April 1, 2019

SEC Proposes Securities Offering and Disclosure Reforms for Business Development Companies and Registered Closed-End Funds

SEC Proposes an Overhaul of the Registration, Offering and Communications Processes and Other Aspects of the Disclosure and Regulatory Framework for Business Development Companies and Registered Closed-End Funds to Provide Parity with Operating Companies

EXECUTIVE SUMMARY

On March 20, 2019, the Securities and Exchange Commission (the "SEC") issued a release (the "Release") proposing rule and form amendments to implement certain provisions of the Small Business Credit Availability Act (the "SBCAA") and the Economic Growth, Regulatory Relief, and Consumer Protection Act (the "EGRRCPA"), which direct the SEC to provide parity in securities offering regulation between certain types of closed-end investment funds and operating companies.[1] Consistent with the statutory mandates, the SEC's proposed changes would allow business development companies ("BDCs") and registered closed-end funds ("CEFs" and, collectively with BDCs, "Affected Funds") to use the more streamlined and flexible registration, offering and communications processes that have been available to eligible operating companies since 2005. Although the SBCAA and the EGRRCPA principally direct the SEC to level the playing field for Affected Funds and operating companies regarding securities offering regulation, the SEC has also proposed to revise other aspects of the disclosure and regulatory framework for Affected Funds. These sweeping securities offering and disclosure reforms, if adopted as proposed, would have broad application in the closed-end industry, albeit to varying degrees depending on fund size and type. The reforms do not, however, affect restrictions under the Investment Company Act of 1940 ("Investment Company Act") on the issuance of securities by Affected Funds, including the general prohibition on the issuance of shares of a fund's common stock at a price below current net asset value. The SEC is seeking

comment from the public on all aspects of the proposed reforms. Comments on the Release will be due 60 days following its publication in the *Federal Register*.

Notable proposals in the Release include:

- ***Securities Offering Reform***.
  - ***Categories of Affected Funds***. Although the securities offering reforms are relevant for all Affected Funds, some of the more streamlined and flexible processes proposed in the Release would be available only to certain eligible Affected Funds.
    - ***Seasoned Funds***. An Affected Fund meeting the eligibility criteria in the proposed short-form registration instruction in Form N-2 (a "Seasoned Fund") would be able to file a short-form registration statement on Form N-2. Like an operating company eligible to use Form S-3, an Affected Fund would generally qualify as a Seasoned Fund if it has a public float (*i.e.*, the aggregate market value of the voting and non-voting common equity held by non-affiliates) of $75 million or more, and if it meets certain filing and reporting history requirements.
    - ***Well-Known Seasoned Issuers***. An Affected Fund would be able to qualify for well-known seasoned issuer ("WKSI") status. Like an operating company that qualifies as a WKSI, an Affected Fund would generally qualify as a WKSI if it either (1) has at least $700 million in worldwide public float or (2) has issued within the last three years at least $1 billion in aggregate principal amount of non-convertible securities, other than common equity, through primary offerings for cash, and if it meets certain filing and reporting history requirements.
  - ***Streamlined Registration and Offering Process***.
    - ***Short-Form Registration Statement on Form N-2***. The SEC has proposed amendments to Form N-2 to allow it to function similarly to a registration statement on Form S-3 used by an operating company. A Seasoned Fund using a short-form registration statement on Form N-2 would be able to incorporate by reference certain of its past and future reports filed under the Securities Exchange Act of 1934 (the "Exchange Act"), and, as a result, avoid the need to file a post-effective amendment or a lengthy prospectus supplement. Additionally, the SEC has proposed to allow a Seasoned Fund using a short-form registration statement on Form N-2 to rely on Rule 430B under the Securities Act to omit certain information from its base prospectus and later provide the omitted information in a prospectus supplement, among other means.
    - ***Impact on Shelf Offering Process***. Through the use of a short-form registration statement on Form N-2, a Seasoned Fund would generally be able to file a shelf registration statement only once every three years (as compared to annually under the current shelf offering process typically utilized by Affected Funds) and sell securities "off the shelf" from time to time in response to market conditions. In addition, an Affected Fund that is a WKSI would be able to file a short-form registration statement on Form N-2 that would be effective automatically upon filing with the SEC (an "automatic shelf registration statement"). Such registration statement (1) would not be subject to SEC staff review prior to becoming effective and (2) would be available for use immediately upon filing.
  - ***Communications Reforms***. Affected Funds would be able to benefit from many of the more flexible communication rules currently available to operating companies, including the ability to use "free writing prospectuses," safe harbors for Affected Funds to publish certain factual business and forward-looking information, and safe harbors for brokers and dealers that publish and distribute research reports about certain Affected Funds and their securities. Affected Funds that are WKSIs would have additional flexibility in communications and would be allowed to engage at any time (before and after a registration statement is filed) in oral and written communications, subject to the same conditions applicable to operating companies that are WKSIs.

- ***Disclosure Reform***. Affected Funds would be subject to new disclosure requirements regarding current reporting, periodic reporting and structured data reporting, among others. Notably, registered CEFs would be required to file current reports on Form 8-K. In addition, under proposed new Items of Form 8-K, Affected Funds would be required to report material changes to investment objectives or policies and material write-downs of significant investments.

Table of Contents

I. BACKGROUND

In 2005, the SEC adopted securities offering reform for operating companies to modernize the securities offering and communication processes for operating companies (the "2005 Securities Offering Reform").[2] Investment companies, including Affected Funds, were specifically excluded from the 2005 Securities Offering Reform. In the SBCAA and the EGRRCPA, Congress directed the SEC to finalize rules that would permit Affected Funds to use securities offerings and registration processes that the 2005 Securities Offering Reform made available to operating companies. Accordingly, the securities offering rule and form amendments set forth in the Release are intended to address and satisfy these Congressional directives. Although the SBCAA and the EGRRCPA principally direct the SEC to level the playing field for Affected Funds and operating companies regarding securities offering rules, in light of the proposed securities offering reform, the SEC has also proposed to revise other aspects of the disclosure and regulatory framework for Affected Funds. A brief overview of each of the SBCAA and the EGRRCPA follows.

A. THE SMALL BUSINESS CREDIT AVAILABILITY ACT

The SBCAA was enacted on March 23, 2018 and includes the most significant amendments to the Investment Company Act that affect BDCs since the creation of BDCs pursuant to the Small Business Investment Incentive Act of 1980.

The SBCAA aims to increase the availability of funding to certain companies by increasing the capital available to BDCs and reducing certain regulatory burdens on BDCs. Among other provisions, the SBCAA reduces the asset coverage requirements of the Investment Company Act applicable to BDCs and requires the SEC to reduce disparities in treatment for BDCs as compared to other companies that seek to offer securities publicly under the Securities Act of 1933 ("Securities Act") by streamlining securities registration and reporting requirements for BDCs, including express and specific provisions regarding amendments to the SEC's existing securities offering rules as identified in Annex A (such as requirements that mandate more flexible shelf registration requirements for larger, more established BDCs).

Significantly, while the reduced asset coverage requirements took effect promptly upon enactment of the SBCAA, Congress imposed a deadline in the SBCAA of March 23, 2019 by which the SEC must adopt implementing rules, or the changes directed by Congress with respect to securities registration and reporting would become self-implementing until final rules adopted by the SEC become effective. Because the deadline has already passed, the revisions specified in the SBCAA are currently in effect for BDCs and will remain in effect until final rules adopted by the SEC become effective.

B. THE ECONOMIC GROWTH, REGULATORY RELIEF, AND CONSUMER PROTECTION ACT

The EGRRCPA was enacted on May 24, 2018 and includes certain limited amendments to the Dodd-Frank Wall Street Reform and Consumer Protection Act and amends various securities- and investment company-related requirements in the Securities Act.

As discussed in our publication on the EGRRCPA, dated May 24, 2018, the EGRRCPA includes:

- a requirement that the SEC propose within one year of enactment and finalize within two years of enactment rules permitting listed CEFs or CEFs that operate as interval funds pursuant to Rule 23c-3 under the Investment Company Act ("Interval Funds") to use the SEC's offering and proxy rules that are available to other reporting companies, subject to conditions the SEC deems appropriate; and
- clarification that nothing in Section 509 of the EGRRCPA shall be construed to limit or impair a registered CEF's ability to distribute sales material pursuant to Rule 482 under the Securities Act.[3]

Although the EGRRCPA shares the broad mandate of the SBCAA, it does not expressly and specifically identify the required offering rule revisions for listed CEFs or Interval Funds. In addition, the EGRRCPA has an implementation timeline that is different from that of the SBCAA. Notably, the EGRRCPA provides that if the SEC fails to complete the rulemakings required by the EGRRCPA by the above deadlines, any listed CEF or Interval Fund would be deemed to be an eligible issuer under the 2005 Securities Offering Reform.[4] Therefore, the EGRRCPA only becomes self-implementing with respect to listed CEFs and Interval Funds if the SEC fails to finalize the rulemakings required by the EGRRCPA by the deadline of May 24, 2020, as set forth in the EGRRCPA.[5]

II. DETAILED SUMMARY OF THE PROPOSALS IN THE RELEASE

A. OVERVIEW

In the Release, the SEC has noted that the proposed amendments to implement the statutory mandate "are designed to provide securities offering parity between [A]ffected [F]unds and operating companies and streamline the registration process for BDCs and registered CEFs, consistent with the [SBCAA] and the [EGRRCPA]."[6] The SEC anticipates that the proposals "would achieve this goal and consequently result in significant benefits in a number of areas, including improving access to the public capital markets and possibly lowering the cost of capital by, among other things, modifying [its] rules related to [A]ffected [F]unds' ability to qualify as WKSIs, to use the full shelf registration process, and to engage in certain communications during a registered offering."[7]

A chart summarizing select key rules and forms impacted by the Release, the affected entities and the effect of the SEC's proposed amendments, including whether the amendments have become self-implementing for BDCs under the SBCAA, is included as Annex A. Annex A is based, in part, on a similar chart included in the Release.[8]

B. SCOPE OF ENTITIES AFFECTED BY THE RELEASE

In the SBCAA, Congress directed the SEC to adopt rules that would apply to all BDCs. In the EGRRCPA, Congress directed the SEC to adopt rules that would apply only to certain registered CEFs, including all registered CEFs that are listed on an exchange and Interval Funds but excluding other unlisted registered CEFs. The SEC has noted in the Release that the EGRRCPA "does not preclude [it] from exercising [its] discretion to extend these rules to all registered CEFs" and that, subject to certain exceptions noted in the Release, it believes, for purposes of the relevant securities offering and communications rules, that "unlisted registered CEFs are not distinguishable from unlisted BDCs, which the proposed rules must cover," and that "unlisted registered CEFs would benefit from parity of treatment."[9] Accordingly, the proposals in the Release generally apply to all Affected Funds (*i.e.*, all BDCs and all registered CEFs) or to certain categories of Affected Funds.

C. SECURITIES OFFERING REFORM

1. Categories of Affected Funds

Although the securities offering reform would affect all Affected Funds, some of the more streamlined and flexible processes made available by the reform would be available only to two categories of larger, listed Affected Funds: Seasoned Funds and WKSIs. The proposed eligibility criteria for Seasoned Funds and WKSIs are discussed below.

a. Seasoned Funds

A Seasoned Fund would be required to satisfy the following criteria:

- for either a BDC or a registered CEF, the fund would be required to meet the registrant and transaction requirements of Form S-3; and
- for a registered CEF, the fund would be required to have been registered under the Investment Company Act for the preceding 12 months and to have timely filed all reports required to be filed under the Investment Company Act during that time.

An Affected Fund would generally meet the registrant requirements of Form S-3 if it has timely filed all reports and other materials required under the Exchange Act during the preceding 12 months, and would generally meet the transaction requirements of Form S-3 for a primary offering if the fund's public float is $75 million or more. As noted in the Release, the time period and timely-filing requirements for registered CEFs' Investment Company Act reports parallel the requirements in Form S-3 regarding an issuer's Exchange Act reports.[10]

b. WKSIs

To qualify as a WKSI, among other criteria, an Affected Fund, as of the latest of (1) the filing of its most recent shelf registration statement, (2) the most recent amendment to a shelf registration statement for purposes of complying with Section 10(a)(3) of the Securities Act, or (3) if the events described in

clauses (1) and (2) have not occurred within the previous 16 months, the filing of its most recent annual report, would be required:

- to be "seasoned" (*i.e.*, meeting the filing and reporting history requirements for a Seasoned Fund as described above);
- as of a date within 60 days of the determination date for WKSI status, either (1) to have at least $700 million in public float; or (2) to have issued, for cash, within the last 3 years, at least $1 billion in aggregate principal amount of non-convertible securities, other than common equity, through primary offerings registered under the Securities Act; and
- not to be an "ineligible issuer."[11]

The SEC stated in the Release that it has considered whether adopting the $700 million public float threshold would be appropriate for Affected Funds for purposes of determining WKSI status, and observed that the WKSI definition is "meant to capture issuers that are presumptively the most widely followed in the marketplace and whose disclosures and other communications are subject to market scrutiny by investors, the financial press, analysts, and others."[12] Although the SEC rejected both a higher threshold (preferring parity with operating companies) and a lower threshold (due to concerns about the lack of market scrutiny), it is requesting comment on whether the $700 million public float threshold is appropriate or if a different metric (*e.g.*, net asset value for funds whose shares are not traded on an exchange) instead of public float should be adopted.[13]

An Affected Fund would be ineligible to qualify as a WKSI as of the relevant determination date for WKSI status under certain circumstances,[14] including if it fails to meet the "seasoned" requirement (with limited exceptions for the failure to timely file reports on Form 8-K required solely pursuant to certain Items), or if, within the past three years, the Affected Fund was "the subject of any judicial or administrative decree or order arising out of a governmental action involving violations of the anti-fraud provisions of the federal securities laws" or its investment adviser, including any sub-adviser, was "the subject of any judicial or administrative decree or order arising out of a government action that determines that the investment adviser aided or abetted or caused the [A]ffected [F]und to have violated the anti-fraud provisions of the federal securities laws."[15] The SEC noted in the Release that the definition of ineligible issuer, as in effect and as proposed to be amended under the Release, would not capture violations of the Investment Company Act that do not involve a violation of the anti-fraud provisions of the federal securities laws, such as provisions addressing self-dealing, breaches of fiduciary duty or implementation of certain changes without shareholder approval, and has requested comment on whether the definition of ineligible issuer should be broadened to include violations of non-anti-fraud provisions of the Investment Company Act.[16]

2. Streamlined Registration and Offerings Process

The proposals in the Release would remove the barriers that currently prevent Affected Funds from using the more flexible registration process available to operating companies. Significantly, the proposals in the Release would permit Affected Funds to conduct primary offerings "off the shelf" through the use of a short-form registration statement on Form N-2. As a result, eligible Affected Funds could more quickly access the public securities market and respond to favorable market conditions.[17]

a. Short-Form Registration Statement on Form N-2

Under proposed General Instruction A.2 to Form N-2, eligible Affected Funds would be able to file a short-form registration statement on Form N-2, similar to a registration statement filed on Form S-3. The SEC noted that proposed General Instruction A.2 would be available to register any of the securities offerings that operating companies are permitted to register on Form S-3 and would not be limited to offerings under Rule 415(a)(1)(x) under the Securities Act.[18]

i. Forward and Backward Incorporation of Information from Exchange Act reports

Under the proposals in the Release, an Affected Fund would be able to incorporate by reference certain past and future Exchange Act reports (*e.g.*, its latest annual report and other reports filed pursuant to Section 13(a) or 15(d) and all subsequent reports filed pursuant to Section 13(a), 13(c), 14, or 15(d))[19] and, as a result, avoid the need to file a post-effective amendment or a lengthy prospectus supplement.

ii. Omitting Information from a Base Prospectus and Prospectus Supplements

To create parity between operating companies and Affected Funds with respect to their processes for filing prospectus supplements, the SEC has proposed to broaden Rule 424 under the Securities Act so that it applies to Affected Funds. Additionally, the SEC proposed to make Rule 424 the exclusive rule for Affected Funds with respect to filing a prospectus, although an advertisement deemed to be a prospectus would remain governed by Rule 482.[20] The proposed expansion of Rule 424 to Affected Funds would allow an Affected Fund to take advantage of additional flexibility in Rule 424 that is not available in Rule 497, which currently provides for the process of the filing of a prospectus for investment companies (*e.g.*, Rule 424 provides additional time for an issuer to file a prospectus compared to Rule 497; and Rule 424 requires an issuer to file a prospectus only if the issuer makes substantive changes from or additions to a previously filed prospectus, whereas Rule 497 requires funds to file every prospectus that varies from any previously filed prospectus).[21]

Additionally, the SEC proposed to allow an Affected Fund to rely on Rule 430B under the Securities Act to omit certain information from its base prospectus and later provide the omitted information in a prospectus supplement, through subsequent Exchange Act filings that are incorporated by reference or a post-effective

amendment. Under Rule 430B, a plan of distribution and disclosure about whether the offering is a primary one or an offering on behalf of selling security holders, may be omitted by a WKSI filing an automatic shelf registration statement and by an issuer eligible to file a registration statement on Form S-3 to register a primary offering, where the issuer is registering securities for selling security holders.[22] In the latter instance, the issuer may also omit the selling security holders' names and the amount of securities to be registered on their behalf, subject to compliance with certain conditions.[23] Importantly, in proposing to allow Affected Funds to rely on Rule 430B, the SEC has proposed to require Affected Funds relying on Rule 430B to make the same undertakings in Form N-2 as those made by operating companies relying on Rule 430B in Form S-3 with respect to when the information contained in a prospectus supplement would be deemed part of and included in the registration statement and circumstances that would trigger a new effective date of the registration statement for purposes of Section 11(a) of the Securities Act.[24]

b. Impact on Shelf Offering Process

Through the use of a short-form registration statement on Form N-2, a Seasoned Fund would generally be able to file a shelf registration statement only once every three years (as compared to annually under the current shelf offering process used by Affected Funds) and sell securities "off the shelf" from time to time in response to market conditions.

In addition, an Affected Fund that is a WKSI would be able to file an automatic shelf registration statement on a short-form registration statement on Form N-2, providing an Affected Fund with WKSI status with significantly more flexibility and efficiency in multiple aspects of the registration and offering process similar to those currently available to operating companies that are WKSIs, including:

- registering unspecified amounts of different types of securities on an automatic shelf registration statement (where the registration statement and any amendments will be effective immediately upon filing); and
- being able to pay filing fees at any time in advance of a shelf takedown or on a "pay-as-you-go" basis at the time of each takedown off the shelf registration statement in an amount calculated for that takedown.

3. Communications Reforms

The Securities Act contains "gun-jumping" provisions that restrict the types of offering communications that issuers or other parties subject to the Securities Act (such as underwriters) may use in connection with registered public offerings. As part of the 2005 Securities Offering Reform, the SEC adopted communications rules that it believed would provide operating companies and other parties (such as underwriters) increased flexibility in their communications with investors and the market under conditions that preserve important investor protections.[25] However, these communications rules are generally not available to Affected Funds. Under the proposals in the Release, Affected Funds would be able to use many of the more flexible communications rules currently available to operating companies.

a. Offering Communications

The SEC proposed to amend certain rules under the Securities Act as follows:

- Rule 134, to allow Affected Funds to "use certain communications prescribed by Rule 134 to publish factual information about the issuer or the offering";[26]
- Rule 163A, to allow Affected Funds to "rely on a bright-line time period, ending 30 days prior to filing a registration statement, during which they may communicate without risk of violating the gun-jumping provisions";[27]
- Rules 168 and 169, to allow Affected Funds to "publish or disseminate regularly released factual business information and forward-looking information at any time, including around the time of a registered offering";[28]
- Rules 164 and 433, to allow Affected Funds to use "free writing prospectuses";[29] and
- each of the rules referred to above, to further allow Affected Funds that are WKSIs to "engage at any time in oral and written communications, including use at any time of a 'free writing prospectus' (before or after a registration statement is filed), subject to the same conditions applicable to other WKSIs."[30]

b. Broker-Dealer Research Reports

Rules 138 and 139 under the Securities Act provide safe harbors for certain broker-dealer research reports regarding an issuer or its securities. Under Rule 138 under the Securities Act, a broker or a dealer is permitted to publish or distribute research reports about an issuer's securities without such reports constituting offers under the Securities Act, if it does so in the regular course of its business, even if it is participating or will participate in a registered offering of the issuer's other securities, subject to compliance with the other conditions in the rule. To expand Rule 138's application to BDCs and certain registered CEFs, the SEC has proposed to amend Rule 138 to include parallel references to Form N-2 and to the reports that registered CEFs are required to file (*i.e.*, Forms N-CSR, N-Q, N-CEN, and N-PORT).[31]

Rule 139 under the Securities Act provides a safe harbor for a broker's or a dealer's publication or distribution of certain issuer-specific or industry research reports concerning an issuer or an issuer's securities without such reports constituting offers under the Securities Act, if it does so in the regular course of its business, even if it is participating or will participate in a registered offering of the issuer's securities, subject to compliance with the other conditions in the rule. The SEC did not propose to amend Rule 139 in the Release because it believed that the recently adopted Rule 139b satisfies the directives of the SBCAA and the EGRRCPA by extending Rule 139's safe harbor to research reports on BDCs and registered CEFs and is consistent with Congress's core objective regarding research reports covering these funds.[32]

D. DISCLOSURE REFORM

To further accomplish regulatory parity, the SEC has proposed amendments to the disclosure and regulatory framework for Affected Funds. The SEC stated in the Release that although such amendments are not specifically required by Congress, it believed that they would "further the respective Acts' goals of providing regulatory parity to [A]ffected [F]unds with otherwise similarly-situated issuers."[33]

1. Current Reporting Requirements

a. New Form 8-K Filing Obligation for Registered CEFs

Form 8-K under the Exchange Act requires companies to disclose certain events that "are of such importance to investors that prompt disclosure is necessary."[34] To provide parity among BDCs, operating companies and registered CEFs, the SEC has proposed to require registered CEFs to be subject to the reporting obligations of Form 8-K.[35]

b. New Form 8-K Reporting Events for All Affected Funds

Further, to tailor Form 8-K to Affected Funds, the SEC proposed two new reporting items for Affected Funds: (1) material changes to investment objectives or policies and (2) material write-downs of significant investments.

- ***Material Changes to Investment Objectives or Policies***. Affected Funds currently disclose material changes to their investment objectives or policies in a periodic report or through a post-effective amendment to a registration statement. The SEC considered the importance of this information to investors, and proposed Item 10.01 to require Affected Funds to provide more timely disclosure of such changes.[36] Examples that would trigger disclosure under proposed Item 10.01 include an investment adviser's decision to adopt a material change that has not been, and will not be, submitted for shareholder approval or a material change that "represents a new or different principal portfolio emphasis—including the types of securities in which the fund invests or will invest, or the significant investment practices or techniques that the fund employs or intends to employ—from the fund's most recent disclosure of its principal objectives or strategies."[37] Disclosure under proposed Item 10.01 would include the date the investment adviser plans to implement the material change to the Affected Fund's objectives or policies. The SEC has proposed to exempt an Affected Fund from filing a Form 8-K report in response to Item 10.01 if a post-effective amendment to a registration statement provides substantially the same information.[38] A Seasoned Fund, however, would be able to update its registration statement by filing a Form 8-K report instead of a post-effective amendment.
- ***Material Write-Downs of Significant Investments***. The SEC also proposed a new Item 10.02 of Form 8-K, which would parallel the reporting obligations under Item 2.06 (material charge for impairment to one or more assets as required under GAAP). Under proposed Item 10.02, an Affected Fund would have reporting obligations if it determines that a material write-down in fair value of a significant investment is required under GAAP. The SEC acknowledged in the Release that Affected Funds may hold a variety of investment types and noted that proposed Item 10.02 would apply to a material write-down of an investment type only to the extent that the investment constitutes a "significant size of the fund's portfolio."[39] Such significance would be measured by whether or not an Affected Fund's and its subsidiaries' investment in a portfolio holding is greater than 10% of the Affected Fund's and its subsidiaries' total assets.[40] Disclosure under proposed Item 10.02 would include the date an Affected Fund determined that a material write-down was required and the estimated amount, or range of amounts, of the material write-down. The SEC noted that an Affected Fund would not be required to disclose the reasoning behind any such write-down under proposed Item 10.02 or the amount, or range of amounts, if it was unable to make a good faith estimate at the time of disclosure. Of note, the SEC exempted an Affected Fund from filing a Form 8-K report required by proposed Item 10.02 if the determination to materially write down a significant investment is made in connection with the preparation, review, or audit of financial statements required to be included in the next periodic report under the Exchange Act, the conclusion is included in the report, and the periodic report is timely filed, consistent with a similar exemption under Item 2.06.

The SEC has proposed that a failure to timely file reports required solely under proposed Item 10.01 or 10.02, among certain other Form 8-K items identified in Form S-3 that would not affect an operating company's eligibility to use Form S-3, would not affect an Affected Fund's eligibility to use a short-form registration statement on Form N-2.[41] The SEC has also proposed to extend the limited safe harbor from Section 10(b) of the Exchange Act and Rule 10b-5 thereunder to the failure to file a report required solely pursuant to proposed Item 10.01 or 10.02, in addition to certain other Items.[42]

To accommodate the proposed amendments discussed above, the SEC proposed conforming changes to certain instructions in Form 8-K to make the instructions applicable to Affected Funds.

2. Periodic Reporting Requirements

In anticipation of an increased reliance on periodic reporting as a result of other proposed amendments, the SEC has proposed to require Affected Funds that use the proposed short-form registration statement on Form N-2 to provide additional disclosure in their annual reports regarding information that would otherwise be disclosed in their prospectuses, such as (1) the fees and expenses for which the investor is, directly or indirectly, responsible;[43] (2) the share price and any premium or discount, compared to the registrant's net asset value; and (3) each of its classes of outstanding senior securities.[44]

Additionally, the SEC has proposed to require:

- registered CEFs to provide management's discussion of fund performance ("MDFP") in their annual reports to shareholders;
- BDCs to provide financial highlights in their registration statements and annual reports; and
- Affected Funds filing a short-form registration statement on Form N-2 to disclose material unresolved staff comments.

a. Management's Discussion of Fund Performance

Similar to mutual funds and exchange-traded funds ("ETFs"), registered CEFs would be required under the proposed amendments to provide MDFP in their annual reports to shareholders.[45] The MDFP is analogous to the management discussion and analysis ("MD&A") provided by operating companies and BDCs. The SEC noted that this disclosure would benefit investors in "assessing the fund's performance over the prior year" and complement other information contained in the report.[46] The proposed MDFP for registered CEFs, similar to the MFDP required of open-end funds, should:

- discuss factors that materially affected the fund's performance during the most recently completed fiscal year;
- include a line graph comparing the initial and subsequent account values at the end of each of the most recently completed 10 fiscal years of the fund and a table of the fund's total returns for certain periods; and

- discuss the impact on a fund's investment strategies and per share net asset value during the last fiscal year if the fund adopts a policy or practice of maintaining a specified level of distributions to shareholders, and the extent to which the fund's distribution policy resulted in distribution of capital.[47]

b. Financial Highlights

While it is generally market practice for BDCs to include financial highlights in their registration statements and annual reports, the SEC proposed to make it a requirement that BDCs, like other Affected Funds, include such highlights in such reports in light of the importance of this information and to achieve consistency across the Affected Funds.

c. Material Unresolved Staff Comments

An operating company that is an accelerated filer, a large accelerated filer or a WKSI is currently required to disclose in its annual report on Form 10-K SEC comments on its periodic or current reports that were received not less than 180 days before the end of the fiscal year to which the annual report on Form 10-K relates and which the issuer believes to be material.[48] By proposing rules that would allow Affected Funds to file short-form registration statements, the SEC anticipates that Affected Funds may no longer be incentivized to timely resolve outstanding SEC comments.[49] To provide an incentive for Affected Funds to timely resolve staff comments, the SEC has proposed to amend Form N-2 to provide for a similar requirement as the requirement placed on certain operating companies. Under the proposed amendment, an Affected Fund filing a short-form registration statement would be required to disclose material, unresolved SEC comments applicable to its current and periodic reports and, unlike operating companies, registration statements. A Seasoned Fund filing a short-form registration statement would have flexibility in providing the required disclosure directly in its prospectus or in its Exchange Act reports incorporated by reference.

3. Structured Data Reporting Requirements

The SEC has proposed to apply certain structured data reporting requirements to Affected Funds by amending:

- Item 601 of Regulation S-K, such that BDCs, like operating companies, would submit financial statements using Inline eXtensible Business Reporting Language ("Inline XBRL") format;[50]
- Form N-2's cover page, such that certain specified data points would be tagged using Inline XBRL format and checkboxes will be included indicating, among other information, whether (1) the form is a registration statement or post-effective amendment filed by a WKSI that would become effective upon filing with the SEC; (2) the filing is in reliance on the proposed short-form registration instruction; and (3) the Affected Fund has certain characteristics (*e.g.*, a registered CEF, a BDC, a WKSI, etc.);[51]
- Rule 405 of Regulation S-T and proposed General Instruction H.2 of Form N-2, such that certain disclosure items in an Affected Fund's prospectus—Fee Table; Senior Securities Table; Investment Objectives and Policies; Risk Factors; Share Price Data; and Capital Stock, Long-Term Debt, and Other Securities—would be tagged using Inline XBRL format;[52] and

- the EDGAR Filer Manual, such that Form 24F-2 filings by mutual funds, ETFs and, pursuant to changes proposed in the Release, Interval Funds, would be submitted in Extensible Markup Language ("XML") format.[53]

4. Other Disclosure and Reporting Parity Proposals

a. Online Availability of Information Incorporated by Reference

The SEC has proposed to eliminate Form N-2's requirement that information that has been incorporated by reference into a fund's prospectus or statement of additional information ("SAI") be delivered to the new investors in the fund. Instead, under the proposed amendments, a fund would make its prospectus, SAI, and the incorporated materials "readily available and accessible" on a website that is maintained by or for the fund.[54] In addition, the SEC has proposed General Instruction F.4 (which mirrors a parallel instruction in Item 12(c) on Form S-3), aiming to streamline Form N-2's instructions regarding the disclosure of documents that have been incorporated by reference, which are included in various provisions throughout current General Instruction F.[55]

b. Enhancements to Certain Annual Report Disclosure

Under Rule 8b-16 under the Investment Company Act, a registered CEF must annually update its registration statement, unless its annual report contains disclosure regarding certain key changes that occurred in the prior year. To address the concern that disclosure regarding such changes may not always be sufficiently complete so as to be useful to investors, the SEC has proposed to amend Rule 8b-16 to require registered CEFs to "describe any changes in enough detail to allow investors to understand each change and how it may affect the fund" and to "preface such disclosures with a legend" in order to provide notice to investors that the disclosure is merely a summary and may not provide an exhaustive list of the changes that have occurred since the investor purchased the fund.[56]

E. OTHER AMENDMENTS PROPOSED IN THE RELEASE

- ***Final Prospectus Delivery Reform***. Under the Securities Act, registrants must deliver to each investor in a registered offering a "final prospectus." The SEC has proposed to modify Rules 172 and 173 under the Securities Act such that an Affected Fund would be allowed to satisfy its final prospectus delivery obligations in a registered offering by filing its final prospectus with the SEC, subject to compliance with other conditions of the rules,[57] thus enabling Affected Funds to rely on the "access equals delivery" means of satisfying the final prospectus delivery requirements currently available to operating companies.
- ***Rule 418 Supplemental Information***. Rule 418(a)(3) under the Securities Act generally requires registrants to be prepared to furnish recent engineering, management, or similar reports or memoranda relating to broad aspects of the business, operations, or products of the registrant upon the request of the SEC, but includes an exemption for registrants eligible to use Form S-3. The SEC has proposed to modify Rule 418 to provide that a Seasoned Fund would also be exempted from the requirement to furnish this information under Rule 418(a)(3).[58]
- ***Amendments to Incorporation by Reference into Proxy Statements***. Schedule 14A sets forth the information that a registrant must include in its proxy statements, including its financial statements and information related to specific proposals. One of the SEC's proposals would implement Congressional

directive in the SBCAA and the EGRRCPA by providing Seasoned Funds the same treatment in this regard as operating companies that meet the requirements of Form S-3 and would allow Seasoned Funds to incorporate this information by reference to previously filed documents without delivering those documents with the proxy statement.[59]

- ***New Registration Fee Payment Method for Interval Funds***. Section 6(b)(1) of the Securities Act requires issuers to pay a registration fee to the SEC at the time of filing a registration statement, regardless of when they sell the securities. Under Rule 24f-2 under the Investment Company Act, many registered investment companies, such as mutual funds and ETFs, can register an indefinite amount of securities upon their registration statements' effectiveness and pay registration fees based on their net issuance of shares after the fiscal year end. The SEC has proposed to amend Rules 23c-3 and 24f-2 under the Investment Company Act to allow Interval Funds to pay their registration fees in the same manner as mutual funds and ETFs.[60]
- ***Certain SEC No-Action Letters***. The SEC staff has issued no-action letters advising that it would not recommend that the SEC take any enforcement action under Section 5(b) or 6(a) of the Securities Act against specific listed registered CEFs conducting offerings under Rule 415(a)(1)(x) in connection with their use of Rule 486(b), under which Interval Funds may file certain post-effective amendments to their registration statements that become effective automatically. Many of the proposed amendments in the Release are aimed at addressing the process by which Affected Funds may update their registration statements. Accordingly, the SEC stated that these no-action letters are being reviewed to determine if they should be withdrawn in connection with any final rulemaking.[61]

III. PROPOSED TRANSITIONAL COMPLIANCE DATES

The SEC proposes to provide a transition period after the publication of final rule and form amendments in the *Federal Register* to give Affected Funds sufficient time to comply with the following four new requirements:[62]

- ***Form 8-K***. All Seasoned Funds would be required to comply with the full scope of Form 8-K, including the new Form 8-K items for Affected Funds, by the earlier of: (1) one year after the publication of a final rule in the *Federal Register* or (2) the date a fund first files a short-form registration statement. All other Affected Funds would be required to comply 18 months after the publication of a final rule in the *Federal Register*.
- ***MDFP***. All registered CEFs would be required to include the proposed MDFP disclosures in any annual report filed one year or later after the publication of a final rule in the *Federal Register*.
- ***Structured Data Requirements***. All Seasoned Funds subject to the proposed structured data reporting requirements would be required to comply with those provisions no later than 18 months after the publication of a final rule in the *Federal Register*. All other Affected Funds subject to proposed structured data reporting requirements would be required to comply within two years after the publication of a final rule in the *Federal Register*. All Form 24F-2 filers would be required to comply with the proposed structured data format for Form 24F-2 no later than 18 months after the publication of a final rule in the *Federal Register*.
- ***New Method for Interval Funds to Pay Registration Fees***. Interval Funds would be allowed to use the new method to pay registration fees beginning one year after the publication of a final rule in the *Federal Register*.

IV. CERTAIN IMPLICATIONS

The sweeping securities offering and disclosures reforms proposed in the Release, if adopted as proposed, would have broad application to the closed-end fund industry, affecting over 100 BDCs and over 700 registered CEFs, as estimated by the SEC,[63] albeit to varying degrees depending on fund size and type. If adopted as proposed, the proposals in the Release could improve the flexibility, efficiency and cost-effectiveness of the capital-raising and investor communications processes for larger, listed Affected Funds. This is because the most streamlined and flexible processes made available by the proposed reforms would be available only to Affected Funds that qualify as WKSIs, which are generally required to have a public float of at least $700 million, and, to a lesser degree, to Seasoned Funds, which are required to have a public float of at least $75 million. As estimated by the SEC based on trading data as of June 30, 2018, 44 listed BDCs and 457 listed registered CEFs have a public float greater than $75 million, and, of those, 14 BDCs and 83 registered CEFs have a public float greater than $700 million.[64] Importantly, however, although the SEC seeks to provide parity in securities offering regulation between Affected Funds and operating companies, the SEC has not proposed to relax substantive restrictions imposed by the Investment Company Act on the issuance of securities by Affected Funds. For example, neither the limitations under Section 23(b) of the Investment Company Act on sales of shares of common stock at a price below current net asset value nor the restrictions under Section 18 of the Investment Company Act on the issuance of senior securities are impacted by the proposals in the Release. As such, the offering reforms may be of little or no utility for unleveraged Affected Funds whose shares trade at a discount.

In addition, the disclosure reform proposed in the Release, if adopted as proposed, could significantly affect the disclosure practices of all Affected Funds and would, according to the SEC's estimates, result in incremental compliance costs to Affected Funds.[65] Although larger, listed Affected Funds eligible to use the most streamlined and flexible processes made available by the securities offering reform could potentially benefit from improved access to the public capital markets and possibly lower costs of capital, as anticipated by the SEC,[66] smaller, listed, as well as unlisted, Affected Funds that likely would not be able to benefit from many aspects of the securities offering reform in practice would nevertheless incur incremental compliance costs. In light of the potential overall effect of the proposals in the Release, the SEC has noted in the "Economic Analysis" section in the Release that possible effects of the proposals in the Release, if adopted as proposed, may include incentives to increase fund size through capital raising or merger and acquisition activities.[67]

Finally, although the proposals in the Release would implement both the SBCAA and the EGRRCPA, which share similar broad mandates of providing securities offering parity for the types of closed-end funds covered by the SBCAA and the EGRRCPA, and generally do not provide for disparate treatment of BDCs and registered CEFs, the impact, including the timing and scope, of the SEC's proposals, if adopted as

proposed, would be different for BDCs and registered CEFs. This is because the SBCAA "*expressly* and *specifically*"[68] requires the SEC to implement securities offering reform for BDCs, and provides that the necessary rule and form changes become self-implementing beginning on March 24, 2019, while the EGRRCPA "does not *expressly* and *specifically*"[69] identify the required revisions for registered CEFs and will not become self-implementing until May 24, 2020. The difference in implementation timelines may lead to interpretive issues and implementation challenges for BDCs, the resolution of many of which may not become apparent until after the final rule and form changes become effective.

* * *

ENDNOTES

1 For the full text of the Release, *see Securities Offering Reform for Closed-End Investment Companies*, Release Nos. 33-10619; 34-85382; IC-33427; File No. S7-03-19 (Mar. 20, 2019), *available at* https://www.sec.gov/rules/proposed/2019/33-10619.pdf.

2 *Securities Offering Reform*, Release Nos. 33-8591; 34-52056; IC-26993; FR-75 (July 19, 2005) [70 FR 44721 (Aug. 3, 2005)].

3 For additional discussion of the EGRRCPA, please see our publication entitled *Financial Services Regulatory Reform Legislation: "Economic Growth, Regulatory Relief, and Consumer Protection Act" is Enacted* (May 24, 2018), *available at* https://www.sullcrom.com/siteFiles/Publications/SC_Publication_Financial_Services_Regulatory_Reform_Legislation_05_24_18.pdf.

4 Section 509(b) of the EGRRCPA, Pub. L. No. 115–174, 132 Stat. 1296 (2018).

5 Section 509(a) of the EGRRCPA, Pub. L. No. 115–174, 132 Stat. 1296 (2018).

6 Release, at 150.

7 *Id.*, at 150-51.

8 *See* Table 1 in the Release. *Id.*, at 11-13.

9 *Id.*, at 13-14.

10 *Id.*, at 21-22.

11 *Id.*, at 38; *see also* Rule 450 of the Securities Act [17 CFR 230.450]. The definition of "Well-Known Seasoned Issuer" also includes provisions for transactions involving majority-owned subsidiaries.

12 Release, at 41.

13 *Id.*, at 41-44 and 46-47.

14 Rule 405 under the Securities Act provides that an issuer shall not be an ineligible issuer if the SEC determines, "upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer." Rule 405 under the Securities Act [17 CFR 230.450]. Such waivers have been granted by the SEC on numerous occasions, typically by the SEC's Division of Corporation Finance pursuant to delegated authority. The SEC's Division of Corporation Finance has set forth a framework for assessing the merits of WKSI waiver applications in its *Revised Statement on Well-Known Seasoned Issuer Waivers* (Apr. 24, 2014), *available at* https://www.sec.gov/divisions/corpfin/guidance/wksi-waivers-interp-031214.htm.

15 *Id.*, at 39-40; *see also* definition of "ineligible issuer" in Rule 450 of the Securities Act [17 CFR 230.450].

16 Release, at 45-46.

17 *Id.*, at 17.

18 *Id.*, at 20-21.

19 *Id.*, at 25-26.

20 *Id.*, at 34; *see also* Section 803(b)(2)(K) of the SBCAA.

21 Release, at 33-34; *see also* Rules 424 and 497 under the Securities Act [17 CFR 230.424; 17 CFR 230.497].

22 *Id.*, at 35; *see also* Rule 430B under the Securities Act [17 CFR 230.430B].

23 Release, at 35.

ENDNOTES (CONTINUED)

[24] *Id*.; *see also* Item 512(a)(5)(i) of Regulation S-K; and proposed Item 34.4(d)(1) of Form N-2.

[25] Release, at 50.

[26] *Id*., at 51.

[27] *Id*.

[28] *Id*., at 52.

[29] *Id*.

[30] *Id*., at 52-53.

[31] *Id*., at 57 (Form N-Q will be rescinded on May 1, 2020).

[32] *Id*., at 58-59; *see also* 17 C.F.R. 230.139b.

[33] Release, at 65-66.

[34] *Id*., at 98.

[35] Registered CEFs currently are only required to use Form 8-K to file notice of a blackout period under Rule 104 of Regulation BTR. *Id*., at 99, n.247; *see also* Rules 13a-11(b) and 15d-11(b) under the Exchange Act [17 CFR 240.13-11(b) and 17 CFR 240.15d-11(b)].

[36] Release, at 106.

[37] *Id*., at 109.

[38] *Id*., at 110.

[39] *Id*., at 113-14.

[40] *Id*., at 115.

[41] *Id*., at 121-22. An issuer's failure to timely file a report required solely pursuant to Item 1.01, 1.02, 1.04, 2.03, 2.04, 2.05, 2.06, 4.02(a), 5.02(e), 10.01 or 10.02 would not affect the issuer's ability to use Form S-3. *Id*., at 121, n.288.

[42] *Id.*, at 121, n.289; *see also* Rules 13a-11(b) and 15d-11(b) under the Exchange Act [17 CFR 240.13-11(b) and 17 CFR 240.15d-11(b)]. Rules 13a-11(c) and 15d-11 under the Exchange Act currently provide a limited safe harbor for failing to timely file a report required solely pursuant to Items 1.01, 1.02, 2.03, 2.04, 2.05, 2.06, 4.02(a), 5.02(e) or 6.03 of Form 8-K.

[43] Unlike in its release proposing rule and form amendments regarding "fund of funds" arrangements (*see Fund of Funds Arrangements*, Release Nos. 33-10590; IC-33329; File No. S7-27-18 (Dec. 19, 2018), *available at* https://www.sec.gov/rules/proposed/2018/33-10590.pdf, at 74-77), the SEC did not request for comment regarding the effectiveness of the line item in Forms N1-A and N-2 requiring disclosure of "Acquired Fund Fees and Expenses" in the Release. In its report accompanying the 2019 Financial Services and General Government Appropriations Bill, the House Committee on Appropriations noted that it "recommends the SEC use its existing authorities to make the necessary regulatory or guidance changes to limit adverse impacts of the Acquired Fund Fee and Expense Rule (AFFE) on Business Development Corporations (BDC)". *See* U.S. House. Committee on Appropriations. *Financial Services and General Government Appropriations Bill, 2019*, *available at* https://docs.house.gov/meetings/AP/AP00/20180613/108421/HRPT-115-HR_FSGG.pdf), at 66. The Committee reported that "[b]ecause index funds no longer invest in BDCs, there has been a decline in market depth and liquidity for BDC shares, reduced institutional ownership in BDCs and less independent third-party research coverage". *Id*.

ENDNOTES (CONTINUED)

44 Release, at 83-84.

45 *Id*., at 87-88.

46 *Id*.

47 *Id.*

48 *See* Item 1.B of Form 10-K.

49 Release, at 95-96. The SEC explained that currently, for its staff to declare any annual update to a fund's registration statement effective, Affected Funds generally must resolve all staff comments. However, under the proposed amendments, Seasoned Funds would generally no longer need to file annual post-effective amendments subject to staff review; and, instead, would generally be required to file a new registration statement every three years.

50 *Id*., at 68-69; *see also* proposed Item 601(b)(101)(i) of Regulation S-K [17 CFR 229.601(b)(101)(i)].

51 Release, at 70-74.

52 *Id*., at 75.

53 *Id*., at 80-81.

54 *Id*., at 128.

55 *Id.*, at 131. For example, under the proposed instruction, an Affected Fund would also be required to provide its prospectus, SAI, and any periodic and current Exchange Act reports that are incorporated by reference upon request, free of charge. *Id*. n.318.

56 *Id*., at 134-35.

57 *Id*., at 47-48.

58 *Id*., at 59-60.

59 *Id*., at 60-62.

60 *Id*., at 62-64.

61 *Id*., at 137.

62 *Id*., at 140-41.

63 *Id.*, at 145.

64 *Id.*, at 146.

65 *Id.*, at 168-91.

66 *Id.*, at 150-51.

67 *Id.*, at 153.

68 *Id*., at 15.

69 *Id*.

ABOUT SULLIVAN & CROMWELL LLP

Sullivan & Cromwell LLP is a global law firm that advises on major domestic and cross-border M&A, finance, corporate and real estate transactions, significant litigation and corporate investigations, and complex restructuring, regulatory, tax and estate planning matters. Founded in 1879, Sullivan & Cromwell LLP has more than 875 lawyers on four continents, with four offices in the United States, including its headquarters in New York, four offices in Europe, two in Australia and three in Asia.

CONTACTING SULLIVAN & CROMWELL LLP

This publication is provided by Sullivan & Cromwell LLP as a service to clients and colleagues. The information contained in this publication should not be construed as legal advice. Questions regarding the matters discussed in this publication may be directed to any of our lawyers listed below, or to any other Sullivan & Cromwell LLP lawyer with whom you have consulted in the past on similar matters. If you have not received this publication directly from us, you may obtain a copy of any past or future publications by sending an e-mail to SCPublications@sullcrom.com.

CONTACTS

New York		
John E. Baumgardner Jr.	+1-212-558-3866	baumgardnerj@sullcrom.com
Whitney A. Chatterjee	+1-212-558-4883	chatterjeew@sullcrom.com
Donald R. Crawshaw	+1-212-558-4016	crawshawd@sullcrom.com
William G. Farrar	+1-212-558-4940	farrarw@sullcrom.com
David J. Gilberg	+1-212-558-4680	gilbergd@sullcrom.com
Joseph A. Hearn	+1-212-558-4457	hearnj@sullcrom.com
Robert W. Reeder III	+1-212-558-3755	reederr@sullcrom.com
Frederick Wertheim	+1-212-558-4974	wertheimf@sullcrom.com
Washington, D.C.		
Eric J. Kadel, Jr.	+1-202-956-7640	kadelej@sullcrom.com
Paul J. McElroy	+1-202-956-7550	mcelroyp@sullcrom.com

Annex A — Effect of Select Proposals in the Release on BDCs and Registered CEFs (If Adopted as Proposed)

An asterisk (*) denotes that BDCs are entitled to treat such rule or form as having been revised in accordance with the actions required to be taken by the SEC as directed by the SBCAA beginning on March 24, 2019 until the final rules become effective.

Topic	Relevant Rule / Form	Summary Description of Relevant Requirement under Current Rule / Form	Summary Description of the Affected Entities and Effect of the Proposal	
			Affected Entities	Effect
Registration and Offering Process	**Securities Act Rule 405** (Definition of Terms) —"Well-Known Seasoned Issuer"*	Excludes investment companies registered under the Investment Company Act ("registered funds") and BDCs from the definition.	Affected Funds	The proposed rule amendment allows Affected Funds to qualify as WKSIs.
	Securities Act Rule 405 (Definition of Terms) —"automatic shelf registration statement"*	Does not include a registration statement filed on Form N-2 by a WKSI.	Affected Funds	The proposed rule amendment allows a short-form registration statement filed on Form N-2 by a WKSI to be an automatic shelf registration statement.
	Securities Act Rule 405 (Definition of Terms) —"ineligible issuer" (used in the definition of WKSI)	Does not contemplate criteria that would render an Affected Fund an ineligible issuer (and, as a result, not being able to qualify as a WKSI).	Affected Funds	The proposed rule amendment provides the criteria that would render an Affected Fund an ineligible issuer, including (1) in the case of a registered CEF, if it fails to timely file all reports and materials required under Section 30 of the Investment Company Act during the preceding 12 months and (2) for any Affected Fund, if, during the past three years, its investment adviser or sub-adviser aided or abetted or caused the fund to have violated the anti-fraud provisions of the federal securities laws.
	Securities Act Rule 415 (Delayed or Continuous Offering and Sale of Securities)*	Permits registrants to conduct certain offerings on a delayed or a continuous basis. Although Affected Funds meeting the eligibility criteria for filing Form S-3 currently can make shelf offerings under Rule 415(a)(1)(x), the ability of such Affected Funds to benefit from the rule is limited due to the lack of a short-form version of Form N-2.	Seasoned Funds	The proposed rule amendment permits Seasoned Funds to conduct offerings "off the shelf" using a short-form registration statement on Form N-2, enabling Seasoned Funds to quickly access the market and take advantage of favorable market conditions.

Topic	Relevant Rule / Form	Summary Description of Relevant Requirement under Current Rule / Form	Summary Description of the Affected Entities and Effect of the Proposal	
			Affected Entities	Effect
	Securities Act Rule 418 (Supplemental Information)*	Provides a non-exhaustive list of supplemental items that registrants should be prepared to furnish upon request of the SEC, subject to certain exemptions in Rule 418(a)(3) available to registrants eligible to use Form S-3.	Seasoned Funds	The proposed rule amendment makes available to Seasoned Funds the same exemptions for registrants eligible to use Form S-3 in Rule 418(a)(3) and exempts Seasoned Funds from having to furnish, upon the request of the SEC, certain recent engineering, management, or similar reports or memoranda relating to broad aspects of the business, operations or products of the registrant.
	Securities Act Rule 424 (Filing of Prospectuses, Number of Copies) **Securities Act Rule 497** (Filing of Investment Company Prospectuses—Number of Copies)*	Rule 424 provides the process for filing a prospectus, which is currently not available to registered funds or BDCs. Rule 497 provides the process for the filing of a prospectus by investment companies, including Affected Funds, which is less flexible compared to the process under Rule 424 due to more restrictive requirements.	Affected Funds	The proposed rule amendment to Rule 424 allows Affected Funds to file any type of prospectus listed in Rule 424(b). The proposed rule amendment to Rule 497 makes Rule 424 the exclusive rule for Affected Funds filing a prospectus, other than with respect to advertisements that are deemed to be prospectuses under Rule 482. Together, the proposed rule amendments enable Affected Funds to take advantage of additional flexibility that is currently available to operating companies under Rule 424 but not available to investment companies under Rule 497 (*e.g.*, Rule 424 provides additional time for an issuer to file a prospectus compared to Rule 497; and Rule 424 requires an issuer to file a prospectus only if the issuer makes substantive changes from or additions to a previously filed prospectus, whereas Rule 497 requires funds to file every prospectus that varies from any previously filed prospectus).
	Securities Act Rule 430B (Prospectus in a Registration Statement After Effective Date)	Permits WKSIs (currently excluding registered funds and BDCs) and issuers eligible to use Form S-3 for primary offerings to omit specified information from the base prospectus when the registration statement becomes effective and provide that information later in a prospectus supplement, among other means.	Seasoned Funds	The proposed rule amendment allows Seasoned Funds to rely on Rule 430B, enabling Seasoned Funds to avoid the need to file post-effective amendments in most cases and file prospectus supplements instead.
	Securities Act Rule 462 (Immediate Effectiveness of Certain Registration Statements and Post-Effective Amendments)	Provides for the automatic effectiveness of certain registration statements and post-effective amendments upon filing.	WKSIs	The proposed rule amendment provides that an automatic shelf registration statement and any post-effective amendments thereto filed by Affected Funds that qualify as WKSIs will become effective automatically upon filing.

Topic	Relevant Rule / Form	Summary Description of Relevant Requirement under Current Rule / Form	Summary Description of the Affected Entities and Effect of the Proposal	
			Affected Entities	Effect
	Regulation FD Rule 103 (No Effect on Exchange Act Reporting Status)*	Provides that a failure to make a public disclosure required solely by Rule 100 of Regulation FD will not affect whether an issuer is deemed "seasoned" (*i.e.*, meeting Exchange Act reporting and filing history requirements) for purposes of determining eligibility to use certain registration statements, including Form S-3.	Seasoned Funds	The proposed rule amendment permits Seasoned Funds to use Form N-2, even if they fail to make public disclosure that is required solely by Rule 100 of Regulation FD.
Communications Process	**Securities Act Rule 134** (Communications Not Deemed a Prospectus)*	Permits an issuer (currently excluding registered funds and BDCs) to publish certain factual information about the issuer or an offering after a registration statement relating to the offering has been filed (*e.g.*, "tombstone ads" and certain press releases) without such communication being deemed to be a prospectus, subject to compliance with the conditions in the rule.	Affected Funds	The proposed rule amendment extends the flexibility of Rule 134 to Affected Funds.
	Securities Act Rule 138 (Publications or Distributions of Research Reports by Brokers or Dealers About Securities Other Than Those They Are Distributing)* **Securities Act Rule 139** (Publications or Distributions of Research Reports by Brokers or Dealers Distributing Securities)*	Provide safe harbors for a broker or a dealer that publishes or distributes certain research reports about an issuer meeting criteria specified in the rules (registered CEFs and BDCs would not be able to satisfy these criteria) and its securities without the reports constituting an offer, even if the broker or the dealer is participating or will participate in a registered offering of the issuer's securities, subject to compliance with the other conditions in the rules.	Seasoned Funds	The proposed rule amendment to Rule 138 makes this safe harbor available to a broker or a dealer that publishes or distributes research reports on Seasoned Funds. The SEC did not propose to make the safe harbor in Rule 139 available to Seasoned Funds because it believed that the recently adopted Rule 139b satisfies the directives of the SBCAA and the EGRRCPA by extending Rule 139's safe harbor to research reports on BDCs and registered CEFs and is consistent with Congress's core objective regarding research reports covering these funds.
	Securities Act Rule 156 (Investment Company Sales Literature)	Prevents investment companies from using sales literature that is materially misleading in connection with the offer or sale of securities issued by an investment company.	Affected Funds	The proposed rule amendment clarifies that nothing in Rule 156 may be construed to prevent an Affected Fund from qualifying for an exemption under Rule 168 or Rule 169 regarding certain factual business information and/or forward-looking information.

Topic	Relevant Rule / Form	Summary Description of Relevant Requirement under Current Rule / Form	Summary Description of the Affected Entities and Effect of the Proposal	
			Affected Entities	Effect
	Securities Act Rule 163 (Exemption From Section 5(c) of the Act For Certain Communications By or on Behalf of Well-Known Seasoned Issuers)*	Permits WKSIs (currently excluding registered funds and BDCs) to engage in written or oral communications before a registration statement is filed, subject to compliance with the conditions in the rule.	WKSIs	The proposed rule amendment extends the availability of Rule 163 to Affected Funds that qualify as WKSIs, providing such funds with greater flexibility in their communications.
	Securities Act Rule 163A (Exemption From Section 5(c) of the Act For Certain Communications Made By or on Behalf of Issuers More Than 30 Days Before a Registration Statement Is Filed)*	Provides issuers (currently excluding registered funds and BDCs) a safe harbor from the gun-jumping restrictions under Section 5(c) of the Securities Act for certain communications made more than 30 days prior to filing a registration statement.	Affected Funds	The proposed rule amendment makes available the safe harbor in Rule 163A to Affected Funds.
	Securities Act Rule 164 (Post-Filing Free Writing Prospectuses in Connection With Certain Registered Offerings)* **Securities Act Rule 433** (Conditions to Permissible Post-Filing Free Writing Prospectuses)*	Permits eligible issuers (currently excluding registered funds and BDCs) and offering participants, including underwriters, to use a "free writing prospectus" after a registration statement is filed, subject to compliance with the conditions in the rules.	Affected Funds	The proposed rule amendment allows Affected Funds and offering participants, including underwriters, to communicate through a "free writing prospectus" after the filing of their registration statements.

Topic	Relevant Rule / Form	Summary Description of Relevant Requirement under Current Rule / Form	Summary Description of the Affected Entities and Effect of the Proposal	
			Affected Entities	Effect
	Securities Act Rule 168 (Exemption From Sections 2(a)(10) and 5(c) of the Act For Certain Communications of Regularly Released Factual Business Information and Forward-Looking Information)* **Securities Act Rule 169** (Exemption From Sections 2(a)(10) and 5(c) of the Act For Certain Communications of Regularly Released Factual Business Information)*	Provide eligible issuers (currently excluding registered funds and BDCs) from gun-jumping liability under Section 5(c) of the Securities Act for publishing and disseminating certain regularly released factual business information and forward-looking information, subject to compliance with the conditions in the rules.	Affected Funds	The proposed rule amendments make available to Affected Funds the safe harbors, providing Affected Funds with more flexibility in communicating certain regularly released factual business information and forward-looking information to investors and certain persons not in their capacities as investors or potential investors (*e.g.*, customers).
Current Reporting	**Exchange Act Rule 13a-11** (Current Reports on Form 8-K) **Exchange Act Rule 15d-11** (Current Reports on Form 8-K)	Does not impose Form 8-K filing obligations on investment companies required to file reports pursuant to Rule 30a-1 under the Investment Company Act (including registered CEFs), except for notice of a blackout period under Rule 104 of Regulation BTR.	Registered CEFs	The proposed rule amendment extends Form 8-K filing obligations to registered CEFs, thus requiring registered CEFs to more promptly disclose certain events on Form 8-K reports. The proposed rule amendment further provides that no failure to file a Form 8-K that is required solely pursuant to the proposed Item 10 of Form 8-K will be deemed to be a violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.
	Proposed Item 10 of Form 8-K (Closed-End Investment Companies)	N/A	Affected Funds	The proposed form amendment tailors Form 8-K to Affected Funds by adding two new reportable events: (1) a material change to a fund's investment objectives or policies (proposed Item 10.01) and (2) a material write-down in fair value of a significant investment (proposed Item 10.02).

Topic	Relevant Rule / Form	Summary Description of Relevant Requirement under Current Rule / Form	Summary Description of the Affected Entities and Effect of the Proposal	
			Affected Entities	Effect
	Current Reports on Form 8-K	Does not contemplate being used by registered CEFs.	Registered CEFs	The proposed form amendment revises certain instructions in Form 8-K to clarify certain terms and requirements for application to registered CEFs.
		N/A	Affected Funds	The proposed form amendment includes the proposed Item 10 and related instructions.
Periodic Reporting	**Investment Company Act Rule 8b-16** (Amendments to Registration Statements)	Requires registered funds to update their registration statements on an annual basis, with an exemption for registered CEFs provided that they disclose certain enumerated items (*e.g.*, certain material changes) in their annual reports.	Registered CEFs	The proposed rule amendment requires a registered CEF to provide sufficient detail when describing certain changes in the annual report and include a specified legend if the fund relies on the exemption in the rule to forgo updating its registration statements annually.
Structured Data Reporting	**Regulation S-T Item 405** (Interactive Data File submissions) **Regulation S-K Item 601(b)(101)** (Interactive Data File)	Exclude all registrants that prepare financial statements in accordance with Article 6 of Regulation S-X (including BDCs) from the interactive data file submission requirements.	BDCs	The proposed rule amendment requires BDCs, like operating companies, to tag certain information in their SEC filings using Inline XBRL format.
	EDGAR Filer Manual	Requires that Form 24F-2 be submitted via EDGAR in HTML or American Standard Code for Information Interchange (ASCII) format.	Form 24F-2 Filers	The proposed amendment requires that filings on Form 24F-2 be submitted in XML format.
Final Prospectus Delivery	**Securities Act Rule 172** (Delivery of Prospectuses)* **Securities Act Rule 173** (Notice of Registration)*	In connection with an offering (excluding an offering by a registered fund or BDC), permit the issuer and each underwriter or dealer participating in the offering to satisfy final prospectus delivery requirements if a final prospectus has been filed with the SEC within the time required by the rules, subject to compliance with other conditions in the rules.	Affected Funds	The proposed rule amendments make available the "access equals delivery" means of satisfying the final prospectus delivery requirements in Rules 172 and 173 to Affected Funds.

Topic	Relevant Rule / Form	Summary Description of Relevant Requirement under Current Rule / Form	Summary Description of the Affected Entities and Effect of the Proposal	
			Affected Entities	Effect
New Registration Fee Payment Method for Interval Funds	**Investment Company Act Rule 23c-3** (Repurchase Offers by Closed-End Companies)	N/A	Interval Funds	The proposed rule amendment provides that an Interval Fund would be deemed to have registered an indefinite amount of securities upon the effective date of its registration statement, enabling Interval Funds to pay their registration fees on the same annual net basis as mutual funds and other open-end funds.
	Investment Company Act Rule 24f-2 (Registration Under the Securities Act of 1933 of Certain Investment Company Securities)	Provides that certain types of investment companies that are deemed to have registered an indefinite amount of securities pursuant to Section 24(f) of the Investment Company Act (currently not including Interval Funds) must file Form 24F-2 with the SEC no later than 90 days after the end of any fiscal year during which they have publicly offered such securities.	Interval Funds	The proposed rule amendment requires Interval Funds to file Form 24F-2 annually in connection with allowing Interval Funds to pay their registration fees on the same annual net basis as mutual funds and other open-end funds.
	Investment Company Act Form 24F-2 (Annual Notice of Securities Sold Pursuant to Rule 24f-2)	Does not contemplate being used by Interval Funds.	Interval Funds	The proposed form amendment provides that Form 24F-2 should be used by Interval Funds, among other issuers, for annual filings required by Rule 24f-2 under the Investment Company Act.
Securities Act and Investment Company Act Form N-2*	**Cover Page**	N/A	Affected Funds	The proposed form amendment requires several new checkboxes indicating, among other information, whether (1) the form is a registration statement or post-effective amendment filed by a WKSI that would become effective upon filing with the SEC; (2) the filing is in reliance on the proposed short-form registration instruction; and (3) the Affected Fund has certain characteristics (*e.g.*, a registered CEF, a BDC, a WKSI, etc.).
	General Instruction A.2 (Optional Use of Form for Certain Funds) (*i.e.*, the Short-Form Registration Instruction)	N/A	Seasoned Funds	The proposed form amendment permits Seasoned Funds to use a short-form registration statement on Form N-2, subject to the satisfaction of the proposed eligibility criteria.

Topic	Relevant Rule / Form	Summary Description of Relevant Requirement under Current Rule / Form	Summary Description of the Affected Entities and Effect of the Proposal	
			Affected Entities	Effect
	General Instruction B (Automatic Shelf Offering by Well-Known Seasoned Issuers)	N/A	WKSIs	The proposed form amendment permits Affected Funds that qualify as WKSIs to use a short-form registration statement on Form N-2 as an automatic shelf registration statement.
	General Instruction F.3 (Specific Requirements for Incorporation by Reference for Certain Funds)	Requires the material incorporated by reference to be provided with the prospectus and/or the SAI to each person to whom the prospectus and/or the SAI is sent or given, unless the person holds securities of the fund and otherwise has received a copy of the material.	Seasoned Funds	The proposed form amendment allows Seasoned Funds to use (1) backward incorporation by reference (*e.g.*, a registrant's latest annual report filed pursuant to section 13(a) or 15(d) of the Exchange Act) and (2) forward incorporation by reference (*e.g.*, documents subsequently filed pursuant to section 13(a), 13(c), 14, or 15(d) of the Exchange Act), and removes the requirement that a Seasoned Fund deliver to new investors information that it has incorporated by reference into the prospectus or SAI.
	General Instruction F.4 (Disclosure)	N/A	Affected Funds	The proposed form amendment requires an Affected Fund to make its prospectus, SAI, and any periodic and current Exchange Act reports that are incorporated by reference readily available and accessible on a website and to disclose the availability of such materials in its prospectus and SAI, including that it will provide such materials upon request, free of charge.
	General Instruction H.2 (Interactive Data Files)	N/A	Affected Funds	The proposed form amendment requires Affected Funds to submit interactive data files in the manner provided by Rule 405 of Regulation S-T and in accordance with the specifications in the EDGAR Filer Manual: (1) for any registration statement or post-effective amendment thereto on Form N-2 containing cover page information specified in Rule 405 of Regulation S-T; (2) for any form of prospectus filed pursuant to Rule 424 under the Securities Act that includes information in a list of enumerated items (*e.g.*, Fee Table; Senior Securities Table; Investment Objectives and Policies; Risk Factors; Share Price Data; and Capital Stock, Long-Term Debt, and Other Securities) that varies from the registration statement; and (3) with respect to a Seasoned Fund filing a short-form registration statement, for any documents incorporated by reference that include or amend information provided in response to the information in the list of enumerated items in clause (2).

Topic	Relevant Rule / Form	Summary Description of Relevant Requirement under Current Rule / Form	Summary Description of the Affected Entities and Effect of the Proposal	
			Affected Entities	Effect
	Item 4.1 (Financial Highlights)	Permits BDCs to omit financial highlights disclosure required by Item 4.1.	BDCs	The proposed form amendment removes Item 4.1, which would have the effect of requiring BDCs, like registered CEFs, to include financial highlights in their registration statements and, because of Item 24.10 discussed below, annual reports.
	Item 24.4.g (Financial Statements—Management's Discussion of Fund Performance)	N/A	Registered CEFs	The proposed form amendment requires registered CEFs to provide MDFP, similar to the MD&A provided by operating companies and BDCs and the MDFP as currently provided by registered open-end funds.
	Item 24.4.h(1) (Financial Statements—Senior Securities)	N/A	Seasoned Funds	Together with Item 24.10 discussed below, the proposed form amendments require Seasoned Funds to provide information in their annual reports about each class of senior securities.
	Item 24.4.h(2) (Financial Statements—Fee and Expense Table)	N/A	Seasoned Funds	Together with Item 24.10 discussed below, the proposed form amendments require Seasoned Funds to include information in their annual reports about costs and expenses for which investors are directly or indirectly responsible.
	Item 24.4.h(3) (Financial Statements—Share Price Data)	N/A	Seasoned Funds	Together with Item 24.10 discussed below, the proposed form amendments require Seasoned Funds to provide information in their annual reports about their common stock prices (if publicly traded) and any premium or discount related thereto.
	Item 24.4.h(4) (Financial Statements—Unresolved Staff Comments)	N/A	Seasoned Funds	Together with Item 24.10 discussed below, the proposed form amendments require Seasoned Funds to disclose material, unresolved staff comments relating to periodic and current reports, similar to the obligation placed on operating companies, as well as registration statements.
	Item 24.10	N/A	BDCs	The proposed form amendment clarifies that BDCs must include the information required by Item 24.4.b (referring to financial highlights in Item 4.1) and Item 24.4.h in their annual reports.

Topic	Relevant Rule / Form	Summary Description of Relevant Requirement under Current Rule / Form	Summary Description of the Affected Entities and Effect of the Proposal	
			Affected Entities	Effect
	Item 34.4.a (Undertakings) (Relating to Rule 415 Offerings)*	Requires a fund registering an offering pursuant to Rule 415 under the Securities Act to undertake to file, during any period in which offers or sales are made, a post-effective amendment to the registration statement to (1) provide any prospectus required by Section 10(a)(3) of the Securities Act, (2) reflect in the prospectus any facts or events after the effective date of the registration statement that represent a fundamental change, and (3) include or update any material information regarding the plan of distribution.	Seasoned Funds	The proposed form amendment makes conforming changes to mirror parallel undertakings in Item 512(a)(1) of Regulation S-K (currently applicable to operating companies), exempting a Seasoned Fund from the undertakings to file a post-effective amendment if the information required to be included in a post-effective amendment by Items 34.4.a(1)-(3) is contained in Exchange Act reports that are incorporated by reference into the Seasoned Fund's registration statement or is contained in a prospectus supplement.
	Item 34.4.d(1) (Undertakings) (Relating to Undertakings by a Fund Relying on Rule 430B under the Securities Act)	Does not include any undertakings for a fund relying on Rule 430B under the Securities Act.	Seasoned Funds	The proposed form amendment makes conforming changes to mirror parallel undertakings in Item 512(a)(5)(i) of Regulation S-K (currently applicable to operating companies), requiring an Affected Fund relying on Rule 430B under the Securities Act when registering its securities on Form N-2 to make certain additional undertakings for the purpose of determining liability under the Securities Act to any purchaser. The additional undertakings state that information in a prospectus supplement is deemed part of and included in the applicable registration statement as of specified dates (generally the earlier of the date the prospectus is first used or the date of the first contract of sale for securities in the offering) and that such date triggers a new effective date of the registration statement for purposes of determining liability of the fund and any underwriter under the Securities Act.

Topic	Relevant Rule / Form	Summary Description of Relevant Requirement under Current Rule / Form	Summary Description of the Affected Entities and Effect of the Proposal	
			Affected Entities	Effect
	Item 34.4.e (Undertakings) (Relating to the Use of "Free Writing Prospectuses")	Does not include any undertakings relating to the use of a "free writing prospectus."	Affected Funds	The proposed form amendment makes conforming changes to mirror parallel undertakings in Item 512(a)(6)(ii)-(iii) of Regulation S-K (currently applicable to operating companies), requiring a fund registering its securities on Form N-2 to make certain additional undertakings if it makes certain communications in connection with a primary offering of securities of the fund pursuant to the registration statement. The additional undertakings state that, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of a free writing prospectus under the circumstances described in the undertakings, the fund will be a seller to the purchaser and will be considered to offer or sell such securities to the purchaser for the purposes of determining liability of the fund under the Securities Act to any purchaser in the initial distribution of securities.
	Item 34.6 (Undertakings—Filing Incorporating Subsequent Exchange Act Documents by Reference)	N/A	Seasoned Funds	The proposed form amendment makes conforming changes to mirror parallel undertakings in Item 512(b) of Regulation S-K (currently applicable to operating companies), requiring a fund registering its securities on Form N-2 to make additional undertakings if the registration statement incorporates by reference any Exchange Act document filed subsequent to the effective date of the registration statement. The additional undertakings state that, for purposes of determining any liability under the Securities Act, each filing of the fund's annual report that is incorporated by reference into the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time will be deemed to be the initial bona fide offering thereof.

Topic	Relevant Rule / Form	Summary Description of Relevant Requirement under Current Rule / Form	Summary Description of the Affected Entities and Effect of the Proposal	
			Affected Entities	Effect
	Item 34.7 (Undertakings—Request for Acceleration of Effective Date or Filing of Registration Statement Becoming Effective Upon Filing)	N/A	Affected Funds	The proposed form amendment makes conforming changes to mirror parallel undertakings in Item 512(h) of Regulation S-K (currently applicable to operating companies), requiring a fund registering its securities on Form N-2 to make certain additional undertakings if acceleration is required of the effective date of the registration statement pursuant to Rule 461 under the Securities Act, or if a short-form registration statement on Form N-2 will become effective upon filing with the SEC pursuant to Rule 462(e) or (f) under the Securities Act, and an indemnification arrangement with a director, officer or controlling person of the fund exists. The fund is required to undertake that, if a claim for such indemnification of a director, officer or controlling person is asserted, it will submit to an appropriate court the question of whether such indemnification is against public policy and will be governed by the final adjudication of such issue.
Proxy Statement on Schedule 14A*	**Item 13(b)(1)** (Incorporation by Reference—S-3 Registrants)	Permits registrants that meet Form S-3 requirements to incorporate by reference to previously filed documents any of the information required by Item 13(a) of Schedule 14A (*e.g.*, certain financial statements), provided that certain additional conditions are met, and to update the information so incorporated by reference to information in subsequently filed documents.	Seasoned Funds	The proposed form amendment makes available to Seasoned Funds the ability to incorporate by reference the information required by Item 13(a) of Schedule 14A, providing Seasoned Funds the same treatment in this regard as operating companies that meet the requirements of Form S-3.