



SEC

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Investment Clubs and the SEC

Investment clubs and questions about them have grown tremendously. This document answers some of the most common questions and directs you to sources of more information.

What is an investment club?

An investment club is a group of people who pool their money to make investments. Usually, investment clubs are organized as partnerships and, after the members study different investments, the group decides to buy or sell based on a majority vote of the members. Club meetings may be educational and each member may actively participate in investment decisions.

Are investment clubs regulated by the SEC?

Investment clubs usually do not have to register, or register the offer and sale of their own membership interests, with the SEC. But since each investment club is unique, each club should decide if it needs to register and comply with securities laws.

We'll discuss two securities laws that might apply to investment clubs:

Under the Securities Act of 1933, membership interests in the investment club may be securities. If so, the offer and sale of membership interests could be subject to Federal regulation.

Under the Investment Company Act of 1940, an investment club may be an investment company, and regulated.

When does an investment club have to register the offer and sale of its membership interests with the SEC under the Securities Act of 1933?

Since the Securities Act requires the registration of the offer and sale of most securities, the investment club must first decide if its membership interests are "securities." Generally, a membership interest is a security if it is an "investment contract."

Generally, a membership interest is an investment contract if members invest and expect to make a profit from the entrepreneurial and managerial efforts of others.

If every member in an investment club actively participates in deciding what investments to make, the membership interests in the club would probably not be considered securities. If the club has any passive members, it may be issuing securities.

Sometimes offers and sales of securities do not have to be registered because they are exempt under the law. For example, a non-public offering is exempt.

When does an investment club have to register with the SEC as an investment company under the Investment Company Act of 1940?

An investment club must register with the SEC as an investment company under the Investment Company Act of 1940 if all of the following three conditions apply:

1. The club invests in securities,
2. The club issues membership interests that are securities (see above), and
3. The club is not able to rely on an exclusion from the definition of investment company.

For example, a “private investment company” may not need to register with the SEC. To qualify, an investment club

- must not make, nor propose to make, a public offering of its securities, and
- must not have more than 100 members.

How do you know if an investment club is making a public offering?

An announcement that a club is looking for new members might be considered a public offering, but this is determined on a case-by-case basis. An attorney with experience in securities law can help the club determine if its membership interests are securities, and if the club is making a public offering of those securities.

Do securities laws apply to a person who provides advice to an investment club?

If the adviser is compensated for providing the advice regarding the club’s investments, the adviser may need to register according to the Investment Advisers Act of 1940. Also, if one person selects investments for the club, that person may have to register as an investment adviser.

In general, a person who has \$25 million or more in assets under management is required to register with the SEC under the Investment Advisers Act of 1940.

A person managing less than \$25 million may be required to register under the securities laws of the state or states in which the adviser transacts business.

Both the Investment Advisers Act of 1940 and many state laws do not require registration for advisers with a small number of clients.

Do states regulate investment clubs?

State securities laws may differ from federal securities laws. To learn more about the laws in your state, call your state securities regulator. To get the telephone number for your state, visit the North American Securities Administrators Association (NASAA) website, www.nasaa.org.

To learn more about investment clubs or investing, visit your local library. You may want to also visit the website of [Better Investing](http://BetterInvesting.com), formerly known as the National Association of Investors Corporation (NAIC). This membership organization provides education for individuals and members of investment clubs.

For more information, read our publications, including: Mutual Funds, A Guide for Investors or Ask Questions, available on www.sec.gov.

If you have a question or complaint, please contact us at (800) 732-0330 or online via www.investor.gov.

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