

# Investment Management Alert

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

### Appendix A

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

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

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Rule	Summary Description of the Current Rule	Summary Description of the Proposed Change	Entities Affected by the Proposed Change*
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
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

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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 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
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)	<p>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.</p> <p>Rule 24f-2 would require interval funds to pay their registration fees on the same annual net basis as mutual funds and ETFs.</p>	Interval funds
<b>Communications Provisions</b>			
Securities Act Rule 134	Permits operating companies to engage in limited written communication related to a securities offering during the waiting period ( <i>i.e.</i> , 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

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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 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
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

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<b>Prospectus Delivery Provisions</b>			
Securities Act Rules 172 and 173	<p>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.</p> <p>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.</p>	Would remove the exclusion for offerings by affected funds.	Affected funds
<b>Structured Data Reporting Provisions</b>			
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	<p>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.</p> <p>Filings on Form 24F-2 would be required to be submitted in a structured format.</p>	Form 24F-2 Filers

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Rule	Summary Description of the Current Rule	Summary Description of the Proposed Change	Entities Affected by the Proposed Change*
<b>Periodic Reporting Provisions</b>			
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>i.e.</i> , 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>i.e.</i> , 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>i.e.</i> , 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

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Proposed Item 24.4.h(4) of Form N-2	N/A	Would require disclosure of unresolved material staff comments.	Seasoned funds
<b>Current Report Provisions</b>			
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

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