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Skadden

Investment Management Alert

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

On March 20, 2019, the Securities and Exchange Commission (SEC) voted to propose a series of rule and form amendments, as directed by Congress under the Small Business Credit Availability Act (SBCA) and the Economic Growth, Regulatory Relief, and Consumer Protection Act (Consumer Protection Act), that are intended to modernize the registration, communication and offering processes for business development companies (BDCs) and registered closed-end investment companies (CEFs) (CEFs and BDCs are defined in the proposing release and referred to herein as the "affected funds") under the Securities Act of 1933 (Securities Act).[1] Importantly, the proposed amendments would allow affected funds to use the securities offering rules that have been available to operating companies since 2005.

The proposed amendments would, among other things:

- streamline the registration process for eligible affected funds, including by allowing eligible affected funds to use a short-form shelf registration statement on Form N-2;
- permit eligible affected funds to qualify as "well-known seasoned issuers" (WKSIs) under Rule 405 of the Securities Act;
- permit affected funds to satisfy final prospectus delivery requirements by using the same method as operating companies; and
- harmonize the public communication rules applicable to affected funds with those applicable to operating companies, which would provide affected funds with greater flexibility to communicate with investors, including through the use of "free writing prospectuses."

The proposing release also includes amendments intended to further harmonize the existing disclosure and regulatory framework for affected funds with that of operating companies. In particular, the proposed amendments would impose on affected funds structured data requirements (*i.e.*, a requirement to tag certain information using Inline eXtensible Business Reporting Language (Inline XBRL)) and new annual and current reporting disclosure requirements (*i.e.*, under the proposed amendments, CEFs would be subject to Form 8-K current reporting requirements, just like operating companies and BDCs). Additionally, CEFs that make periodic repurchase offers pursuant to Rule 23c-3 under the Investment Company Act of 1940 (1940 Act), commonly referred to as

[1] Securities Offering Reform for Closed-End Investment Companies, Securities Act Release No. 33-10619 (March 20, 2019) (the "proposing release").

interval funds, would be permitted to pay securities registration fees using the same method currently used by mutual funds and exchange-traded funds (ETFs).

If adopted as proposed, these amendments would have broad application in the closed-end fund industry, impacting funds in varying degrees depending on size and type. Comments on the proposed amendments are due June 10, 2019.

An annotated chart detailing the potential impacts to the affected funds of the proposed amendments is provided in Appendix A.

Background

In 2005, the SEC adopted sweeping reforms of its rules governing the registration, communications and offering processes under the Securities Act (2005 reforms).[2] At the time, investment companies were specifically excluded from the scope of the 2005 reforms, with the SEC in the adopting rule release stating, "[I]t would be more appropriate to consider changes to [its] requirements as they apply to registered investment companies and business development companies in the context of a broader reconsideration of the separate framework applicable to such issuers." However, for over 12 years, similar reforms were not proposed for investment companies.

The proposed amendments are a result of the SBCA and the Consumer Protection Act, which generally directed the SEC to propose rules that would permit affected funds to use the securities offering rules available to operating companies.[3] For BDCs, Section 803 of the SBCA required the SEC, no later than one year after the date of the enactment, to revise Form N-2, as well as numerous specific rules under the Securities Act, the Securities Exchange Act of 1934 (Exchange Act) and Regulation FD, to allow BDCs to rely on the offering, proxy and communication rules previously available only to operating companies. Section 803 provided that if the SEC does not act to revise its rules and forms by the one-year anniversary of the SBCA, BDCs would be entitled to treat such revisions as self-implementing until such revisions are completed by the SEC. Accordingly, notwithstanding the proposed amendments, BDCs technically may rely on the rules made available by Section 803 until the proposed amendments are adopted because the one-year anniversary of the SBCA was March 23, 2019.[4]

For CEFs, Section 509 of the Consumer Protection Act instructed the SEC to propose rules by May 24, 2019 — and finalize rules by May 24, 2020 — that would permit any CEF that is listed on a national securities exchange or that is an interval fund to "use the securities offering and proxy rules, subject to conditions the Commission determines appropriate, that are available to other issuers that are required to file reports under Section 13 or Section 15(d) of the Securities Exchange Act of 1934." Unlike the SBCA, the Consumer Protection Act did not specifically identify required revisions, but instead imposed a broader principles-based mandate on the SEC, reserving for the SEC the authority to impose conditions that it determines to be appropriate to securities offering and proxy rules for CEFs.

In the proposing release, the SEC noted that while the Consumer Protection Act only requires the SEC to consider interval funds and listed CEFs, the agency will exercise its discretion to extend the proposed amendments to all CEFs, as applicable.

Summary of Proposed Amendments

Registration Process: Short-Form Registration Statement and Incorporation by Reference

The proposed amendments would allow affected funds to use the more streamlined and cost-effective registration process currently available to operating companies. Notably, eligible affected funds are less likely to experience gaps between the expiration of one registration statement and the effectiveness of a new shelf registration statement, which could require untimely suspensions of their offerings. In addition, eligible affected funds would benefit from reduced costs associated with updating their prospectuses.

Under existing Securities Act rules and applicable SEC staff guidance,[5] issuers (including affected funds) that meet the eligibility requirements of Form S-3[6] may conduct primary "off-the-shelf" offerings under Rule 415(a)(1)(x) of the Securities Act and then later take down securities "off the shelf" for sale in a public offering as market conditions warrant. The existing offering rules for operating companies, however, are more flexible than those for affected funds. Eligible operating companies are permitted to use a short-form registration statement on Form S-3. They also may rely on Rule 430B of the Securities Act to omit certain information from the base prospectus when the registration

[2] Securities Offering Reform (70 Fed. Reg. 44722; published August 3, 2005).

[3] For additional information regarding the SBCA and the Consumer Protection Act, please refer to our April 9, 2018, and November 1, 2018, articles.

[4] Although reliance on Section 803 is technically available, the absence of implementing rulemaking may result in significant uncertainty. Therefore, BDCs seeking to rely on the statutory mandate regarding the availability of these rules should consult experienced counsel prior to such reliance.

[5] See Nuveen Virginia Premium Income Municipal Fund, SEC Staff No-Action Letter (Oct. 6, 2006); Pilgrim America Prime Rate Trust, SEC Staff No-Action Letter (May 1, 1998).

[6] Form S-3 is a short-form registration statement that allows an issuer to register and conduct primary offerings "off the shelf" under Rule 415 of the Securities Act. It permits issuers to update disclosure prospectively through incorporation by reference into the registration statement subsequently filed reports of the issuer on Form 8-K, Form 10-Q and Form 10-K.

statement is declared effective and later provide such information in a subsequent Exchange Act report incorporated by reference, a prospectus supplement or a post-effective amendment. Affected funds, however, currently are not permitted to use a short-form registration statement or forward incorporate information from subsequently filed Exchange Act reports. When an affected fund sells securities, including as part of an off-the-shelf offering, its registration statement must include all required information.

The proposed amendments would permit eligible affected funds to:

- file short-form registration statements on Form N-2 that will function like a Form S-3 registration statement;
- rely on Rule 430B to omit information from a base prospectus to be used in shelf takedowns and to use the process operating companies follow to file prospectus supplements; and
- include additional information in periodic reports to update their registration statements, provided that the affected funds disclose that such information is being included for this purpose.

Short-Form Registration Statement. Under the proposed amendments, an affected fund would be permitted to file a short-form registration statement on Form N-2 if it meets the registrant and transaction requirements of Form S-3 (an affected fund that meets such requirements is referred to herein as a seasoned fund). An affected fund would meet the registrant requirements if it has:

- a class of securities registered pursuant to Section 12(b) of the Exchange Act or a class of equity securities registered under Section 12(g) of the Exchange Act or is required to file reports pursuant to Section 15(d) of the Exchange Act (which would generally include all affected funds with shares listed on a national securities exchange);
- been subject to the requirements of Section 12 or 15(d) of the Exchange Act and filed all material required to be filed under Section 13, 14 or 15(d) for at least the 12 calendar months immediately preceding the filing of the registration statement; and
- filed in a timely manner certain reports required under Section 13, 14 or 15(d) of the Exchange Act during the 12 calendar months and any portion of a month immediately preceding the filing of the registration statement.

Additionally, an affected fund generally would meet the transaction requirement of Form S-3 for a primary offering if it has a common share public float of at least $75 million.

For a CEF, the fund also must have been registered under the 1940 Act for at least 12 calendar months immediately preceding the filing of the registration statement and have filed all reports required to be filed under Section 30 of the 1940 Act in a timely manner.

A seasoned fund relying on the proposed short-form registration instructions would be required to:

- backward incorporate by reference into the prospectus and statement of additional information (1) its latest annual report filed pursuant to Section 13(a) or 15(d) of the Exchange Act that contains financial statements for the seasoned fund's latest fiscal year for which a Form N-CSR or Form 10-K was required to be filed; and (2) all other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report (*e.g.*, reports on Form 8-K, Form 10-Q, Form N-CSR and Form 10-K); and
- forward incorporate by reference into the prospectus and statement of additional information all documents subsequently filed pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act prior to the termination of the offering (*e.g.*, any subsequently filed reports on Form 8-K, Form 10-Q and Form 10-K, and proxy statements).

The ability to backward and forward incorporate information by reference would allow seasoned funds using a short-form registration statement to avoid the need to file a post-effective amendment in connection with annual updates or a lengthy prospectus supplement in connection with takedowns. However, affected funds should consider that the proposed amendments could increase their liability with respect to information that has not previously been incorporated into their registration statements.

Certain affected funds, including unlisted interval funds and unlisted BDCs, that do not list their securities on a national securities exchange, and therefore do not have a "public float," would not be able to satisfy the transaction requirement necessary to file a short-form registration statement, and therefore would not be able to qualify as seasoned funds. Interval funds, however, will still be eligible to file certain post-effective amendments to their registration statements that are immediately effective under Rule 486(b) of the Securities Act.[7]

[7] The SEC staff has historically provided no-action assurances that it would not recommend that the agency take any enforcement action under Section 5(b) or 6(a) of the Securities Act against BDCs and specific CEFs conducting offerings under Rule 415(a)(1)(x) on a case-by-case basis regarding their use of Rule 486(b). In the proposing release, the SEC noted that it is reevaluating these no-action letters, including whether such letters should be withdrawn in connection with any final rules adopted under this proposal.

We believe that the omission of unlisted affected funds from being able to use a short-form registration statement and its benefits is a glaring deficiency in this proposed rulemaking. Unlisted funds, including non-listed BDCs, interval funds and so-called tender offer funds, recently account for a growing share of newly launched BDCs and CEFs. While interval funds can avail themselves of Rule 486(b) to streamline their continuous offering process, unlisted tender offer funds and unlisted BDCs cannot. Coupled with their omission from this proposed rulemaking, unlisted tender offer funds and unlisted BDCs are left in the same situation as they are currently — needing to go through a lengthy annual post-effective amendment filing process with the SEC, which culminates in the SEC declaring the post-effective amendment effective. There is no reason to discriminate against unlisted affected funds from the benefits of a streamlined offering process if the SEC intends to provide regulatory parity. Sponsors of unlisted affected funds may wish to recommend that the SEC either permit unlisted affected funds to use the short-form registration statement process by, for example, including a net asset value-based standard for them in the short-form eligibility criteria, or at the least by expanding Rule 486(b) to encompass unlisted BDCs and tender offer funds in addition to interval funds.

Omitting Information from a Base Prospectus and Filing Prospectus Supplements. As previously noted, Rule 430B of the Securities Act permits WKSIs and certain issuers eligible to use Form S-3 to omit specified information from its base prospectus and later provide such information in a subsequent Exchange Act report incorporated by reference, a prospectus supplement or a post-effective amendment.[8] Under the proposed amendments, seasoned funds would be permitted to use Rule 430B in parity with operating companies. By relying on Rule 430B, seasoned funds that qualify as WKSIs would be permitted to omit the plan of distribution and information regarding whether the offering is a primary one or an offering on behalf of selling security holders from its registration statement. Additionally, all seasoned funds would be permitted to omit the identities of selling security holders and the amount of securities to be registered on their behalf, subject to certain conditions.

Rules 424 and 497 of the Securities Act currently provide different processes for operating companies and investment companies to file prospectuses. Operating companies follow Rule 424, which provides additional time for an issuer to file a prospectus and also requires an issuer to file a prospectus only if the issuer makes substantive changes from, or additions to, a previously filed prospectus. In contrast, Rule 497 currently requires funds to file every prospectus that varies from a previously filed prospectus. Under the proposed amendments, all affected funds would be able to rely on Rule 424 to file any type of prospectus enumerated in Rule 424(b) to update or to include information omitted from a prospectus (including information omitted from an initial public offering (IPO) prospectus pursuant to Rule 430A)[9] or in connection with a shelf takedown, which would reduce the number of prospectus filings that a fund would be required to make.[10] The SEC also proposed to amend Rule 497 to provide that Rule 424 would be the exclusive rule for affected funds to file a prospectus or prospectus supplement other than an advertisement that is deemed to be a prospectus under Rule 482 of the Securities Act.

Under the proposed amendments, affected funds relying on Rule 430B — similar to operating companies — would undertake that, for purposes of determining liability under the Securities Act with respect to any purchaser, each prospectus supplement is deemed part of the corresponding base prospectus as of the earlier of the date of first use after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus.

Additional Information in Periodic Reports. Under the proposed amendments, seasoned funds would be permitted to forward incorporate information from their Exchange Act reports. The SEC noted that these funds may wish to include information in their periodic reports that is not required to be included in order to update their registration statements. The proposed amendments would include a new instruction to Form N-2 that would allow a fund to provide additional information so long as the fund includes a statement in the report identifying any information that has been included for this purpose.

Well-Known Seasoned Issuer Status

The proposal includes amendments that would allow an affected fund to qualify as a WKSI. When an issuer qualifies as a WKSI, it can register an unspecified amount of different types of securities under the Securities Act on a shelf registration statement that becomes effective automatically upon filing. The ability to use an automatic shelf registration statement means that such registration statement would not be subject to review by the SEC staff prior to becoming effective and would be available

[8] Under Rule 430B, a prospectus filed as part of an automatic shelf registration statement may omit the following: information that is unknown or not reasonably available to the issuer; whether the offering is a primary or secondary offering, or a combination of the two; the plan of distribution for the securities; a description of the securities registered other than an identification of the name or class of such securities; the identity of other issuers; and the names of any selling security holders and amounts of securities to be registered on their behalf.

[9] Rule 430A of the Securities Act permits, if specified conditions are met, a registration statement to be declared effective without containing final pricing information.

[10] The proposing release noted that the proposed amendments to Rule 424(f) would not apply to open-end or other registered companies. Those investment companies would continue to file prospectuses pursuant to Rule 497.

for use immediately upon filing. This streamlined registration process provides flexibility for WKSIs to time securities sales to meet market conditions without waiting for the SEC staff to review and comment on a registration statement and declare it effective. Additionally, subject to certain conditions, a WKSI also can communicate at any time, including through a free writing prospectus, without violating the gun-jumping provisions of the Securities Act.

To qualify as a WKSI, an issuer is required to file Exchange Act reports with the SEC and meet the following requirements: (1) it must be a seasoned fund; (2) it must, as of a date within 60 days of filing its shelf registration statement, either (a) have a worldwide market value of its outstanding voting and nonvoting common stock held by non-affiliates of at least $700 million or (b) have issued in the last three years at least $1 billion aggregate principal amount of nonconvertible securities, other than common equity, in registered primary offerings for cash; and (3) it is not an "ineligible issuer."[11]

Final Prospectus Delivery Reforms

Under Rule 172 of the Securities Act, issuers, brokers and dealers are permitted to satisfy final prospectus delivery obligations if a final prospectus is filed with the SEC within the time required and other conditions are satisfied. Rule 173 of the Securities Act requires a notice stating that a sale of securities was made pursuant to a registration statement or in a transaction in which a final prospectus would have been required to have been delivered in the absence of Rule 172. Currently, affected funds are specifically excluded from the group of issuers that may rely on these rules, which means issuers and their distributors are required to deliver paper copies of prospectuses. To implement the SBCA and to provide parity for CEFs consistent with the Consumer Protection Act, the proposed amendments would remove the exclusion for offerings by affected funds in Rules 172 and 173. This means that physical or electronic copies of an affected fund's final prospectus would no longer be required to be delivered to investors provided the conditions of these rules are met. This would hold true for IPO transactions and other registered offerings.

Communication Rules

Offering Communications: Overview. The gun-jumping provisions of the Securities Act restrict the types of offering communications that issuers or other parties subject to the Securities Act's provisions may use in connection with a proposed registered offering of securities. As part of its 2005 reforms, the SEC adopted rules that provided operating companies and other parties increased flexibility in their communications with the public in connection with an offering. The applicability of the gun-jumping provisions is determined based on the stage of the offering process during which the communications are made:

- the "pre-filing period," the time a company is first "in registration" until the initial filing of a registration statement with the SEC;
- the "waiting period," the time a registration statement is filed with the SEC until it is declared effective; and
- the "post-effective period," typically up to 25 days after a registration statement has been declared effective.

Pre-Filing Period Restrictions and Safe Harbors[12]

Publicity about a company or its business during the pre-filing period may be deemed to constitute an unlawful offering if the SEC or a court were to determine that such publicity was designed to stimulate interest in the securities to be offered, even absent a specific reference to any proposed offering. The SEC has adopted a number of safe harbors applicable to pre-filing communications that specify the types of communications and information that are permitted to be distributed without being considered "gun-jumping," including for example:

[11] Rule 405 of the Securities Act defines an "ineligible issuer" as, among other things, an issuer that has not filed all required reports during the preceding 12 months (or for such shorter period that the issuer was required to file such reports); an issuer that has (or whose subsidiary has) been convicted of a felony or misdemeanor; or an issuer that has violated (or whose subsidiary has violated) the anti-fraud provisions of the federal securities laws. The proposed amendments would expand the anti-fraud prong for affected funds to provide that an affected fund would be an ineligible issuer if, within the past three years, its investment adviser, including any sub-adviser, was the subject of any judicial or administrative decree or order arising of a governmental action, that determines that the investment adviser aided, abetted or caused the affected fund to have violated the anti-fraud provisions of the federal securities law. In addition, the SEC noted in the proposing release that neither the current ineligible issuer definition under Rule 405 nor the proposed amendments to the definition would cover provisions in the 1940 Act that do not involve a violation of the non-anti-fraud provisions of the 1940 Act (*i.e.*, prohibitions on management self-dealing, breaches of fiduciary duty, or changes in a fund's business or investment policies without shareholder approval) and requested comments on whether the definition of ineligible issuer should be expanded to cover violations of these 1940 Act provisions.

[12] On February 21, 2019, the SEC proposed Rule 163B under the Securities Act, which would permit all prospective issuers, including registered investment companies and BDCs, to engage in "test the waters" communications with prospective investors that the issuer reasonably believes are qualified institutional buyers and/or institutional accredited investors prior to, or following, the filing of a registration statement. For additional information, see the SEC's press release describing the proposal, available here, as well as the proposing release, available here.

- **Rule 163A**, which provides that communications made by or on behalf of a company more than 30 days prior to filing a registration statement are excluded from the gun-jumping restrictions so long as such communications do not reference a securities offering that is or will be the subject of a registration statement, and the company takes reasonable steps within its control to prevent further dissemination of the communication during the 30-day period immediately before the registration statement is filed. This bright-line exclusion applies only to communications by or on behalf of an issuer and may not be used by potential offering participants who are underwriters or dealers.
- **Rule 163**, which permits communications, including certain offers to sell or buy securities, during the pre-filing period by issuers that qualify as WKSIs. Rule 163 communications can be made by or on behalf of a WKSI, but they cannot be made by offering participants, such as prospective underwriters. Written communications issued under Rule 163 are required to include a legend and are treated as issuer free writing prospectuses, which, subject to certain exceptions, must be filed with the SEC promptly upon the filing of the registration statement, if one is filed, covering the securities that were offered in reliance on Rule 163.
- **Rule 168**, which establishes a safe harbor for reporting issuers for communications issued by or on behalf of an issuer of regularly released factual business information or, unlike Rule 169, forward-looking information. Examples include factual information about the issuer, its business or financial developments, advertisements or other information regarding the issuer's products or services and dividend notices. To rely on the Rule 168 safe harbor, the issuer must have previously released or disseminated the information or the information must be released in the ordinary course of its business, and the timing, manner and form of the release must be consistent with similar past releases.
- **Rule 169**, which provides a safe harbor for continued communications at any time by or on behalf of a non-reporting issuer (an issuer that is not required to file periodic reports under the Exchange Act and that does not file such reports voluntarily) of regularly released factual business information by the same employees who historically have been responsible for providing such information to persons other than investors or potential investors. For purposes of Rule 169, "factual business information" is defined as (1) factual information about the issuer, its business or financial developments, or other aspects of its business; and (2) advertisements of, or other information about, the issuer's products or services.

Waiting Period Restrictions and Safe Harbors

During the waiting period, other than for the delivery of a preliminary prospectus, issuers, underwriters and dealers are only permitted to engage in limited written communications with prospective investors, including soliciting offers, without violating the gun-jumping rules. The following is a summary of communications with security holders and the general public that are permitted during the waiting period:

- **Rule 134** permits a company to publish limited advertisements of a security offering after a registration statement has been filed (*i.e.*, "tombstone ads"); these communications are deemed not to be prospectuses.
- **Rules 168 and 169** permit ongoing communications by reporting or non-reporting issuers before and after the filing of a registration statement so long as those communications are limited to factual business information in the case of rules 168 and 169 and certain forward-looking information in the case of Rule 168.
- **Rule 433/Free Writing Prospectus:** A free writing prospectus is a written communication that constitutes an offer to sell, or a solicitation of an offer to buy, securities that are or will be the subject of a registration statement. It may take any form and is not required to meet the informational requirements applicable to statutory prospectuses. Although it may include information that is different from, or supplemental to, the information included in the registration statement, such information may not conflict with the registration statement. Issuers using a free writing prospectus must comply with applicable prospectus delivery, SEC filing and legend requirements. WKSIs are permitted to use a free writing prospectus during any stage of the offering process. In contrast, the free writing prospectus of a non-reporting issuer must be accompanied or preceded by the prospectus filed with the registration statement.

Offering Communications: Proposed Amendments. The proposed amendments would extend flexibility to the affected funds. Specifically, the proposed amendments would permit affected funds to:

- publish factual information about the issuer or the offering during the waiting period, including "tombstone ads," in reliance on Rule 134;
- rely on the Rule 163A safe harbor for communications that do not refer to the registered offering made more than 30 days prior to the filing of a registration statement;
- publish or disseminate regularly released factual business information and forward-looking information at any time,

including around the time of a registered offering, in reliance on Rule 168. Rule 169 also would permit affected funds' continued publication or dissemination of such information that is intended for use by persons other than in their capacity as investors or potential investors;

- rely on rules 164 and 433 to use a free writing prospectus; and
- if qualified as a WKSI, engage at any time in oral and written communications, including the use at any time of a free writing prospectus, subject to the same conditions applicable to other WKSIs.

The proposed amendments to the communication rules would provide affected funds with incremental flexibility in their communications. Affected funds would be permitted to take advantage of this additional flexibility or continue to rely on Rule 482, the primary advertising rule for investment companies, and other rules currently applicable to their communications. For example, small affected funds would be able to take advantage of new communication options not previously afforded to them, including Rule 163A and Rule 169. Additionally, the proposed amendments to the free writing prospectus rules would permit broker-dealers to engage in such communications on behalf of the affected fund issuer. Accordingly, the proposing release noted that broker-dealers that once used Rule 482 ads may rely on the proposed amended Rule 433 to publish and distribute similar communications, and would no longer be required to file these communications with the Financial Industry Regulatory Authority.

Broker-Dealer Research Reports. Rule 138 permits a broker-dealer participating in a distribution of securities to publish or distribute research reports about that issuer if the broker-dealer publishes or distributes such research reports in the regular course of its business and if the issuer has filed all periodic reports required during the preceding 12 months on forms 10-K and 10-Q. The proposed amendments would amend Rule 138's references to shelf registration statements filed on Form S-3 to include a parallel reference to registration statements filed on Form N-2 under the proposed short-form registration statement. The proposed amendments also would amend Rule 138 to include parallel references to the reports that registered CEFs are required to file (*i.e.*, reports on forms N-CSR, N-Q, N-CEN and N-PORT).

The SEC did not propose to amend Rule 139, which provides a safe harbor for a broker-dealer's publication or distribution of research reports where the broker-dealer is participating in the registered offering. Instead, the SEC determined that newly adopted Rule 139b satisfied the directives of the SBCA and the Consumer Protection Act by extending Rule 139's safe harbor to research reports on affected funds.[13] However, Rule 139b imposes certain exclusions not contemplated by Rule 139, including that research reports published or distributed by a broker-dealer that is affiliated with an investment adviser to an affected fund are not covered under the safe harbor contained in Rule 139b.

Other Proposed Rule Amendments

Registration Fee Payment Method for Interval Funds. Under existing rules, interval funds are required to pay a registration fee to the SEC at the time of filing a registration statement, regardless of when or if they sell the securities being registered. In contrast, as provided by Section 24(f)(2) of the 1940 Act, mutual funds and ETFs pay registration fees based on their net issuance of shares, no later than 90 days after the fund's fiscal year end. Under the proposed amendments, interval funds would be permitted to pay registration fees on the same annual net issuance basis as mutual funds and ETFs. Interval funds also would be required to submit information regarding the computation of the fee and other incorporation on Form 24F-2 in a structured data format.[14]

Registration Fee Payment Method for WKSIs. Under Rule 456(b) of the Securities Act, WKSIs using automatic shelf registration statements are permitted to pay filing fees on a "pay as you go" basis. Affected funds that qualify as WKSIs as a result of the proposed amendments would gain this payment flexibility.

Disclosure and Reporting Framework

The SEC proposed amendments to its rules and forms that are intended to tailor the disclosure and regulatory framework for affected funds in light of the proposed amendments to the offering rules. Although many of these proposed amendments are not expressly required by the SBCA or the Consumer Protection Act, the SEC stated in its proposing release that it believes such amendments would "further the respective Acts' goals of providing regulatory parity to affected funds with otherwise similarly situated issuers." The proposed amendments include:

- structured data requirements;

[13] Covered Investment Fund Research Reports, Securities Act Release No. 33-10580 (Nov. 30, 2018).

[14] The SEC requested comments regarding whether additional categories of issuers, including tender offer funds, should be permitted to pay registration fees on an annual net basis. Sponsors of continuously offered CEFs may wish to recommend that the SEC permit tender offer funds, which share many characteristics with interval funds, to use such registration fee payment method.

- new annual reporting requirements;
- new current reporting requirements;
- amendments to provide all affected funds additional flexibility to incorporate by reference; and
- enhancements to the disclosures that CEFs make to investors when the funds are not updating their registration statements.

Structured Data Requirements. Under the proposed amendments, affected funds would be required to report certain information in a structured data format. The SEC staff proposed amending:

- Item 601 of Regulation S-K, such that BDCs, similar to operating companies, would be required to tag financial statement information in registration statements and Exchange Act reports using Inline XBRL format;
- the Form N-2 cover page, such that an affected fund would be required to tag the data points that appear on the cover page using Inline XBRL format, including, for example, the fund name, the statutes to which the registration statement relates and check boxes relating to the effectiveness of the registration statement;
- Rule 405 of Regulation S-T and proposed General Instruction H.2 of Form N-2, such that an affected fund would be required to tag certain items in its prospectus using Inline XBRL format, including the fee table; the senior securities table; investment objectives and policies; risk factors; share price data; and capital stock, long-term debt and other securities; and
- the EDGAR Filer Manual, such that Form 24F-2 filings by mutual funds, ETFs and interval funds would be submitted in Extensible Markup Language.

Under the proposed amendments, affected funds would be required to submit "Interactive Data Files" (*i.e.*, machine-readable computer code that presents information in XBRL format) with (1) any registration statements and post-effective amendments; (2) any prospectus filed pursuant to Rule 424; and (3) for seasoned funds, any Exchange Act report that a seasoned fund filing a short-form registration statement on Form N-2 is required to tag using Inline XBRL format.

New Annual Reporting Requirements. The proposing release includes new annual report requirements that would be applicable to all affected funds. Under the proposed amendments, seasoned funds that file short-form registration statements would be required to include key information in their annual reports that is currently disclosed in their prospectuses, including the fee and expense table, share price data and the senior securities table.

The proposed amendments also set forth other disclosure requirements including, among other things:

- CEFs would be required to include a management's discussion of fund performance (MDFP) in their annual reports to shareholders, similar to the MDFP disclosures that mutual funds and ETFs include in their annual reports, and to the "management's discussion and analysis" that operating companies and BDCs include in their annual reports;
- BDCs would be required to disclose financial highlights in their registration statements and annual reports; and
- affected funds filing short-form registration statements would be required to disclose, in their registration statements or shareholder reports, material unresolved comments received from the SEC on their current or periodic reports or registration statements.

On extending MDFP disclosure requirements to CEFs, the SEC staff noted that investors in these funds, like investors in mutual funds, ETFs, BDCs and operating companies, similarly would benefit from annual report disclosures that aid investors in assessing a fund's performance over the prior fiscal year. Under the proposed amendments, Form N-2 would be amended to require CEFs to provide a narrative description of the factors that materially affected their performance during the most recently completed fiscal year. CEFs also would be required to 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 against an appropriate broad-based securities market index for the same period, and a table of the fund's average annual returns for the one-, five-, and 10-year periods as of the last day of the fund's most recent fiscal year. The final account values for listed CEFs would be shown based on market price per share, whereas unlisted CEFs would provide such information based on net asset value (NAV). **We note that while market value is an important performance metric, discounts to NAV are often out of a fund's control, and, therefore, listed CEFs may wish to show NAV performance supplementally.** Finally, CEFs would be required to discuss in their annual reports the effect of any policy or practice of maintaining a specified level of distributions to shareholders on the fund's investment strategies and NAV per share during the last fiscal year, as well as the extent to which the registrant's distribution policy resulted in distributions of capital.

New Current Reporting Requirements: Form 8-K Requirement. Form 8-K under the Exchange Act generally requires reporting companies subject to the periodic reporting requirements of the Exchange Act, including BDCs, to publicly disclose major events relevant to shareholders on a timely basis. The proposed amendments would require CEFs that are reporting companies under Section 13(a) or 15(d) of the Exchange Act to respond to reporting items on Form 8-K, some of which are substantially the same as, or similar to, existing disclosure requirements for CEFs. This Form 8-K filing requirement would be a new regulatory burden for CEFs,[15] in particular since Form 8-K requires disclosure within four business days after the occurrence of a relevant event, while the existing regime generally calls for disclosure on an annual or semi-annual basis.

Form 8-K also would be amended for all issuers to (1) add two new reporting items for affected funds on material changes to investment objectives or policies and material write-downs of significant investments and (2) tailor existing reporting requirements and instructions to affected funds:

- Material Changes to Investment Objectives or Policies: An affected fund would be required to file a Form 8-K report under new Item 10.01 if the fund's investment adviser, including any sub-adviser, has determined to implement a material change to the fund's investment objectives or policies that has not been, and will not be, submitted to shareholders for approval. Specifically, a reporting obligation would be triggered when an affected fund's adviser[16] has determined to implement 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 in, 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."[17] The Form 8-K report would disclose the date the adviser plans to implement the material change to the fund's investment objectives or policies and a description of such change. The SEC noted that an affected fund would not be required to file a Form 8-K report for such a change if it provides substantially the same information in a post-effective amendment. A seasoned fund relying on the proposed short-form registration instructions could, however, update its registration statement by filing a Form 8-K report in response to this new item instead of a post-effective amendment.
- Material Write-Downs of Significant Investments: An affected fund would be required to file a Form 8-K report under new Item 10.02 if the fund determines that a material write-down in fair value of a "significant investment" is required under the generally accepted accounting principles applicable to the affected fund. An investment would be considered a "significant investment" under this new reporting item if the affected fund and its other subsidiaries' investments in a portfolio holding exceed 10 percent of the total assets of the fund and its consolidated subsidiaries. To determine whether a portfolio holding is significant, an affected fund would be required to aggregate investments in the same issuer,[18] not investments in different issuers. Disclosure under this new item also would include the date the affected fund concluded that a material write-down in fair value was required and the estimate of the amount or range of amounts of the material write-down. However, an affected fund would not be required to disclose such estimate if the fund is unable to make a good faith estimate at the time of filing, provided that the fund files an amended Form 8-K report under this item within four business days after it makes such determination. An affected fund would not be required to file a report under this item if the fund's determination to materially write down a significant investment was 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 periodic report is filed on a timely basis and such conclusion is disclosed in the report.

Consistent with provisions for operating companies, the proposed amendments would permit seasoned funds to file short-form registration statements even if they fail to file timely reports on Form 8-K related to certain specified items. The SEC staff noted that a seasoned fund that elects to file a short-form registration statement would need to be current in its Form 8-K filings with respect to all required items at the actual time of a Form N-2 filing. In addition, consistent with the approach adopted for operating companies,

[15] For example, CEFs are required to disclose certain information relating to changes in their certifying account (Item 4.01 of Form 8-K) and matters submitted to a vote of shareholders (Item 5.07 of Form 8-K) in their semi-annual or annual reports.

[16] We note that the SEC appears unsure of how to evaluate when such a determination should be deemed to have been made, and made the following request for comment: "Is there a standard industry practice for approving a material change to a fund's investment objectives or policies before it is implemented? If so, is there a particular step in the approval process that should trigger the obligation to file a Form 8-K report under proposed Item 10.01? If there is not a standard industry practice, how could we modify the proposal to achieve more consistent reporting across affected funds? Are there differences between the approval process for funds with a single adviser and funds with one or more sub-advisers that we should take into account?" This is of course quite important, as the Form 8-K reporting timeline will be triggered off of such a determination having been made.

[17] We note that "portfolio emphasis" could be very broad. We believe the SEC should clarify that changes in the "types of securities that the fund invests or will invest" relate to the types of securities that the fund "invests or will invest principally" (emphasis added). See proposed Item 8.2b(1) of Form 8-K.

[18] The SEC provided the following example in the proposing release: "For example, if an affected fund held debt and equity securities issued by Company A, it would need to consider the percentage of total assets invested in Company A securities in the aggregate to determine whether it had a significant investment under proposed Item 10.02."

the safe harbor from the antifraud provisions of the Securities Act would be extended to proposed items 10.01 and 10.02 and would apply only until the due date of the affected fund's periodic report for the relevant period in which the Form 8-K was not timely filed.

Online Availability of Incorporation by Reference. Form N-2's current General Instruction for Incorporation by Reference permits affected funds to backward incorporate their financial information into the prospectus or statement of additional information (SAI), but requires the funds to provide new investors with copies of all previously filed materials that the funds incorporated by reference into the prospectus and/or SAI. Under the proposed amendments, affected funds would no longer be required to deliver such information to new investors. Instead, affected funds would be required to make their prospectuses, SAIs and the incorporated materials readily available and accessible on a website.

Enhancements to Certain CEFs' Annual Report Disclosure. Rule 8b-16 under the 1940 Act requires all registered investment companies to update their 1940 Act registration statements on an annual basis. CEFs, however, may rely on Rule 8b-16(b) to forgo an annual update provided that they disclose certain key changes that occurred during the prior year in their annual reports. The SEC proposed amending Rule 8b-16, noting their concern that "funds disclosing important changes may not always provide enough context for investors to understand the implications of those changes." Accordingly, under the proposed amendments, Rule 8b-16 would be amended to require CEFs to describe such key changes in enough detail to allow investors to understand each change and how it may affect the fund. Such disclosures must be prefaced with a legend clarifying that the disclosures provide only a summary of certain changes that have occurred over the past year and may not reflect all of the changes that have occurred since the investor purchased the fund. For example, according to the proposing release, to the extent a fund's principal investment objectives and policies or principal risk factors have changed, the fund should describe its investment objectives or principal risk factors before and after the change.

Compliance Dates

The SEC proposed a transition period after the publication of a final rule in the Federal Register to allow affected funds sufficient time to comply with the following four proposed requirements:

- Form 8-K. All affected funds eligible to file a short-form registration statement would be required to comply with the full scope of the amended Form 8-K 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 on Form N-2. For all other affected funds, the Form 8-K requirements would take effect 18 months after the date of the publication of a final rule in the Federal Register.
- MDFP. Any annual report that a CEF files one year or more after the publication of a final rule in the Federal Register would be required to include the proposed MDFP disclosures.
- Structured Data Requirements. All affected funds eligible to file a short-form registration statement would be required to comply with structured data requirements no later than 18 months after the date of publication of a final rule in the Federal Register. All other affected funds would be required to comply with these requirements 24 months after publication of a final rule in the Federal Register. Filers on Form 24F-2 would be required to comply with the structured data format for Form 24F-2 no later than 18 months after the publication of a final rule in the Federal Register.
- Rule 24f-2. The proposed amendments to rules 23c-3 and 24f-2 applicable to interval funds would become effective one year after the publication of a final rule in the Federal Register.

Although the SEC did not provide extended compliance dates for other proposed amendments, it requested comments on the proposed compliance periods, including whether any of the other proposed amendments warrant an extended compliance period.

Boston associate Michelle Huynh contributed to this client alert.

Appendix A

This table has been adapted from the summary table provided by the SEC in the proposing release.

Rule	Summary Description of the Current Rule	Summary Description of the Proposed Change	Entities Affected by the Proposed Change*
Registration Provisions			
Securities Act Rule 405	Generally excludes affected funds from the definition of "Well-Known Seasoned Issuer" and related concepts.	Would allow certain eligible affected funds to qualify as WKSIs.	Affected funds
Securities Act Rule 415	Permits issuers to register securities to be offered on a delayed or continuous basis pursuant to Rule 415(a)(1)(x).	Would include Form N-2, which will allow for affected funds to offer securities on a delayed and continuous basis.	Seasoned funds
Cover Page to Form N-2	N/A	Would include several new checkboxes indicating, among other things, whether the form is a registration statement or post-effective amendment filed by a WKSI that will become effective upon filing with the SEC, whether a fund is relying on the proposed short-form registration instruction, and the characteristics of the fund.	Affected funds
Proposed General Instruction A.2 of Form N-2	N/A	Would allow eligible affected funds to file a short form registration statement on Form N-2.	Seasoned funds
Proposed General Instruction B of Form N-2	N/A	Would allow affected funds that qualify as WKSIs to use a short-form registration statement on Form N-2 as an automatic shelf registration statement.	WKSIs
General Instruction F.3 of Form N-2	Requires material incorporated by reference to be provided with the prospectus and/or SAI to each person to whom the prospectus and/or SAI is sent, unless the person holds securities of the registrant and otherwise has received a copy of the material.	Replaces Instruction F.3 in its entirety with proposed General Instruction F.3 that addresses backward and forward incorporation by reference. New Instruction F.4 would address delivery requirements (see below).	Seasoned funds

* Some of the proposed rule changes that are shown as affecting seasoned funds would affect only those that elect to file a registration statement on Form N-2 using a proposed instruction permitting funds to use the form to file a short-form registration statement.

Rule	Summary Description of the Current Rule	Summary Description of the Proposed Change	Entities Affected by the Proposed Change*
Proposed General Instruction F.4.a. of Form N-2	N/A	Would require the registrant to post online its prospectus, SAI, and any periodic and current reports filed pursuant to Section 13 or 15(d) of the Exchange Act that are incorporated by reference. A seasoned fund would not have an affirmative obligation to send copies of any or all of the information that has been incorporated by reference absent a written or oral request from an investor.	Affected funds
Securities Act Rule 430B	Permits operating companies to omit certain information from the "base" prospectus and update the registration statement after effectiveness.	Would allow affected funds to use the rule in parity with operating companies.	Seasoned funds
Securities Act Rules 424 and 497	Operating companies follow Rule 424 to file prospectus supplements; investment companies follow Rule 497 to file prospectus supplements.	Rule 424 would require all affected funds to file any type of prospectus enumerated in Rule 424(b) to update, or to include information omitted from, a prospectus (including information omitted from an IPO prospectus pursuant to Rule 430A) or in connection with a shelf takedown. Rule 497 would provide that Rule 424 would be the exclusive rule for affected funds to file a prospectus or prospectus supplement other than an advertisement that is deemed to be a prospectus under Rule 482.	Affected funds
Securities Act Rule 462	Provides for effectiveness of registration statements immediately upon filing with the SEC.	Rule 462(f) would include parallel references to Form N-2.	WKSIs
Securities Act Rule 418	Exempts registrants that meet the eligibility requirements of Form S-3 from an obligation to furnish recent engineering, management or similar reports, or memoranda relating to the broad aspects of the business, operations, or products of the registrants.	Rule 418(a)(3) would provide that registrants that are eligible to file a short-form registration statement on Form N-2 also are excepted from the requirement to furnish such information.	Seasoned funds

* Some of the proposed rule changes that are shown as affecting seasoned funds would affect only those that elect to file a registration statement on Form N-2 using a proposed instruction permitting funds to use the form to file a short-form registration statement.

Rule	Summary Description of the Current Rule	Summary Description of the Proposed Change	Entities Affected by the Proposed Change*
1940 Act Rules 23c-3 and 24f-2	N/A (Interval funds are not currently permitted to pay registration fees on an annual "net" basis and must pay the registration fee at the time of filing)	Rule 23c-3 would include new section (e), which provides that an interval fund will be deemed to have registered an indefinite amount of securities pursuant to Section 24(f) of the 1940 Act upon the effective date of its registration statement. This change would subject interval funds to the registration fee payment system used by mutual funds and ETFs. Rule 24f-2 would require interval funds to pay their registration fees on the same annual net basis as mutual funds and ETFs.	Interval funds
Communications Provisions			
Securities Act Rule 134	Permits operating companies to engage in limited written communication related to a securities offering during the waiting period (*i.e.*, the period after filing the registration statement), including publishing "tombstone ads."	Would apply to affected funds.	Affected funds
Securities Act Rule 163A	Permits operating companies to communicate without risk of violating gun-jumping provisions until 30 days prior to the filing of a registration statement.	Would apply to affected funds.	Affected funds
Securities Act Rules 168 and 169	Permit operating companies to publish and disseminate regularly released factual and forward-looking information.	Would apply to affected funds.	Affected funds
Securities Act Rules 164 and 433	Permit operating companies to use a "free writing prospectus" after a registration statement is filed.	Would apply to affected funds.	Affected funds
Securities Act Rule 163	Permits operating companies that qualify as WKSIs to engage in oral and written communications at any time.	Would apply to affected funds that qualify as WKSIs.	WKSIs

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Rule	Summary Description of the Current Rule	Summary Description of the Proposed Change	Entities Affected by the Proposed Change*
Securities Act Rule 138	Permits a broker or dealer to publish or distribute certain research about the securities of the issuer other than those they are distributing.	Would include a parallel reference to Form N-2 and parallel references to the reports that CEFs are required to file. (The SEC did not propose to amend Rule 139, which provides a safe harbor for a broker-dealer's publication or distribution of research reports where the broker-dealer is participating in the registered offering, because the SEC believed that the recently adopted Rule 139b satisfied the directives of the SBCA and the Consumer Protection Act by extending Rule 139's safe harbor to research reports on affected funds.)	Seasoned funds
Securities Act Rule 156	Prevents registered investment companies from using sales literature that is materially misleading in connection with the offer and sale of securities.	Would clarify that nothing in that rule may be construed to prevent an affected fund from qualifying for an exemption under Rules 168 or 169.	Affected funds
Proxy Statement Provisions			
Item 13 of Schedule 14A	Requires a registrant to furnish financial statements and other information for proxy statements containing specific proposals; however, a registrant that meets the requirements of Form S-3 generally may incorporate the information by reference to previously filed documents without having to deliver them to securities holders along with the proxy statement.	Item 13(b)(1) and Note E would be amended so that affected funds that meet the requirements of the proposed short-form registration instructions would have the same treatment under Item 13 as registrants that meet the requirements of Form S-3.	Seasoned funds

* Some of the proposed rule changes that are shown as affecting seasoned funds would affect only those that elect to file a registration statement on Form N-2 using a proposed instruction permitting funds to use the form to file a short-form registration statement.

Rule	Summary Description of the Current Rule	Summary Description of the Proposed Change	Entities Affected by the Proposed Change*
Prospectus Delivery Provisions			
Securities Act Rules 172 and 173	Under Rule 172, issuers, brokers and dealers are permitted to satisfy final prospectus delivery obligations if a final prospectus is filed with the SEC within the time required and other conditions are satisfied. Rule 173 requires a notice stating that a sale of securities was made pursuant to a registration statement or in a transaction in which a final prospectus would have been required to have been delivered in the absence of Rule 172.	Would remove the exclusion for offerings by affected funds.	Affected funds
Structured Data Reporting Provisions			
Structured Financial Statement Data: Regulation S-T, Item 405; Regulation S-K, Item 601(b)(1)	N/A	Would require tagging financial statements using Inline XBRL.	BDCs
Prospectus Structured Data Requirements	N/A	Would require tagging certain information required by Form N-2 using Inline XBRL.	Affected funds
Proposed General Instruction H.2 of Form N-2	N/A	Would require submission of interactive data files with (1) any registration statements and post-effective amendments; (2) any prospectus filed pursuant to Rule 424; and (3) for seasoned funds, any Exchange Act report that a seasoned fund filing a short-form registration statement on Form N-2 is required to tag using Inline XBRL format.	Affected funds
EDGAR Manual, Form 24F-2 Structured Format	N/A	Interval funds paying registration fees on an annual net basis, pursuant to Rule 23c-3 and Section 24(f) of the 1940 Act would be required to file Form 24F-2. Filings on Form 24F-2 would be required to be submitted in a structured format.	Form 24F-2 Filers

* Some of the proposed rule changes that are shown as affecting seasoned funds would affect only those that elect to file a registration statement on Form N-2 using a proposed instruction permitting funds to use the form to file a short-form registration statement.

Rule	Summary Description of the Current Rule	Summary Description of the Proposed Change	Entities Affected by the Proposed Change*
Periodic Reporting Provisions			
1940 Act Rule 8b-16	Requires all registered investment companies to update their 1940 Act registration statements with the SEC on an annual basis; however, CEFs may rely on Rule 8b-16(b) to forgo an annual update provided that they disclose in their annual reports certain key changes that occurred over the prior year.	Would include new paragraph (e) to require CEFs to describe such key changes in enough detail to allow investors to understand each change and how it may affect the fund and to disclose a legend clarifying that the disclosures provide only a summary of certain changes that have occurred over the past year and may not reflect all of the changes that have occurred since the investor purchased the fund.	CEFs
Proposed Item 24.4.h(2) of Form N-2	N/A	Would require inclusion of a fee and expenses table in annual reports, which would include information also required by Item 3.1 (*i.e.*, fees and expenses).	Seasoned funds
Proposed Item 24.4.h(3) of Form N-2	N/A	Would require information about the share price of stock and any premium or discount in annual reports, which would include information also required by Item 8.5 (*i.e.*, share price data).	Seasoned funds
Proposed Item 24.4.h(1) of Form N-2	N/A	Would require information about each of the seasoned fund's classes of senior securities in its annual report, which would include information also required by Item 4.3 (*i.e.*, senior securities).	Seasoned funds
Proposed Item 24.4.g of Form N-2	N/A	Would require inclusion of management's discussion of fund performance in annual reports, including a 10-year line graph of performance compared against an appropriate broad-based securities market index for the same period and a table of standardized 1-, 5- and 10-year average annual total return. (BDCs and operating companies currently provide such information in their annual reports filed on Form 10-K, and mutual funds and ETFs currently provide such information in their annual reports filed on Form N-CSR)	CEFs
Item 4.1 of Form N-2	BDCs are currently permitted to omit financial highlights disclosure summarizing their financial statements.	Would require BDCs to provide financial highlights.	BDCs

* Some of the proposed rule changes that are shown as affecting seasoned funds would affect only those that elect to file a registration statement on Form N-2 using a proposed instruction permitting funds to use the form to file a short-form registration statement.

Rule	Summary Description of the Current Rule	Summary Description of the Proposed Change	Entities Affected by the Proposed Change*
Proposed Item 24.4.h(4) of Form N-2	N/A	Would require disclosure of unresolved material staff comments.	Seasoned funds
Current Report Provisions			
Exchange Act Rules 13a-11 and 15d-11	CEFs are presently not required to file current reports on Form 8-K.	CEFs would be required to provide current information on Form 8-K. Failure to file timely reports on Form 8-K in response to Item 10 would not be deemed to be a violation of the antifraud provisions of the Securities Act.	CEFs
Proposed Section 10 of Form 8-K	N/A	Would require affected funds to report material changes to investment objectives or policies and material write-downs of significant investments.	Affected funds
General Instructions in Form 8-K	Does not contemplate being used by CEFs.	Would be modified to make instructions more applicable to affected funds, particularly CEFs.	CEFs
Regulation FD Rule 103	Provides that a failure to make a public disclosure required solely by Rule 100 of Regulation FD will not disqualify a "seasoned" issuer from use of certain forms.	Would be amended to extend the protection under Rule 103 to seasoned funds.	Seasoned funds

* Some of the proposed rule changes that are shown as affecting seasoned funds would affect only those that elect to file a registration statement on Form N-2 using a proposed instruction permitting funds to use the form to file a short-form registration statement.