

# DETERMINING

## if an Investment Fund is Registered under the 1940 Act

To qualify for the mutual fund exemptions to 18 U.S.C § 208 found at 5 C.F.R. § 2640.201, an investment fund must be an entity which is registered under the Investment Company Act of 1940 (1940 Act). Although referred to as the “mutual fund exemptions,” the exemptions also apply to other kinds of funds including some exchange-traded funds.

It can be challenging to figure out if an entity is registered under the 1940 Act. Follow the steps below to determine if a fund is registered:

1. Determine if the reported item in question is an investment fund or an account. If the reported item is not an investment fund, it cannot qualify for the mutual fund exemptions.
  - Mutual funds are companies in which investors purchase shares.
  - If the ticker symbol has five letters ending in the letter X, you know the entity is a mutual fund.
  - Brokerage, managed, and IRA accounts, and common trust funds of a bank are not themselves mutual funds, even though some holdings in those accounts may be mutual funds.
2. Search the internet for the name of the fund, such as “ABC S&P 500 Fund,” and “annual report.”
  - The annual report may also be easy to locate on the fund family’s webpage — look for a section that reads “Fund Literature.”
  - Note: There may be multiple funds in an annual report for a single registered fund manager. Make sure you’re looking at the correct fund within the report.
3. Search the annual report for “1940.”
  - The reports are generally downloadable in PDF format and you can utilize the Ctrl + F buttons in Windows to open the Find tool.
  - If the investment fund is registered, you will find a statement similar to the following: “The ABC Fund is registered under the Investment Company Act of 1940....”
  - If you do not find such a statement, the fund is not registered and is not covered by the mutual fund exemptions.

Note: Some commodity funds, often those that track the price of gold or silver or hold cryptocurrency, are not registered under the 1940 Act.

Important Reminder: The fact that an investment fund qualifies as an excepted investment fund (EIF) is not relevant to a determination as to whether the investment qualifies for an exemption to 18 U.S.C. § 208.