

SEC Rulemaking Update Qualifying Venture Capital Funds Inflation Adjustment Proposed Rulemaking

On February 14, 2024, the Securities and Exchange Commission (**SEC**) proposed a rule that would update the dollar threshold for a fund to qualify as a “qualifying venture capital fund” from the current standard of \$10 million to \$12 million in aggregate capital contributions and uncalled committed capital, based on the Personal Consumption Expenditures Chain-Type Price Index (**PCE Index**). Qualifying venture capital funds are excluded from the definition of an “investment company” under the Investment Company Act of 1940 (the **Company Act**).

The Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 (**EGRRCPA**) created a new exemption from registration under Section 3(c)(1) of the Company Act for “qualifying venture capital funds.” The new exemption allows qualifying venture capital funds to have up to 250 “beneficial owners” or investors (rather than 100) who are accredited investors as long as the fund has no more than \$10 million in commitments. This allowed so-called micro venture capital funds the ability to raise money from a larger number of investors, which was expected to have a positive impact on start-up and emerging growth companies that receive funding from angel investors. The EGRRCPA directs the SEC to index the \$10 million limitation for inflation every five years.

Accordingly, in addition to raising the threshold upon the 5-year anniversary of the EGRRCPA, the proposed rule is designed to establish a process for future inflation adjustments every five years. The SEC has proposed to issue an order every five years adjusting the dollar threshold for inflation using the PCE Index (or any successor index) as the inflation benchmark. The PCE Index is published by the Department of Commerce and is often used as an indicator of inflation in the personal sector of the U.S. economy. The SEC considered other inflation adjustment benchmarks, including the Consumer Price Index for all Urban Consumers (**CPIU**), which has been required by certain statutes to conduct certain inflation adjustments. For the specific 5-year period considered, the two indexes yielded the same \$2,000,000 increase from \$10,000,000 to \$12,000,000 after rounding to the nearest \$1,000,000. However, the SEC proposed the PCE Index for future inflation adjustments because the methodology and scope of the PCE Index (which considers both urban and rural households and expenditures made on their behalf by third parties) reflects a broad sector of the U.S. economy.

The comment period for the proposed rulemaking ends on March 22, 2024. Following is a link to the proposed release. Most **Core** clients do not meet the qualifying venture capital fund definition and will not be impacted by this rulemaking. However, for micro venture capital funds, the current and future inflation adjustments will be meaningful.

See Proposed Rule – <https://www.sec.gov/rules/2024/02/qvcf-inflation-adjustment>