

Reimagining the 1940 Act

KEY RECOMMENDATIONS FOR INNOVATION AND INVESTOR PROTECTION

MARCH 2025

Ready for Reform

It has been more than 30 years since the Securities and Exchange Commission (SEC) last reviewed the regulatory framework of the Investment Company Act of 1940 (1940 Act) and recommended reforms. The SEC should update this framework to ensure 1940 Act funds—including mutual funds, exchange-traded funds (ETFs), and closed-end funds—continue to support middle-class wealth creation.

Over the past three years, ICI has developed a blueprint for reform. Two principles have guided our work: first, that the core 1940 Act regulatory framework remains fundamentally sound; and second, that any proposed changes must advance the interests of individual investors. Our recommendations are listed below and detailed in [this paper](#).

ICI's Recommendations at a Glance

Foster ETF innovation

ETFs, one of the most successful financial innovations for the investing public, did not exist in 1992, when the 1940 Act regulatory framework was last reviewed. The SEC should adopt reforms that will expand ETF offerings to investors while maintaining strong 1940 Act protections.

1. Enable a new or existing fund to offer both mutual fund and ETF share classes
 2. Expand permissible asset classes for semi-transparent ETFs
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Expand retail investors' access to private markets and strengthen closed-end funds

Companies are successfully raising capital in the private equity and credit markets, allowing many to stay private for longer. Most individual investors are ineligible to participate directly in the private markets. At the same time, closed-end funds are highly suitable vehicles for providing retail investors with exposure to the private markets. The SEC should adopt reforms to strengthen closed-end funds, including by giving them additional tools to combat harmful predatory activists, and expand investment flexibility without sacrificing investor protection.

3. Allow closed-end funds to more flexibly invest in private funds
4. Remove the annual shareholder meeting requirement for listed closed-end funds
5. Let fund boards rely on state-recognized anti-takeover measures
6. Update the framework for fund co-investments
7. Create more flexibility for closed-end funds to provide repurchase opportunities to their investors
8. Let interval funds and tender offer funds operate as series companies

Eliminate unnecessary regulatory costs and burdens

The SEC should adopt reforms that alleviate unnecessary regulatory costs and burdens. A number of current requirements, for example, were developed in a world where mobile technology did not exist and most communication by funds with their investors was through the postal service, on paper. These and other requirements may be updated without any compromise of investor protection.

9. Adopt electronic delivery of information as the default delivery option
10. Streamline the shareholder approval process
11. Restore the ability of funds to cross-trade
12. Allow closed-end funds to use more than one type of debt
13. Permit continuously offered closed-end funds to offer multiple share classes
14. Streamline notification requirements for distributions

Better leverage the expertise and independence of fund directors

The 1940 Act places significant responsibility on a fund’s board of directors—particularly on the directors who are independent of the adviser—for oversight of actions by the fund’s investment adviser and other service providers that impact the fund. Independent directors now comprise a supermajority on most fund boards, and under the SEC’s fund compliance rule, they have new responsibilities and dedicated resources that enhance their oversight of fund compliance with the federal securities laws. The SEC should adopt reforms that reflect the composition and capabilities of today’s fund boards.

15. Update requirements for in-person voting by directors
16. Permit streamlined board approval of new subadvisory contracts and annual renewals
17. Revise the “interested person” standard
18. Permit fund boards to appoint a greater number of new independent directors
19. Update fund board responsibilities with respect to auditor approval



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