

SECURITIES AND EXCHANGE COMMISSION

17 CFR PART 270

[Release No. IC-35129; File No. S7-2024-01]

RIN 3235-AN33

Qualifying Venture Capital Funds Inflation Adjustment

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: To implement the requirements of section 504 of the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 (“EGRRCPA”), the Securities and Exchange Commission (“Commission”) is proposing a rule that would adjust for inflation the dollar threshold used in defining a “qualifying venture capital fund” under section 3(c)(1) of the Investment Company Act of 1940 (“Investment Company Act” or “Act”). The proposed rule also would allow the Commission to adjust for inflation this threshold amount by order every five years and specify how those adjustments would be determined.

DATE: Comments should be submitted on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission’s internet comment form (<https://www.sec.gov/rules/2024/02/qvcf-inflation-adjustment>); or
- Send an email to rule-comments@sec.gov. Please include File Number S7-2024-01 on the subject line.

Paper Comments:

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-2024-01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission's website (<https://www.sec.gov/rules/2024/02/qvcf-inflation-adjustment>). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Operating conditions may limit access to the Commission's public reference room. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the "Stay Connected" option at www.sec.gov to receive notifications by email.

A summary of the proposal of not more than 100 words is posted on the Commission's website (<https://www.sec.gov/rules/2024/02/qvcf-inflation-adjustment>).

FOR FURTHER INFORMATION CONTACT: Michael Khalil, Senior Counsel, Brad Gude, Branch Chief, or Brian McLaughlin Johnson, Assistant Director, Investment Company

Regulation Office, at (202) 551-6792, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-8549.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 3(a) of the Investment Company Act defines the term “investment company” for purposes of the Act, and section 3(c)(1) provides certain exclusions from that definition.¹ Section 504 of the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 (“EGRRCPA”) amended section 3(c)(1) of the Investment Company Act by excluding “qualifying venture capital funds” from the investment company definition.² Section 504 of EGRRCPA also added new Investment Company Act section 3(c)(1)(C), defining a “qualifying venture capital fund” as “a venture capital fund that has not more than \$10,000,000 in aggregate capital contributions and uncalled committed capital.”³ The statutory definition requires this \$10,000,000 threshold “be indexed for inflation once every 5 years by the Commission, beginning from a measurement made by the Commission on a date selected by the Commission, rounded to the nearest \$1,000,000.”⁴

II. Discussion

Pursuant to section 3(c)(1)(C) of the Act and section 504 of EGRRCPA, we are proposing a new rule under the Investment Company Act, 17 CFR 270.3c-7 (“rule 3c-7”), that

¹ See 15 U.S.C. 80a-3(a) and 80a-3(c)(1).

² Pub. L. 115-174, section 504 (May 24, 2018); 15 U.S.C. 80a-3(c)(1). In order to meet this statutory exclusion, a qualifying venture capital fund’s outstanding securities cannot be beneficially owned by more than 250 persons, and the fund must not be making, or presently proposing to make, a public offering of its securities. *Id.*

³ Pub. L. 115-174, section 504 (May 24, 2018); 15 U.S.C. 80a-3(c)(1)(C)(i). For purposes of section 3(c)(1), a “venture capital fund” has the meaning given the term in 17 CFR 275.203(l)-1. 15 U.S.C. 80a-3(c)(1)(C)(i).

⁴ *Id.*

would update for inflation the dollar threshold for defining a qualifying venture capital fund under section 3(c)(1)(C) of the Act. Proposed rule 3c-7 would also provide that the Commission will subsequently issue orders every five years making future inflation adjustments to the definition of qualifying venture capital fund and specify how those adjustments would be determined.

A. Current Inflation-Adjusted Definition of Qualifying Venture Capital Fund

Proposed rule 3c-7(a) would state the current inflation-adjusted dollar threshold for purposes of defining a qualifying venture capital fund under section 3(c)(1)(C) of the Investment Company Act.⁵ Pursuant to EGRRCPA,⁶ proposed rule 3c-7(a) would use December 2023 as the current measurement date and adjust the current dollar threshold for determining a qualifying venture capital fund under section 3(c)(1)(C) of the Act to \$12,000,000 or, following a date five years after the effective date of any final rule, the dollar amount specified in the most recent order issued by the Commission in accordance with the proposed rule and as published in the *Federal Register*.⁷

This revised dollar threshold would take into account the effects of inflation by reference to the historic and current levels of the Personal Consumption Expenditures Chain-Type Price

⁵ Proposed rule 3c-7's definition of qualifying venture capital fund is expressly limited to construing the term for purposes of section 3(c)(1) of the Act. Under 12 CFR 351.10, the term qualifying venture capital fund has a different meaning.

⁶ Pub. L. 115-174, section 504 (May 24, 2018); 15 U.S.C. 80a-3(c)(1) (defining a "qualifying venture capital fund" as "a venture capital fund that has not more than \$10,000,000 in aggregate capital contributions and uncalled committed capital" and requiring the Commission to adjust this dollar threshold for inflation once every 5 years, beginning from a measurement made by the Commission on a date selected by the Commission, rounded to the nearest \$1,000,000).

⁷ Such orders would also be available on the Commission's website.

Index (“PCE Index”),⁸ which is published by the Department of Commerce.⁹ The PCE Index is often used as an indicator of inflation in the personal sector of the U.S. economy.¹⁰ Additionally, the Commission routinely has used the PCE Index in similar contexts in Commission rules and provisions of the federal securities laws.¹¹

We are proposing to use the PCE Index to calculate inflation adjustments for this rulemaking because the methodology and scope of the PCE Index (which considers both urban

⁸ The revised dollar threshold would reflect inflation as of Dec. 2023, and is rounded to the nearest \$1,000,000 as required by section 3(c)(1)(C) of the Act. The Dec. 2023 PCE Index was 121.421, and the May 2018 PCE Index was 101.941. $121.421/101.941 \times \$10,000,000 = \$11,910,909$; \$11,910,909 rounded to the nearest multiple of \$1,000,000 = \$12,000,000.

⁹ The values of the PCE Index are available from the Bureau of Economic Analysis, a bureau of the Department of Commerce. See <https://www.bea.gov>. The PCE Index measures the prices that people living in the United States, or those buying on their behalf, pay for goods and services. The PCE Index is known for capturing inflation (or deflation) across a wide range of consumer expenses and reflecting changes in consumer behavior. See <https://www.bea.gov/data/personal-consumption-expenditures-price-index>.

¹⁰ See Clinton P. McCully, Brian C. Moyer & Kenneth J. Stewart, *Comparing the Consumer Price Index and the Personal Consumption Expenditures Price Index*, SURVEY OF CURRENT BUS., Nov. 2007, at 26 n.1 (PCE Index measures changes in “prices paid for goods and services by the personal sector in the U.S. national income and product accounts” and is primarily used for macroeconomic analysis and forecasting). See also FEDERAL RESERVE BOARD, MONETARY POLICY REPORT TO THE CONGRESS, at n.1 (Feb. 17, 2000), available at <https://www.federalreserve.gov/boarddocs/hh/2000/february/ReportSection1.htm#FN1> (noting the reasons for using the PCE Index rather than the consumer price index).

¹¹ See, e.g., Investment Adviser Performance Compensation, Investment Advisers Act Release No. 3372 (Feb. 15, 2012) [77 FR 10358, 10367 (Feb. 22, 2012)] (stating that the Commission had proposed and was adopting the PCE Index in relation to the definition of “qualified clients” because it is widely used as a broad indicator of inflation in the economy, and because the Commission has used it in other provisions of the federal securities laws); Definitions of Terms and Exemptions Relating to the “Broker” Exceptions for Banks, Securities Exchange Act Release No. 56501 (Sept. 24, 2007) [72 FR 56514 (Oct. 3, 2007)] (using PCE Index in adopting periodic inflation adjustments to the fixed-dollar thresholds for both “institutional customers” and “high net worth customers” under Rule 701 of Regulation R “because it is a widely used and broad indicator of inflation in the U.S. economy”); see also Amendments to Form ADV, Investment Advisers Act Release No. 3060 (July 28, 2010) [75 FR 49234 (Aug. 12, 2010)] (using PCE Index in increasing for inflation the threshold amount for prepayment of advisory fees that triggers an adviser’s duty to provide clients with an audited balance sheet and the dollar threshold triggering the exception to the delivery of brochures to advisory clients receiving only impersonal advice). The Dodd-Frank Act also requires the use of the PCE Index to calculate inflation adjustments for the cash limit protection of each investor under the Securities Investor Protection Act of 1970. See section 929H(a) of the Dodd-Frank Act, 15 U.S.C. 78fff-3.

and rural households and expenditures made on their behalf by third parties) reflects a broad sector of the U.S. economy.¹²

We also considered other inflation adjustment calculations. For example, the Commission has been required by statute to use the Consumer Price Index for all Urban Consumers (“CPI-U”)¹³ to conduct certain inflation adjustments.¹⁴ We calculated the rate of inflation between May 2018 and December 2023 using both PCE Index and CPI-U. While these indexes yielded slightly different rates of inflation for the measured time period,¹⁵ after rounding to the nearest \$1,000,000 as required by EGRRCPA, both indexes yielded an adjusted inflation threshold of \$12,000,000, or an increase of \$2,000,000.¹⁶

Notwithstanding that the PCE Index and CPI-U yield the same inflation adjustment for this time-period after the rounding required by EGRRCPA, we are proposing to use the PCE Index to calculate inflation adjustments for this rulemaking because the PCE Index reflects a

¹² See *infra* section III.

¹³ The CPI-U is the statistical metric developed by the U.S. Bureau of Labor Statistics to monitor the change in the price of a set list of products. The CPI-U represents changes in prices of all goods and services purchased for consumption by urban households. See *Consumer Price Index* available at <https://www.bls.gov/cpi> (last visited Feb. 7, 2024, 12:51 PM).

¹⁴ See, e.g., Inflation Adjustments and Other Technical Amendments Under Titles I and III of the Jobs Act, Securities Act Release No. 10332 (Mar. 31, 2017) [82 FR 17545 (Apr. 12, 2017)] (citing the Jumpstart Our Business Startups Act (“JOBS Act”), Pub. L. 112-106, 126 Stat. 306 (2012); Crowdfunding, Securities Act Release No. 9974 (Oct. 30, 2015) [80 FR 71387 (Nov. 16, 2015)] (citing the JOBS Act); 17 CFR 201.1001 (Adjustment of civil monetary penalties); Adjustments to Civil Monetary Penalty Amounts, Investment Company Act Release No. 22310 (Nov. 1, 1996) [61 FR 57773 (Nov. 8, 1996)] (citing the Debt Collection Improvement Act of 1996 (Pub. L. 104-134)).

¹⁵ Inflation as measured by PCE Index was 19.11%, while inflation as measured by CPI-U was 23.15%. See footnote 8 (showing PCE Index calculation). The May 2018 PCE Index was 101.941 and the Dec. 2023 PCE Index was 121.421 ((121.421/101.941-1) x 100 = 19.11%). The May 2018 CPI-U was 250.792 and the Dec. 2023 CPI-U was 308.850 ((308.850/250.792-1) x 100 = 23.15%).

¹⁶ Before conducting the mandated rounding to the nearest million, inflation as calculated according to the PCE Index would have resulted in an increase of \$1.911 million (*i.e.*, a new \$11,911,000 threshold), while inflation as calculated according to CPI-U would have resulted in an increase of \$2.315 million (*i.e.*, a new \$12,315,000 threshold).

broader scope of the U.S. economy and in light of the additional considerations discussed below in the Economic Analysis.

B. Future Inflation Adjustments to the Definition of Qualifying Venture Capital Fund

Proposed rule 3c-7(b) would provide a mechanism for future inflation adjustments.

Specifically, the Commission would issue an order every five years adjusting for inflation the dollar threshold for qualifying venture capital funds for purposes of section 3(c)(1) of the Act.¹⁷

Proposed rule 3c-7(b) would also specify the PCE Index (or any successor index thereto) as the inflation index used to calculate future inflation adjustment of the dollar threshold in the rule.¹⁸

We are proposing to use the PCE Index for these updates for the same reasons we are proposing to use the PCE Index for the proposed initial adjustment.¹⁹

We request comment on proposed rule 3c-7.

(1) Is the proposed use of the PCE Index as a measure of inflation appropriate? Is there another index (such as the CPI-U) or other measure that would be more appropriate, and if so, why?

(2) The proposed rule would establish the original \$10,000,000 threshold stated in EGRRCPA as the baseline for all future inflation adjustments, as a consistent denominator for all future calculations. Should we instead establish each future adjustment of the dollar amount as a new baseline for the next calculation of the

¹⁷ Proposed rule 3c-7 would provide that the Commission will issue an order effective on or about five years after the effective date of the rule, and approximately every five years thereafter, adjusting for inflation the dollar threshold necessary to be a qualifying venture capital fund for purposes of section 3(c)(1) of the Act.

¹⁸ Proposed rule 3c-7 would provide that the dollar threshold for qualifying venture capital funds will be adjusted for inflation by (i) dividing the year-end value of the PCE Index for the calendar year preceding the calendar year in which the order is being issued, by the year-end value of the PCE Index for the calendar year 2018, (ii) multiplying \$10,000,000 (*i.e.*, the original 2018 statutory threshold for a qualifying venture capital fund) by that quotient, and (iii) rounding the product to the nearest multiple of \$1,000,000.

¹⁹ *See supra* footnotes 8-12 and accompanying text and *infra* section III.

threshold amount? If we were to adopt that approach, because EGRRCPA's amendments to section 3(c)(1)(C) of the Act requires that the revised threshold be rounded to the nearest \$1,000,000, could the establishment of a new baseline at the rounded amount, each time the threshold is adjusted, result in the underestimation or overestimation of the effects of inflation in subsequent periods?

C. Effective Date

Because the rule would implement a required inflation adjustment to an existing statutory exclusion from regulation, we are not proposing a compliance period or extended effective date. Reliance on section 3(c)(1) is voluntary and a fund that newly met the definition of a qualifying venture capital fund under rule 3c-7 could choose whether to rely on the exclusion provided by section 3(c)(1) for such funds.

(3) Do commenters see a benefit to including a compliance period or extended effective date for this proposed rule? If so, please describe.

III. Economic Analysis

The Commission is sensitive to the economic effects that could result from proposed rule 3c-7. To comply with the inflation adjustment required under EGRRCPA, we are proposing rule 3c-7 to state the current threshold for qualifying venture capital funds as indexed for inflation. This proposed rule would allow the Commission to adjust the current threshold in the definition of the term "qualifying venture capital fund" from \$10,000,000 to \$12,000,000 in response to inflation as measured by the PCE Index, and to perform future statutorily required inflation adjustments using the same methodology.

For purposes of analyzing the economic effects of the proposed rule, we use as our baseline the current venture capital fund market and the current regulatory framework. To be

excepted from registration under section 3(c)(1), an issuer (including a venture capital fund) must, among other things, either have not more than 100 beneficial owners, or in the case of a qualifying venture capital fund, which currently is defined as having no more than \$10,000,000 in aggregate capital contributions and uncalled committed capital, have no more than 250 beneficial owners.

An adviser to a venture capital fund that is either registered with the Commission or is an “exempt reporting adviser” is required to file reports on Form ADV.²⁰ Based on this data, there are at least 23,759 venture capital funds, of which at least 14,822 are qualifying venture capital funds as of December 2022.²¹ Of the qualifying venture capital funds, 653 have more than 100 beneficial owners and so could not use the section 3(c)(1) exclusion absent meeting the current \$10,000,000 asset threshold. Increasing the asset threshold in the definition of the term “qualifying venture capital fund” will increase the number of venture capital funds that can be qualifying venture capital funds. Specifically, we estimate that there are approximately three

²⁰ An adviser to a venture capital fund may or may not be required to register with the Commission depending on its specific facts and circumstances including the adviser’s total regulatory assets under management, the state of its principal office, and whether it solely manages private funds or venture capital funds. Many of the advisers to qualifying venture capital funds are “exempt reporting advisers.” *See, e.g.,* Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers with Less Than \$150 Million in Assets Under Management, and Foreign Private Advisers, Investment Advisers Act Release No. 3222 (June 22, 2011) [76 FR 39645 (July 6, 2011)], at n.20 and accompanying text. Exempt reporting advisers are not subject to the investment adviser registration requirements under the Advisers Act. They are, however, subject to certain other requirements under the Advisers Act and its rules that also apply to registered advisers, including the requirement to file reports on Form ADV and the Advisers Act’s antifraud provisions. *See* 17 U.S.C. 80b-3(l).

²¹ Based on Form ADV data between Jan. 1, 2022 and Dec. 31, 2022. These estimates encompass all private funds reported on Form ADV that advisers indicated are venture capital funds. The estimate of qualifying venture capital funds includes only these funds that qualify for the exclusion from the definition of investment company under section 3(c)(1) of the Act, have no more than 250 beneficial owners, and report gross assets of no more than \$10,000,000. These numbers somewhat underestimate the total number of relevant funds. First, gross assets may include assets that are not considered aggregate capital contributions or uncalled capital commitments. Second, with certain exceptions, advisers with less than \$25 million in regulatory assets under management are prohibited from registering with the Commission and must instead register with state regulators, with certain exceptions. Some states require these advisers to file Form ADV under state registration, while other states do not. Accordingly, these estimates do not capture funds managed by advisers registered in states that do not require filing Form ADV.

venture capital funds that are not currently excluded from registration under section 3(c)(1) but that could be defined as a qualifying venture capital fund if the threshold were adjusted for inflation to \$12,000,000 as proposed.²²

Incentives for funds to change their behaviors to stay within the regulatory definition of a “qualifying venture capital fund” would also strengthen or be mitigated depending on the specific circumstances of the fund. If the threshold is increased to \$12,000,000, a fund near the current \$10,000,000 threshold in aggregate capital contributions and uncalled capital commitments, and a number of beneficial owners above 100 but well below 250, would have additional room to raise capital while remaining a qualifying venture capital fund. Accordingly, it would have weaker incentives to prevent growth until its aggregate capital contributions and uncalled capital commitments approach the new threshold. Funds near an anticipated future adjusted threshold of aggregate capital contributions and uncalled capital commitments could have a greater incentive to maintain a balance below this future threshold and maintain fewer than 250 beneficial owners.

While the immediate impacts described above are likely to be meaningful for funds near the existing and future adjusted thresholds, the overall effect of the proposed rule on the venture capital fund market would be minimal; the inflation adjustment should maintain the scope of funds that can be defined as a qualifying venture capital fund, thereby preserving the economic effects associated with the original provision.

Relatively few funds would be directly impacted by the proposed change in the asset threshold. Accordingly, the proposed rule would not substantively impact efficiency,

²² This estimate is based on the number of venture capital funds reported on Form ADV between Jan. 1, 2022 and Dec. 31, 2022, that have gross asset value between \$10,000,000 and \$12,000,000, between 100 and 250 beneficial owners, and currently do not qualify for an exception under section 3(c)(1).

competition, or capital formation in the near term. In addition, over time, as future inflation adjustments are made, the proposed rule would preserve the costs and benefits associated with the original provision by maintaining a consistent threshold standard. At the margin, the proposed rule may encourage market competition by lowering barriers to entry for emerging venture capital managers. Specifically, it could lower compliance costs for eligible funds by exempting them from certain regulatory requirements such as registration as an investment company and make it easier for their managers to raise smaller amounts of capital from a larger number of accredited investors.

Absent the periodic inflation adjustments that the proposed rule would implement, the capital threshold for qualifying venture capital funds would, over time, shrink in real terms. This would either result in higher compliance costs for these types of funds—because these funds would be newly required to register under the Act—or cause the managers of these funds to change their strategies. For example, such funds may decide to merge with other funds to spread out any fixed costs from registration or stop operating these types of funds altogether. They may also choose to limit the number of investors to be under the conventional section 3(c)(1) limit of no more than 100 beneficial owners. Either of these shifts could limit the types of funds available for investment, especially to accredited investors with relatively fewer assets. For example, funds that merge or choose to rely on the conventional section 3(c)(1) limit could become more likely to seek larger investments from relatively fewer beneficial owners. It could also impact smaller firms' ability to raise capital since these firms disproportionately raise capital from smaller funds.²³ Whether managers changed their behavior or not, the number of qualifying venture

²³ See, e.g., Mark Humphery-Jenner, *Private Equity Fund Size, Investment Size, and Value Creation*, 16 REV. FIN. 799 (2012). In Table IV, the authors find a correlation between the natural logarithm of private equity fund size and the natural logarithm of investment size of 0.56.

capital funds would decrease absent the periodic inflation adjustment. At least some of the capital that would otherwise be allocated to these funds would likely go to funds that are not excluded from the Act and thus would receive the investor protection benefits provided by the Act.

Because the proposed rule would implement the statutory inflation adjustments mandated by EGRRCPA, the only reasonable alternative to be considered relates to the choice of inflation index to be used. As discussed above, two indexes were considered—the PCE Index and CPI-U. These measures differ because of different scopes and different methodologies. CPI-U reflects only expenditures made directly by urban households, whereas the PCE Index considers both urban and rural households and considers expenditures made on their behalf by third parties, such as employer-paid health insurance. The PCE Index also better captures substitution effects since its category weights update quarterly whereas those of the CPI-U update annually. Category weights reflect the quantity of goods and services purchased in a particular category. As some determinants of prices change, consumers will substitute purchases between categories. Category weights that change less frequently will less accurately capture these substitution effects. The indexes' survey methodologies also differ: CPI-U relies on two voluntary consumer surveys whereas the PCE Index incorporates multiple surveys of businesses, some of which are government mandated and carry fines for nonresponse. The scope of the PCE Index, covering all American households, is more relevant to the affected parties of this proposed rule than is the scope of the CPI-U, which only reflects urban households.

We request comment on all aspects of the economic analysis of proposed rule 3c-7. To the extent possible, we request that commenters provide supporting data and analysis. In particular, we ask commenters to consider the following questions:

(4) The proposed rule would require that the PCE Index or its successor index be used to perform future inflation adjustments. Are there additional factors beyond those discussed in this release that should be considered regarding which index to use for these adjustments?

(5) We estimate that three of the funds reported on Form ADV would be directly impacted by the proposed change in threshold. This is the number of reported venture capital funds that have gross asset value between \$10,000,000 and \$12,000,000, between 100 and 250 beneficial owners, and currently do not qualify for an exception under section 3(c)(1). Does this estimate capture the likely number of directly affected funds? How could this estimate be improved?

(6) Are the costs and benefits of the proposed rule accurately characterized?

(7) Are the effects on competition, efficiency, and capital formation arising from the proposed rule accurately characterized?

IV. Paperwork Reduction Act

Proposed rule 3c-7 does not contain a “collection of information” requirement within the meaning of the Paperwork Reduction Act of 1995 (“PRA”) nor would it create any new filing, reporting, recordkeeping, or disclosure reporting requirements.²⁴ Accordingly, the PRA is not applicable and we are not submitting the proposed rule to the Office of Management and Budget

²⁴ 44 U.S.C. 3502(3).

for review under the PRA.²⁵ We request comment on whether our conclusion that there is no collection of information is correct.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (“RFA”) requires the Commission, when issuing a rulemaking proposal, to prepare and make available for public comment an initial regulatory flexibility analysis (“IRFA”) that describes the impact of the proposed rule on small entities,²⁶ unless the Commission certifies that the rule, if adopted, would not have a significant economic impact on a substantial number of small entities.²⁷ Pursuant to 5 U.S.C. 605(b), we hereby certify that proposed new rule 3c-7 under the Investment Company Act would not, if adopted, have a significant economic impact on a substantial number of small entities. We are proposing new rule 3c-7 pursuant to the authority set forth in the Investment Company Act, particularly sections 3 and 38 thereof [15 U.S.C. 80a *et seq.*], and the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018, particularly section 504 [Pub. L. 115-174, 132 Stat. 1296]. Generally, for purposes of the Investment Company Act and the RFA, an investment company is a small entity if, together with other investment companies in the same group of related investment companies, it has net assets of \$50 million or less as of the end of its most recent fiscal year.²⁸

To qualify for a section 3(c)(1) exclusion, an issuer must (among other things) have no more than 100 beneficial owners, or in the case of a qualifying venture capital fund, no more

²⁵ 44 U.S.C. 3507(d) and 5 CFR 1320.11.

²⁶ 5 U.S.C. 603(a).

²⁷ 5 U.S.C. 605(b).

²⁸ 17 CFR 270.0-10(a).

than 250 beneficial owners.²⁹ Based on Form ADV filings, as of December 2022, there were at least 14,822 funds that had met the definition of a qualifying venture capital fund.³⁰ Of those funds, approximately 653 had between 100 and 250 beneficial owners, such that they would have had to rely on meeting the definition of a qualifying venture capital fund in order to qualify for a section 3(c)(1) exclusion. A review of Form ADV filings also suggest that there are approximately three venture capital funds that are not currently relying on the exclusion in section 3(c)(1) but that have between \$10,000 and \$12,000,000 in aggregate capital contributions and uncalled committed capital, and between 100 and 250 beneficial owners, such that they could meet the definition of a qualifying venture capital fund under proposed rule 3c-7.³¹ We do not believe that three out of 653 total venture capital funds with between 100 and 250 beneficial owners represent a “substantial number” of small entities. For these reasons, the Commission believes that proposed rule 3c-7 would not, if adopted, have a significant economic impact on a substantial number of small entities.

The Commission encourages written comments on the certification. We solicit comment as to whether the proposed rule could have an effect on small entities that has not been considered. We ask that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

²⁹ 15 U.S.C. 80a-3(c)(1).

³⁰ *See supra* footnote 21.

³¹ *See supra* footnote 22.

VI. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”),³² the Commission must advise OMB whether a proposed regulation constitutes a “major” rule. Under SBREFA, a rule is considered “major” where, if adopted, it results in or is likely to result in:

- An annual effect on the economy of \$100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

We request comment on whether our proposal would be a “major rule” for purposes of SBREFA. We solicit comment and empirical data on:

- The potential effect on the U.S. economy on an annual basis;
- Any potential increase in costs or prices for consumers or individual industries;
and
- Any potential effect on competition, investment, or innovation.

Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

Statutory Authority

The new rule contained in this release is being proposed under the authority set forth in the Investment Company Act, particularly sections 3 and 38 thereof [15 U.S.C. 80a *et seq.*] and the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018, particularly section 504 thereof [115 Pub. L. 174, 132 Stat. 1296].

³² Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

List of Subjects in 17 CFR Part 270

Investment companies, Securities.

TEXT OF PROPOSED RULE

For reasons set forth in the preamble, we are proposing to amend title 17, chapter II of the Code of Federal Regulations as follows:

PART 270--RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The general authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a-1 *et seq.*, 80a-34(d), 80a-37, 80a-39, and Pub. L. 111-203, sec. 939A, 124 Stat. 1376, unless otherwise noted.

* * * * *

2. Section 270.3c-7 is added to read as follows:

§ 270.3c-7 Inflation-adjusted definition of qualifying venture capital fund.

(a) *Inflation-adjusted definition of qualifying venture capital fund.* For purposes of section 3(c)(1)(C)(i) of the Act (15 U.S.C. 80a-3(c)(1)(C)(i)), the term *qualifying venture capital fund* means a venture capital fund (as that term is defined in 17 CFR 275.203(1)-1 or any successor regulation) that has not more than \$12,000,000 in aggregate capital contributions and uncalled committed capital, or, following **[DATE FIVE YEARS AFTER EFFECTIVE DATE OF FINAL RULE]**, the dollar amount specified in the most recent order issued by the Commission in accordance with paragraph (b) of this section and as published in the *Federal Register*.

(b) *Future inflation adjustments.* Pursuant to section 3(c)(1)(C)(i) of the Act (15 U.S.C. 80a-3(c)(1)(C)(i)), the dollar amount specified in paragraph (a) of this section shall be adjusted by order of the Commission, issued on or about **[DATE FIVE YEARS AFTER EFFECTIVE**

DATE OF FINAL RULE] and approximately every five years thereafter. The adjusted dollar amount established in such orders shall be computed by:

- (1) Dividing the year-end value of the Personal Consumption Expenditures Chain-Type Price Index (or any successor index thereto), as published by the United States Department of Commerce, for the calendar year preceding the calendar year in which the order is being issued, by the year-end value of such index (or successor) for the calendar year 2018; and
- (2) Multiplying \$10,000,000 times the quotient obtained in paragraph (b)(1) of this section and rounding the product to the nearest multiple of \$1,000,000.

By the Commission.

Dated: February 14, 2024.

Vanessa A. Countryman,

Secretary.