

SEC Staff Grants No-Actions Relief for “Seed Share” Structures in New Non-Traded BDCs and Registered Closed-End Funds

April 27, 2026

On April 16, 2026, the staff of the SEC’s Division of Investment Management issued a no-action letter granting relief to Third Point Private Capital Income Fund (the Fund) in connection with the proposed issuance of a class of preferred shares designed to allow the Fund to build an initial investment portfolio using seed capital provided by the Fund’s sponsor or its affiliates. The Investment Company Act presents significant constraints on the capital structure of registered investment companies (RICs) and business development companies (BDCs), including as it relates to issuance of preferred stock and other “senior securities.” These restrictions present particular challenges for non-traded funds given the added difficulty of raising enough money initially to build a portfolio, and the relief in the letter is aimed at alleviating some of those challenges.

While the Fund that is the subject of the letter intends to elect to be regulated as a BDC, the relief granted in this letter applies to both BDCs and to closed-end RICs, and provides a potential avenue for such funds to provide seed funding and build out an initial portfolio.

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Background: The Seed Share Structure

In its request letter, the Fund proposed entering into subscription agreements with one or more investors that are affiliated persons of either Third Point or the Fund (the Seed Investors) pursuant to which the Fund would issue new preferred shares (the Seed Shares) from time to time to the Seed Investors pursuant to capital calls under such subscription agreements. Each Seed Share would be entitled to receive a quarterly dividend that would be the greater of a fixed floor rate and the actual distributions paid on each of the Fund's common shares during each quarter. Upon repurchase, the owner of each Seed Share would also receive an amount equal to any accrued but unpaid dividends.

The purpose of the Seed Shares is to provide the Fund with the seed capital necessary to acquire its initial portfolio of investments, which has become a critical requirement for any new retail fund launch. Once the initial portfolio has been acquired and a sufficient amount of capital from new third-party investors has been invested in the Fund's common shares, the Fund would then repurchase the Seed Shares, eventually leaving only common shares outstanding. In particular, in the request letter, the Fund proposed committing to use 50% of the proceeds from any new issuances of common shares to redeem out any outstanding Seed Shares. In addition, the Seed Shares must be redeemed at the lesser of their purchase price or the Fund's then current net asset value per common share, and by their terms have no liquidation preference over the Fund's common shares.

Relief

Under Section 18(a)(2) of the Investment Company Act, a closed-end RIC cannot issue any class of "senior security" representing stock unless, among other things, the RIC complies with certain requirements, including strict limitations on the total amount of senior securities that can be sold based on the amount of assets of the RIC, as well as the liquidation preference of any senior securities structured as stock over common shares. Section 61(a)(2) of the Investment Company Act extends the

restrictions of Section 18(a)(2) to BDCs, though with slightly less stringent asset coverage requirements.

The letter provides relief from various requirements of Section 18(a)(2) (as modified by Section 61(a) for BDCs) if the Fund issues Seed Shares, which are assumed by the letter to be "senior securities," pursuant to the conditions in the letter. In particular, the letter permits the Fund to omit any liquidation preference attributable to the Seed Shares when calculating its compliance with the asset coverage requirements applicable to it under the Investment Company Act. Absent such relief, the Fund would have been restricted both in its ability to issue Seed Shares relative to the number of common shares outstanding, as well as to utilize additional portfolio leverage given the outstanding Seed Shares.

Key Conditions

The relief granted by the letter was subject to various conditions. Some of the key conditions are summarized here:

- **Cash Purchase.** The Seed Shares must be purchased with cash (*i.e.*, initial seeding could not be done by delivering securities or other instruments to the Fund).
- **Price.** The Seed Shares would all be issued at the same fixed price per share, which would be equal to the initial offering price of the Fund's common shares.
- **Voting Rights.** The Seed Shares would have the same voting rights as the common shares, except that for so long as any Seed Shares remain outstanding, the holders of such Seed Shares would have the exclusive right to elect two trustees on the Fund's board of trustees.
- **36 Month Limit.** If any Seed Shares remain outstanding 36 months after the initial issuance of Seed Shares, the Fund would cease offering new common shares, cease originating new investments, and thereafter dispose of investments and distribute proceeds until the Fund has been fully liquidated.

- Public Listing Restriction. The Fund explicitly stated that it did not intend to seek a public listing on any national securities exchange for at least 24 months from the issuance of the Seed Shares, and committed to no such listing while any Seed Shares remain outstanding.
- No Acquisition of Assets From an Affiliate. No assets would be acquired from an affiliated person of the Fund or affiliated persons of such persons until (i) the Seed Shares have been fully repurchased and (ii) no additional Seed Shares are intended to be issued.
- Valuation Review. So long as any Seed Shares are outstanding, the valuations of the Fund's portfolio, performed by the adviser to the Fund, would be reviewed at least quarterly by the Fund's audit committee.
- No Liquidation Preference. The Seed Shares would not have any contractual liquidation preference relative to the Fund's common shares.

Key Takeaways

The relief in this letter represents a significant development for sponsors considering launching new non-traded BDC and closed-end RIC funds. Some of the key takeaways from the letter are:

- Pathway to Build Initial Portfolios. The Seed Share structure reflected in this letter provides a potential pathway for new non-traded BDCs and closed-end RICs, including interval funds, to potentially build an initial investment portfolio using seed capital provided by the Fund's sponsor or an affiliate before a broader investor base has subscribed to the fund. Today, newly formed non-traded BDCs and closed-end RICs generally will seek to acquire an initial portfolio either from an existing private fund, or alternatively through conversion to a regulated fund structure. Notably, however, the acquisition of such seed portfolios raises significant regulatory challenges under the Investment Company Act. While others have sought to utilize third party warehouse structures to build similar seed portfolios, those too have

raised concerns from an Investment Company Act perspective. The structure described in the request letter instead allows sponsors to build seed portfolios using proprietary capital within the regulated fund framework itself, while providing a proscribed method for withdrawing that capital over time as third-party investors come into the Fund.

- Application Limited to Non-Traded Vehicles. The requirements in the letter relating to seeking a stock exchange listing while any Seed Shares remain outstanding, combined with the 24-month lockout period from the initial Seed Share issuance, means that the relief is effectively limited to non-traded BDCs and closed-end RICs, including interval funds. Accordingly, sponsors contemplating an initial public offering or exchange listing at or near the time of launch will not be able to take advantage of the Seed Share structure and will need to consider alternative approaches to initial portfolio construction.

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