

How '40 Act Funds Can Safely Open Private Markets to Main Street

With far fewer companies listed on public exchanges today than just two decades ago, individual investors are increasingly turning to private markets to diversify their portfolios—and policymakers have taken notice. The growth of private markets is undeniable, yet access for everyday investors remains limited. Concerns persist that private markets carry too much risk, and ICI agrees that any expansion of access must come with strong investor protections.

Those protections already exist in funds governed by the Investment Company Act of 1940 ('40 Act), including closed-end funds, which combine access to private market strategies with decades of proven safeguards. A recent executive order from President Donald Trump directs regulators to expand such access. The safest path forward is to build on this time-tested framework.

Why '40 Act Funds Work

Fiduciary Oversight

- » Advisers must act in the best interests of shareholders, ensuring due diligence, accurate valuation, and prudent risk management.
- » Independent directors must comprise a majority of each board and are tasked with approving critical matters, such as contracts with the adviser, and transactions involving affiliates that are not otherwise prohibited, and with overseeing the fund's derivatives risk management and valuation of its investments.
- » '40 Act fund advisers are institutional investors with the scale to request and evaluate detailed information on private market opportunities, applying a level of scrutiny not feasible for most individuals.

Comprehensive Disclosure and Valuation

- » Detailed public reports to shareholders and the SEC, including, for example, registered funds providing audited annual financial statements (with a full schedule of investments) within 60 days of fiscal year-end, and semi-annual unaudited statements within 60 days of mid-year.
- » Valuation processes to ensure that portfolio holdings are priced fairly and consistently.

Strict Conflict-of-Interest Limits

- » The '40 Act tightly restricts transactions with affiliates—including affiliated private funds—except under narrow statutory or SEC exemptions.
- » Joint transactions are also limited to prevent arrangements that could disadvantage shareholders or shift undesirable assets to '40 Act funds.

Liquidity and Leverage Controls

- » Closed-end structures avoid daily redemption pressures, enabling investment in less liquid private assets with a long-term horizon.
- » '40 Act closed-end funds have strict leverage limitations and varying liquidity features, depending on selected wrapper:

Liquidity and Leverage at a Glance: How '40 Act Closed-End Funds are Structured

Fund Type	Leverage Limits	Liquidity Features
Listed closed-end fund	\$1 in debt for every \$2 in equity/\$1 in preferred shares for every \$1 in equity	Trades on exchange, investors buy and sell at market prices
Business Development Company (BDC)	\$2 in debt for every \$1 in equity	Can use an interval or tender offer structure, but must use a tender offer structure
Interval Fund	\$1 in debt for every \$2 in equity/\$1 in preferred shares for every \$1 in equity	Must offer to repurchase 5%-25% of shares at NAV on regular, pre-set schedule
Tender Offer Fund	\$1 in debt for every \$2 in equity/\$1 in preferred shares for every \$1 in equity	Discretionary periodic repurchase offers via tender offer

The Path Forward

Policymakers at the DOL, SEC, and other agencies should leverage the '40 Act's robust protections to responsibly broaden access to private markets—giving Main Street investors new opportunities without sacrificing transparency, fairness, or oversight.