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# Fund Formation Regulatory Issues: Investment Company Act of 1940

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## Investment Company Act

- Most Common Exemptions:
  - Section 3(c)(1) Funds
    - Not making or proposing to make a public offering
    - Beneficial ownership is limited to fewer than 100 persons
  - Section 3(c)(7) Funds
    - Not making or proposing to make a public offering
    - All owners must be “qualified purchasers”

## Investment Company Act – 3(c)(1) Funds

- 100 Beneficial Owner Limit
  - Natural persons:
    - Individuals
    - Spouses holding interests jointly
    - Involuntary transfers do not increase the number of beneficial owners
  - Entities:
    - Companies that own 10% or more of the Fund
      - Look-through to beneficial owners
      - Only applies to other Funds and Investment Companies

## Investment Company Act – 3(c)(1) Funds

- Prohibition Against Public Offerings
  - Generally satisfied by complying with Regulation D prohibitions

## Investment Company Act – 3(c)(7) Funds

- Exclusive ownership by “Qualified Purchasers”
  - Natural persons who own not less than \$5 million in investments
  - Family companies that own not less than \$5 million in investments
  - Trusts with a trustee and settlor who are qualified purchasers
  - Institutional buyers that own and invest on a discretionary basis not less than \$25 million in investments
  - Companies in which each beneficial owner of the company’s securities is a qualified purchaser

## Investment Company Act – 3(c)(7) Funds

- Prohibition Against Public Offerings
  - Generally satisfied by complying with Regulation D prohibitions