

## SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 230, 232, 239, 240, 243, 249, 270, and 274

[Release Nos. 33–10619; 34–85382; IC–33427; File No. S7–03–19]

RIN 3235–AM31

### Securities Offering Reform for Closed-End Investment Companies

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Securities and Exchange Commission (the “Commission”) is proposing rules that would modify the registration, communications, and offering processes for business development companies (“BDCs”) and other closed-end investment companies under the Securities Act of 1933. As directed by Congress, we are proposing rules that would allow these investment companies to use the securities offering rules that are already available to operating companies. The proposed rules would extend to closed-end investment companies offering reforms currently available to operating company issuers by expanding the definition of “well-known seasoned issuer” to allow these investment companies to qualify; streamlining the registration process for these investment companies, including the process for shelf registration; permitting these investment companies to satisfy their final prospectus delivery requirements by filing the prospectus with the Commission; and permitting additional communications by and about these investment companies during a registered public offering. In addition, the proposed rules would include amendments to our rules and forms

intended to tailor the disclosure and regulatory framework to these investment companies. The proposed rules also include a modernized approach to securities registration fee payment that would require closed-end investment companies that operate as “interval funds” to pay securities registration fees using the same method that mutual funds use today. Lastly, we are proposing certain structured data reporting requirements, including the use of structured data format for filings on the form providing annual notice of securities sold pursuant to the rule under the Investment Company Act of 1940 that prescribes the method by which certain investment companies (including mutual funds) calculate and pay registration fees.

**DATES:** Comments should be received by June 10, 2019.

**ADDRESSES:** Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission’s internet comment forms (<http://www.sec.gov/rules/proposed.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7–03–19 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. All submissions should refer to File Number S7–03–19. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s website (<http://www.sec.gov/rules/proposed.shtml>).

Comments also are available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission’s website. To ensure direct electronic receipt of such notifications, sign up through the “Stay Connected” option at [www.sec.gov](http://www.sec.gov) to receive notifications by email.

**FOR FURTHER INFORMATION CONTACT:** Asaf Barouk, Attorney-Adviser; J. Matthew DeLesDernier, Senior Counsel; Sean Harrison, Senior Counsel; Amy Miller, Senior Counsel; Angela Mokodean, Senior Counsel; Jacob D. Krawitz, Branch Chief; David J. Marcinkus, Branch Chief; Amanda Hollander Wagner, Branch Chief; or Brian McLaughlin Johnson, Assistant Director, at (202) 551–6792, Investment Company Regulation Office; Christian T. Sandoe, Assistant Director or Michael J. Spratt, Assistant Director, at (202) 551–6921, Disclosure Review and Accounting Office; Division of Investment Management; U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

**SUPPLEMENTARY INFORMATION:** The Commission is proposing for public comment amendments to:

Commission reference	CFR citation (17 CFR)
Securities Act of 1933 (“Securities Act”) <sup>1</sup>	<ul style="list-style-type: none"> <li>Rule 134 ..... § 230.134.</li> <li>Rule 138 ..... § 230.138.</li> <li>Rule 139 ..... § 230.139.</li> <li>Rule 156 ..... § 230.156.</li> <li>Rule 163 ..... § 230.163.</li> <li>Rule 163A ..... § 230.163A.</li> <li>Rule 164 ..... § 230.164.</li> <li>Rule 168 ..... § 230.168.</li> <li>Rule 169 ..... § 230.169.</li> <li>Rule 172 ..... § 230.172.</li> <li>Rule 173 ..... § 230.173.</li> <li>Rule 405 ..... § 230.405.</li> <li>Rule 415 ..... § 230.415.</li> <li>Rule 418 ..... § 230.418.</li> <li>Rule 424 ..... § 230.424.</li> <li>Rule 430B ..... § 230.430B.</li> <li>Rule 433 ..... § 230.433.</li> <li>Rule 462 ..... § 230.462.</li> <li>Rule 497 ..... § 230.497.</li> </ul>

<sup>1</sup> 15 U.S.C. 77a *et seq.*

<sup>2</sup> 15 U.S.C. 78a *et seq.*

<sup>3</sup> 15 U.S.C. 80a–1 *et seq.*

Commission reference		
Securities Exchange Act of 1934 (“Exchange Act”) <sup>2</sup>	Rule 13a–11	§ 240.13a–11.
	Rule 15d–11	§ 240.15d–11.
	Form 8–K	§ 249.308.
Investment Company Act of 1940 (“Investment Company Act”) <sup>3</sup>	Rule 8b–16	§ 270.8b–16.
	Rule 23c–3	§ 270.23c–3.
	Rule 24f–2	§ 270.24f–2.
	Form 24F–2	§ 274.24.
Securities Act and Investment Company Act	Form N–2	§ 239.14 and § 274.11a–1.

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## I. Introduction

We are proposing rules that would modify the registration, communications, and offering processes for business development companies (“BDCs”) and registered closed-end investment companies (“registered CEFs”) and, collectively with BDCs, “affected funds”) under the Securities Act.<sup>4</sup> In 2005, the Commission adopted

<sup>4</sup> BDCs are a category of closed-end investment companies that do not register under the Investment Company Act, but rather elect to be subject to the provisions of sections 55 through 65 of the Investment Company Act. See section 2(a)(48) of the Investment Company Act [15 U.S.C. 80a–2(a)(48)]. Congress established BDCs for the purpose of making capital more readily available to small, developing and financially troubled companies that do not have ready access to the public capital markets or other forms of conventional financing.

securities offering reforms for operating companies to modernize the securities offering and communication processes while maintaining the protection of investors under the Securities Act.<sup>5</sup> At that time, the Commission specifically excluded all investment companies—including affected funds—from the scope of the reforms.<sup>6</sup> Now, as directed by Congress, we are proposing rules that would allow affected funds to use the securities offering rules that are already available to operating companies.<sup>7</sup>

The Small Business Credit Availability Act (the “BDC Act”) directs us to allow a BDC to use the securities offering rules that are available to other issuers required to file reports under section 13(a) or section 15(d) of the Exchange Act.<sup>8</sup> As discussed in detail below, the BDC Act identifies with specificity the required revisions.<sup>9</sup> The Economic Growth, Regulatory Relief, and Consumer Protection Act (the “Registered CEF Act”) (and, together with the BDC Act, the “Acts”) directs us to finalize rules to allow any registered CEF that is listed on a national

See H.R. Rep. No. 1341, 96th Cong., 2d Sess. 21 (1980).

<sup>5</sup> Securities Offering Reform, Securities Act Release No. 8591 (July 19, 2005) [70 FR 44721 (Aug. 3, 2005)] (“Securities Offering Reform Adopting Release”). In this release we generally use the term “operating company” to refer to issuers that are not investment companies and that are currently eligible to rely on the rules we are proposing to amend.

<sup>6</sup> See, e.g., *id.* at 44727 (discussing the exclusion of investment companies registered under the Investment Company Act and BDCs from the definition of “well-known seasoned issuer”); *id.* at 44735 (discussing the exclusion of such companies from safe harbors for factual business information and forward-looking information); *id.* at 44784 (discussing the exclusion of such companies from final prospectus delivery reforms).

<sup>7</sup> See Part II.A *infra* concerning the definition of “affected funds.”

<sup>8</sup> Section 803(b) of Small Business Credit Availability Act, Public Law 115–141, 132 Stat. 348 (2018) (“BDC Act”). This section also directs us to make specified revisions to allow a BDC to use the proxy rules that are available to such other issuers. *Id.* Affected funds generally use the proxy rules that are available to operating companies already. One current difference applicable to these entities, however, is a more limited ability to incorporate information into their proxy statements by reference. The BDC Act directs that we eliminate this difference by providing these entities parity with operating companies. Section 803(b)(2)(N) of the BDC Act; see also *infra* Part II.F.2.

<sup>9</sup> See section 803(b)(2) of BDC Act.

securities exchange (a “listed registered CEF”) or that makes periodic repurchase offers under rule 23c–3 under the Investment Company Act (“rule 23c–3”) <sup>10</sup> (an “interval fund”) to use the securities offering rules that are available to other issuers that are required to file reports under section 13(a) or section 15(d) of the Exchange Act, subject to appropriate conditions.<sup>11</sup> Unlike the BDC Act, the Registered CEF Act does not identify with specificity the revisions that are required.

The proposed rules would institute a number of reforms:

- First, they would streamline the registration process to allow eligible affected funds to use a short-form shelf registration statement to sell securities “off the shelf” more quickly and efficiently in response to market opportunities.
- Second, the proposed rules would allow affected funds to qualify as “well-known seasoned issuers” (“WKSIs”) under rule 405 under the Securities Act.

- Third, they would allow affected funds to satisfy final prospectus delivery requirements using the same method as operating companies.
- Fourth, they would allow affected funds to use communications rules currently available to operating companies, such as the use of certain factual business information, forward-looking information, a “free writing prospectus,” and broker-dealer research reports.
- Finally, they would tailor the disclosure and regulatory framework for affected funds in light of the proposed amendments to the offering rules applicable to them. These proposed amendments include structured data requirements to make it easier for investors and others to analyze fund data; new annual report disclosure requirements to provide key information in annual reports; a new requirement for registered CEFs to file reports on Form 8–K in a manner similar to operating companies and BDCs, including new Form 8–K items tailored to registered

CEFs and BDCs; and a proposal to require interval funds to pay securities registration fees using the same method that mutual funds and exchange-traded funds (“ETFs”) use today.

As discussed in detail below, the proposed rules would affect categories of affected funds differently just as categories of operating companies are treated differently under these rules currently. For example, some of the rules would apply to all affected funds, that is, all BDCs and registered CEFs. Many of the proposed rules, however, would apply only to “seasoned funds.” These are affected funds that are current and timely in their reporting and therefore generally eligible to file a short-form registration statement under the proposal if they have at least \$75 million in “public float.” <sup>12</sup> Some of the proposed rules would apply only to seasoned funds that also qualify as WKSIs, that is, seasoned funds that generally have at least \$700 million in public float. Table 1 summarizes these different impacts.

TABLE 1

Rule	Summary description of rule	Entities affected by proposed changes	Discussed below in
<b>REGISTRATION PROVISIONS</b>			
Securities Act Rule 415.	Permits registration of securities to be offered on a delayed or a continuous basis.	Seasoned Funds* ...	Parts II.B.1–II.B.2.a.
Proposed General Instructions A.2 and F.3 of Form N–2.	Provide for backward and forward incorporation by reference .....	Seasoned Funds .....	Part II.B.2.a.
Proposed General Instruction F.4.a.	Requires online posting of information incorporated by reference .....	Affected Funds .....	Part II.H.4.
Securities Act Rule 430B.	Permits certain issuers to omit certain information from their “base” prospectuses and update the registration statement after effectiveness.	Seasoned Funds .....	Part II.B.2.b.
Securities Act Rules 424 and 497.	Provide the processes for filing prospectus supplements .....	Affected Funds .....	Part II.B.2.b.
Securities Act Rule 462.	Provides for effectiveness of registration statements immediately upon filing with the Commission.	WKSIs .....	Part II.B.2.a.
Securities Act Rule 418.	Exempts some registrants from an obligation to furnish certain engineering, management, or similar reports.	Seasoned Funds .....	Part II.F.1.
Investment Company Act Rule 22c–3.	Subjects interval funds to the registration fee payment system based on annual net sales.	Interval Funds .....	Part II.G.
<b>COMMUNICATIONS PROVISIONS</b>			
Securities Act Rule 134.	Permits issuers to publish factual information about the issuer or the offering, including “tombstone ads”.	Affected Funds .....	Part II.E.1.
Securities Act Rule 163A.	Permits issuers to communicate without risk of violating the gun-jumping provisions until 30 days prior to filing a registration statement.	Affected Funds .....	Part II.E.1.
Securities Act Rules 168 and 169.	Permit the publication and dissemination of regularly released factual and forward-looking information.	Affected Funds .....	Part II.E.1.
Securities Act Rules 164 and 433.	Permit use of a “free writing prospectus” .....	Affected Funds .....	Part II.E.1.

<sup>10</sup> 17 CFR 270.23c–3.

<sup>11</sup> Section 509(a) of Economic Growth, Regulatory Relief, and Consumer Protection Act, Public Law 115–174, 132 Stat. 1296 (2018) (“Registered CEF Act”). The Registered CEF Act also refers to proxy rules, as does the BDC Act. See *supra* footnote 8.

<sup>12</sup> See *infra* footnote 18. Form S–3 defines an issuer’s “aggregate market value,” commonly referred to as “public float,” as the “aggregate market value of the voting and non-voting common equity held by non-affiliates.” See General Instruction I.B.1 of Form S–3. The determination of

public float is based on a public trading market, such as an exchange or certain over-the-counter markets. See Securities Offering Reform Adopting Release, *supra* footnote 5, at n.50.

TABLE 1—Continued

Rule	Summary description of rule	Entities affected by proposed changes	Discussed below in
Securities Act Rule 163.	Permits oral and written communications by WKSIs at any time .....	WKSIs .....	Part II.E.1.
Securities Act Rule 138.	Permits a broker or dealer to publish or distribute certain research about securities other than those they are distributing.	Seasoned Funds .....	Part II.E.2.
<b>PROXY STATEMENT PROVISION</b>			
Item 13 of Schedule 14A.	Permits certain registrants to use incorporation by reference to provide information that otherwise must be furnished with certain types of proxy statements.	Seasoned Funds .....	Part II.F.2.
<b>PROSPECTUS DELIVERY PROVISIONS</b>			
Securities Act Rules 172 and 173.	Permit issuers, brokers, and dealers to satisfy final prospectus delivery obligations if certain conditions are satisfied.	Affected Funds .....	Part II.D.
<b>STRUCTURED DATA REPORTING PROVISIONS</b>			
Structured Financial Statement Data.	A requirement that BDCs tag their financial statements using Inline eXtensible Business Reporting Language ("Inline XBRL") format.	BDCs .....	Part II.H.1.a.
Prospectus Structured Data Requirements.	A requirement that registrants tag certain information required by Form N-2 using Inline XBRL.	Affected Funds .....	Parts II.H.1.b–II.H.1.c.
Form 24F-2 Structured Format.	A requirement that filings on Form 24F-2 be submitted in a structured format	Form 24F-2 Filers ..	Part II.H.1.d.
<b>PERIODIC REPORTING PROVISIONS</b>			
Investment Company Act Rule 8b-16.	A requirement that funds that rely on the rule disclose certain enumerated changes in the annual report in enough detail to allow investors to understand each change and how it may affect the fund.	Registered CEFs .....	Part II.H.5.
Proposed Item 24.4.h(2) of Form N-2.	A requirement for information about the investor's costs and expenses in the registrant's annual report.	Seasoned Funds .....	Part II.H.2.a.
Proposed Item 24.4.h(3) of Form N-2 .....	A requirement for information about the share price of the registrant's stock and any premium or discount in the registrant's annual report.	Seasoned Funds .....	Part II.H.2.a.
Proposed Item 24.4.h(1) of Form N-2.	A requirement for information about each of a fund's classes of senior securities in the registrant's annual report.	Seasoned Funds .....	Part II.H.2.a.
Proposed Item 24.4.g of Form N-2.	A requirement for narrative disclosure about the fund's performance in the fund's annual report.	Registered CEFs .....	Part II.H.2.b.
Item 4 of Form N-2	Requires disclosure of certain financial information .....	BDCs .....	Part II.H.2.c.
Proposed Item 24.4.h(4) of Form N-2.	A requirement to disclose outstanding material staff comments that remain unresolved for a substantial period of time.	Seasoned Funds .....	Part II.H.2.d.
<b>CURRENT REPORT PROVISIONS</b>			
Exchange Act Rules 13a-11 and 15d-11.	Require registered CEFs to file current reports on Form 8-K .....	Registered CEFs .....	Part II.H.3.a.
Proposed Section 10 of Form 8-K.	Requires current reporting of two new events specific to affected funds .....	Affected Funds .....	Part II.H.3.b.
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.	Seasoned Funds .....	Part II.H.3.d.

\* Some of the proposed rule changes that are shown above as affecting "seasoned funds" would only affect those seasoned funds 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.

## II. Discussion

### A. Scope of Closed-End Investment Companies Affected by the Proposed Rules

While the rulemaking mandate of the BDC Act applies to all BDCs, the mandate of the Registered CEF Act extends to most, but not all, registered CEFs.<sup>13</sup> Specifically, the BDC Act addresses both BDCs that are listed on an exchange and those that are not, while the Registered CEF Act extends to all registered CEFs that are listed on an exchange as well as interval funds, but excludes other unlisted funds. We propose to apply the proposed rules to all BDCs and registered CEFs, with certain conditions and exceptions discussed below and generally illustrated in Table 1 above.

Although the Registered CEF Act only requires us to allow interval funds and listed registered CEFs to use the securities offering rules available to operating companies, that Act does not preclude us from exercising our discretion to extend these rules to all registered CEFs. Except as noted below, we believe, 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.

Although certain benefits of the rules we are proposing to amend are less likely to apply, by their existing terms, to unlisted issuers,<sup>14</sup> the scope of our proposed amendments would generally treat unlisted BDCs, unlisted registered CEFs, and unlisted operating companies in a consistent manner. We believe that this approach would benefit unlisted registered CEFs and their investors, including by providing new investor protections to investors in these funds. It also could avoid adverse consequences that could result from treating unlisted registered CEFs differently from all other registered CEFs and unlisted BDCs. For example, such disparate treatment could produce potential competitive disparities<sup>15</sup> and the possibility of anomalous results if an unlisted registered CEF were to list its shares and at that time become subject to different offering requirements. The proposal therefore would provide all BDCs and registered CEFs additional

flexibility in raising capital, subject to the conditions and associated investor protections included in the proposed rules. We recognize that despite this consistent treatment of affected funds, unlisted affected funds may not qualify to rely on all of the rules we propose to amend, by those rules' existing terms and conditions (for example, most interval funds). However, these funds still would be able to rely on many of the rules to gain additional flexibility in multiple aspects of the offering process.<sup>16</sup>

Although the BDC Act's requirements are more specific than those in the Registered CEF Act, we believe they both share the overall purpose of providing offering and communication rule parity to the investment companies covered by the Acts. In particular, both Acts direct that we make available to these investment companies the securities offering rules that are available to other issuers required to file reports under section 13 or 15(d) of the Exchange Act. The BDC Act *expressly* and *specifically* requires that we apply many of the proposed amendments to BDCs while the Registered CEF Act does not *expressly* and *specifically* identify the required revisions for registered CEFs, but the two Acts share similar broad mandates. We believe that, except where dictated by meaningful differences between BDCs and registered CEFs—or each type of entity's broader regulatory environment—consistent application of the proposed rules across affected funds would result in more efficient offering processes and more consistent investor protections. Accordingly, the proposed rules would generally apply the specific requirements of the BDC Act to both BDCs and registered CEFs, with certain conditions and exceptions discussed below.

We request comment on the proposed scope of affected funds.

- Is the proposed scope of affected funds appropriate?
- Should open-end registered investment companies be included in the scope of the affected funds? Why or why not? Should some open-end

registered investment companies but not others be included? If so, which ones and why?

- Should any investment companies be removed from the scope of affected funds? If so, which ones and why? Should the scope—or the scope of any of the individual aspects of the proposed rules—be narrowed to exclude registered CEFs that are neither interval funds nor listed registered CEFs?

- We also request comment as to whether each proposed amendment discussed throughout this release should include additional or fewer types of investment companies.

### B. Registration Process

We are proposing amendments to our rules and forms to permit affected funds to use the more flexible registration process currently available to operating companies. Specifically, the proposed amendments would allow affected funds to sell securities “off the shelf” more quickly and efficiently in response to market opportunities.

#### 1. Current Shelf Offering Process for Affected Funds

Issuers, including affected funds, that are eligible to register their securities offerings on Form S-3 may conduct primary offerings “off the shelf” under Securities Act rule 415(a)(1)(x), the provision for offerings made on a delayed or continuous basis.<sup>17</sup> In a rule 415(a)(1)(x) shelf offering, a seasoned issuer can register an unallocated dollar amount of securities for sale at a later time.<sup>18</sup> The issuer can then take down

<sup>17</sup> Primary offerings that are not continuous in nature may only be made on a delayed, or “shelf,” basis if they fit within one of the narrow sets of permissible delayed offerings in Rule 415(a)(1), including rule 415(a)(1)(x). In a continuous offering, an issuer must be ready and willing to sell the securities at all times. The issuer may not suspend and resume the offering. *See* Continuous or Delayed Offerings by Certain Closed-End Management Investment Companies, Investment Company Act Release No. 19391 (Apr. 7, 1993) [58 FR 19361, 19362 (Apr. 14, 1993)]. An issuer also can rely on rule 415(a)(1)(x) to make an immediate offering.

<sup>18</sup> In this release we use the term “seasoned” to refer generally to an issuer that meets the registrant requirements in General Instruction I.A of Form S-3 and, when referring to seasoned funds, a fund that meets these Form S-3 registrant requirements as well as certain proposed modifications for registered CEFs. Among other things, General Instruction I.A requires that the registrant (1) has been subject to the reporting requirements of sections 12 or 15(d) of the Exchange Act and has filed all of the material required to be filed pursuant to sections 13, 14, or 15(d) of the Exchange Act for at least twelve calendar months immediately preceding the filing of the registration statement; and (2) has filed in a timely manner all reports required to be filed during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement (with specified Form 8-K exceptions). A foreign private issuer also can meet the registrant

<sup>13</sup> See section 509(a) of Registered CEF Act.

<sup>14</sup> For example, affected funds that do not list their securities on an exchange and do not have “public float”—such as most interval funds—would generally not qualify to be WKSIs or to file short-form registration statements. *See, e.g., infra* footnotes 35–37.

<sup>15</sup> See *infra* Part IV.B.1.

<sup>16</sup> For example, these funds would newly be able to satisfy final prospectus delivery obligations by filing a prospectus with the Commission under the conditions discussed in Part II.D *infra*, and the proposed rules also would significantly expand these funds' flexibility with respect to offering communications as discussed in Part II.E *infra*. These funds would also be subject to the other requirements we are proposing for affected funds, such as the requirement to provide reports on Form 8-K discussed in Part II.H.3 *infra*. We are also proposing a modernized approach to interval funds' payment of securities registration fees. *See infra* Part II.G.

securities “off the shelf” for sale in a public offering as market conditions warrant. This allows seasoned issuers to quickly access the public securities markets from time to time to take advantage of favorable market conditions.<sup>19</sup>

Affected funds currently can make shelf offerings under rule 415(a)(1)(x) if they meet the eligibility criteria for Form S-3, even though affected funds register their securities offerings on Form N-2.<sup>20</sup> Our rules for operating companies, however, are more flexible and efficient than for affected funds. In particular, seasoned operating companies can use a short-form registration statement on Form S-3. Certain seasoned operating companies also can rely on Securities Act rule 430B to omit certain information from the “base” prospectus when the registration statement becomes effective and later provide that information in a subsequent Exchange Act report incorporated by reference, a prospectus supplement, or a post-effective amendment.<sup>21</sup> The ability to “forward incorporate” information in Exchange Act reports filed *after* the registration statement becomes effective allows operating companies to efficiently update their prospectuses and access capital markets without the expense and delay of filing post-effective amendments in most cases.

Affected funds, on the other hand, currently have limited ability to incorporate information by reference

requirements of Form F-3, in lieu of Form S-3. We focus in this release on Form S-3 because a foreign investment company generally cannot make a public offering of its securities in the United States. *See* section 7(d) of the Investment Company Act [15 U.S.C. 80a-7(d)].

<sup>19</sup> Issuers that rely on rule 415(a)(1)(x) must file a new registration statement every three years, with unsold securities and unused fees carried forward to the new registration statement. *See* Securities Act rule 415(a)(5) [17 CFR 230.415(a)(5)]. If the new registration statement is an automatic shelf registration statement filed by a WKSI, it will be effective immediately upon filing.

<sup>20</sup> *See* Revisions to the Eligibility Requirements for Primary Securities Offerings on Forms S-3 and F-3, Securities Act Release No. 8878 (Dec. 19, 2007) [72 FR 73534, 73537 n.36 (Dec. 27, 2007)] (“Rule 415(a)(1)(x) permits shelf offerings of securities ‘registered (or qualified to be registered)’ on Form S-3 or Form F-3. We note that a closed-end investment company, including a business development company . . . that meets the eligibility standards enumerated in Form S-3, as revised by new General Instruction I.B.6., may register its securities in reliance on Rule 415(a)(1)(x) notwithstanding the fact that closed-end funds register their securities on Form N-2 rather than Form S-3.” (emphasis added)). Affected funds also can currently conduct offerings under other provisions of rule 415(a)(1).

<sup>21</sup> The base prospectus of a shelf registration statement will generally describe in broad terms the types of securities and offerings that the issuer may conduct at some later time.

into their registration statements and cannot forward incorporate information from subsequently-filed Exchange Act reports.<sup>22</sup> When an affected fund sells securities, including as part of a “takedown off the shelf,” its registration statement must include all required information.<sup>23</sup> In particular, the affected fund’s registration statement must include current financial information, including any annual update required by section 10(a)(3) of the Securities Act.<sup>24</sup> Affected funds provide any section 10(a)(3) update to the registration statement by filing a post-effective amendment, which involves the expense and potential delay associated with the fund’s preparation of the amendment and our staff’s review and comment process.<sup>25</sup>

Affected funds also cannot currently rely on rule 430B, which allows certain issuers to omit information from a base

<sup>22</sup> Form N-2 permits registrants to “backward incorporate” financial information from a previously-filed report under limited circumstances: (1) A registered CEF can satisfy the requirements to provide financial highlights in the prospectus, and financial statements in the SAI, by incorporating this information by reference to a previously-filed annual or semi-annual report filed on Form N-CSR; and (2) a BDC may satisfy the requirement to provide similar financial and other information by reference to a previously-filed annual report on Form 10-K. *See* General Instruction F of Form N-2.

<sup>23</sup> The fund’s registration statement must include all required information to avoid liability from selling securities from an out-of-date prospectus and to satisfy section 10(a) of the Securities Act. *See infra* footnotes 67–68 and accompanying text.

<sup>24</sup> Section 10(a)(3) of the Securities Act provides that when a prospectus is used more than nine months after the effective date of the registration statement, the information contained therein shall be as of a date not more than sixteen months prior to such use. 15 U.S.C. 77j. An affected fund registering an offering under rule 415 also must undertake to file a post-effective amendment to the registration statement: (1) To include any prospectus required by section 10(a)(3) of the Securities Act; (2) to reflect in the prospectus any facts or events after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement; and (3) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement. *See* Item 34.4 of Form N-2.

<sup>25</sup> These post-effective amendments are filed pursuant to section 8(c) of the Securities Act and must be declared effective, typically by the staff acting pursuant to delegated authority. In contrast, under Form S-3, an issuer’s section 10(a)(3) update need not be made through a separate post-effective amendment. Rather, under that form, when the issuer files its annual report on Form 10-K containing the issuer’s audited financial statements for its most recently completed fiscal year by the due date of the annual report, it operates as a post-effective amendment to the registration statement for purposes of section 10(a)(3). *See* Securities Offering Reform Adopting Release, *supra* footnote 5, at n.61.

prospectus, or the process that operating companies follow to file prospectus supplements.<sup>26</sup> In addition, affected funds cannot currently file automatic shelf registration statements because only WSIs can file these registration statements. These differences can result in additional expense or delay for affected funds relative to operating companies and can affect the timing of an affected fund’s capital raising.<sup>27</sup>

## 2. Proposed Amendments to the Registration Process for Affected Funds

Consistent with the BDC Act and the Registered CEF Act, we are proposing to provide affected funds parity with operating companies by permitting affected funds to:

- File a short-form registration statement on Form N-2 that will function like a Form S-3 registration statement. An affected fund eligible to file this short-form registration statement could use it to register shelf offerings, including shelf registration statements filed by WKSI affected funds that become effective automatically, and could satisfy Form N-2’s disclosure requirements by incorporating by reference information from the fund’s Exchange Act reports;
- Rely on rule 430B to omit information from their base prospectuses, 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 this information is identified as being included for this purpose.

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

We are proposing a new instruction to Form N-2 to allow affected funds to file a short-form registration statement on Form N-2 that will function like a registration statement filed on Form

<sup>26</sup> Rule 430B is available for automatic shelf registration statements filed by WSIs and shelf registration statements filed by certain issuers eligible to use Form S-3 for a primary offering. Affected funds currently rely on Securities Act rule 430A and rule 430C, which do not permit an issuer to omit as much information as permitted under rule 430B.

<sup>27</sup> Affected funds in particular may want greater flexibility to control the timing of their capital raising because section 23(b) of the Investment Company Act generally prohibits a registered CEF from issuing its shares at a price below the fund’s current net asset value (“NAV”) without shareholder approval (and this provision applies to BDCs as well with certain modifications). 15 U.S.C. 80a-23(b); 15 U.S.C. 80a-62. Because the shares of affected funds often trade at a discount to NAV, these funds may want to quickly access the markets when their shares are trading at a premium. Selling securities “off the shelf” is one way to achieve such quick access.

S-3. We generally refer to this proposed instruction, General Instruction A.2, as the “short-form registration instruction” and funds relying on this instruction as filing a short-form registration statement on Form N-2.<sup>28</sup> If a fund is eligible to file a registration statement under this new instruction, the fund’s registration statement would incorporate certain past and future Exchange Act reports by reference, allowing the fund to use a short-form registration statement and avoid the need to make post-effective amendments in most cases. An affected fund could use the proposed instruction to register a shelf offering under rule 415(a)(1)(x), and we are proposing conforming amendments to that rule to make this clear. But the proposed instruction would not be limited to offerings under rule 415(a)(1)(x); an affected fund could use the proposed instruction to register any of the securities offerings that operating companies are permitted to register on Form S-3.<sup>29</sup>

#### Eligibility To File a Short-Form Registration Statement

An affected fund would be able to file a short-form registration statement under the proposed short-form registration instruction if:

- For either a BDC or a registered CEF, the fund meets the registrant and

transaction requirements of Form S-3 (i.e., the fund could register the offering on Form S-3 if it were an operating company);<sup>30</sup> and

- For registered CEFs, the fund also has been registered under the Investment Company Act for at least 12 calendar months immediately preceding the filing of the registration statement and has timely filed all reports required to be filed under section 30 of the Investment Company Act during that time.<sup>31</sup> This time period and timely-filing requirement parallel the requirements in Form S-3 regarding an issuer’s Exchange Act reports.

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 prior year.<sup>32</sup> An affected fund 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.<sup>33</sup> Requiring affected funds to satisfy the requirements of Form S-3 in order to file a short-form registration statement would provide parity for affected funds and operating companies.

Certain affected funds, including most interval funds,<sup>34</sup> do not list their securities on an exchange and do not have public float. As a result, there are some affected funds that generally would not be able to satisfy the transaction requirement necessary to file a short-form registration statement.<sup>35</sup>

<sup>28</sup> Proposed General Instruction A.2 of Form N-2. Some of the required amendments and the conditions in our current rules are available only to issuers that meet the eligibility and transaction requirements of Form S-3 and are therefore eligible to file a short-form registration statement on that form. The proposed short-form registration instruction in Form N-2 is designed to facilitate these amendments that we are proposing to implement the BDC Act and the Registered CEF Act.

<sup>29</sup> See General Instruction I.B of Form S-3 (identifying transactions that can be registered on the form); proposed General Instruction A.2.c of Form N-2, Form S-3, and therefore the proposed short-form registration instruction, also is available to a majority-owned subsidiary that is a closed-end management investment company eligible to register a securities offering on Form N-2 if (1) the subsidiary independently satisfies the form’s registrant eligibility and transactional requirements; (2) the parent satisfies the form’s registrant requirements and the transaction requirement for a primary offering of non-convertible securities; (3) the parent satisfies the form’s registrant eligibility and transactional requirements and provides a full and unconditional guarantee of the payment obligations on the securities being registered; (4) the parent satisfies the form’s registrant eligibility and transactional requirements and the securities of the registrant subsidiary being registered are guarantees of the payment obligations on the parent’s non-convertible securities; and (5) the parent satisfies the form’s registrant eligibility and transactional requirements and the securities of the registrant subsidiary being registered are guarantees of the payment obligations on the non-convertible securities being registered by another majority-owned subsidiary. See General Instruction I.C of Form S-3.

<sup>30</sup> See proposed General Instructions A.2.a and A.2.c of Form N-2; General Instructions I.A (registrant requirements) and I.B (transaction requirements) of Form S-3.

<sup>31</sup> Under the proposed amendment, the fund would also have to have timely filed all reports required to be filed under section 30 of the Investment Company Act during any portion of a month immediately preceding the filing of the registration statement. See proposed General Instruction A.2.b of Form N-2.

<sup>32</sup> See General Instruction I.A.3 of Form S-3. In addition, we are proposing two new Form 8-K reporting items for affected funds. An affected fund’s failure to timely file Form 8-K reports solely under these proposed items would not affect the fund’s ability to file a short-form registration statement on Form N-2. See *infra* Part II.H.3.

<sup>33</sup> See General Instruction I.B of Form S-3. For example, certain issuers with less than a \$75 million public float also are eligible to use Form S-3 to register a primary offering but are limited as to the amount of securities they can register. See General Instruction I.B.6 of Form S-3. See also *infra* Part II.C (discussing our consideration of a different level of public float for an affected fund to qualify as a WKSI or to file a short-form registration statement on Form N-2, or a different metric in lieu of an affected fund’s public float).

<sup>34</sup> Only one interval fund is currently exchange-traded.

<sup>35</sup> The proposed short-form registration instruction is designed to provide affected funds parity with operating companies by permitting them to use the instruction to register the same

Interval funds have their own offering provision, Securities Act rule 415(a)(1)(xi),<sup>36</sup> and certain post-effective amendments to their registration statements are immediately effective under rule 486(b) under the Securities Act.<sup>37</sup> As a result, interval funds currently have a tailored registration process that, although different in certain respects from that of operating companies, may provide many of the same efficiencies. In addition, because interval funds make continuous offerings, they would not be able to file a short-form registration statement that omits information required to be in an issuer’s prospectus when it is offering its securities.

Along with satisfying the registrant requirements of Form S-3, a registered CEF also must have timely filed all reports required under section 30 of the Investment Company Act for the preceding 12 months in order to register an offering under the proposed short-form registration instruction.<sup>38</sup> A registered CEF therefore must have timely filed during the prior year all required Exchange Act reports, such as annual and semi-annual reports to shareholders filed with the Commission on Form N-CSR,<sup>39</sup> as well as reports required only under section 30 of the Investment Company Act, such as reports on new Forms N-CEN<sup>40</sup> and N-PORT.<sup>41</sup>

transactions that an operating company can register on Form S-3. To register a primary offering of equity securities on Form S-3, an issuer must have a requisite amount of public float. See General Instruction I.B.1 of Form S-3. Alternatively, an issuer must have shares listed on an exchange and limit the amount sold over a twelve-month period to no more than one-third of the aggregate value of voting and non-voting common equity held by non-affiliates. See General Instruction I.B.6 of Form S-3. Interval funds that are not exchange-listed and without public float would not be qualified to register a primary offering of their shares on Form S-3.

<sup>36</sup> 17 CFR 230.415(a)(1)(xi).

<sup>37</sup> 17 CFR 230.486(b).

<sup>38</sup> See proposed General Instruction A.2.b of Form N-2.

<sup>39</sup> 17 CFR 249.331 and 17 CFR 274.128. Reports on Form N-CSR are filed both under the Exchange Act and the Investment Company Act.

<sup>40</sup> 17 CFR 249.330 and 17 CFR 274.101.

<sup>41</sup> 17 CFR 274.150. In October 2016, we modernized the reporting and disclosure of information by registered investment companies. Specifically, we adopted a new monthly portfolio reporting form, Form N-PORT, which replaces Form N-Q [17 CFR 249.332 and 17 CFR 274.130]. Form N-PORT requires registered investment companies other than money market funds and small business investment companies to report information about their monthly portfolio holdings to the Commission in a structured data format on a quarterly basis, 60 days after quarter end. See Investment Company Reporting Modernization, Investment Company Act Release No. 32314 (Oct. 13, 2016) [81 FR 81870 (Nov. 18, 2016)] (“Reporting Modernization Release”); see also Amendments to the Timing Requirements for Filing Reports on

An issuer's Exchange Act record provides the basic source of information to the market and to potential purchasers, and investors in the secondary market use that information in making their investment decisions.<sup>42</sup> Although all affected funds file reports under the Exchange Act, registered CEFs also file reports under the Investment Company Act. Investment Company Act reports also provide important information to the market and investors, including information about an affected fund's portfolio holdings that will be publicly reported on a quarterly basis on Form N-PORT. We believe that the market will analyze this portfolio holdings information in a similar manner to how it analyzes financial statements for operating companies to determine changes in prospects for growth and performance. Portfolio holdings disclosure on Form N-PORT, for example, provides important information that is comparable to information BDCs include in Exchange Act reports for purposes of providing a quarterly flow of key information to the market.<sup>43</sup> Moreover, requiring registered CEFs to have timely filed their Investment Company Act reports would also provide parity among BDCs, registered CEFs, and operating

companies. This is because once Form N-PORT fully replaces Form N-Q,<sup>44</sup> registered CEFs will only file Exchange Act reports semi-annually on Form N-CSR, whereas BDCs and operating companies file Exchange Act reports quarterly on Forms 10-K and 10-Q.<sup>45</sup> Under the proposal, all issuers would be required to have filed their quarterly and other required reports in order to file a short-form registration statement.<sup>46</sup>

#### Information Incorporated by Reference

The same rules on incorporation by reference that apply to Form S-3 registration statements would apply to a short-form registration statement filed on Form N-2.<sup>47</sup> Specifically, an affected fund relying on the short-form registration instruction would be required to:

- Specifically incorporate by reference into the prospectus and statement of additional information ("SAI"): (1) Its latest annual report filed pursuant to section 13(a) or section 15(d) of the Exchange Act that contains financial statements for the registrant'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 sections 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report (backward incorporation by reference);<sup>48</sup> and

- State that 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 shall be deemed to be incorporated by reference into the prospectus and SAI (forward incorporation by reference).<sup>49</sup>

We also are proposing to allow an affected fund filing a short-form registration statement on Form N-2 to satisfy the disclosure requirements for its prospectus or SAI by incorporating the information by reference from Exchange Act reports.<sup>50</sup> This approach, which is substantively identical to a parallel item in Form S-3, would give affected funds filing a short-form registration statement on Form N-2 the option to either provide required disclosure directly in the prospectus or SAI or to satisfy Form N-2's disclosure requirements with information incorporated by reference.<sup>51</sup>

We considered requiring registered CEFs to incorporate by reference into their prospectuses and SAIs reports filed on Forms N-PORT and Form N-CEN. These forms provide important information to investors, other market participants, and Commission staff, and we propose including these forms in the timeliness requirement for registered CEFs to use the new short-form registration statement instruction.<sup>52</sup> This information, however, is not specifically required disclosure under Form N-2, and so incorporating it by reference would not update the required disclosures on Form N-2. Taking this consideration into account, we are not proposing to require such incorporation.

We are also proposing conforming changes to Form N-2's undertakings.<sup>53</sup> Form N-2 currently requires an

Form N-PORT, Investment Company Act Release No. 33384 (Feb. 27, 2019) [84 FR 7980 (Mar. 6, 2019)] ("N-PORT Modification Release"). We also adopted a new annual reporting form, Form N-CEN, to be used by registered investment companies to report annually certain census-type information. Fund groups with \$1 billion or more in net assets will begin filing reports on Form N-PORT with the Commission by April 30, 2019 (for the period ending March 31, 2019). Smaller fund groups (*i.e.*, fund groups with less than \$1 billion in net assets) will be required to begin submitting reports on Form N-PORT by April 30, 2020 (for the period ending March 31, 2020). *See also* Investment Company Reporting Modernization, Investment Company Act Release No. 32936 (Dec. 8, 2017) [82 FR 58731 (Dec. 14, 2017)].

<sup>42</sup> *See* Shelf Registration, Securities Act Release No. 6499 (Nov. 17, 1983) [48 FR 52889 (Nov. 23, 1983)]. *See also* Securities Offering Reform Adopting Release, *supra* footnote 5, at 44726 (recognizing that an "issuer's Exchange Act record provides the basic source of information to the market and to potential purchasers regarding the issuer and its management, business, financial condition, and prospects. Because an issuer's Exchange Act reports and other publicly available information form the basis for the market's evaluation of the issuer and the pricing of its securities, investors in the secondary market use that information in making their investment decisions.").

<sup>43</sup> Exchange Act reports, such as reports on Form 10-Q or Form N-CSR, include information required by Regulation S-X. Certain reports on Form N-PORT must include the portfolio holdings information required by the schedules set forth in rules 12-12 through 12-14 of Regulation S-X. *See* Part F of Form N-PORT. We also require reports on Form N-PORT to include, in a structured format, data elements that are otherwise required by Regulation S-X. *See* Reporting Modernization Release, *supra* footnote 41, at 81894.

<sup>44</sup> Form N-Q will be rescinded on May 1, 2020. *See supra* footnote 41.

<sup>45</sup> Reports on Form N-PORT with monthly information will be filed with the Commission on a quarterly basis, but only information reported for the third month of each fund's fiscal quarter on Form N-PORT will be publicly available (and not until 60 days after the end of the fiscal quarter).

<sup>46</sup> Affected funds historically must have timely filed reports on Forms N-Q and N-SAR for the preceding 12 months in order to rely on rule 415(a)(1)(x). This is because to rely on that rule, an issuer must have timely filed required Exchange Act reports and Form N-Q is, and Form N-SAR was, filed under both the Investment Company Act and section 13(a) or 15(d) of the Exchange Act.

<sup>47</sup> *See* section 803(c)(1) of the BDC Act (directing us to include an item or instruction that is similar to item 12 on Form S-3 to provide that a BDC that would otherwise meet the requirements of Form S-3 shall incorporate by reference the reports and documents filed by the BDC under the Exchange Act into the registration statement of the BDC filed on Form N-2). We would eliminate current General Instruction F.3 of Form N-2 in its entirety and replace it with proposed General Instruction F.3. In these proposed provisions and others that are substantively identical to parallel provisions in Form S-3, we have proposed conforming references to a fund's SAI.

<sup>48</sup> Proposed General Instruction F.3.a(1)-(2) of Form N-2; *cf.* Item 12(a)(1)-(2) of Form S-3. In addition, if sales of a class of capital stock are to be registered on Form N-2 and the same class is registered under section 12 of the Exchange Act, the affected fund must incorporate by reference the description of the class contained in the Exchange Act registration statement with respect to that class

(including any amendment or reports filed for the purpose of updating such description). Proposed General Instruction F.3.a(3) of Form N-2; *cf.* Item 12(a)(3) of Form S-3.

<sup>49</sup> Proposed General Instruction F.3.b of Form N-2; *cf.* Item 12(b) of Form S-3.

<sup>50</sup> *See* proposed General Instruction F.3. The proposed amendments would permit a fund to use this incorporated information to provide the disclosure required by Items 3-13 and Items 16-24 of Form N-2. Proposed General Instruction F.3.c of Form N-2; *cf.* Item 12(d) of Form S-3.

<sup>51</sup> The BDC Act directs that we extend this parallel item in Form S-3 (Item 12) to BDCs that meet Form S-3's requirements. *See supra* footnote 47; Item 12(d) of Form S-3; *see also* section 509(a) of the Registered CEF Act.

<sup>52</sup> Proposed General Instruction A.2.b of Form N-2.

<sup>53</sup> *See* section 803(b)(2)(P) of the BDC Act (directing us to revise Item 34 of Form N-2 to require a BDC to provide undertakings that are no more restrictive than the undertakings that are required of a registrant pursuant to Item 512 of Regulation S-K, which are the undertakings that apply to an operating company registering an offering on Form S-3).



undertaking that would prevent seasoned funds from incorporating information by reference as proposed because it requires these funds to file post-effective amendments in certain circumstances (and would do so regardless of whether the information had already been incorporated by reference).<sup>54</sup> In contrast, operating companies registering on Form S-3 are not required to make this undertaking if the required information is included in an Exchange Act report incorporated by reference or in a prospectus supplement that is part of the registration statement.<sup>55</sup> To implement the statutory mandate and provide parity for affected funds, we propose to amend Form N-2's undertakings to provide the same approach for affected funds filing a short-form registration statement on that form that applies to operating companies that file on Form S-3.<sup>56</sup>

#### Affected Funds' Use of Rule 415(a)(1)(x) and Automatic Shelf Registration Statements

We are proposing two additional amendments to allow affected funds to use the shelf registration system in parity with operating companies. First, we propose to amend rule 415(a)(1)(x) to clarify that affected funds may use that rule by adding references to a registration statement filed under the proposed short-form registration instruction.<sup>57</sup> Second, we propose a

new general instruction to permit affected funds that would be WKSIs under the proposed amendments to file an automatic shelf registration statement.<sup>58</sup> A WKSI can register unspecified amounts of different types or classes of securities on an automatic shelf registration statement.<sup>59</sup> The ability to use an automatic shelf registration statement means that the registration statement and any amendments will be effective immediately upon filing.<sup>60</sup> Automatic shelf registration provides WKSIs with significant flexibility to take advantage of market windows, structure terms of securities on a real-time basis to accommodate investor demand, and determine or change the plan of distribution in response to changing market conditions. WKSIs using an automatic shelf registration statement also benefit by 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.<sup>61</sup> Our proposed amendments would extend these same benefits to affected funds that would be WKSIs under the

rule 415(a)(1)(x) to provide that a BDC that would otherwise meet the eligibility requirements of Form S-3 can register its securities under that provision). We also are proposing to add a reference to a Form N-2 registration statement filed pursuant to General Instruction A.2 to rule 415(a)(2) to make clear that affected funds registering offerings pursuant to rule 415(a)(1)(ix), like other issuers relying on that provision, would not be subject to the limitation that they register an amount of securities that the issuer reasonably expected would be offered or sold within two years from the date that the registration statement became effective. *Cf.* Securities Offering Reform Adopting Release, *supra* footnote 5, at 44774-44775.

<sup>58</sup> See proposed General Instruction B of Form N-2; section 803(c)(2) of the BDC Act (directing that we amend Form N-2 to include an instruction that is similar to the instruction regarding automatic shelf registration offerings by well-known seasoned issuers on Form S-3 to provide that a BDC that is a well-known seasoned issuer may file automatic shelf offerings on Form N-2). The proposed instruction would provide that an affected fund that is a WKSI may use the form as an automatic shelf registration statement only for the transactions that are described in, and consistent with the requirements of, General Instruction I.D of Form S-3. This provides parity with operating companies because General Instruction I.D of Form S-3 specifies the transactions and requirements for an automatic shelf registration statement filed on Form S-3. Consistent with General Instruction I.D of Form S-3, proposed General Instruction B specifies that the form could not be used as an automatic shelf registration statement for securities offerings under rule 415(a)(1)(vii) or (viii).

<sup>59</sup> See rule 430B(a) under the Securities Act [17 CFR 230.430B(a)].

<sup>60</sup> See rule 462(e) and rule 462(f) under the Securities Act [17 CFR 230.462(e) and 17 CFR 230.462(f)].

<sup>61</sup> See rule 457(r) and rule 456(b) under the Securities Act [17 CFR 230.457(r) and 17 CFR 230.456(b)].

proposed amendments, as directed by the BDC Act and the Registered CEF Act.<sup>62</sup>

We request comment on these proposed amendments, including:

- Do the proposed amendments provide parity to affected funds? Why or why not? Are there other changes that we should make that would provide parity for affected funds? What changes and why?

- Currently, Form S-3 under specified circumstances allows majority-owned subsidiaries of a parent issuer eligible to use Form S-3 to register offerings of certain non-convertible securities or guarantees under General Instruction I.C of the form. Under the proposed amendments, an affected fund could use the new short-form registration instruction of Form N-2 to register the same types of offerings that operating companies can register on Form S-3, including offerings by majority-owned subsidiaries that are closed-end management investment companies eligible to register a securities offering on Form N-2. Is it appropriate to amend Form N-2 to provide a similar process for affected funds to register the same types of offerings by majority-owned subsidiaries that operating companies can register on Form S-3? Would affected funds expect to register these offerings using the proposed short-form registration instruction? How do affected funds treat securities issued by majority-owned subsidiaries that are investment companies when calculating asset coverage under sections 18 or 61 of the Investment Company Act? <sup>63</sup> If affected funds do not include these securities in calculating asset coverage, why not?

- Rather than amending Form N-2, should we create a separate registration form specifically for affected funds to file a short-form registration statement?

- Should we require registered CEFs to have timely filed reports under section 30 of the Investment Company Act during the prior year in order to file a short-form registration on Form N-2, as proposed?

- We are proposing to allow an affected fund filing a short-form registration statement on Form N-2 to satisfy the disclosure requirements for its prospectus or SAI by incorporating the information by reference from Exchange Act reports. Are there any

<sup>62</sup> We are proposing conforming amendments to Securities Act rule 462(f) and to the registration fee table in Form N-2 to enhance consistency with Form S-3 and to recognize that affected funds that would be WKSIs could use the pay-as-you-go registration fee process.

<sup>63</sup> 15 U.S.C. 80a-18 and 80a-60.

<sup>54</sup> Form N-2 currently requires an affected fund registering an offering under rule 415 to undertake to file, during any period in which offers or sales are being made, a post-effective amendment to the registration statement under certain circumstances, including to provide any prospectus required by section 10(a)(3) of the Securities Act. Item 34.4.a(1) of Form N-2.

<sup>55</sup> See Item 512(a)(iii)(B) of Regulation S-K [17 CFR 229.512(a)(iii)(B)].

<sup>56</sup> Specifically, we propose to add a new provision to Item 34.4.a of Form N-2 stating that the requirement to undertake to file a post-effective amendment would not apply if the registration statement is filed under the proposed short-form registration instruction and 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 fund's registration statement or is contained in a form of prospectus that is part of the registration statement. See proposed Item 34.4.a of Form N-2; *cf.* Item 512(a) of Regulation S-K.

We also propose to revise Item 34 to make conforming changes to mirror parallel undertakings in Item 512 of Regulation S-K. See, e.g., proposed Item 34.4.a(2) of Form N-2; *cf.* Item 512(a)(1)(ii) of Regulation S-K; proposed Item 34.4.d(1) of Form N-2; *cf.* Item 512(a)(5)(i) of Regulation S-K; proposed Item 34.4.e(2)-(3) of Form N-2; *cf.* Item 512(a)(6)(ii)-(iii) of Regulation S-K; proposed Item 34.6 of Form N-2; *cf.* Item 512(b) of Regulation S-K; and proposed Item 34.7 of Form N-2; *cf.* Item 512(h) of Regulation S-K.

<sup>57</sup> See proposed rule 415(a)(1)(x) (revised to include securities registered pursuant to General Instruction A.2 of Form N-2). See also section 803(b)(2)(f) of the BDC Act (directing us to revise

specific prospectus or SAI disclosure items that an affected fund should not be permitted to incorporate by reference into the registration statement? If so, which ones and why?

- An affected fund filing a short-form registration statement on Form N-2 would incorporate by reference into its prospectus and SAI certain past and future Exchange Act reports. This could increase an affected fund's liability with respect to information that has not previously been incorporated into its registration statement. Would this raise any concerns unique to affected funds? For example, is there any information in registered CEFs' annual and semi-annual reports that should not be incorporated by reference? If so, which information and why?

- Are there any changes we should make to the registration process for interval funds? Should we, for example, permit them to forward incorporate if they would be eligible to rely on the proposed short-form registration instruction but for their lack of public float? Why or why not? Is there a basis to treat interval funds differently in this respect than any other issuer that does not have public float? Besides the additional flexibility in the aspects of the offering process that interval funds would receive under this proposal,<sup>64</sup> are there any other ways in which we should modernize the offering process for interval fund offerings?

- Unlisted BDCs and unlisted registered CEFs also would not generally have "public float." Are there any changes we should make to the shelf registration process for these funds?

- Are there any other line items or language from Forms S-1 or S-3 that we should include in Form N-2 to facilitate the incorporation by reference regime (or to otherwise enhance or modernize Form N-2 to provide parity with the operating company regime)? For example, is it necessary or useful to add a new item for "Material Changes" in Form N-2 that mirrors Item 11A of Form S-1 and Item 11(a) of Form S-3?<sup>65</sup> Those items generally provide that, where a registrant is backward incorporating information by reference into a new registration statement, it must disclose in the registration

statement any material changes that have not been disclosed in an Exchange Act report being incorporated by reference. Would it be necessary or useful to include a new item for "Material Changes" in Form N-2 to remind registrants that, as currently required, the new registration statement must include all material information? Would it elicit any disclosure that is not otherwise required by Form N-2's other items?

- We are not proposing to require that registered CEFs incorporate by reference reports filed on Forms N-PORT or N-CEN. Do commenters agree that this is appropriate? Conversely, should the reports on those forms be incorporated by reference? Should we permit or require a fund to incorporate the exhibit to certain reports on Form N-PORT that sets forth a registered CEF's complete portfolio holdings presented using the form and content specified by Regulation S-X? Would incorporating these reports allow funds to update any aspect of their registration statement and in that way avoid having to provide the same information through a prospectus supplement or post-effective amendment?

- Are there incorporation by reference provisions in any other registration forms filed by affected funds that should be modified to provide parity or consistency across registration statements, and if so, in what respect? For example, should we amend General Instruction G of Form N-14 to provide that BDCs may incorporate by reference to the same extent as registered CEFs? Would BDCs use this ability to incorporate information by reference?

- Proposed General Instruction B cross-references General Instructions I, E, F, and G and IV of Form S-3. These instructions explain the application of general rules and regulations. Cross-referencing these instructions would direct registrants' attention to them without having to set forth the instructions in Form N-2 as well. Would it be clearer, however, to set forth the substance of those instructions in Form N-2?

#### b. Omitting Information From a Base Prospectus and Prospectus Supplements

Affected funds registering securities in shelf offerings under Securities Act rule 415 can generally omit required information from the base prospectus that is unknown or not reasonably available to the fund when the registration statement becomes effective.<sup>66</sup> Rule 430B also permits WKSIs and certain issuers eligible to use

Form S-3 for primary offerings to omit certain additional information. A base prospectus that omits statutorily-required information is not a final prospectus under section 10(a) of the Securities Act.<sup>67</sup> Filing a prospectus supplement is one way to provide information required for a prospectus to satisfy section 10(a).<sup>68</sup>

Our rules currently provide different processes for operating companies and investment companies to file prospectuses. Operating companies currently follow rule 424 to file prospectus supplements, whereas investment companies follow rule 497. Although these rules provide similar processes, they have certain key differences. For example, rule 424(b) is designed to work together with rule 415(a)(1)(x), and provides additional time for an issuer to file a prospectus. Rule 497 does not contain provisions specifically related to offerings under rule 415(a)(1)(x) and requires the fund to file a prospectus with the Commission before using it. Rule 424 also 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.

In order to provide parity with operating companies, the BDC Act directs us to include a process for a BDC to file a prospectus in the same manner as under rule 424(b).<sup>69</sup> Consistent with this directive and with the Registered CEF Act, we are proposing to amend rule 424(f) to allow affected funds to file a prospectus under rule 424.<sup>70</sup> Under the proposed amendment, an affected fund would be able to file any type of prospectus enumerated in rule 424(b) to update, or to include information omitted from, a prospectus or in connection with a shelf takedown. We also are proposing to amend rule 497 to provide that rule 424 would be the exclusive rule for affected funds to file a prospectus supplement other than an advertisement that is deemed to be a

<sup>67</sup> 15 U.S.C. 77j(a).

<sup>68</sup> Omitted information also may be provided in a post-effective amendment or, where permitted, through Exchange Act filings that are incorporated by reference.

<sup>69</sup> See section 803(b)(2)(K) of the BDC Act.

<sup>70</sup> The proposed amendments would not apply to open-end funds or other registered investment companies. Accordingly, those investment companies would continue to file prospectuses pursuant to rule 497. See proposed amendments to rule 424(f). We also are proposing to amend rule 424(f) to state that references to the term "form of prospectus" in the rule includes the Statement of Additional Information.

<sup>64</sup> See *supra* footnote 16.

<sup>65</sup> See Item 11A of Form S-1 (directing a registrant that elects to incorporate information by reference to describe any and all material changes in the registrant's affairs which have occurred since the end of the latest fiscal year for which audited financial statements were included in the latest Form 10-K and that have not been described in a Form 10-Q or Form 8-K filed under the Exchange Act); see also Item 11(a) of Form S-3 (describing parallel requirements).

<sup>66</sup> See Securities Act rule 409 [17 CFR 230.409].

prospectus under rule 482.<sup>71</sup> This would avoid any confusion that might result if affected funds were permitted to file prospectuses under both rule 424 and rule 497, while also continuing to require affected funds to file rule 482 advertisements as they and other investment companies do today.

We also are proposing an amendment to permit affected funds to use rule 430B in parity with operating companies. That rule permits an issuer to omit specified information from its base prospectus in two circumstances. First, a WKSII filing an automatic shelf registration statement can omit the plan of distribution and whether the offering is a primary one or an offering on behalf of selling security holders. An amendment to rule 430B is not required to achieve parity with respect to this first use because, once affected funds are permitted to qualify as WKSIs, those that are WKSIs would be able to rely on rule 430B as currently written. Second, the rule also applies to issuers 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. In this case, the prospectus can omit the same information that WKSIs can omit, as well as the identities of selling security holders and the amount of securities to be registered on their behalf, subject to conditions. Unlike the first use, this second use would not be available to affected funds without a modification to the rule. Accordingly, we are proposing an amendment to allow affected funds eligible to register a primary offering under the proposed short-form registration instruction to rely on rule 430B for this second use as well. In addition, affected funds relying on rule 430B, like 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 registration statement containing the base prospectus to which the supplement relates. This is measured as of the earlier of the date the prospectus supplement is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus.<sup>72</sup>

<sup>71</sup> See proposed Securities Act rule 497(l).

<sup>72</sup> See proposed rule 430B(b). Rules 430B, 424, and 158 specify when information contained in a prospectus supplement will be deemed part of and included in the registration statement and circumstances that will trigger a new effective date of the registration statement for purposes of section 11(a) of the Securities Act. These rules would apply to affected funds just as they apply to operating companies. We also are proposing to amend the

We request comment on these proposed amendments, including:

- Should we amend rule 424(f) as proposed to allow affected funds to file a prospectus under rule 424? Is this an effective means to implement the parity requirements of the BDC Act and Registered CEF Act? Why or why not?
- Are there additional amendments that we should make to rules 430B, 424, or 497 to allow affected funds to omit information from their base prospectuses and file prospectus supplements in parity with operating companies?
- Should we make rule 424 the exclusive rule under which affected funds must file prospectuses as proposed, or should we allow affected funds to have the option to file a prospectus under rule 424 or rule 497? If we provided optionality, would that increase the potential to cause confusion for funds or investors? Are there any other consequences of requiring affected funds to use rule 424 that we should consider? Rather than require affected funds to use rule 424 as proposed, should we amend rule 497 to include the substantive requirements of rule 424 for affected funds?

#### c. Additional Information in Periodic Reports

Under the proposed amendments, certain affected funds would be permitted to forward incorporate information from their Exchange Act reports. These funds may wish to include information in their periodic reports that is not required to be included in these reports in order to update their registration statements. We therefore propose to include a new instruction to Form N-2 that would allow a fund to include additional information so as long as the fund includes a statement in the report identifying information that it has included for this purpose.<sup>73</sup> This would provide context for investors in considering this additional disclosure, akin to the context funds today provide investors when they mail prospectus “stickers” updating disclosure in the prospectus.

We request comment on this proposed instruction, including:

- Does the proposed instruction adequately provide a mechanism for affected funds to update their

undertakings in Form N-2 to require affected funds relying on rule 430B to make the same undertakings required of operating companies that rely on the rule. See proposed Item 34.4.d(1); cf. Item 512(a)(5)(i) of Regulation S-K. See also *supra* footnote 53.

<sup>73</sup> Proposed Instruction 6.i of Item 24 of Form N-2.

registration statements via their periodic reports?

- Does the proposed instruction provide sufficient guidance to an affected fund regarding whether and how it may include additional information in its periodic reports to update its registration statement, and how to identify that information?
- Is there any reason we should not permit affected funds to incorporate by reference information from their periodic reports that is not required to be included in those reports, or should we further prescribe how any additional information must be presented? Should we, for example, require that any additional information appear after the information affected funds are required to include in their annual reports?
- In addition to affected funds’ periodic reports, should we also require an affected fund to identify information included in a report on Form 8-K filed for the purpose of updating the fund’s registration statement?

#### C. Well-Known Seasoned Issuer Status

We are proposing amendments that would allow an affected fund to qualify as a WKSII. In 2005, the Commission created a new category of issuer—a WKSII—that benefits to the greatest degree from the modifications to our rules regarding communications and the registration processes that the Commission adopted at that time.<sup>74</sup> A WKSII, for example, can file a registration statement or amendment that becomes effective automatically in a broader variety of contexts than non-WKSIs. Subject to certain conditions, our rules also permit a WKSII to communicate at any time, including through a free writing prospectus, without violating the “gun-jumping” provisions of the Securities Act.<sup>75</sup> In order for an issuer to qualify as a WKSII, the issuer must meet the registrant requirements of Form S-3, *i.e.*, it must be “seasoned,”<sup>76</sup> and generally must have at least \$700 million in “public float.”<sup>77</sup> An issuer is ineligible for

<sup>74</sup> Securities Offering Reform Adopting Release, *supra* footnote 5, at 44727.

<sup>75</sup> See *infra* Part II.E.1.

<sup>76</sup> See *supra* footnote 18.

<sup>77</sup> See paragraph (1)(i)(A) of the WKSII definition in rule 405 (providing that the issuer must have at least \$700 million in worldwide “public float,” that is, the market value of outstanding voting and non-voting common equity held by non-affiliates). An alternative basis for an issuer to satisfy this requirement is to have issued, for cash, within the last three years, at least \$1 billion in aggregate principal amount of non-convertible securities through primary offerings registered under the Securities Act (paragraph (1)(i)(B) of the WKSII definition). The definition also includes provisions for transactions involving majority-owned

WKSI status if, among other bases: (1) It is not current and timely in its Exchange Act reports, or (2) it is the subject of a judicial or administrative decree or order arising out of a governmental action involving violations of the anti-fraud provisions of the federal securities laws (the “anti-fraud prong” of the ineligible issuer definition).<sup>78</sup>

The BDC Act directs us to revise Securities Act rule 405 to allow a BDC to qualify as a WKSI and the Registered CEF Act directs us to allow registered CEFs covered by the Act to use the securities offering rules that are available to operating companies.<sup>79</sup> We are also proposing conforming amendments to the definition of an “ineligible issuer.” Specifically:

- First, the WKSI definition specifically excludes BDCs and registered investment companies. We propose to amend rule 405 so that the exclusion does not apply to affected funds.<sup>80</sup>
- Second, the WKSI definition currently provides that an issuer must meet the registrant requirements of Form S-3. We propose to add a parallel reference to the registrant requirements of the proposed short-form registration instruction.<sup>81</sup>
- Third, we propose to amend the definition of “ineligible issuer” to provide that a registered CEF would be ineligible if it has failed to file all reports and materials required to be filed under section 30 of the Investment Company Act during the preceding 12 months. This provision is consistent with the proposed short-form registration instruction and would mirror the current Exchange Act reporting provision in the ineligible issuer definition.<sup>82</sup>
- Finally, we propose to amend the definition of ineligible issuer to give

effect to the current anti-fraud prong in that definition in the context of affected funds. Specifically, we are proposing a parallel anti-fraud prong for affected funds. The current anti-fraud prong provides that an issuer that, within the past three years, was the subject of a judicial or administrative decree or order arising out of a governmental action involving violations of the anti-fraud provisions of the federal securities laws would be an ineligible issuer.<sup>83</sup> The proposed new anti-fraud prong for affected funds would 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 out of a governmental action, that determines that the *investment adviser aided or abetted or caused* the affected fund to have violated the anti-fraud provisions of the federal securities laws.<sup>84</sup> Investment companies typically are externally managed by an investment adviser, which is primarily responsible for the day-to-day management of the fund and the preparation of the fund’s disclosures.

We considered proposing a different level of public float for an affected fund to qualify as a WKSI (or to file a short-form registration statement on Form N-2), or a different metric in lieu of an affected fund’s public float, such as its net asset value for funds whose shares are not traded on an exchange.<sup>85</sup> Either of these types of changes could permit additional affected funds to qualify as WSIs and enjoy the associated benefits. The BDC Act and the Registered CEF Act, however, direct that we allow the funds covered by those Acts to use the rules available to operating companies.

Specifically, the WKSI definition, including its \$700 million public float threshold, 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.<sup>86</sup> As a result of the active participation of these issuers in the markets and, among other things, the wide following of these issuers by market participants, the media, and institutional investors, the Commission has previously stated that it believes that it is appropriate to provide communications and registration flexibilities to WSIs beyond that provided to other issuers, including other seasoned issuers.<sup>87</sup>

In adopting the current \$700 million public float threshold for WSIs, the Commission observed that high levels of analyst coverage, institutional ownership, and trading volume are useful indicators of the scrutiny that an issuer receives from the market, recognizing that no one statistic can fully capture the extent to which an issuer is followed by the market.<sup>88</sup> Operating company issuers with market capitalization in excess of \$700 million that conducted offerings from 1997 to 2004 typically had an average of 12 analysts following them prior to the offering, which the Commission observed was likely a conservative indicator of analyst scrutiny because it included only sell-side analysts.<sup>89</sup> Institutional investors accounted for an average of 52% of equity ownership prior to offerings by issuers with market capitalization above \$700 million; these issuers had an average daily trading volume of nearly \$52 million prior to offerings in this period; and these issuers accounted for significant percentages of capital raised (e.g., 70% of equity capital raised from 1997 to 2004).<sup>90</sup> The Commission observed that the issuers that would meet the thresholds for WKSI status are the most active issuers in the U.S. public capital markets.<sup>91</sup>

Affected funds, in contrast, have limited analyst coverage relative to operating companies and many have high levels of retail, rather than institutional, investors.<sup>92</sup> Affected funds

subsidiaries (paragraph (1)(ii) of the WKSI definition).

<sup>78</sup> See paragraph (1)(i) and (1)(vi) of the definition of ineligible issuer in Securities Act rule 405.

<sup>79</sup> Section 803(b)(2)(A)(i).

<sup>80</sup> See proposed amendments to paragraph (1)(v) of rule 405.

<sup>81</sup> See proposed amendments to paragraph (1)(v) of the WKSI definition in rule 405. In addition, in certain places where the WKSI definition currently refers to Form S-3, we propose to add conforming references to a Form N-2 registration statement filed under proposed General Instruction A.2 of Form N-2. See proposed amendments to paragraph (1)(i) and (1)(i)(B)(2) of the definition of WKSI in rule 405. See proposed General Instruction A.2 of Form N-2. We also are proposing a conforming amendment to paragraph (2) of the definition of WKSI to add a reference to Form N-CSR, the form on which registered CEFs file their shareholder reports with the Commission. See proposed amendment to paragraph (2) of the definition of WKSI in Securities Act rule 405. See also *infra* Part II.D.2.

<sup>82</sup> See *supra* footnote 78.

<sup>83</sup> See paragraph (1)(vi) of the ineligible issuer definition in rule 405.

<sup>84</sup> See proposed paragraph (1)(ix) of the ineligible issuer definition in rule 405. The proposed amendment’s reference to an affected fund’s investment adviser would include any sub-adviser. This is consistent with the Investment Company Act’s definition of an “investment adviser” to an investment company, which includes sub-advisers. See section 2(a)(20) of the Investment Company Act. Cf. proposed Item 10.01 of Form 8-K (providing that an affected fund would be required to file a Form 8-K report if the fund’s investment adviser, including any sub-adviser, has determined to implement a material change to the registrant’s investment objectives or policies, and such change has not been, and will not be, submitted to shareholders for approval).

<sup>85</sup> We focus in this section on affected funds’ public float because we believe that affected funds would be more likely to qualify for WKSI status on the basis of having \$700 million or more in public float than to have to have issued, for cash, within the last three years, at least \$1 billion in aggregate principal amount of non-convertible securities in registered offerings. See *supra* footnote 77.

<sup>86</sup> See *id.* at 44726–30.

<sup>87</sup> See *id.* at 44727.

<sup>88</sup> See *id.* at 44728.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.* at 44727.

<sup>92</sup> For example, listed BDCs having on average six security analysts following them as of December 2017, and listed registered CEFs having on average

Continued

have relatively modest daily trading volumes: For example, the average daily dollar volume of a listed affected fund (a listed BDC or listed registered CEF) prior to offerings was \$3.8 million in 2017, and listed affected funds represented less than one percent of the daily dollar trading volume on the New York Stock Exchange and NASDAQ in 2017.<sup>93</sup> Affected funds also do not account for significant percentages of capital raised, with affected funds (listed and non-listed) raising about two percent of the total capital raised in 2017 in registered offerings.<sup>94</sup> Based on our consideration of the same criteria the Commission evaluated in 2005, we do not believe that affected funds would be likely to have a level of market following at lower levels of public float than operating companies that would justify a lower public float threshold or alternative metric to qualify as a WKSI. We also are not aware of alternative indicia of a market following for affected funds or any particular type of affected funds that would suggest a lower public float threshold, or alternative metric in lieu of public float, would be appropriate. We believe these same considerations also support our proposal to require affected funds to have the same level of public float to file a short-form registration statement—currently \$75 million—that applies to operating companies.<sup>95</sup>

Indeed, based on the general level of affected funds' analyst coverage, trading volume, and capital raised, we considered whether the public float threshold should be higher for affected funds than for operating companies. We determined not to propose a higher threshold, however, because we believe the same public float threshold for all issuers would be consistent with the general directive in the BDC Act and the Registered CEF Act to provide the funds covered in those Acts the securities

offerings rules available to operating companies.

We also considered whether to propose any modifications to the way that an affected fund would calculate its public float. The Commission recently adopted new Securities Act rule 139b to permit broker-dealers to publish "covered investment fund research reports," which include reports covering affected funds.<sup>96</sup> In that rulemaking the Commission determined not to require broker-dealers to exclude shares held by the fund's affiliates from the calculation of the fund's public float.<sup>97</sup> Our approach to the public float calculation in rule 139b, however, was designed to address operational challenges broker-dealers could experience in obtaining affiliate shareholder information.<sup>98</sup> Affected funds should not experience the same operational difficulties in calculating their own public float. Indeed, BDCs currently disclose their public float net of affiliate holdings on Form 10-K, and registered CEFs (as well as BDCs) that conduct offerings under rule 415(a)(1)(x) currently must determine their public float net of affiliate holdings to evaluate their eligibility to use that rule.

Not all affected funds will have public float or the level of public float required to be a WKSI or to file a short-form registration statement. For example, unlisted funds, including interval funds, will generally not have public float. However, the same is true for operating companies. For example there are many unlisted real estate investment trusts that do not have a public float and cannot qualify as a WKSI.<sup>99</sup> An unlisted affected fund, like an unlisted operating company, could list its shares and qualify as a WKSI or use a short-form registration statement if it had the requisite public float and met the other requirements. We request comment in this release on extending the benefits of particular reforms to affected funds that would not qualify because they do not have the requisite public float.<sup>100</sup>

We request comment generally on the proposed amendments to the WKSI and ineligible issuer definitions, including:

- Would these proposed amendments to the WKSI definition provide parity to affected funds? Why or why not? Are there other revisions that we should make to the definition to achieve that objective?

- Are the proposed amendments to the definition of ineligible issuer appropriate, and would they help give effect to the current anti-fraud prong of the ineligible issuer definition in the context of affected funds, in light of funds' management structure? If not, what approach would better give effect to the anti-fraud prong in the context of affected funds? Are the proposed amendments clear, and would issuers understand what it means for an investment adviser, including any sub-adviser, to have aided or abetted or caused the issuer to have violated the anti-fraud provisions of the federal securities laws? If not, how should we change, or provide guidance on, the proposed provision? For example, should we clarify how the proposed ineligible issuer definition would apply to a fund where the investment adviser, including any sub-adviser, aided, abetted, or caused the fund to have violated certain anti-fraud provisions within the three-year look-back period that the proposed definition specifies, and then the fund selected a new investment adviser within this same period?

- The activities of affected funds, unlike those of operating companies, are substantively regulated under the Investment Company Act. For example, certain provisions of the Investment Company Act directly govern the operations of investment companies, such as prohibitions on management self-dealing,<sup>101</sup> breaches of fiduciary duty,<sup>102</sup> or changes in an investment company's business or investment policies without shareholder approval.<sup>103</sup> Neither the current ineligible issuer definition in rule 405 nor our proposed amendments to the definition would cover substantive provisions of the Investment Company Act that do not involve a violation of the anti-fraud provisions of the federal securities laws. Should we expand the definition of ineligible issuer to include violations of non-antifraud provisions of

for interval funds that do not list their securities on an exchange and do not have public float).

<sup>101</sup> See section 17 of the Investment Company Act [15 U.S.C. 80a–17].

<sup>102</sup> See section 36 of the Investment Company Act [15 U.S.C. 80a–35].

<sup>103</sup> See section 13 of the Investment Company Act [15 U.S.C. 80a–13].

zero security analysts following them as of December 2017. Data on analyst coverage is taken from the I/B/E/S database (Thomson Reuters).

<sup>93</sup> Data on daily trading volume is taken from the TAQ database. Data on securities offerings is taken from taken from Securities Data Corporation's New Issues database (Thomson Reuters). We estimated affected funds' average daily trading volume during a period of a month prior to a securities offering. See also *infra* footnote 383 and accompanying text (discussing institutional ownership of affected funds and operating companies).

<sup>94</sup> Data on registered securities offerings are taken from Securities Data Corporation's New Issues database (Thomson Reuters).

<sup>95</sup> See *supra* footnote 33 (explaining that there are other bases to file a short-form registration statement on Form S-3 that do not require an issuer to have \$75 million in public float and that these other bases would also be available to affected funds filing a short-form registration statement on Form N-2).

<sup>96</sup> See *infra* Part II.E.2.

<sup>97</sup> In new rule 139b, consistent with this proposal, we generally provided that issuers covered in research reports published under the rule must have the same level of public float required for research reports on operating companies.

<sup>98</sup> See Covered Investment Fund Research Reports, Securities Act Release No. 10580 (Nov. 30, 2018) [83 FR 26788 (Dec. 13, 2018)] ("CIFRR Adopting Release").

<sup>99</sup> The determination of public float is based on a public trading market, such as an exchange or certain over-the-counter markets. See Securities Offering Reform Adopting Release, *supra* footnote 5, at n.50.

<sup>100</sup> See, e.g., *supra* footnotes 35–37 and accompanying text; requests for comment in *supra* Part II.B.2.a (requesting comment on whether we should make any changes to the registration process

the Investment Company Act? If so, which provisions of the Investment Company Act? For example, should an affected fund be ineligible if it is the subject of a judicial or administrative decree involving violations of the self-dealing provisions of section 17 or 57 of the Investment Company Act, or such a decree involving violations of the asset coverage requirements of section 18 or 61 of the Investment Company Act?

- Should we adopt a different level of public float for an affected fund to qualify as a WKSI (or to file a short-form registration statement on Form N-2), or a different metric in lieu of an affected fund's public float? If so, which level or metric and why?

- Should we, for example, provide for a different metric for interval funds, whose shares are generally not listed on an exchange, or for other unlisted affected funds? If so, which metric and why? For example, would it be appropriate to allow these funds to use their net asset values in lieu of or in addition to public float? Do interval funds or other unlisted affected funds with net asset values of \$700 million or more (or \$75 million or more) have a similar degree of market following and scrutiny as listed issuers with comparable amounts of public float? Are there other metrics tailored to affected funds that would indicate a similar degree of market following and scrutiny as listed issuers with comparable amounts of public float? Would it be appropriate to provide more advantageous provisions for interval funds or other types of affected funds relative to operating companies? Should we adopt any differences in the way that an affected fund would calculate its public float?

#### D. Final Prospectus Delivery Reforms

We propose to apply the alternative delivery method for operating company final prospectuses to affected funds. As a result, an affected fund would be allowed to satisfy its final prospectus delivery obligations by filing its final prospectus with the Commission.

The Securities Act requires registrants to deliver to each investor in a registered offering a prospectus meeting the requirements of section 10(a) (known as a "final prospectus").<sup>104</sup> Section 5(b)(2) makes it unlawful to deliver a security for the purpose of sale or for delivery after sale unless accompanied or preceded by a final prospectus. After the effective date of a registration statement, a written communication that offers a security for sale, or confirms the sale of a security,

may be provided to investors if a final prospectus is sent or given previously or at the same time. Otherwise, such a communication is a prospectus and may not be provided unless it meets the requirements of section 10(a).<sup>105</sup>

Rule 172 allows issuers, brokers, and dealers to satisfy final prospectus delivery obligations if a final prospectus is or will be on file with the Commission within the time required by the rules and other conditions are satisfied.<sup>106</sup> For example, rule 172 provides that a final prospectus will be deemed to precede or accompany a security for sale for purposes of section 5(b)(2) as long as the final prospectus is filed with the Commission or it will be filed as part of the registration statement.<sup>107</sup> Rule 172 applies only to final prospectuses and not to other documents.<sup>108</sup> 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.<sup>109</sup>

Currently, affected funds are specifically excluded from the issuers that may rely on these rules.<sup>110</sup> The BDC Act directs us to remove this exclusion for BDCs.<sup>111</sup> To implement the BDC Act, and to provide parity for registered CEFs consistent with the Registered CEF Act, we propose to amend rules 172 and 173 to remove the exclusion for offerings by affected funds.<sup>112</sup>

<sup>105</sup> 15 U.S.C. 77e(b)(2).

<sup>106</sup> 17 CFR 230.172; *see also* Securities Offering Reform Adopting Release, *supra* footnote 5, at 44783.

<sup>107</sup> *See id.* In the event that the issuer fails to file such a prospectus in a timely manner, the issuer must file the prospectus as soon as practicable thereafter. 17 CFR 230.172(c)(3); *see also* Securities Offering Reform Adopting Release, *supra* footnote 5, at 44784 (summarizing the effect of this "cure" provision).

<sup>108</sup> *Id.* at 44784.

<sup>109</sup> 17 CFR 230.173. This notification enables investors to "trace" their purchases of securities for purposes of asserting their rights under the liability provisions of the federal securities laws. *See* Securities Offering Reform Adopting Release, *supra* footnote 5, at 44784. Rule 173(d) provides that a purchaser who receives a notification may request a copy of the final prospectus. We are proposing a conforming change to current Item 34.6 of Form N-2, under which funds currently undertake to provide an SAI upon request, to also require an affected fund to undertake to provide a prospectus upon request. *See* proposed Item 34.8 of Form N-2.

<sup>110</sup> *See* rule 172(d)(1)–(2) under the Securities Act [17 CFR 230.172(d)(1)–(2)]; rule 173(f)(2)–(3) under the Securities Act [17 CFR 230.173(f)(2)–(3)].

<sup>111</sup> Section 803(b)(2)(L) of the BDC Act; *see also* section 509(a) of Registered CEF Act (requiring parity of securities offering rules with operating companies for listed registered CEFs and interval funds).

<sup>112</sup> *See* proposed rule 172(d) under the Securities Act; proposed rule 173(f) under the Securities Act.

We request comment on the proposed revisions to the final prospectus delivery rules.

- Are the proposed revisions to rules 172 and 173 appropriately tailored to affected funds? Should we add additional conditions to reliance on rule 172 for some or all affected funds? If so, which ones and why? For example, should we limit the availability of rule 172 only to affected funds that have timely filed all reports and other materials required under the Exchange Act and/or Investment Company Act for a certain period of time prior to reliance on the rule? As another example, should we limit the availability of rule 172 only to seasoned funds that file a short-form registration statement on Form N-2, or to funds that qualify for WKSI status?

#### E. Communications Reforms

##### 1. Offering Communications

The Securities Act restricts the types of offering communications that issuers or other parties subject to the Act's provisions may use in connection with a registered public offering.<sup>113</sup> These provisions, which we refer to as the "gun-jumping provisions," were designed to make the statutorily mandated prospectus the primary means for investors to obtain information regarding a registered securities offering.<sup>114</sup> Accordingly, unless otherwise permitted:

- Before an issuer files a registration statement, all offers, in whatever form, are prohibited;<sup>115</sup>
- After the issuer files a registration statement but before it has become effective, the only written offers that are permitted are those made using a preliminary prospectus that meets the requirements of section 10 of the Securities Act, which must be filed with the Commission;<sup>116</sup> and
- Even after the registration statement is declared effective, offering participants still may make written offers only through a statutory

<sup>113</sup> Unless otherwise noted, offering communications generally refer to written communications. Rule 405 provides that "[e]xcept as otherwise specifically provided or the context otherwise requires, a written communication is any communication that is written, printed, a radio or television broadcast, or a graphic communication as defined in [rule 405]." 17 CFR 230.405.

<sup>114</sup> *See* Securities Offering Reform Adopting Release, *supra* footnote 5, at 44731.

<sup>115</sup> *See* Securities Act section 5(c) [15 U.S.C. 77e(c)].

<sup>116</sup> This is because after the filing of the registration statement but before its effectiveness, offers made in writing (including electronically), by radio, or by television are limited to a "statutory prospectus" that conforms to the information requirements of Securities Act section 10. *See* Securities Act section 5(b)(1) [15 U.S.C. 77e(b)(1)] and Securities Act section 10 [15 U.S.C. 77j].

<sup>104</sup> 15 U.S.C. 77j(a).

prospectus, except that they may use additional written offering materials if a final prospectus that meets the requirements of Securities Act section 10(a) is sent or given prior to or with those materials.<sup>117</sup>

The Commission has previously adopted rules that provide operating companies and other parties (such as underwriters) increased flexibility in their communications as compared to the limitations described above.<sup>118</sup> The Commission adopted these rules, which we refer to as the “communications rules,” because the Commission believed that investors and the market could benefit from access to greater communications under conditions that preserve important investor protections. These communication rules, however, are generally not available to affected funds, which are subject to a separate framework governing communications with investors.<sup>119</sup>

The BDC Act directs us to allow BDCs to use the same communications rules available to operating companies, generally by removing a BDC from the list of issuers that are ineligible for the exemptions provided by these rules.<sup>120</sup> To implement the BDC Act, and to provide parity for registered CEFs consistent with the Registered CEF Act, we propose to remove the exclusions for affected funds from the following rules and to make other conforming changes.<sup>121</sup> These proposed amendments would:

- Permit affected funds to use certain communications prescribed by rule 134 to publish factual information about the issuer or the offering, including “tombstone ads.”<sup>122</sup>

- Permit affected funds to rely on rule 163A, which provides issuers 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.<sup>123</sup>

- Permit affected funds that are reporting companies to rely on rule 168 to publish or disseminate regularly released factual business information and forward-looking information at any time, including around the time of a registered offering.<sup>124</sup> Rule 169 would also permit affected funds’ continued publication or dissemination of regularly released factual business information that is intended for use by persons other than in their capacity as

(removing references to BDCs and limiting the rules’ exclusion of registered investment companies from the safe harbor to exclude registered funds other than registered CEFs).

*See also* conforming amendments to proposed rule 168 (proposing to add to paragraphs (b)(1) and (2) references to the Investment Company Act to parallel current references to the Exchange Act to provide that forward-looking information and factual business information may be included in materials filed under the Investment Company Act); proposed rule 433 (proposing to add to paragraphs (a)(1)(i) and (iv) references to registration statements filed on Form N-2 under proposed General Instruction A.2 to parallel current references to Form S-3; proposing to add to paragraph (c)(1)(ii) a reference to reports filed under section 30 of the Investment Company Act as reports with which a free-writing prospectus may not conflict). *See also* proposed rule 156(d), *infra* footnote 124.

<sup>122</sup> Rule 134 generally provides that the terms “prospectus” as defined in section 2(a)(10) of the Securities Act or “free writing prospectus” as defined in Rule 405 shall not include a communication limited to the statements required or permitted by the rule, provided that the rule 134 communications are published or transmitted to any person only after a registration statement has been filed that includes a prospectus satisfying the requirement of section 10 of the Securities Act, except as otherwise provided in the rule.

<sup>123</sup> Rule 163A provides that a communication that meets the rule’s conditions is not an “offer” for purposes of Securities Act section 5(c). The Commission has explained that, because rule 163A provides a safe harbor from the application of Securities Act section 5(c), it necessarily applies only prior to the filing of a registration statement. This exclusion will thus not apply to issuers offering securities off a shelf registration statement on file, whether or not effective, as the prohibition in section 5(c) does not apply to the offering of the securities covered by such shelf registration statement. *See* Securities Offering Reform Adopting Release, *supra* footnote 5, at n.155.

<sup>124</sup> Rule 168 is a safe harbor from the definition of “prospectus” in Securities Act section 2(a)(10) and, therefore, prevents the application of the prohibition in Securities Act section 5(b)(1) on the use of a prospectus that is not a statutory prospectus. Rule 168 also is a safe harbor from the prohibitions on pre-filing “offers” in Securities Act section 5(c).

investors or potential investors.<sup>125</sup> We also are proposing to amend rule 156 to state that nothing in that rule may be construed to prevent an affected fund from qualifying for an exemption under rules 168 or 169.<sup>126</sup> The contents of any rule 168 or 169 communication would remain subject to the anti-fraud provisions of the federal securities laws.

- Permit affected funds to rely on rules 164 and 433 to use a “free writing prospectus.”<sup>127</sup>

- Permit 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.<sup>128</sup>

Investment company communications currently are subject to rule 482 under the Securities Act. Rule 482 communications, or “ads,” can only be used by a fund that is selling or is proposing to sell its securities pursuant to a filed registration statement.<sup>129</sup> Some of the communications rules we propose to amend, in contrast, permit an issuer to communicate before it has filed a registration statement. In addition, a rule 482 ad, like the free-writing prospectuses that we propose to permit affected funds to use, is a prospectus subject to prospectus liability under section 12 of the Securities Act. Some

<sup>125</sup> Rule 169 is also a safe harbor from the definition of “prospectus” in Securities Act section 2(a)(10).

<sup>126</sup> *See* proposed rule 156(d); section 803(b)(2)(G) of the BDC Act; section 509(a) of Registered CEF Act.

<sup>127</sup> Rules 164 and 433 provide that a free writing prospectus is a permitted prospectus for purposes of section 10(b) of the Securities Act and can be used without violating section 5(b)(1) of the Securities Act only after a registration statement related to the offering has been filed. [17 CFR 230.164 and 17 CFR 230.433]. *See also* Securities Offering Reform Adopting Release, *supra* footnote 5, at 44744. Rule 433(a) further provides that a free writing prospectus is a prospectus permitted under section 10(b) for purposes of sections 2(a)(10) and 5(b)(2) of the Securities Act.

<sup>128</sup> A WKSI can: (1) Rely on the bright-line time period provided by rule 163A for communications made more than 30 days before a registration statement is filed and that do not reference a securities offering that is or will be the subject of a registration statement; (2) subject to specified conditions, rely on the exemption in rule 163 from the prohibition on offers before the filing of a registration statement to engage in written or oral communications, including use at any time of a free writing prospectus, made by or on behalf of eligible WKSIs; (3) disseminate regularly released factual and forward-looking information at any time, including around the time of a registered offering, in reliance on rule 168; (4) issue a broader category of routine communications set forth in rule 134 regarding issuers, offerings, and procedural matters, that are excluded from the definition of “prospectus,” and (5) use a free writing prospectus after a registration statement is filed in reliance on rules 164 and 433.

<sup>129</sup> 17 CFR 230.482; *see also* 17 CFR 230.497(i).

<sup>117</sup> *See* Securities Act section 2(a)(10) [15 U.S.C. 77b(a)(10)] and section 5(b)(1) [15 U.S.C. 77e(b)(1)].

<sup>118</sup> *See, e.g.,* Securities Offering Reform Adopting Release, *supra* footnote 5, at 44731. *See also* rules 134 [17 CFR 230.134], 138 [17 CFR 203.138], 139 [17 CFR 230.139], 156 [17 CFR 230.156], 163 [17 CFR 230.163], 163A [17 CFR 230.163A], 164 [17 CFR 230.164], 168 [17 CFR 230.168], 169 [17 CFR 230.169], and 433 [17 CFR 230.433].

<sup>119</sup> *See* Securities Offering Reform Adopting Release, *supra* footnote 5, at n.115 and accompanying text. Certain of the communications rules expressly exclude registered investment companies and BDCs from the types of issuers that may rely on them. *See, e.g.,* rules 134(g) [17 CFR 230.134(g)], 163(b)(3)(ii)–(iii) [17 CFR 230.163(b)(3)(ii)–(iii)], 163A(b)(4)(i)–(ii) [17 CFR 230.163A(b)(4)(i)–(ii)], 164(f) [17 CFR 230.164(f)], 168(d)(3) [17 CFR 230.168(d)(3)], and 169(d)(4) [17 CFR 230.169(d)(4)]. Other communications rules, such as rule 139, do not expressly exclude registered investment companies and BDCs but include conditions that can make them unavailable for affected funds. *See also* CEFRR Adopting Release, *supra* footnote 98 at 64183 (adopting new rule 139b which covers a broker-dealers’ distribution of research reports concerning “covered investment funds,” which includes registered investment companies and BDCs).

<sup>120</sup> *See* section 803(b)(2)(B)–(E) and 803(b)(2)(G)–(I) of the BDC Act, *supra* footnote 8. *See also* section 509(a) of the Registered CEF Act, *supra* footnote 11 (requiring parity of securities offering rules with operating companies for listed registered CEFs and interval funds).

<sup>121</sup> *See* proposed rules 134(g), 163(b)(3), 163A(b)(4), 164(f), 168(d)(3), and 169(d)(4).



communications rules we propose to extend to affected funds, however, deem permissible communications not to be prospectuses, such as rule 134 communications. The proposed amendments to the communications rules would therefore provide incremental flexibility to affected funds in their communications. Funds would have additional flexibility to communicate before filing a registration statement, and they would have some additional flexibility in using communications that are not subject to prospectus liability under section 12 of the Securities Act. Affected funds would be permitted to take advantage of this additional flexibility or to continue to rely on rule 482 and other rules currently applicable to investment company communications.

We request comment on the proposed amendments to the communication rules:

- Are there other changes we should make to the communication rules to permit affected fund communications under those rules? Which changes and why?
- Are there changes we should make, or guidance we should provide, regarding the application of the conditions in the communication rules to affected fund communications?
- Are there any changes we should make to rule 482 regarding the communications that affected funds can make using the rule? Which provisions and why? Should we include any standardized performance presentation requirements for affected funds in rule 482? If so, should they differ in any way from open-end funds' performance presentation requirements already required by rule 482? Rather than or in addition to any changes to rule 482, should we amend the communications rules to require that any affected fund communication, such as a free writing prospectus, that contains performance information must present that information in accordance with standardized presentation requirements? If so, should these standardized presentation requirements be the same as those that are included in rule 482, replicate the instructions to Item 4.1.g set forth in Form N-2,<sup>130</sup> or

<sup>130</sup> See, e.g., Securities Act rule 139b(a)(3) [17 CFR 230.139b(a)(3)] requiring that the performance of certain covered investment funds, including registered CEFs, to be presented in accordance with certain standardized presentation requirements. Rule 139b requires that a registered CEF's performance be presented in accordance with the instructions to Item 4.1.g of Form N-2. *Id.* Other historical measures of fund performance are also permitted, so long as the other measures are set out with no greater prominence. *Id.*

differ from either of these sets of requirements in any way?

- As discussed above, rules 163, 163A, 168, and 169 all permit issuers to engage in specified communications prior to, or during, the filing of a registration statement. Would affected funds rely on these rules, as proposed to be amended, in practice? If so, what types of communications would affected funds make in reliance on these rules? Are there any additional changes to these rules that we should make to tailor them to affected fund communications?

- Rule 134 deems certain permitted communications not to be prospectuses. Should we make any additional changes to tailor this rule to affected fund communications? For example, should we explicitly include the fund's investment adviser as permissible information to disclose in paragraph (a) of rule 134? Should we expand rule 134(a)(3) to include the business of affected funds, or is 134(a)(3)(iv) sufficient?<sup>131</sup> Why or why not? What other information specific to affected funds should we permit that would be consistent with the intent of rule 134 communications?

- In 2003, the Commission removed certain investment-company specific provisions from rule 134 on the basis that rule 134 was unnecessary for investment company communications in light of the amendments we adopted to rule 482 at that time.<sup>132</sup> For example, prior rule 134 permitted investment companies to provide a brief indication of the general type of business of the issuer, but with specified limitations tailored to investment companies.<sup>133</sup> Should we restore some or all of the pre-2003 investment company related provisions of rule 134? Which provisions and why? When the Commission eliminated these provisions in rule 134, it reasoned that the standard of liability that attaches to a fund advertisement should not depend on the content of the advertisement and that it did not believe exactly the same content should be subject to different liability standards depending on whether that content is included in a

<sup>131</sup> Rule 134(a)(3) currently permits an issuer to provide a brief indication of the general type of business it engages in, but restricts that information according to the type of business involved. The rule provides specific requirements for certain types of companies (e.g., manufacturing companies), as well as a catch-all provision in paragraph (a)(3)(iv) for companies in a business that is not specifically enumerated.

<sup>132</sup> See Amendments to Investment Company Advertising Rules, Securities Act Release No. 8294 (Oct. 3, 2003) [68 FR 57760 (Oct. 6, 2003)] ("Advertising Rules Amendments Adopting Release").

<sup>133</sup> See prior rule 134(a)(3)(iii).

rule 134 advertisement or a rule 482 advertisement.<sup>134</sup> How should we balance these considerations in considering any further changes to rule 134?

- Rules 164 and 433 allow issuers to communicate through a free writing prospectus after an issuer files a registration statement. What types of communications would an affected fund make in reliance on rules 164 and 433? How, if at all, would they differ from communications affected funds currently make under rule 482? Should we provide for an anti-staleness provision similar to rule 482(g)<sup>135</sup> of the Securities Act with respect to any discussion of performance by affected funds in a free writing prospectus? Why or why not?

## 2. Broker-Dealer Research Reports

The BDC Act also directs us to amend rules 138 and 139 to specifically include a BDC as an issuer to which those rules apply, and the Registered CEF Act directs us to allow certain registered CEFs to use the securities offering rules that are available to other issuers that are required to file reports under section 13(a) or section 15(d) of the Exchange Act.<sup>136</sup> Rule 138 permits a broker-dealer participating in a distribution of an issuer's common stock and similar securities to publish or distribute research about that issuer's fixed income securities, and vice versa, if it publishes or distributes that research in the regular course of its business.<sup>137</sup> Although rule 138 does not currently exclude affected funds from coverage, it does include references to Form S-3 but not Form N-2. We therefore propose to amend the rule's references to shelf registration statements filed on Form S-3 to include a parallel reference to a

<sup>134</sup> See Advertising Rules Amendments Adopting Release, *supra* footnote 132, at 57761-6262.

<sup>135</sup> Rule 482(g) [17 CFR 230.482(g)] is an anti-staleness provision providing in part that "[a]ll performance data contained in any advertisement must be as of the most recent practicable date considering the type of investment company and the media through which the data will be conveyed. . . ."

<sup>136</sup> See section 803(b)(2)(F) of the BDC Act, *supra* footnote 8. See also section 509(a) of the Registered CEF Act, *supra* footnote 11.

<sup>137</sup> See 17 CFR 230.138. Specifically, a research report published or distributed by a broker or dealer is not considered an offer for sale or an offer to sell a security that is the subject of an offering for purposes of section 2(a)(10) and 5(c) of the Securities Act even if the broker or dealer participates in the distribution of the issuer's securities, so long as the research report relates to securities that are not equivalent, as defined by the rule, to the securities being distributed. See rule 138(a). A broker-dealer's publication or distribution of a research report in reliance on rule 138 would therefore be deemed not to constitute an offer that otherwise could be a non-conforming prospect in violation of section 5 of the Securities Act.



registration statement filed on Form N-2 under the proposed short-form registration instruction.

Rule 138 also currently provides that an issuer covered in a research report published in reliance on the rule must be required to file reports, and have filed all periodic reports required during the preceding 12 months (or such shorter time that the issuer was required to file such reports), on Forms 10-K and 10-Q.<sup>138</sup> This requirement is designed to ensure that all reporting issuers are current in their periodic reports at the time a broker-dealer relies on the exemption.<sup>139</sup> Because registered CEFs do not file the periodic reports currently specified in rule 138, we propose to include parallel references to the reports that registered CEFs are required to file, *i.e.*, reports on Forms N-CSR, N-Q,<sup>140</sup> N-CEN, and N-PORT.<sup>141</sup>

We are not, however, proposing any changes to rule 139. That rule 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 of the issuer's securities and, unlike rule 138, permits the research report to cover any class of the issuer's securities.

The Commission recently adopted new Securities Act rule 139b to implement the Fair Access to Investment Research Act of 2017 (the "FAIR Act").<sup>142</sup> The FAIR Act directed that the Commission extend rule 139 to cover broker-dealers' publication or distribution of "covered investment fund research reports." These include research reports about affected funds.<sup>143</sup>

Rule 139b includes specific conditions mandated by Congress for covered investment fund research

reports.<sup>144</sup> For example, rule 139b excludes from the rule's safe harbor research reports published or distributed by the covered investment fund itself, any affiliate of the covered investment fund, or any broker-dealer that is an investment adviser (or an affiliated person of an investment adviser) for the covered investment fund.<sup>145</sup> We believe that rule 139b satisfies the directives of the BDC Act and Registered CEF Act 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. Moreover, if we were to amend rule 139 to cover research reports on BDCs, or on affected funds generally, exactly the same conduct would be subject to different standards based on the rule a broker-dealer chose to use. We believe it is more appropriate to provide a consistent approach for affected fund research reports under rule 139b.

We request comment on the proposed amendments to the research report rules:

- Would the proposed amendments to rule 138 effectively implement the BDC Act and the Registered CEF Act? Have we effectively implemented the BDC Act and Registered CEF Act with respect to the research report rules?
- Do commenters agree that amendments to rule 139 are not necessary or appropriate in light of rule 139b? Why or why not? If not, how should we appropriately address affected funds in light of the specific directives in the FAIR Act regarding covered investment fund research reports? If we were to amend rule 139 to include either or both of BDCs and registered CEFs, should we remove them from the scope of "covered investment funds" as defined in rule 139b to avoid exactly the same activity being subject to different standards based on the rule that a broker-dealer chose to use?

## F. Other Proposed Rule Amendments

### 1. Rule 418 Supplemental Information

Rule 418 provides that the Commission or its staff may request supplemental information concerning the registrant, the registration statement, the distribution of the securities, market activities, and underwriters' activities. The rule provides a non-exhaustive list of the types of items that registrants

should be prepared to furnish to the Commission or staff promptly upon request.<sup>146</sup> The BDC Act requires us to amend rule 418 to provide that a BDC that would otherwise meet the eligibility requirements of Form S-3 is exempt from rule 418(a)(3).<sup>147</sup> Paragraph (a)(3) of rule 418 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. To implement the BDC Act, and to provide parity for affected registered CEFs consistent with the Registered CEF Act, we are proposing to amend rule 418(a)(3) to provide that, in addition to registrants that are eligible to use Form S-3, registrants that are eligible to file a short-form registration statement on Form N-2 are excepted from the requirement to furnish this information under rule 418.<sup>148</sup>

### 2. Amendments to Incorporation by Reference Into Proxy Statements

Schedule 14A under the Exchange Act specifies the information that a registrant must include in a proxy statement. Item 13 of Schedule 14A generally requires a registrant to furnish financial statements and other information for proxy statements containing specific proposals.<sup>149</sup> However, a registrant that meets the

<sup>146</sup> Under rule 418, registrants furnish supplemental information. They are not required to file the information with their registration statement, and the supplemental information does not become part of the registration statement. See 17 CFR 230.418(b). Supplemental information that is "furnished" rather than "filed" does not subject a registrant to certain liabilities under the federal securities laws. See, e.g., section 11 of the Securities Act [15 U.S.C. 77k] (establishing liability for material untrue statements or omissions in registration statements); see also *infra* footnote 263.

<sup>147</sup> Section 803(b)(2)(M) of the BDC Act.

<sup>148</sup> Under section 31(b)(1) of the Investment Company Act, all records that a registered investment company and certain majority-owned subsidiaries are required to maintain and preserve under section 31(a) shall be subject at any time and from time to time to such reasonable periodic, special, and other examinations by the Commission, or any member or representative thereof, as the Commission may prescribe. For purposes of these examinations, any subject person must make available to the Commission or its representatives any copies or extracts from such records as may be prepared without undue effort, expense, or delay as the Commission or its representatives may reasonably request. See 15 U.S.C. 80a-30(b). Section 64 of the Investment Company Act generally provides that section 31 shall apply to a BDC to the same extent as if it were a registered CEF. See 15 U.S.C. 80a-63. See also rule 31a-1 under the Investment Company Act [17 CFR 270.31a-1] (Commission books and records rules); rule 31a-2 [17 CFR 270.31a-2] (same).

<sup>149</sup> Item 13 applies to proxy statements seeking security holder approval to authorize, issue, modify, or exchange securities as described in Items 11 or 12 of Schedule 14A.

<sup>138</sup> See rule 138(a)(2)(i) [17 CFR 230.138(a)(2)(i)].

<sup>139</sup> See Securities Offering Reform Adopting Release, *supra* footnote 5, at 44763 (amending rule 138 to require that all issuers covered in a research report under rule 138, and not just those that file on Forms S-3 or F-3, be current and timely in filing their periodic reports).

<sup>140</sup> See *supra* footnotes 41 and 44 (Form N-Q will be rescinded on May 1, 2020). See also *infra* Part VIII (instruction 6 under Text of Proposed Rules and Amendments).

<sup>141</sup> Reports on Form N-PORT for each month will be filed with the Commission on a quarterly basis. In addition, only information reported for the third month of each fund's fiscal quarter on Form N-PORT will be publicly available (60 days after the end of the fiscal quarter). See N-PORT Modification Release, *supra* footnote 41.

<sup>142</sup> See Fair Access to Investment Research Act of 2017, Public Law 115-66, 131 Stat. 1196 (2017). We implemented the FAIR Act's directives to amend rule 139 by adopting new rule 139b. See also CEFRR Adopting Release, *supra* footnote 98.

<sup>143</sup> 17 CFR 230.139b. See also CEFRR Adopting Release, *supra* footnote 98, at 64183 (providing that under rule 139b, the term "covered investment fund" includes, among other things, registered investment companies and BDCs).

<sup>144</sup> See section 2(f)(2)(A) of the FAIR Act, *supra* footnote 142.

<sup>145</sup> See Covered Investment Fund Research Reports, *supra* footnote 98. See also section 2(f)(3) of the FAIR Act, *supra* footnote 142.

requirements of Form S-3—as defined in Note E to the Schedule—generally may incorporate this information by reference to previously-filed documents without delivering those documents to security holders with the proxy statement. The BDC Act directs us to amend Item 13(b)(1) of Schedule 14A to include as an issuer to which Item 13(b)(1) applies a BDC that would otherwise meet the requirements of Note E of the Schedule.<sup>150</sup> The Registered CEF Act requires us to provide certain registered CEFs with the same flexibility under the proxy rules, subject to conditions that we determine are appropriate, as is available to other issuers that are required to file reports under section 13 or section 15(d) of the Exchange Act.<sup>151</sup>

We are proposing to amend Item 13(b)(1) and Note E to Schedule 14A so that affected funds that meet the requirements of the proposed short-form registration instruction would have the same treatment under this item as registrants that meet the requirements of Form S-3. Specifically, we are proposing to extend this item to registrants that meet the requirements of the proposed short-form registration instruction and to describe in Note E when a registrant will be deemed to meet the requirements of this new instruction for these purposes. The proposed description in Note E would track the existing description of when a registrant meets the requirements of Form S-3 by, for example, applying the same general transaction limitations to affected funds that currently apply to registrants that meet the requirements of Form S-3.<sup>152</sup>

<sup>150</sup> Section 803(b)(2)(N) of the BDC Act.

<sup>151</sup> Section 509(a) of the Registered CEF Act.

<sup>152</sup> Note E states that a registrant meets the requirements of Form S-3 for purposes of Item 13 of Schedule 14A if, among other things, it meets certain of the transaction requirements identified in General Instruction I.B or I.C of Form S-3, subject to certain limitations with respect to transactions described in General Instruction I.B.2 of Form S-3. For instance, a registrant relying on the transaction requirements in General Instruction I.B.2 of Form S-3 (e.g., a registrant that has issued at least \$1 billion in non-convertible securities, other than common equity, in registered primary offerings for cash over the prior 3 years) would only qualify for incorporation by reference under Item 13 of Schedule 14A if the registrant is seeking shareholder approval to authorize, issue, modify, or exchange non-convertible debt or preferred securities meeting the requirements of General Instruction I.B.2. Further, certain transaction requirements in General Instruction I.B of Form S-3, including those in General Instruction I.B.3, I.B.4, and I.B.6, are not covered by Note E. Based on affected funds' current practices, we understand that affected funds rarely make the types of proposals covered by Item 13 of Schedule 14A (i.e., to issue, modify, or exchange its securities) and may be less likely than operating companies to rely on the transaction requirements of General Instruction

We request comment on our proposed amendments to rule 418 and Schedule 14A:

- Do our proposed amendments to Schedule 14A provide affected funds with comparable treatment to operating companies? If not, why not? Are other modifications to our proxy rules needed to treat affected funds in the same manner as other issuers that are required to file reports under section 13 or section 15(d) of the Exchange Act?
- Should our proposed amendments to rule 418 extend to registered CEFs, as we have proposed?

#### *G. New Registration Fee Payment Method for Interval Funds*

We are proposing a modernized approach to registration fee payment that would require interval funds to pay securities registration fees using the same method that mutual funds and ETFs use today. In general, issuers today—including interval funds—are required under the Securities Act to pay a registration fee to the Commission at the time of filing a registration statement.<sup>153</sup> This means that they pay registration fees at the time they register the securities, regardless of when (or if) they sell them.

Today, WKSIs using automatic shelf registration statements have additional flexibility to pay filing fees at or prior to the time of a securities offering.<sup>154</sup> As a result, these filers may defer payment until a future takedown of shares off a shelf registration statement. Affected funds that become WKSIs as a result of our proposed amendments would also gain that flexibility, but other affected funds would not.<sup>155</sup> WKSIs are not the only types of issuers that currently can pay registration fees after they file their registration statements. The Investment Company Act provides that many registered investment companies, such as mutual funds and ETFs, register an indefinite amount of securities upon their registration statements' effectiveness.<sup>156</sup> These funds pay registration fees based on their net issuance of shares, no later than 90 days after the fund's fiscal year end.<sup>157</sup> These

I.B or I.C of Form S-3 that are subject to limitations in Note E. However, to provide parity, we propose to apply to affected funds the same standards that apply to operating companies in our proposed amendments to Note E of Schedule 14A.

<sup>153</sup> Section 6(b)(1) of the Securities Act [15 U.S.C. 77f(b)(1)].

<sup>154</sup> See *supra* footnote 62; see also Securities Offering Reform Adopting Release, *supra* footnote 5, at 44780. This arrangement is commonly known as "pay as you go." *Id.*

<sup>155</sup> See *supra* Part II.C.

<sup>156</sup> See section 24(f)(1) of the Investment Company Act [15 U.S.C. 80a-24(f)(1)].

<sup>157</sup> See section 24(f)(2) of the Investment Company Act [15 U.S.C. 80a-24(f)(2)]. Specifically,

issuers must file information about the computation of this registration fee and other information on Form 24F-2 under the Investment Company Act when paying the fee.<sup>158</sup>

Interval funds, like other affected funds, are not currently permitted to pay registration fees on this same annual "net" basis, and must pay the registration fee at the time of filing the registration statement. However, we believe that interval funds would benefit from the ability to pay their registration fees in the same manner as mutual funds and ETFs, and that this approach is appropriate in light of interval funds' operations. In particular, interval funds—like mutual funds and unlike other affected funds—routinely repurchase shares at net asset value and are required to periodically offer to repurchase their shares.<sup>159</sup> When the Commission adopted rule 23c-3, which permits the operation of interval funds, it noted that the rule was intended to allow them to operate in certain ways that were traditionally available only to open-end funds.<sup>160</sup> We believe that paying their registration fees in the same manner as open-end funds would yield similar operational benefits that open-end funds enjoy today (e.g., by computing registration fees due on an annual net basis). Additionally, this approach would avoid the possibility that an interval fund would inadvertently sell more shares than it had registered and would not require the interval fund to periodically register new shares. Accordingly, we propose to amend rules 23c-3 and 24f-2 so that interval funds would pay registration fees on this same annual net basis.<sup>161</sup>

these funds pay fees on a net basis, based upon the sales price for securities sold during the fiscal year and reduced based on the price of shares redeemed or repurchased that year.

<sup>158</sup> 17 CFR 274.24.

<sup>159</sup> An interval fund must have a fundamental policy regarding its repurchase offers that can be changed only by a shareholder vote. See 17 CFR 270.23c-3(b)(2)(i).

<sup>160</sup> Registration Offers by Closed-End Management Investment Companies, Investment Company Act Release No. 19399 (Apr. 7, 1993) [58 FR 19330, 19330 (Apr. 14, 1993)].

<sup>161</sup> Specifically, the amendments to rule 23c-3 would provide that an interval fund would be deemed to have registered an indefinite amount of securities under section 24(f) upon the effective date of its registration statement. Proposed rule 23c-3(e). We also propose to make a conforming amendment to rule 24f-2 so that interval funds would pay their registration fees on the same annual net basis as mutual funds and other open-end funds do. Proposed rule 24f-2(a). We preliminarily believe that these actions are necessary or appropriate in the public interest and consistent with the protection of investors. See section 28 of the Securities Act [15 U.S.C. 77z-3]; section 6(c) of the Investment Company Act [15 U.S.C. 80a-6(c)]. As discussed in detail below, we

Continued

We request comment on these proposed amendments:

- Should we amend our rules to deem an interval fund to have registered an indefinite amount of securities upon effectiveness of its registration statement, as proposed? Should we require interval funds to pay registration fees on an annual net basis by filing on Form 24F-2? Why or why not?
- Should these changes be tailored to interval funds in any way? Why or why not? If so, how?
- Should we tailor Form 24F-2 to interval funds in any way? Why or why not? If so, how?
- Instead of requiring interval funds to pay registration fees on an annual net basis as proposed, should we permit interval funds that are not WKSIs to make registration fee payments on a pay-as-you-go basis, as WKSIs are permitted to do today? Why or why not?
- Should we permit additional categories of issuers to pay registration statement fees on an annual net basis as under rule 24f-2 (or on a pay-as-you-go basis)? For example, should tender offer funds be permitted to pay registration fees in this manner? Are funds that have historically made periodic tender offers voluntarily—but for which these offers are not a fundamental policy—sufficiently similar to interval funds or open-end funds such that their paying registration fees under rule 24f-2 would be appropriate? If we were to permit tender offer funds to use this payment method, how would we define an eligible tender offer fund?
- Should interval funds be permitted to choose whether to pay registration fees on either an annual net basis (or on a pay-as-you-go basis) or in the current manner, at the time of registration? Alternatively, should *all* interval funds be required to pay registration fees on an annual net basis, as we propose and as open-end funds are required to do today?

#### H. Disclosure and Reporting Parity Proposals

We are proposing amendments to our rules and forms intended to tailor the disclosure and regulatory framework for affected funds in light of our proposed amendments to the offering rules applicable to them. Many of these proposed amendments are not expressly required by the BDC Act or the Registered CEF Act but we believe would further the respective Acts' goals of providing regulatory parity to affected

are also proposing to modernize the computation and payment of registration fees subject to section 24(f) by requiring that submissions on Form 24F-2 be made in a structured data format. *See infra* Part II.H.1.d.

funds with otherwise similarly-situated issuers.<sup>162</sup> Some of the proposed amendments also reflect that, as the Registered CEF Act requires, we have considered the availability of information to investors in connection with the proposed amendments.<sup>163</sup> As discussed in detail below, these proposed amendments include structured data requirements; new annual and current reporting requirements; amendments to provide all affected funds additional flexibility to incorporate information by reference; and proposed enhancements to the disclosures that registered CEFs make to investors when the funds are not updating their registration statements.

#### 1. Structured Data Requirements

We are proposing certain new structured data reporting requirements for registered CEFs and BDCs. In particular, and as discussed in detail below, we are proposing to require BDCs, like operating companies, to submit financial statement information using Inline XBRL format; to require that registered CEFs and BDCs include structured cover page information in their registration statements on Form N-2 using Inline XBRL format; to require that certain information required in an affected fund's prospectus be tagged using Inline XBRL format; and to require that filings on Form 24F-2 be submitted in Extensible Markup Language ("XML") format.

#### a. Inline XBRL Requirements for Financial Statements and Notes to Financial Statements

In 2009, the Commission adopted rules requiring operating companies to submit the information from the financial statements accompanying their registration statements and periodic and current reports in a structured, machine-readable format using XBRL format.<sup>164</sup>

<sup>162</sup> For example, regulatory parity could mitigate any competitive disparities between affected funds and other issuers. It also could help investors in affected funds by providing them investor protections that are currently provided to investors in similarly-situated issuers. *See, e.g., infra* discussion in paragraphs accompanying footnotes 209–215.

<sup>163</sup> Section 509(a) of the Registered CEF Act (providing, in part, that any action that the Commission takes pursuant to this subsection shall consider the availability of information to investors, including what disclosures constitute adequate information to be designated as a "well-known seasoned issuer").

<sup>164</sup> Interactive Data to Improve Financial Reporting, Securities Act Release No. 9002 (Jan. 30, 2009) [74 FR 6776 (Feb. 10, 2009)] ("2009 Financial Statement Information Adopting Release") (requiring submission of an Interactive Data File to the Commission in exhibits to such reports); *see also* Securities Act Release No. 9002A (Apr. 1, 2009) [74 FR 15666 (Apr. 7, 2009)].

These requirements were intended to make financial information easier for investors to analyze and to assist in automating regulatory filings and business information processing.<sup>165</sup> Last year, the Commission adopted modifications to these requirements by requiring issuers to use Inline XBRL format to reduce the time and effort associated with preparing XBRL filings, simplify the review process for filers, and improve the quality and usability of XBRL data for investors.<sup>166</sup> The Commission has also adopted structured data reporting requirements for most registered investment companies, including, for example, prospectus risk/return summary information for mutual funds and ETFs,<sup>167</sup> which are also required to submit this information using Inline XBRL format.<sup>168</sup> The Commission also adopted requirements for most registered investment companies to file monthly reporting of portfolio securities on a quarterly basis,<sup>169</sup> as well as annual reporting of certain "census" information,<sup>170</sup> in a structured data format.<sup>171</sup> Most recently the Commission proposed to require the use of Inline XBRL for the submission of certain statutory prospectus disclosures for variable annuity and variable life insurance contracts.<sup>172</sup> BDCs, however, are currently subject to neither the structured data reporting requirements for operating companies

<sup>165</sup> 2009 Financial Statement Information Adopting Release, *supra* footnote 164, at 6776.

<sup>166</sup> Inline XBRL Filing of Tagged Data, Securities Act Release No. 10514 (June 28, 2018) [83 FR 40846, 40847 (Aug. 16, 2018)] ("Inline XBRL Adopting Release"). Inline XBRL allows filers to embed XBRL data directly into an HTML document, eliminating the need to tag a copy of the information in a separate XBRL exhibit. Inline XBRL is both human-readable and machine-readable for purposes of validation, aggregation, and analysis. *Id.* at 40851.

<sup>167</sup> Interactive Data for Mutual Fund Risk/Return Summary, Investment Company Act Release No. 28617 (Feb. 11, 2009) [74 FR 7748 (Feb. 19, 2009)].

<sup>168</sup> *See* Inline XBRL Adopting Release, *supra* footnote 166.

<sup>169</sup> Reporting Modernization Release, *supra* footnote 41 (requiring portfolio information on Form N-PORT); N-PORT Modification Release, *supra* footnote 41 (modifying the filing requirements for Form N-PORT); Money Market Fund Reform, Investment Company Act Release No. 29132 (Feb. 23, 2010) [75 FR 10060 (Mar. 4, 2010)] (requiring portfolio information on Form N-MFP).

<sup>170</sup> Reporting Modernization Release, *supra* footnote 41, at 81870 (requiring "census" information on Form N-CEN).

<sup>171</sup> We require reports on these forms to be filed in an XML format that is not Inline XBRL.

<sup>172</sup> Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts, Investment Company Act Release No. 33286 (Oct. 30, 2018) [83 FR 61730 (Nov. 30, 2018)] ("Variable Contract Summary Prospectus Proposing Release").

nor those for registered investment companies.<sup>173</sup>

We believe that reporting in a structured data format makes financial information easier for investors to analyze and helps automate regulatory filings and business information processing. We further believe that, like investors in operating companies and investors in registered investment companies, BDC investors would—either directly or indirectly through third-party analysis—benefit from the availability of relevant information in a structured data format.<sup>174</sup> Accordingly, we propose to amend Item 601 of Regulation S-K to remove the exclusion for BDCs from the Inline XBRL financial statement tagging requirements.<sup>175</sup> This would subject BDCs to the Inline XBRL financial statement tagging requirements that apply to operating companies, reducing the current disparity between the accessibility of information BDCs provide to the market and the accessibility of information that operating companies provide to the market. Based on our staff's review of BDCs' disclosures and assessment of the XBRL taxonomies' development since they were first adopted in 2009, we believe that relevant XBRL taxonomies are sufficiently well developed for financial statement reporting by BDCs. We therefore believe that applying these taxonomies to BDCs would impose smaller reporting costs and would yield more useful data for investors, Commission staff, and other data users than would requiring BDCs to provide structured financial information by

filing reports on Forms N-PORT or N-CEN using a different technology.

We request comment on the proposed requirement for BDCs to tag financial statement information using Inline XBRL format:

- Should we require BDCs to tag financial statement information in a structured data format? Why or why not? Is Inline XBRL the appropriate format for BDC financial statement information? Why or why not? If another structured data format would be more appropriate, which one, and why?
- Is it appropriate for BDCs to be subject to the same Inline XBRL financial statement information requirements as operating companies, or would it be more appropriate to require them to provide structured data by filing reports on Form N-PORT or Form N-CEN? Why or why not? Would the information that BDCs include in financial statements and that would be tagged in Inline XBRL format under the proposal be more important to BDC investors than the structured data required by Forms N-PORT and N-CEN? Why or why not?
- Should structured financial statement data reporting requirements be tailored to BDCs? If so, how and why?
- Should any subset of BDCs (for example, BDCs that would not be eligible to file a short-form registration statement) be exempt from the proposed structured financial statement data reporting requirement? If so, what subset and why?
- Do commenters agree that the relevant XBRL taxonomies are sufficiently well developed for financial statement reporting by BDCs? Why or why not? What, if any, additions should be made to one or more of the XBRL taxonomies to enhance their suitability for BDC financial statements?

#### b. New Check Boxes and Structured Data Format for Form N-2 Cover Page Information

We are proposing to require all affected funds to tag the data points that appear on the cover page of proposed Form N-2 using Inline XBRL format.<sup>176</sup> We currently require registrants to tag all of the data points on the cover page of Form 10-K, Form 10-Q, Form 8-K, Form 20-F, and Form 40-F using Inline XBRL format.<sup>177</sup> We believe extending

this requirement to mandatory tagging of the data points on the cover page of Form N-2 would allow investors, other market participants, and other data users to automate their use of this information. This would enhance their ability to better identify, count, sort, aggregate, compare, and analyze registrants and disclosures to the extent these data points otherwise would be formatted only in HyperText Markup Language (“HTML”). The cover page data points that we propose affected funds to tag would include, for example, the company name, the Act or Acts to which the registration statement relates, and checkboxes relating to the effectiveness of the registration statement.

In addition, we propose to amend Form N-2 to require a checkbox indicating that the registration statement or post-effective amendment filed by a WSKI will become effective upon filing with the Commission under rule 462(e) under the Securities Act.<sup>178</sup> The securities offering reforms of 2005 included a parallel requirement for operating companies' registration statements on Form S-3.<sup>179</sup> A related checkbox would indicate that the registration statement is an automatic shelf registration statement filed by a WSKI to post-effectively register additional securities or classes of securities under rule 413(b) under the Securities Act.<sup>180</sup> We also propose to require a checkbox indicating a fund's reliance on the proposed short-form registration instruction—electing a status that is similar to the use of Form S-3 (rather than Form S-1) in the operating company context. Investors, Commission staff, and other data users can distinguish between registration statements for operating companies based on whether they are filed on Form S-1 or Form S-3. Because affected funds all file their registration

(Oct. 11, 2017) [82 FR 50988, 51023 (Nov. 2, 2017)]; FAST Act Modernization and Simplification of Regulation S-K, Securities Act Release No. 10618 (Mar. 20, 2019) (“FAST Act Modernization Adopting Release”).

<sup>178</sup> See proposed cover page of Form N-2.

<sup>179</sup> See Securities Offering Reform Adopting Release, *supra* footnote 2, at 44789.

<sup>180</sup> Rule 413(b) under the Securities Act, which allows a WSKI to file a post-effective amendment to add additional securities or additional classes of securities to an automatic shelf registration statement already in effect, is limited to: (1) Securities of a class different than those registered on the effective automatic shelf registration statement identified as provided in rule 430B(a); or (2) securities of a majority-owned subsidiary that are permitted to be included in an automatic shelf registration statement, provided that the subsidiary and the securities are identified as provided in rule 430B and the subsidiary satisfies the signature requirements of an issuer in the post-effective amendment.

<sup>173</sup> Rule 30b-1 under the Investment Company Act [17 CFR 270.30b-1] (requiring certain registered investment companies, but not BDCs, to file reports on Form N-PORT); rule 30a-1 under the Investment Company Act [17 CFR 270.30a-1] (requiring certain registered investment companies, but not BDCs, to file reports on Form N-CEN); *see also* Reporting Modernization Release, *supra* footnote 41, at 81876 (noting that BDCs are not subject to reporting on Form N-PORT); 2009 Financial Statement Information Adopting Release, *supra* footnote 164, at 6788 (noting that BDCs are not subject to the XBRL financial statement information requirements).

Prior to the adoption of the XBRL requirements in the 2009 Financial Statement Information Adopting Release, which did not apply to BDCs, the one commenter to address their exclusion from the scope of the proposal had opined that the investment management taxonomy was not yet sufficiently developed. *See id.*

<sup>174</sup> Having this information in a structured data format would also enhance our staff's ability to review and analyze BDCs' financial statements.

<sup>175</sup> Compare proposed Item 601(b)(101)(i) of Regulation S-K [17 CFR 229.601(b)(101)(i)] (excludes registered investment companies from financial statement tagging requirements) with current Item 601(b)(101)(i) of Regulation S-K [17 CFR 229.601(b)(101)(i)] (excludes all registrants that prepare financial statements in accordance with Article 6 of Regulation S-X [17 CFR 210.6-01 through 210.6-10]).

<sup>176</sup> See proposed General Instruction H.2.a of Form N-2; proposed rule 405(b)(3) of Regulation S-T. We propose that all of the data points that appear on the cover page of proposed Form N-2, with the exception of the table including information about calculation of the registration fee under the Securities Act, be tagged in Inline XBRL format.

<sup>177</sup> FAST Act Modernization and Simplification of Regulation S-K, Securities Act Release No. 10425

statements on Form N-2, a checkbox is necessary to distinguish the type of registration statement being filed. We are also proposing to require checkboxes that would identify characteristics of the fund, including whether it is (1) a registered CEF; (2) a BDC; (3) a registered CEF that operates as an interval fund; (4) qualified to file a short-form registration statement on Form N-2; (5) a WKSI; (6) an emerging growth company;<sup>181</sup> or (7) a registrant that has been registered or regulated under the Investment Company Act for less than 12 calendar months.<sup>182</sup> The checkbox presentation of these characteristics on the cover page will allow investors, Commission staff, and others to more readily identify types of issuers and securities. These checkboxes would be among the data points required to be tagged using Inline XBRL format.

Form N-2 registrants are required to include a table on the form's cover page that includes information about calculation of the fund's registration fee under the Securities Act. We believe that the information in this table would not—unlike the other cover page elements, including the proposed checkboxes—permit data users to distinguish among Form N-2 registrants in a manner that is similar to the way that that operating company registrants currently may be distinguished by their filing form type. Therefore, we are not proposing that affected funds be required to tag this cover page fee table.

We request comment on the proposed Form N-2 cover page information tagging requirement:

- Should we require, as proposed, all information on the cover page of Form N-2, except the table that includes information about the calculation of the fund's registration fee, to be tagged using Inline XBRL format? Are there any other cover page data points that we should not require be tagged in Inline XBRL format? For example, are there any data points where tagging in Inline XBRL format would be duplicative with similar requirements, or where Inline XBRL tagging would serve limited benefit in helping to identify, count, sort, aggregate, compare, and analyze registrants? Should this requirement be

tailored in any way—for example, to particular types of registrants that file on Form N-2 (such as those that are eligible to file a short-form registration statement, and/or WSIs)—and if so, how and why? Should the proposed requirement apply to only to those data points related to affected funds' use of the rules amended by this proposal? Would the costs associated with tagging all of the cover page data points be significantly greater than the costs of tagging only the checkboxes related to use of the proposed short-form registration instruction or the use of an automatic shelf registration? If so, why?

- Is proposed General Instruction H.2 of Form N-2, in conjunction with rule 405 of Regulation S-T as we propose to amend it, sufficiently clear for registrants and other market participants to understand the proposed requirement to tag Form N-2 cover page information in Inline XBRL format? If not, how could we make the requirement clearer?

- Instead of requiring cover page data points to be tagged using Inline XBRL format, should we require this data to be submitted using another format, such as XML? Why or why not? If so, which alternative format would be appropriate, and why? Would the administrative costs vary between formats? If so, which format would be more costly, and why? Would the benefits to users of the information vary between formats? If so, which format would be more beneficial, and why? Should more than one format be permitted? Should the specific format be left unspecified? Would investors and others realize the benefits of reporting in a structured data format if the specific structured data format were unspecified? Why or why not?

- Are there any changes we should make to the proposed amendments to better ensure accurate and consistent tagging? If so, which changes should we make and why?

#### c. Tagging of Prospectus Disclosure Items

We propose to require all affected funds to tag certain information that is required to be included in an affected fund's prospectus using Inline XBRL format.<sup>183</sup> Like mutual funds and ETFs, all affected funds would be required to submit to the Commission using Inline XBRL certain information discussed below in registration statements or post-effective amendments filed on Form N-2<sup>184</sup> and forms of prospectuses filed pursuant to rule 424 under the

Securities Act that include information that varies from the registration statement.<sup>185</sup> A seasoned fund filing a short-form registration statement on Form N-2 also would be required to tag information appearing in Exchange Act reports—such as those on Forms N-CSR, 10-K, or 8-K—if that information is required to be tagged in the fund's prospectus.<sup>186</sup>

We are proposing that affected funds tag the following prospectus disclosure items using Inline XBRL format: Fee Table; Senior Securities Table; Investment Objectives and Policies; Risk Factors; Share Price Data; and Capital Stock, Long-Term Debt, and Other Securities.<sup>187</sup> We believe that these items—which provide important information about a fund's key features, costs, and risks—would be best suited to being tagged in a structured format and be of greatest utility for investors and other data users that seek structured data to analyze and compare funds.

We would require affected funds to tag the Fee Table, which provides detailed information about the fund's costs. We believe that tagging could facilitate analysis of fund costs, and allow investors and other data users to compare the costs of a particular affected fund with the costs of other funds or other investment products, such as mutual funds. We are also proposing to require affected funds to tag the Senior Securities Table, which requires registrants to include information about each of its classes of senior securities, including bank loans. This will facilitate analyses of outstanding senior securities that may bear on the likelihood, frequency, and size of distributions from the fund to its investors. We propose to require tagging of Investment Objectives and Policies, which provides information about the fund's principal portfolio emphasis. We are also proposing to require tagging of Risk Factors to facilitate the aggregation, analysis, and comparison by investors and other data users of information about a fund's risks alongside the fund's features and benefits. We propose to require the tagging of Share Price

<sup>185</sup> See proposed General Instruction H.2.b of Form N-2.

<sup>186</sup> See proposed General Instruction H.2.c of Form N-2.

<sup>187</sup> See proposed General Instructions H.2.b and H.2.c of Form N-2; see also Items 3.1, 4.3, 8.2.b, 8.2.d, 8.3.a, 8.3.b, 8.5.b, 8.5.c, 8.5.e, 10.1.a–d, 10.2.a–c, 10.2.e, 10.3, and 10.5 of Form N-2. This information largely parallels similar information contained in the Form N-1A risk/return summary. See Item 2 (Risk/Return Summary: Investment Objectives/Goals), Item 3 (Risk/Return Summary: Fee Table), and Item 4 (Risk/Return Summary: Investments, Risks and Performance) of Form N-1A.

<sup>181</sup> See rule 12b-2 under the Exchange Act [17 CFR 240.12b-2] (defining “emerging growth company”).

<sup>182</sup> We are also proposing to add several other checkboxes to Form N-2 to clarify the purpose of the filing, including a checkbox to indicate that the only securities being registered are being offered pursuant to dividend or interest reinvestment plans, as well as new checkboxes to indicate whether the Form is being filed as a post-effective amendment filed pursuant to Rule 462(c) or Rule 462(d) under the Securities Act.

<sup>183</sup> See proposed General Instruction H.2 of Form N-2; proposed amendments to rule 405 of Regulation S-T.

<sup>184</sup> See proposed General Instruction H.2.a of Form N-2.

Information, as the presence of a premium or discount may bear on the likelihood, frequency, and size of distributions from the fund to its investors, which we believe may be of particular importance to many affected fund investors.<sup>188</sup> We would also require affected funds to tag Capital Stock, Long-Term Debt, and Other Securities to better inform common shareholders how their rights, expenses, and risks are affected when the fund issues other types or classes of securities.

Similar to mutual funds and ETFs under the recently adopted Inline XBRL regime,<sup>189</sup> we would require affected funds to submit “Interactive Data Files” (i.e., machine-readable computer code that presents information in XBRL format) as follows:

- For any registration statements and post-effective amendments, Interactive Data Files must be filed either concurrently with the filing or in a subsequent amendment that is filed on or before the date that the registration statement or post-effective amendment that contains the related information becomes effective;<sup>190</sup>
- for any prospectus filed pursuant to rule 424, Interactive Data Files must be submitted concurrently with the filing;<sup>191</sup> and

- for any Exchange Act report that a seasoned fund filing a short-form registration statement on Form N-2 would have to tag, as discussed above, Interactive Data files must be submitted concurrently with the filing.<sup>192</sup>

We believe this approach will facilitate the timely availability and promote the comparability and utility of important information in a structured data format for investors, other market participants, and other data users, yielding substantial benefits. For data aggregators responding to demand for the data, the availability of the required disclosures in the Inline XBRL format concurrent with filing or before the date of effectiveness would allow them to quickly process and share the data and related analysis with investors.

Therefore, consistent with the approach in the recently adopted Inline XBRL rules for mutual funds and ETFs, we are not proposing to provide affected funds a filing period to submit Interactive Data Files. Affected funds could request temporary and continuing hardship exemptions for the inability to timely file electronically the Interactive Data File.<sup>193</sup>

We request comment generally on the proposed amendments to require the use of Inline XBRL format for certain Form N-2 disclosure items, and specifically on the following issues:

- Should we make the submission of structured data in the Inline XBRL format mandatory for affected funds, as proposed? Should the requirements for affected funds generally mirror the recently-adopted Inline XBRL requirements for mutual funds and ETFs, as proposed? Should we take a different or more tailored approach for affected funds, and if so, what should that be?
- Should we also require a seasoned fund filing a short-form registration statement on Form N-2 to tag information appearing in Exchange Act reports, such as those on Forms N-CSR, 10-Q, 10-K, or 8-K, if that information is required to be tagged in the fund’s prospectus? Why or why not?
- Is proposed General Instruction H.2 of Form N-2, in conjunction with rule 405 of Regulation S-T as we propose to amend it, sufficiently clear for registrants and other market participants to understand the proposed requirement to tag certain Form N-2 disclosure items in Inline XBRL format? Is this proposed requirement equally clear in its

requirements to tag initial registration statements, post-effective amendments, forms of prospectuses, and (for seasoned funds that file a short-form registration statement on Form N-2) certain information that appears in Exchange Act reports? If not, how could we make the requirements more clear?

- Would affected funds encounter any technical or other difficulties associated with the proposed requirement to tag certain information that appears in forms of prospectus or Exchange Act reports, and if so, how could we resolve such difficulties? For example, should we amend any of the Commission forms that affected funds use to file Exchange Act reports to facilitate the proposed tagging requirement? If so, how?

- As proposed, should affected funds be required to use Inline XBRL format to tag each of the following sections of the prospectus: Fee Table; Senior Securities Table; Investment Objectives and Policies; Risk Factors; Share Price Data; and Capital Stock, Long-Term Debt, and Other Securities? Should other or different information that affected funds disclose on Form N-2 be required to be tagged using Inline XBRL? For example, should we require tagging of information about asset coverage ratios?

- Should any category of affected fund (for example, affected funds that would not be eligible to file a short-form registration statement) be exempt from the proposed Inline XBRL requirements? If so, which ones, and why?

- To what extent do investors and other market participants find information that is available in a structured format useful for analytical purposes? Is information that is narrative, rather than numerical, useful as an analytical tool?

- Should the failure by an affected fund to submit a required Interactive Data File affect the registrant’s ability to file post-effective amendments to its registration statement, as is the case currently for mutual funds and ETFs? Why or why not? Should it similarly affect an affected fund’s ability to update its registration statement with information incorporated by reference from an Exchange Act report?

- We are proposing to require BDCs to submit the information from their financial statements using Inline XBRL format.<sup>194</sup> We also are proposing that all affected funds—BDCs and registered CEFs—tag certain prospectus disclosure items using Inline XBRL. Should we also require registered CEFs to submit

<sup>188</sup> See *infra* footnote 207 and accompanying text.

<sup>189</sup> See Inline XBRL Adopting Release, *supra* footnote 166.

<sup>190</sup> Proposed General Instruction H.2.a of Form N-2; cf. General Instruction C.3.(g)(i)(B) of Form N-1A.

In the corresponding instruction in Form N-1A, the timing of the submission of the Interactive Data File varies based on whether the fund is filing a registration statement or post-effective amendment pursuant to rule 485(a) under the Securities Act, or a post-effective amendment pursuant to rule 485(b) under the Act. If the fund is filing pursuant to rule 485(a), it must submit the Interactive Data File as an amendment to the registration statement to which it relates, on or before the date that the registration statement or post-effective amendment that contains the related information becomes effective. See General Instruction C.3.(g)(i)(A) of Form N-1A. If the fund is filing pursuant to rule 485(b) (where the post-effective amendment may become effective immediately upon filing), the fund may submit the Interactive Data File either together with the post-effective amendment filing, or in the same manner as it would with a rule 485(a) filing. See General Instruction C.3.(g)(i)(B) of Form N-1A. Because rule 485 is not applicable to affected funds, and because practices may differ as to automatic effectiveness of affected funds’ registration statements and post-effective amendments, the proposed Form N-2 instruction (like General Instruction C.3.(g)(i)(B) of Form N-1A) permits an affected fund to submit an Interactive Data file either concurrently with the registration statement or post-effective amendment filing, or as a subsequent amendment that is filed on or before the date that the registration statement or post-effective amendment that contains the related information becomes effective.

<sup>191</sup> Proposed General Instruction H.2.b to Form N-2; cf. General Instruction C.3.(g)(ii) of Form N-1A.

<sup>192</sup> Proposed General Instruction H.2.c to Form N-2.

<sup>193</sup> See rule 201 of Regulation S-T (temporary hardship exemption) and rule 202 of Regulation S-T (continuing hardship exemption).

<sup>194</sup> See *supra* Part H.1.a.

the information from their financial statements to the Commission using Inline XBRL format? If so, should we require registered CEFs to tag all of this information, or just information that is not required by Forms N-PORT or N-CEN, such as certain information from a fund's Statement of Operations or Financial Highlights?<sup>195</sup>

#### d. Structured Data Format for Form 24F-2

Today, filings on Form 24F-2 are submitted via EDGAR in HTML or, less commonly, American Standard Code for Information Interchange ("ASCII") format.<sup>196</sup> Such submissions are human-readable but are not susceptible to automated validation or aggregation. We believe use of a structured data format would make it easier for issuers to accurately prepare and submit the information required by Form 24F-2 and would make the submitted information more useful to Commission staff. Automated validation processes could help issuers compute registration fees accurately before submitting the filing. A structured filing format could also facilitate pre-population of previously-filed information. Therefore, we propose to amend the EDGAR Filer Manual to require submission of filings on Form 24F-2 in a structured XML format.<sup>197</sup>

We request comment on our proposal to require filings on Form 24F-2 to be submitted in a structured XML format:

- Should we require, as proposed, that filings on Form 24F-2 be submitted in a structured format? Why or why not?

<sup>195</sup> A fund's Statement of Operations and Financial Highlights describes the amount and character of the income received (e.g., dividends, interest income, payment in kind ("PIK")), which helps investors understand whether a fund is likely to pay or cut a dividend, and the amount and character of the distributions paid (e.g., distributions from income, realized gains, return of capital), which helps investors understand whether they are receiving actual profits from the fund, or just receiving a portion of their original investment. Similarly, a registered CEF must identify affiliated investments and income from affiliates in its Schedule of Investments, Statement of Assets & Liabilities, and Statement of Operations. Investors that are focused on the potential conflicts of interest that are inherent in affiliated transactions may look more carefully at a fund that invests a significant amount in an affiliate that only pays PIK. This could suggest that the fund is investing in the entity because it is an affiliate, and not because it is a good investment.

<sup>196</sup> See General Instruction A.3 to Form 24F-2; rule 101(a)(1)(iv). We are also proposing to make a technical correction in Form 24F-2 to refer to the applicable paragraph of rule 101 of Regulation S-T. See proposed General Instruction A.3 to Form 24F-2 (correcting "rule 101(a)(1)(i)" to "rule 101(a)(1)(iv)").

<sup>197</sup> As discussed in detail above, we are also proposing to expand the group of issuers subject to filing on Form 24F-2 to include certain affected funds. See *supra* Part II.G.

Should the required format, as proposed, be XML? Why or why not? If another format would be more appropriate, which format and why?

- Should the requirement to submit filings on Form 24F-2 in a structured data format apply to certain 24F-2 filers and not to others? If so, which ones and why?
- Should the Commission make available a web-based fillable form for preparing submissions on Form 24F-2? Why or why not? Would such a tool be useful for filers? Would additional pre-filing validation processes designed to reduce fee computation errors be useful for filers?

#### 2. Periodic Reporting Requirements

We are also proposing new annual report requirements. We expect several of the reforms we are proposing in this release, such as those relating to automatically effective shelf registration, forward incorporation by reference, and final prospectus delivery, would elevate the importance of periodic reporting relative to prospectus disclosure for affected funds. A seasoned fund filing a short-form registration statement on Form N-2 would forward incorporate all periodic Exchange Act reports into its registration statement.<sup>198</sup> This could result in periodic reports becoming a more salient, convenient, and comprehensive source of updated information about a particular seasoned fund, relative to that fund's registration statement. These funds' annual reports may take on greater prominence, with investors looking to the annual reports for key information.<sup>199</sup> Registered CEFs' shareholder reports may also take on greater prominence for investors because, under the proposal, affected funds would not be required to deliver final prospectuses but would still be required to deliver shareholder reports at least semi-annually.<sup>200</sup>

Accordingly, we are proposing to require seasoned funds that register using the proposed short-form registration instruction to include key information in their annual reports regarding fees and expenses, premiums

<sup>198</sup> See proposed General Instruction F.3.b of Form N-2.

<sup>199</sup> In 2005, the Commission observed that recent enhancements to Exchange Act reporting enabled us to rely on those reports to a greater degree in adopting our rules to reform the securities offering process. Securities Offering Reform Adopting Release, *supra* footnote 5, at 44726. As the Commission did then, we believe that enhanced periodic reporting is an important corollary to reform of the offering process under the Securities Act. See *id.*

<sup>200</sup> Compare proposed 17 CFR 230.172 with 17 CFR 270.30e-1; see also *supra* Part II.C.

and discounts, and outstanding senior securities that the funds currently disclose in their prospectuses.<sup>201</sup> Because the annual report will be incorporated by reference into the fund's prospectus, requiring disclosure in both the prospectus and annual report should not require duplicative disclosure. Moreover, specifying identical disclosure requirements in both places may facilitate forward incorporation by reference, by making clear that the same required disclosure will satisfy both requirements. We believe that investors should have no less current information than they do today about these items when the fund is offering its shares. Finally, we are proposing to require registered CEFs to provide management's discussion of fund performance (or "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. These proposals are intended to modernize and harmonize our periodic report disclosure requirements for affected funds with those applicable to operating companies and mutual funds and ETFs.<sup>202</sup>

#### a. Fee and Expense Table, Share Price Data, and Senior Securities Table

We are proposing to require funds filing a short-form registration statement on Form N-2 to include key information in their annual reports that they currently disclose in their prospectuses in light of the importance of this information and the increased prominence of shareholder reports under our proposal. Specifically, we propose that these funds include the following information in their annual reports:<sup>203</sup>

<sup>201</sup> In general, these proposed requirements are expressed as a cross-reference to the existing registration statement requirements in Form N-2. See proposed Instructions 4.h(1)–4.h(4) to Item 24 of Form N-2. We considered proposing that these requirements apply to both annual and semi-annual reports to shareholders in the case of registered CEFs. We determined to propose to require this disclosure only in annual reports (and not also semi-annual reports) because annual reports currently provide more comprehensive information than semi-annual reports, and we therefore believe annual reports' information would be better complemented by the proposed additional disclosures.

<sup>202</sup> See *infra* Parts II.H.1.a–II.H.2.d. We also propose to amend Form N-2 to clarify that certain of its requirements for annual reports also apply to BDCs. See proposed Instruction 10 to Item 24 of Form N-2.

<sup>203</sup> See proposed Instruction 4.h(2) to Item 24 of Form N-2 (fee and expense table); Proposed Instruction 4.h(3) to Item 24 of Form N-2 (share



• *Fee and Expense Table*: Form N-2 currently requires registrants to include information about the costs and expenses that the investor will bear directly or indirectly, using specified captions and a specified tabular format.<sup>204</sup> This table is designed to help investors understand the costs of investing in an affected fund and to compare those costs with the costs of other affected funds.<sup>205</sup> The Commission has previously noted the importance of costs to an investment decision and, in the case of registered open-end funds, has specified the location of the fee table to enhance the prominence of the cost information.<sup>206</sup>

• *Share Price Data*: Form N-2 currently requires registrants to include information about the share price of the registrant's stock as well as information about any premium or discount that the share price reflects, compared to the registrant's net asset value.<sup>207</sup> The presence of a premium or discount may bear on the likelihood, frequency, and size of distributions from the fund to its investors, which we believe may be of particular importance to many affected fund investors.

• *Senior Securities Table*: Form N-2 currently requires registrants to include information about each of its classes of senior securities, including bank loans.<sup>208</sup> As with a premium or discount, any outstanding senior securities may bear on the likelihood, frequency, and size of distributions from the fund to its investors.

We request comment on our proposal that these funds include this information in their annual reports:

- Should we require this information to appear in these affected funds' annual reports? Why or why not?
- Should we also require these affected funds to provide this

price data); Proposed Instruction 4.h(1) to Item 24 of Form N-2 (senior securities table).

<sup>204</sup> Item 3.1 of Form N-2.

<sup>205</sup> See Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies, Investment Company Release No. 28064 (Nov. 21, 2007) [72 FR 67790, 67794 (Nov. 30, 2007)].

<sup>206</sup> See *id.*; Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies, Investment Company Act Release No. 28584 (Jan. 13, 2009) [74 FR 4546, 4553 (Jan. 26, 2009)]; Request for Comment on Fund Retail Investor Experience and Disclosure, Investment Company Act Release No. 33113 (June 5, 2018) [83 FR 26891, 26901 (June 11, 2018)] ("Investor Experience Request for Comment").

<sup>207</sup> Item 8.5 of Form N-2; see also proposed Instruction 4.h(3) to Item 24 of Form N-2 (share price data).

<sup>208</sup> Item 4.3 of Form N-2. This information must be audited. See Instruction 1 to Item 4.3 (applying Instruction 8 to Item 4.1 to Item 4.3); Instruction 8 to Item 4.1 (requiring the information to be audited).

information in their semi-annual and other periodic reports?

- Should the required information be the same as the information currently required in the registration statement? Should it be tailored to the annual report? If so, how and why? For example, should information on fees and expenses be backward-looking rather than forward-looking?
- We are proposing to require funds filing a short-form registration statement on Form N-2 to include the key information discussed above in their annual reports. Is the scope of affected funds we have proposed to be subject to this requirement appropriate? Should the scope be expanded or reduced? Why or why not? For example, should all affected funds be subject to the fee and expense information requirements, rather than only those that file a short-form registration on the form?
- Should we permit some or all of the required information to be provided on a fund's website in lieu of including it in the fund's annual report? Would a website disclosure requirement make more frequently and timely disclosure practicable? For example, should we permit a fund not to include the required premium and discount information in its annual report if it provides the information on its website on a daily basis? Would such information be more accessible to investors and other data users than information included in an annual report transmitted to shareholders, or less accessible?

#### b. Management's Discussion of Fund Performance

Currently, mutual funds and ETFs are required to include MDPF in their annual reports to shareholders.<sup>209</sup> That requirement was intended to address our concern that existing disclosure requirements did not provide investors with sufficient information to easily evaluate investment results achieved by mutual funds, or to relate those results to the mutual fund's investment objective.<sup>210</sup> MDPF disclosure aids investors in assessing a fund's performance over the prior year and complements other backward looking information required in the annual report, such as financial statements.<sup>211</sup>

<sup>209</sup> Item 27(b)(7) of Form N-1A. This requirement applies to registered open-end management investment companies other than money market funds.

<sup>210</sup> Disclosure and Analysis of Mutual Fund Performance Information; Portfolio Manager Disclosure, Investment Company Act Release No. 17294 (Jan. 8, 1990) [55 FR 1460, 1462 (Jan. 16, 1990)] ("MDPF Proposing Release").

<sup>211</sup> Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment

This required disclosure is grounded conceptually in the disclosure requirement for operating companies (as well as BDCs) to include a narrative discussion of the financial statements of the company—"management discussion and analysis" or "MD&A"—and to provide an opportunity to look at a company through the eyes of management.<sup>212</sup> MDPF requires, among other things, narrative disclosure about factors that materially affected the fund's performance during the most recently completed fiscal year, as well as the impact on a fund and its shareholders of policies and practices that funds may use to maintain a certain level of distributions.<sup>213</sup> This narrative disclosure requirement is formulated in an intentionally general way, reflecting our view that a flexible approach would elicit more meaningful disclosure tailored to each fund.<sup>214</sup>

Although the Commission has required mutual funds and ETFs to include MDPF disclosure and BDCs, like operating companies, to include MD&A disclosure for some time, Form N-2 does not currently include an MD&A or MDPF requirement for registered CEFs. We believe that investors in these funds—like investors in mutual funds, ETFs, BDCs, and operating companies—would benefit from annual report disclosure that aids them in assessing the fund's performance over the prior year and that complements other information in the report.<sup>215</sup> Moreover, we believe that

Companies, Investment Company Act Release No. 26372 (Feb. 27, 2004) [69 FR 11243, 11254 (Mar. 9, 2004)] ("Quarterly Portfolio Disclosure Adopting Release"). When this disclosure requirement was first adopted, the information could be included in either the prospectus or the annual report, but in 2004 the Commission determined to require that it be included in the annual report to aid investors in assessing a fund's performance over the prior year and to complement other backward looking information required in the annual report, such as financial statements. *Id.*

<sup>212</sup> MDPF Proposing Release, *supra* footnote 210, at 1462 (explaining that the MD&A disclosure requirement includes a discussion of an operating company's liquidity, capital resources, results of operations, and other information necessary to an understanding of the company's financial condition, changes in financial condition, and results of operations; further explaining that it requires the management of an operating company to identify and address those key variables and other qualitative and quantitative factors which are peculiar to and necessary for an understanding and evaluation of the company).

<sup>213</sup> *Id.* at 1461; Item 27(b)(7) of Form N-1A.

<sup>214</sup> MDPF Proposing Release, *supra* footnote 210, at 1462. The narrative discussion must relate back, in part, specifically to the fund's investment strategies and the techniques used by the fund's investment adviser. See Item 27(b)(7)(i).

<sup>215</sup> See Quarterly Portfolio Disclosure Adopting Release, *supra* footnote 211, at 11254; Comment Letter of Investment Company Institute (Oct. 24,



MDFP disclosure requirements are more appropriately tailored to the financial reporting of registered investment companies than MD&A requirements. Therefore, we propose to amend Form N-2 to extend the MDFP disclosure requirements to all registered CEFs. Specifically, we propose to require, similar to Form N-1A, that registered CEFs:

- Discuss the factors that materially affected their performance during the most recently completed fiscal year, including the relevant market conditions and the investment strategies and techniques used by the fund;<sup>216</sup>
- Provide a line graph comparing the initial and subsequent account values at the end of each of the most recently completed ten fiscal years of the fund and a table of the fund's total returns for the 1-, 5-, and 10-year periods as of the last day of the fund's most recent fiscal year;<sup>217</sup> and
- Discuss the effect of any policy or practice of maintaining a specified level of distributions to shareholders on the fund's investment strategies and per share net asset value during the last fiscal year, as well as the extent to which the registrant's distribution policy resulted in distributions of capital.<sup>218</sup>

We request comment on the proposed requirement for registered CEFs to include a discussion of fund performance in their annual reports:

- Should we require MDFP information to appear in a registered CEF's annual report? Why or why not? If so, should we further tailor the current MDFP requirements applicable to mutual funds and ETFs for registered

CEFs, beyond ways in which the proposal is already tailored for registered CEFs?

- Instead of requiring MDFP information for registered CEFs, should we require such funds to disclose MD&A information like BDCs and operating companies? If so, should an MD&A requirement be tailored for registered CEFs? If so, how and why? Should the disclosure requirement vary between funds that are internally managed and those that are externally managed? For example, would an MD&A requirement be more appropriate for internally managed funds and an MDFP requirement be more appropriate for externally managed funds? Why or why not?

• Alternatively, should we bring over any of the MD&A requirements into the proposed MDFP requirement for registered CEFs, in order to further the disclosure goals of MDFP? Would it be appropriate to require or permit forward-looking disclosure, as is included in MD&A disclosure (and if so, are there any related additional rules or rule amendments we should adopt to facilitate this disclosure)? For example, many investors invest in registered CEFs based on an expectation of receiving shareholder distributions. In addition to the proposed requirement that registered CEFs include in MDFP a discussion of distributions to shareholders during the last fiscal year, would investors benefit from a forward-looking discussion of anticipated distributions? If we were to require certain MD&A requirements for registered CEFs, should these requirements apply only to a certain subset of registered CEFs, for example, those that most closely resemble BDCs in terms of investment strategy? If so, what changes to the proposed MDFP disclosure requirements should we make to achieve this result? As another alternative, should we require registered CEFs to provide either MD&A or MDFP disclosure, based on their view of the presentation that would be most informative to investors?

- Are there other ways in which we should modify the proposed MDFP disclosure requirement for registered CEFs to better elicit meaningful disclosure that would further the goals that the Commission discussed when it originally adopted the MDFP requirement for open-end funds?<sup>219</sup> For example, in reviewing MDFP disclosure provided by mutual funds and ETFs, our staff has observed instances in which funds' MDFP disclosure was not

well tailored to the relevant fund and generally discussed economic trends without a meaningful discussion of how those trends (or other factors) materially affected the fund's performance during the period. Are there changes we can make to the proposed MDFP disclosure requirements for registered CEFs to make more clear that MDFP disclosure should discuss the factors that materially affected the fund's performance during the period as opposed to more general discussions of economic trends and fund performance? For example, should we incorporate requirements to: (1) Disclose the impact of particular investments (including large positions and/or significant investments) or investment types that contributed to or detracted from performance; (2) explain a fund's performance in relation to its index; (3) explain how the use of leverage affected fund performance; (4) explain the reason for and effect of any large cash or temporary defensive positions on fund performance; (5) explain the effect of any tax strategies, or the effects of taxes, on fund performance; (6) explain the effect of non-recurring or non-cash income on fund performance; (7) include general discussion of purchases and sales of fund shares and the effects of any share repurchases or tender offers on fund performance; and/or (8) disclose whether the fund engages in high portfolio turnover and the effect of portfolio turnover on fund performance? Are there changes we should make to the proposed average annual total return table to provide additional or more useful information to investors, for example, to require total return based on per-share net asset value, in addition to (as is proposed) total return based on current market price?

- As another alternative, should any of the proposed MDFP requirements for registered CEFs also be required for BDCs to include in their MD&A? For example, should we include the line graph currently required in MDFP in the MD&A requirements applicable to BDCs?

• Should registered CEFs be required to include the line graph that mutual funds and ETFs are required to include in their MDFP disclosure, as we have proposed? If so, should that requirement be differently or further tailored for registered CEFs in any way? If so, how and why?

- The line graph that mutual funds and ETFs are required to include in their MDFP disclosure, and which we would propose to require of registered CEFs, compares the fund's performance to an "appropriate broad-based

2018) on File No. S7-12-18 (recommending that the Commission consider requiring registered CEFs to provide an MDFP in shareholder reports); Comment Letter of A. Wellington (Sept. 3, 2018) on File No. S7-12-18 (noting that registered CEF shareholder reports do not include MDFP and expressing concerns about registered CEF disclosures).

<sup>216</sup> Proposed Instruction 4.g(1) to Item 24 of Form N-2. As proposed, we would expressly permit the information presented to include tables, charts, and other graphical depictions. *Id.* We encourage such depictions to the extent they may be illuminating.

<sup>217</sup> Proposed Instruction 4.g(2) to Item 24 of Form N-2. The proposed requirement for Form N-2 differs from the requirement in Form N-1A in that open-end fund values must be computed on the basis of the fund's net asset value per share, while registered CEF values would be required to be computed on the basis of market price per share or on the basis of net asset value if their shares are not listed. Compare Instruction 1(b) to Item 27(b)(7)(iv) of Form N-1A with proposed Instruction 4.g(2)(A)1 to Item 24 of Form N-2. Because certain registered CEFs have received exemptive relief to offer more than one share class, we are including an instruction regarding class selection for purposes of the line graph computation. See proposed Instruction 4.g(2)(A)2 to Item 24 of Form N-2.

<sup>218</sup> Proposed Instruction 4.g(3) to Item 24 of Form N-2.

<sup>219</sup> See *supra* footnote 210 and accompanying text.

securities market index.”<sup>220</sup> In adopting this requirement, the Commission described such an index as “one that provides investors with a performance indicator of the overall applicable stock or bond markets, as applicable,” while also stating that a fund would have “considerable flexibility in selecting a broad-based index that it believes best reflects the market(s) in which it invests.”<sup>221</sup> Our staff has observed varying practices with respect to the benchmarks funds use. Some funds, for example, disclose their performance against a benchmark index that may not provide a performance indicator of “the overall applicable stock or bond markets,” and in some cases, is not a “securities market index.”<sup>222</sup> Others disclose as their benchmark index a combination of two or more broad-based securities market indexes.<sup>223</sup> We recently requested comment on benchmark indexes in our Investor Experience Request for Comment, with some investors expressing concerns about the effectiveness of the benchmarks certain funds use in presenting their performance.<sup>224</sup> As we continue to consider improvements to the investor experience with fund disclosure,<sup>225</sup> we seek further comment

on how benchmark indexes are used in connection with performance presentations. If an index does not reflect the performance of the overall applicable stock or bond markets, does it provide an effective comparison for investors to understand the performance of their fund relative to the market? If not, should we provide additional limitations on an appropriate benchmark to facilitate a more effective comparison? If so, what kinds of limitations and why?

#### c. Financial Highlights

Currently, registered CEFs are required to include financial highlights in their registration statement,<sup>226</sup> as well as in each annual report to shareholders.<sup>227</sup> This information is arranged to allow investors to trace the operating performance of a fund on a per share basis from the fund’s beginning net asset value to its ending net asset value so that investors may understand the sources of changes.<sup>228</sup> It summarizes the financial statements.<sup>229</sup> BDCs include their full financial statements in their prospectus, and we currently permit BDCs to omit financial highlights disclosure summarizing these financial statements.<sup>230</sup> We understand, however, that it is generally market practice for BDCs to include financial highlights, and we believe that investors would benefit from disclosure summarizing a BDC’s financial statements. In light of the importance of financial highlights information and to provide consistent requirements for all affected funds, we are proposing to require that BDCs, like other affected funds, disclose this information in their registration statements and annual reports.<sup>231</sup>

the current disclosure framework of funds under the Investment Company Act to improve the investor experience. The Commission’s Fall 2018 Regulatory Flexibility Act agenda is available at [www.reginfo.gov](http://www.reginfo.gov).

<sup>226</sup> Item 4.1 of Form N-2; *but see* General Instruction 1 to Item 4.1 of Form N-2 (limiting the applicability of Item 4.1 in the case of BDCs).

<sup>227</sup> Instruction 4.b to Item 24 of Form N-2.

<sup>228</sup> Registration Form for Closed-End Management Investment Companies, Investment Company Act Release No. 19115 (Nov. 20, 1992) [57 FR 56826, 56829 (Dec. 1, 1992)].

<sup>229</sup> Registration Form for Closed-End Management Investment Companies, Investment Company Act Release No. 17091 (July 28, 1989) [54 FR 32993, 32997 (Aug. 11, 1989)].

<sup>230</sup> General Instruction 1 to Item 4.

<sup>231</sup> Proposed Deletion of Instruction 1 to Item 4 of Form N-2.

In addition, we propose to make one conforming change to the financial highlights requirements in Form N-2 to eliminate the requirement that registered CEFs specify the average commission rate paid.<sup>232</sup> Although this information is currently required for registered CEFs,<sup>233</sup> the Commission previously eliminated a similar requirement for open-end funds registered on Form N-1A.<sup>234</sup> The Commission reached this determination after receiving and considering public comment arguing that these rates are technical information that typical investors are unable to understand.<sup>235</sup> We believe that the same considerations meriting elimination of this information from Form N-1A also apply to registered CEFs.

We request comment on the proposed requirement for BDCs to disclose financial highlights and the elimination of the requirement that registered CEFs specify the average commission rate paid:

- Should we require BDCs to disclose financial highlight information? Why or why not?
- BDCs currently disclose information under Item 301 of Regulation S-K that has some similarities to the financial highlights requirement. Would requiring disclosure of both sets of information result in duplicative disclosure obligations? Why or why not? Should we permit the Item 301 information and the financial highlights information to be presented in a combined manner, or should we require each set of information to be disclosed separately? Why?
- Should the required financial highlight information be tailored for BDCs in any way? If so, how and why?
- Should we eliminate the average commission rate paid requirement from Form N-2? Why or why not? Should registered CEFs be distinguished from open-end funds in this respect?

Should the required financial highlight information be tailored for BDCs in any way? If so, how and why?

Should we eliminate the average commission rate paid requirement from Form N-2? Why or why not? Should registered CEFs be distinguished from open-end funds in this respect?

<sup>232</sup> See proposed Item 4.1 of Form N-2.

<sup>233</sup> Item 4.1.1 of Form N-2; Instructions 18–19 to Item 4.1 of Form N-2.

<sup>234</sup> Item 13(a) of Form N-1A; Registration Form Used by Open-End Management Investment Companies, Investment Company Act Release No. 23064 (Mar. 13, 1998) [63 FR 13916, 13936 (Mar. 23, 1998)].

<sup>235</sup> *Id.*

<sup>220</sup> Proposed Instruction 4(g)(2)(F) of Form N-2; *cf.* Instruction 5 of Item 27(b)(7) of Form N-1A.

<sup>221</sup> Disclosures of Mutual Fund Performance and Managers, Investment Company Act Release No. 19832 (Apr. 6, 1993) [58 FR 19050, 19053 (Apr. 12, 1993)].

<sup>222</sup> Our staff has observed that some funds, particularly those that invest in several different asset classes, may select an interest-rate index (*e.g.*, LIBOR), not a securities market index, against which to compare their performance.

<sup>223</sup> Other funds disclose a “blended index” that combines the components of two or more broad-based securities market indices (*e.g.*, 50% S&P 500, 50% Barclays US Aggregate Bond Index). Funds with niche or highly-customized investment strategies may disclose a customized or bespoke index that is used only by the fund in question (or perhaps a small number of funds).

<sup>224</sup> See Investor Experience Request for Comment, *infra* footnote 206 (comments available at <https://www.sec.gov/comments/s7-12-18/s71218.htm>); Comment of Logan Fowler (Aug. 13, 2018) (“Compare to a market measure I understand, and the asset class the fund holds.”); Comment of Hector Ewing (Aug. 30, 2018) (“Compare against a market measure I know, like the S&P 500, not some obscure thing I never heard of.”); and Comment of Frank W. (“Compare all equity funds to S&P 500 or compare all bond funds to Total Bond Index. Compare funds to similar funds (in same category).”).

<sup>225</sup> As described in the Commission’s Fall 2018 Regulatory Flexibility Act agenda, the Division of Investment Management is considering recommending that the Commission propose rule and form amendments to improve and modernize

#### d. Unresolved Staff Comments

As part of the Commission's 2005 securities offering reforms for operating companies, the Commission required certain issuers affected by that rulemaking to disclose outstanding staff comments that remain unresolved for a substantial period of time and that the issuer believes are material.<sup>236</sup> The Commission stated at the time that enhanced Exchange Act reporting provided a principal basis for those rules. Specifically, the Commission emphasized that it is important for issuers to timely resolve any staff comments on their Exchange Act reports, but recognized that the new rules could eliminate some incentives issuers may have to do so.<sup>237</sup> Specifically, the Commission required operating companies that are accelerated filers or WKSIs to disclose, in their annual reports on Form 10-K or Form 20-F, written comments staff made in connection with a review of Exchange Act reports that the issuer believes are material, that were issued more than 180 days before the end of the fiscal year covered by the annual report, and that remain unresolved as of the date of the filing of the Form 10-K or Form 20-F report.<sup>238</sup> This rulemaking, like the 2005 securities offering reforms, may eliminate some incentives for certain affected funds to timely resolve staff comments. Currently, for staff to declare any annual update to the fund's registration statement effective, affected funds generally must resolve all staff comments.<sup>239</sup> Under the proposed amendments, in contrast, affected funds filing a short-form registration statement on Form N-2 would generally no longer need to file annual post-effective amendments subject to staff review.<sup>240</sup> We therefore propose to amend the annual report requirement in Form N-2 to apply a similar requirement to affected funds filing a short-form registration on the form.<sup>241</sup> In addition to written comments on current and periodic reports, we also propose to require these funds to disclose unresolved written comments on their registration statement that they believe are material.<sup>242</sup> Affected funds filing a short-form registration statement on

Form N-2 will have flexibility in providing required prospectus disclosure directly in the prospectus or in Exchange Act reports incorporated by reference. Our proposal would therefore require these funds to disclose material unresolved staff comments on key required disclosures regardless of whether a fund includes them in a shareholder report or directly in the fund's registration statement. These disclosure requirements would provide an incentive for affected funds to timely resolve staff comments, and investors may value information about areas of disagreement that the issuer believes are material.

We request comment on the proposed requirement to disclose unresolved staff comments:

- Should we require disclosure of unresolved staff comments? Why or why not? Are there more appropriate means to provide incentives to timely resolve staff comments? Should we require disclosure of unresolved staff comments in semi-annual reports as well?
- Is the scope of registrants subject to the unresolved staff comments disclosure requirement appropriate? Should the requirement apply to additional registrants? If so, which ones, and why? For example, should the requirement apply to all affected funds, or a different subset of affected funds than proposed? Should the requirement apply, for example, to registered CEFs that file post-effective amendments to registration statements under paragraph (b) of Securities Act rule 486? Similarly, should the requirement apply to mutual funds and ETFs that file post-effective amendments under paragraph (b) of Securities Act rule 485? Alternatively, should the requirement apply to fewer affected funds? If so, which ones, and why?
- Should the staff have a role in determining which unresolved comments should be disclosed? Should we require disclosure of all unresolved comments without regard to a materiality assessment by the issuer?
- Should we specifically require issuers to list each outstanding comment in its disclosure by repeating the comment verbatim as issued by the staff instead of, as proposed, requiring issuers to disclose the substance of any unresolved comment? Should we permit issuers to paraphrase or summarize the outstanding staff comments?
- Is 180 days the right timeframe to resolve outstanding staff comments? Is it too long or too short? Should the 180 days be calculated from the date of the initial written comment letter from the staff, regardless of comments received

after that date that relate to or arise from the original comments or issuer responses to the original comments?

#### 3. New Current Reporting Requirements for Affected Funds

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 certain specified events and information on a current basis to provide investors and the market with timely information about these events. In order to improve information for investors and to provide parity among registered CEFs, BDCs, and operating companies, we are proposing to require registered CEFs to report information on Form 8-K.<sup>243</sup> We also propose to amend Form 8-K 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 the existing reporting requirements and instructions to affected funds.<sup>244</sup>

##### a. Proposal To Require Form 8-K Reporting by Registered CEFs

Form 8-K identifies certain events that are of such importance to investors that prompt disclosure is necessary. Companies may also use Form 8-K to voluntarily disclose any other information that they determine may be material or otherwise important to investors.<sup>245</sup> Under the current regulatory framework, BDCs are required to furnish or file reports on Form 8-K to provide current information about important events. These events include, among others, new material definitive agreements, quarterly earnings announcements and releases, new direct financial obligations, changes in directors, sales of unregistered equity securities, and submissions of matters to a vote of security holders.<sup>246</sup> Registered CEFs

<sup>243</sup> Consistent with the scope of operating companies that currently are required to file reports on Form 8-K, only registered CEFs that are Exchange Act reporting companies under section 13(a) or section 15(d) of the Exchange Act would be subject to Form 8-K requirements under our proposal. See 17 CFR 240.13a-1; 17 CFR 240.13a-11; 17 CFR 240.15d-1; 17 CFR 240.15d-11.

<sup>244</sup> In connection with this proposal, we are proposing to amend Form 8-K as well as rule 13a-11 and rule 15d-11 under the Exchange Act.

<sup>245</sup> See, e.g., Additional Form 8-K Disclosure Requirements and Acceleration of Filing Date, Securities Act Release No. 8106 (June 17, 2002) [67 FR 42914, 42915 (June 25, 2002)]; Additional Form 8-K Disclosure Requirements and Acceleration of Filing Date, Securities Act Release No. 8400 (Mar. 16, 2004) [69 FR 15594, 15595 (Mar. 25, 2004)] ("2004 8-K Adopting Release").

<sup>246</sup> See Items 1.01 (Entry into a Material Definitive Agreement), 2.02 (Results of Operations and

<sup>236</sup> Securities Offering Reform Adopting Release, *supra* footnote 5, at 44787.

<sup>237</sup> *Id.*

<sup>238</sup> *Id.*

<sup>239</sup> See *supra* footnote 25 and accompanying text.

<sup>240</sup> These funds would, however, generally be required to file a new registration statement every three years. See *supra* footnote 19.

<sup>241</sup> Proposed Instruction 4.h(4) to Item 24 of Form N-2.

<sup>242</sup> *Id.*

generally are not required by our rules to report information on Form 8-K,<sup>247</sup> although some do so voluntarily or under exchange rules.<sup>248</sup> Exchange rules generally require certain disclosure to be made on Form 8-K or through another Regulation FD compliant method that is reasonably designed to provide broad non-exclusionary distribution of the information to the public.<sup>249</sup> Approximately 73% of registered CEFs are listed on an exchange and already subject to exchange rules requiring prompt public disclosure of certain information.<sup>250</sup> Registered CEFs may also furnish information on Form 8-K to satisfy public disclosure requirements under Regulation FD.<sup>251</sup>

Financial Condition), 2.03 (Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant), 3.02 (Unregistered Sales of Equity Securities), 5.02 (Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers), and 5.07 (Submission of Matters to a Vote of Security Holders). Based on a review by the staff, BDCs file or furnish reports under these items of Form 8-K more frequently than other mandatory reporting items in the Form. BDCs also made many reports under Item 7.01 (Regulation FD Disclosure) and Item 8.01 (Other Events).

<sup>247</sup> See rules 13a-11(b) and 15d-11(b) under the Exchange Act [17 CFR 240.13a-11(b) and 17 CFR 240.15d-11(b)]. While registered CEFs are required to use Form 8-K to file notice of a blackout period under 17 CFR 245.104 (rule 104 of Regulation BTR), we have recognized that this requirement would only apply to investment companies in rare instances. See rules 13a-11(b)(1) and 15d-11(b)(1) under the Exchange Act; Insider Trades During Pension Fund Blackout Periods, Exchange Act Release No. 47225 (Jan. 22, 2003) [68 FR 4338, 4339 (Jan. 28, 2003)]; Insider Trades During Pension Fund Blackout Periods, Exchange Act Release No. 46778 (Nov. 6, 2002) [67 FR 69430, 69432 (Nov. 15, 2002)] (explaining that because investment companies typically do not have employees, they typically do not maintain employee pension plans and, as a practical matter, there generally would be no blackout periods that would trigger a Form 8-K reporting requirement).

<sup>248</sup> See, e.g., NYSE Listed Company Manual Sections 202.05 and 202.06 (providing the following examples of the types of information that may need to be promptly disclosed to the public: annual and quarterly earnings, dividend announcements, mergers, acquisitions, tender offers, stock splits, major management changes, and any substantive items of unusual or non-recurrent nature); Nasdaq Rule 5250(b)(1).

<sup>249</sup> See, e.g., NYSE Listed Company Manual Section 202.06(A); Nasdaq rule 5250(b)(1); rule 101(e) of Regulation FD [17 CFR 243.101(e)].

<sup>250</sup> As of September 30, 2018, there were 516 listed registered CEFs and 188 unlisted registered CEFs. See *infra* Part IV.A.1.

<sup>251</sup> See rule 101(e) of Regulation FD [17 CFR 243.101(e)]; Item 7.01 of Form 8-K. Affected funds are generally subject to Regulation FD. See rule 101(b) of Regulation FD [17 CFR 243.101(b)] (providing that an issuer subject to Regulation FD is one that has a class of securities registered under section 12 of the Exchange Act [15 U.S.C. 78f] or that is required to file reports under section 15(d) of the Exchange Act [15 U.S.C. 78o(d)], including any closed-end investment company, as defined in section 5(a)(2) of the Investment Company Act [15 U.S.C. 80a-5(a)(2)]).

In adopting the 2005 securities offering reforms, the Commission stated that reforming the securities offering process was possible due, in part, to the fact that operating companies disseminated information to the market on an ongoing basis through Exchange Act reports, including current reporting on Form 8-K.<sup>252</sup> In addition, operating companies must provide current information on Form 8-K to qualify as WKSIs or seasoned issuers and gain the associated benefits (e.g., automatic shelf registration statements, forward incorporation by reference).<sup>253</sup> We are proposing to require registered CEFs to report current information on Form 8-K to improve current information available to registered CEF investors and in recognition of the role of current reporting in the 2005 securities offering reforms that we are proposing to extend to registered CEFs. We also believe that requiring this reporting would address the current lack of parity between registered CEFs and BDCs in terms of current reporting to investors and the market.

While we understand that registered CEFs presently may provide some current disclosure through press releases, voluntary Form 8-K filings, prospectus supplements, or post-effective amendments, we believe it would be beneficial to standardize the current information that all affected funds must disclose and to make this information accessible in a central location on EDGAR.<sup>254</sup> This approach would provide all investors in affected funds with uniform information and

<sup>252</sup> See 2005 Securities Offering Reform Adopting Release, *supra* footnote 5, at 44726. See also *id.* at 44730 (declining to make the benefits of being a reporting issuer, seasoned issuer, or well-known seasoned issuer available to voluntary filers and stating that “such issuers should be required to register under the Exchange Act, and thus become subject to all of the results of registration for all purposes, if they wish to avail themselves of” these benefits).

<sup>253</sup> See General Instruction I.A.3 of Form S-3 (requiring, in relevant part, that an operating company has filed all the material required to be filed pursuant to section 13 or 15(d) of the Exchange Act—which would include Form 8-K—for a period of time, and has filed all such required reports in a timely manner for that period, with the exception of specified Form 8-K items); rule 405 under the Securities Act (requiring an issuer to meet these Form S-3 requirements to qualify as a WKSI).

<sup>254</sup> Notably, registered CEFs would still be permitted to publish current information in press releases or other published documents or statements (“press releases”). If a press release contains information that would meet some or all requirements of Form 8-K and is published before a registered CEF would be required to file a Form 8-K report under any relevant items, the registered CEF could incorporate by reference information from the press release into its Form 8-K report, provided the press release is filed as an exhibit to the report. See General Instruction F of Form 8-K.

reduce potential informational disparities.

We recognize that certain items in Form 8-K are substantively the same as or similar to existing disclosure requirements for registered CEFs, although the existing requirements provide less timely disclosure. For example, registered CEFs are generally required to provide the information required under Item 4.01 (Changes in Registrant’s Certifying Accountant) of Form 8-K in their semi-annual or annual shareholder reports.<sup>255</sup> Further, registered CEFs are required to provide in their semi-annual or annual shareholder reports certain information found in Item 5.07 of Form 8-K about matters submitted to a vote of shareholders.<sup>256</sup> Notably, Form 8-K would require disclosure within 4 business days of the relevant event, while the existing regime calls for disclosure on an annual or semi-annual basis. We believe it would be appropriate to require registered CEFs to provide more timely and current disclosure on these matters on Form 8-K. We are not proposing to remove or otherwise modify current disclosure requirements for registered CEFs that are similar to reportable events under Form 8-K. We believe this approach should not significantly burden registered CEFs since, absent significant changes, they should be able to use their Form 8-K disclosure to more efficiently prepare the corresponding disclosure in their shareholder reports.<sup>257</sup> Moreover, we believe that continuing to require the relevant disclosure in shareholder reports may reduce potential disruptions to shareholders who are accustomed to finding certain information in these reports, and who may not regularly monitor for reports on Form 8-K, and should limit discrepancies between different types of funds’ shareholder reports.

<sup>255</sup> See Instructions 4.d and 5.d of Item 24 of Form N-2. Operating companies are similarly required to provide this information in their annual reports to security holders. See 17 CFR 240.14a-3(b)(4); 17 CFR 240.14c-3(a)(1).

<sup>256</sup> See rule 30e-1(b) under the Investment Company Act [17 CFR 270.30e-1(b)]. We recognize that operating companies and BDCs are not required to provide information about shareholder voting results on Form 10-Q or Form 10-K. See Proxy Disclosure Enhancements, Exchange Act Release No. 61175 (Dec. 16, 2009) [74 FR 68334 (Dec. 23, 2009)].

<sup>257</sup> As discussed below, a registered CEF would not be required to furnish or file a report on Form 8-K if relevant disclosure was already provided in a shareholder report. See proposed amendments to General Instruction B.3 of Form 8-K, discussed *infra* at footnotes 295–296 and accompanying text.

We request comment on our proposal to apply Form 8-K reporting requirements to registered CEFs:<sup>258</sup>

- Should all registered CEFs be required to disclose current information on Form 8-K? If not, why should certain or all registered CEFs be permitted to make use of the registration, communications, and offering amendments discussed in this proposal without providing current information to the market, unlike operating companies and BDCs? Should we require Form 8-K reporting only by listed registered CEFs or by registered CEFs that qualify as WKSIs or that are eligible to file a short-form registration statement? If so, why should certain types of registered CEFs (e.g., unlisted registered CEFs) be treated differently than similarly-situated BDCs or operating companies (e.g., unlisted BDCs)? What would be the potential impacts on investors and the market if we required different levels of information from different categories of registered CEFs? If we do not require certain types of registered CEFs to report on Form 8-K, should we also consider this approach for the same category of BDCs? What would be the potential impact on investors and the market of removing Form 8-K information for the relevant BDCs?

- Do investors and the market have a need for more current disclosure about important events impacting registered CEFs? Why or why not? Do informational needs vary between listed registered CEFs and unlisted registered CEFs? For example, do investors and the market need more current information about listed registered CEFs for purposes of pricing shares? Are investors and the market less likely to need current disclosure from registered CEFs that are engaged in a continuous offering and provide investors and the market information about important changes to their disclosure through prospectus supplements or post-effective amendments?

- Are there existing mechanisms that registered CEFs use to disclose current information about important events to investors, other than disclosures required by exchange rules as discussed above? For example, to what extent do registered CEFs provide current information about the types of important events covered by Form 8-K and our proposed amendments through filings under rule 497, in press releases, or on their websites? How timely and accessible are registered CEFs'

disclosures about important events under the current framework? How does this framework impact the potential costs and benefits of requiring registered CEFs to report information on Form 8-K?

- Should we address potentially duplicative disclosure requirements for registered CEFs under Form 8-K and existing rule and form requirements? If so, how? For example, should we amend rule 30e-1(b) under the Investment Company Act to exclude registered CEFs that file information under Item 5.07 of Form 8-K (Submission of Matters to a Vote of Security Holders) from the requirement to furnish information about matters submitted to a shareholder vote in the fund's annual or semi-annual shareholder report? Would investors be more likely to miss information disclosed only on Form 8-K, and not also included in an annual or semi-annual report to shareholders, because some investors may be more likely to read a shareholder report rather than monitor for 8-K filings during the year?

- Does a listed registered CEF's compliance with exchange disclosure rules impact the potential costs and benefits of requiring listed registered CEFs to report information on Form 8-K? If so, how?

- What are the impacts, if any, of requiring registered CEFs to make reports on Form 8-K but not subjecting other registered investment companies to this requirement?<sup>259</sup> Should we require that other registered investment companies provide current disclosure on Form 8-K or otherwise? Why or why not?

- In addition to the requests for comment above, we request general comment on feasible alternatives to our proposal to require registered CEFs to report on Form 8-K that would minimize the reporting burdens on funds while maintaining the anticipated benefits of the reporting and disclosure. We also request comment on the utility of the information proposed to be

<sup>259</sup> We have not proposed requiring registered investment companies that are not affected funds, such as registered open-end funds, to report information on Form 8-K because these funds are not eligible to take advantage of the other amendments to the registration, communications, and offering rules we are proposing. Further, the new Form 8-K items we are proposing are tailored to affected funds and may not provide useful information for other types of funds. For example, as described below, registered open-end funds typically invest in more liquid investments for which there is publicly-available information surrounding events that may impact valuations, which makes Form 8-K disclosure about these funds' material write-downs less important to investors. See *infra* Part II.H.3.b.ii (discussing proposed Item 10.02 of Form 8-K).

included in reports to the Commission, investors, and the public in relation to the costs to funds of providing the reports.

#### b. Proposed Form 8-K Reporting Items for Affected Funds

We are proposing amendments to Form 8-K as it relates to affected funds to improve current reporting of important information by affected funds to investors and the market. We believe it is appropriate to propose certain new reporting items that would apply to all affected funds to better tailor Form 8-K disclosure to these types of investment companies. We believe these amendments enhance parity between affected funds and operating companies that are able to take advantage of the registration, communications, and offering rules in the 2005 securities offering reforms with respect to the amount of current information available to investors, consistent with the overall intent of the Registered CEF and BDC Acts.

We believe many current reporting items are relevant to affected funds and provide information that is important to investors and the market. However, based on an analysis of BDC reporting on Form 8-K, BDCs did not file any reports under 7 of the 23 mandatory reporting items reflected in Item 1.01 through Item 5.08 over a 3-year review period, and there was a relatively low volume of reporting on several other items.<sup>260</sup> While we recognize that Form 8-K is meant to capture important events, many of which may occur at a low frequency, we believe it would be beneficial to investors and the market to make certain targeted amendments to Form 8-K as it applies to affected funds to ensure that investors and the markets receive important current information from affected funds. The additional reporting items we propose are designed to recognize certain differences between events that are relevant to affected funds and those that are relevant to operating companies. We believe these additions should promote parity between affected funds and operating companies with respect to the market benefits of current disclosure about relevant important events. This approach is similar to our approach to applying tailored Form 8-K reporting requirements to asset-backed issuers.<sup>261</sup>

<sup>260</sup> See also *infra* footnotes 415–416 and accompanying text.

<sup>261</sup> See section 6 of Form 8-K (identifying six discrete reportable events that apply only to asset-backed securities); Asset-Backed Securities, Exchange Act Release No. 50905 (Dec. 22, 2004) [70 FR 1506, 1508, 1577–80 (Jan. 7, 2005)] (establishing separate Form 8-K reportable events for asset-

<sup>258</sup> We also request comment on the proposed compliance date for the proposed amendments to Form 8-K in Part II.K *infra*.

Specifically, we are proposing to add new Section 10 to Form 8-K to list two additional reportable events for affected funds. Under new Section 10, an affected fund would be required to file a report on Form 8-K if the fund has: (1) A material change to its investment objectives or policies; or (2) a material write-down in fair value of a significant investment. The first item represents an event that does not occur in operating companies and, thus, it has not previously been considered for purposes of current reporting requirements on Form 8-K. The second item is similar to the Form 8-K requirement that operating companies report material impairments, but with necessary modifications to tailor the disclosure requirements to affected funds and their use of fair value accounting under generally accepted accounting principles (“GAAP”). We believe these two events are important to investors and that affected funds should be required to provide timely disclosure when they occur. We believe that the proposed reportable events occur infrequently and should not result in numerous, persistent reports on Form 8-K by affected funds.

We request comment immediately below on this general approach and, separately, discuss each new proposed Form 8-K item.

- Should we add new reporting items to Form 8-K for affected funds? Why or why not? Should reportable items be the same or different for registered CEFs and BDCs?

- Should we expressly exclude affected funds from being required to report certain events covered by existing Form 8-K items, similar to the approach we took for asset-backed issuers? Which items should be covered by such an exclusion, and why? What are the potential benefits and costs of this approach?

- Beyond the proposed additional reporting items for affected funds, are there other events that are of such

backed securities in recognition that many of the Commission’s then-existing disclosure and reporting requirements did not elicit relevant information for most asset-backed securities transactions). Similar to asset-backed issuers, affected funds differ from corporate issuers because, for example, they typically do not have employees and they are generally formed to provide investors with exposure to a pool of assets. Unlike our approach to asset-backed issuers, we are not proposing a General Instruction to Form 8-K to exclude affected funds from certain reporting requirements. While we believe that certain items will never or very rarely create reporting obligations for affected funds, excluding affected funds from certain reporting requirements may unduly complicate Form 8-K and may not provide tangible benefits since affected funds are unlikely to be subject to such reporting requirements regardless of whether we provide specific exclusions.

importance to investors that we should require affected funds to report these events on Form 8-K? What are these events, and why are they important to investors? What are the potential benefits and costs of requiring an affected fund to furnish or file a report on Form 8-K for such events? For example, are there events covered by rule 8b-16(b) under the Investment Company Act, other than material changes to a fund’s investment objectives or policies, that an affected fund should be required to report on Form 8-K?<sup>262</sup> Are there other ways we should modify Form 8-K to recognize differences between affected funds and operating companies?

- An affected fund would be required to file a Form 8-K for both proposed reporting items in Section 10. Should we instead permit an affected fund to furnish rather than file a Form 8-K report for any of the proposed new reporting items? If so, which item, and why?<sup>263</sup> Should affected funds be permitted to furnish reports under certain items of Form 8-K that other issuers are required to file? Alternatively, should affected funds be required to file information that other issuers may furnish? Please explain any basis for treating affected funds differently.

#### i. Material Change to Investment Objectives or Policies

Information about an affected fund’s investment objectives or policies, such as the types of instruments and investment practices it uses, is important to prospective investors and current shareholders to help inform their investment decisions. Currently, affected funds disclose information about a material change in their investment objectives or policies through a post-effective amendment to a registration statement (in the case of a fund that is selling its securities in a delayed or continuous offering) or a periodic report. For example, certain registered CEFs are not required to amend their registration statements on an annual basis as long as their annual reports to shareholders disclose, among other things, any material changes to the fund’s investment objectives or policies

<sup>262</sup> See 17 CFR 270.8b-16(b).

<sup>263</sup> A Form 8-K report that is “furnished” rather than “filed” is not subject to section 18 of the Exchange Act or otherwise subject to the liabilities of that section, unless the registrant specifically states that the information is to be considered “filed” under the Exchange Act or incorporates it by reference into a filing under the Securities Act or the Exchange Act. See General Instruction B.2 of Form 8-K.

that have not been approved by shareholders.<sup>264</sup>

Given the importance of this information to investors, we are proposing to require current disclosure about a material change in an affected fund’s investment objectives or policies.<sup>265</sup> Under proposed Item 10.01 of Form 8-K, an affected fund would be required to file a Form 8-K report if the fund’s investment adviser, including any sub-adviser, has determined to implement a material change to the registrant’s investment objectives or policies, and such change has not been, and will not be, submitted to shareholders for approval.<sup>266</sup> A reporting obligation would be triggered under this item once an affected fund’s adviser determines 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, 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.<sup>267</sup>

A report under proposed Item 10.01 would disclose the date the adviser plans to implement the material change to the affected fund’s objectives or policies, as well as a description of the material change. This description of the material change should help an investor understand the change and how it relates to the fund’s current investment objectives and policies.<sup>268</sup> Affected

<sup>264</sup> See rule 8b-16 under the Investment Company Act [17 CFR 270.8b-16].

<sup>265</sup> For these purposes, investment objectives or policies would mean the information specified in Item 8.2 of Form N-2. See proposed Instruction 1 to Item 10.01 of Form 8-K.

<sup>266</sup> A sub-adviser is typically responsible for the day-to-day portfolio management of some or all assets of a fund, subject to oversight by the fund’s adviser and board of directors. We understand that sub-advisory agreements already establish procedures for a sub-adviser to communicate with the adviser or board about matters related to a fund’s investment objectives or policies to, among other things, ensure that the fund’s assets are being managed consistently with its disclosed investment objectives or policies.

<sup>267</sup> See proposed Instruction 2 to Item 10.01 of Form 8-K. The most recent disclosure would be the later of the most recent version of the fund’s prospectus (*i.e.*, that included in the fund’s effective registration statement or as modified through post-effective amendments or prospectus supplements) or its most recent periodic report. A BDC’s most recent periodic report would be the most recently filed report on Form 10-Q or Form 10-K, while a registered CEF’s most recent periodic report would be the most recently filed annual or semi-annual report to shareholders under rule 30b2-1 under the Investment Company Act.

<sup>268</sup> The Form 8-K report should not, for example, solely discuss a new investment practice or technique without explaining how it relates to or modifies the fund’s most recent disclosure of its investment objectives and policies.

funds also may disclose other information related to a material change in investment objective or policy in a Form 8-K report filed under proposed Item 10.01. For example, an affected fund could disclose material changes in the fund's risk factors that are associated with the material change to its investment objective or policy.<sup>269</sup>

Affected funds engaged in a delayed or continuous offering of their securities are subject to other requirements to update the disclosure in their registration statements. A fund would not be required to file a Form 8-K report under proposed Item 10.01 if it provides substantially the same information in a post-effective amendment.<sup>270</sup> A fund that relies on the proposed short-form registration instruction could, however, update its registration statement by filing a Form 8-K report instead of a post-effective amendment.<sup>271</sup> A registered CEF relying on rule 8b-16(b) to avoid updating its registration statements on an annual basis would continue to be required to disclose in its annual report to shareholders any material change in its investment objectives or policies.<sup>272</sup>

We request comment on our proposal to require Form 8-K disclosure if an affected fund's adviser has determined to make a material change to the fund's investment objectives or policies:

- Should a report under proposed Item 10.01 include different information than what we have proposed? Are there additional types of information that would be helpful to investors or the

market? For example, should affected funds be required to report under proposed Item 10.01 any changes to principal risk factors that accompany a material change to the fund's investment objectives or policies that the fund discloses in such report? Why or why not?

- Current disclosure on Form 8-K is generally required within 4 business days after the relevant event occurs.<sup>273</sup> Should we modify the timeframe in which an affected fund must file a report under proposed Item 10.01? If so, what is a more appropriate timeframe, and why should the reporting timeframe be different for proposed Item 10.01 than the reporting timeframe for other items under Form 8-K? Rather than require disclosure within 4 business days after an affected fund's adviser has determined to implement a material change to the fund's investment objectives or policies, should we require an affected fund to file a report on Form 8-K concurrent with, or before, any material change to the fund's investment objectives or policies? Would this approach be administratively easier or more difficult for funds to implement in practice? Would this approach raise front-running concerns or impact the usefulness of information to investors or the market more generally?

- 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? <sup>274</sup>

- Instead of generally requiring current disclosure on Form 8-K before a material change to the fund's investment objectives or policies is implemented, should we require Form 8-K disclosure after the adviser has begun to implement the material change? If so, when should we require disclosure? For example, should we require Form 8-K disclosure when the fund's investment portfolio has changed by a defined threshold (such as a 5% or 10% change in total assets invested in a particular industry, asset type,

geography, or credit quality)? What are the advantages and disadvantages of this approach, including the impact on investors of less timely disclosure?

- Should we exempt registered CEFs from the requirement in rule 8b-16 to report material changes to a fund's investment objectives or policies in its annual report if they have already reported the change on Form 8-K? Why or why not?

- BDCs are required to disclose material changes to their risk factors on a quarterly basis, while registered CEFs are generally required to make this disclosure on an annual basis.<sup>275</sup> Should registered CEFs be required to provide updated disclosure about material changes to risk factors on a more frequent basis, such as semi-annually in their shareholder reports? Why or why not?

## ii. Material Write-Downs

Item 2.06 of Form 8-K requires a registrant to report certain information if it concludes that a material charge for impairment to one or more of its assets is required under GAAP applicable to the registrant. Because affected funds use fair value accounting to value their investments, Item 2.06 does not apply to them.<sup>276</sup> To provide investors with consistent information and to promote parity with operating companies, we are proposing a new Form 8-K reporting item that is conceptually similar to Item 2.06, but tailored to the accounting method used by affected funds.

Specifically, proposed Item 10.02 would require reporting if an affected fund concludes that a material write-down in fair value of a significant investment is required under GAAP applicable to the affected fund. An affected fund would have a reporting obligation under this item once a conclusion that a material write-down is required is made in accordance with the fund's valuation procedures.

We believe a material decline in the valuation of one or more significant investments of an affected fund would be important to investors. Such a decline would likely have a significant impact on the value of an investment in

<sup>275</sup> See *supra* footnote 269.

<sup>276</sup> In defining "value," section 2(a)(41) of the Investment Company Act distinguishes between the market value of securities for which market quotations are readily available and the fair value, as determined in good faith by the board of directors, of other securities and assets. See 15 U.S.C. 80a-2(a)(41). Fair value accounting, as that term is used in GAAP, refers to the method investment companies use to value all investments, regardless of the availability of market quotations. Consistent with GAAP, we use fair value in proposed Item 10.02 to refer to the method for valuing any investment of an affected fund.

<sup>269</sup> Affected funds are otherwise required to disclose material changes in risk factors in periodic or annual reports. See Item 1A to Part II of Form 10-Q (requiring BDCs to disclose any material change to risk factors previously disclosed in its annual report on Form 10-K); rule 8b-16(b)(4) (requiring registered CEFs to disclose any material change in the principal risk factors associated with investment in the fund in its annual report to shareholders).

<sup>270</sup> See proposed Instruction 3 to Item 10.01 of Form 8-K.

<sup>271</sup> See *supra* Part II.B.2.a. If the material change in the fund's investment objectives or strategies involves facts or events that, individually or in the aggregate, represent a fundamental change in the information set forth in the fund's registration statement and the fund discloses this change on Form 8-K in lieu of filing a post-effective amendment, the date the fund filed the Form 8-K report would be a new effective date of its registration statement for purposes of the last paragraph of section 11(a) of the Securities Act. See rule 158(c)(3) under the Securities Act [17 CFR 230.158(c)(3)].

<sup>272</sup> See *supra* Part II.H.3.a (discussing our determination to not propose to remove or otherwise modify current disclosure requirements for registered CEFs that are similar to reportable events under Form 8-K). Additionally, we believe annual report disclosure of all material changes to a fund's investment objectives or policies that have occurred over the past year would continue to benefit shareholders.

<sup>273</sup> See General Instruction B.1 of Form 8-K.

<sup>274</sup> See *supra* footnote 266 (discussing sub-advisers).



the fund. Further, unlike open-end funds, which must maintain sufficiently liquid assets in order to provide daily redemptions (and generally must limit their investments in illiquid securities to 15% of the fund's assets),<sup>277</sup> affected funds often invest more significantly in less liquid investments where there is less publicly-available information surrounding events that may impact valuations.<sup>278</sup> We recognize that affected funds—particularly registered CEFs—may hold a range of investment types, including liquid securities that have publicly-available pricing information. While investors may have less need for current disclosure on Form 8-K regarding a material write-down of an investment that has public pricing information, we propose to require affected funds to report a material write-down of any investment type, provided the investment is a significant size of the fund's portfolio. Capturing all investment types would provide greater and more uniform information to investors about potentially significant changes to the value of their investment in an affected fund. We propose to balance the broad scope of investment types that could trigger a reporting obligation by limiting this reporting item to only those investments that are significant in size.

Under proposed Item 10.02 of Form 8-K, an affected fund would be required to report the date it concluded that a material write-down in fair value was required and an estimate of the amount or range of amounts of the material write down. Although affected funds may not assess valuations of their investments on a continuous (*i.e.*, daily or weekly) basis and are generally only required to calculate their NAVs at discrete times under the Investment Company Act (*e.g.*, prior to selling shares or in connection with their periodic reports), we understand that affected funds typically monitor and review investment valuations between their periodic reports, particularly if a significant event occurs that is likely to impact the value of one or more sizable investments. An affected fund would be required to report on Form 8-K if it concludes that a material write-down of

a significant investment is required in connection with this process. We recognize that a fund may write down the fair value of an investment for a variety of reasons, including company-specific considerations or events (such as bankruptcy) or macro-level events that cause a market decline in a certain sector or type of security. An affected fund would not be required to disclose the reasons it determined that a material write-down of a significant investment is required.

With respect to the requirement to report an estimate of the amount or range of amounts of the material write down, an affected fund would not be required to disclose an estimate in its initial report on Form 8-K if it was unable to make a good faith estimate at the time it was required to file a Form 8-K report. However, the affected fund would be required to file an amended report on Form 8-K under this item within 4 business days after it makes a determination of the estimate or range of estimates. This approach is similar to current reporting by operating companies under Item 2.06 of Form 8-K. We believe that this requirement would be more relevant for less liquid investments where the affected fund has discretion under GAAP to determine fair value.

Instruction 1 to proposed Item 10.02 would clarify the meaning of a “significant” investment for these purposes.<sup>279</sup> An investment would be considered significant if the affected fund's and its other subsidiaries' investments in a portfolio holding exceed 10% of the total assets of the registrant and its consolidated subsidiaries.<sup>280</sup> We are proposing that an investment be greater than 10% of the affected fund's total assets to be significant for these purposes to focus on material write-downs that may substantially affect a fund's NAV and, thus, would be of greater interest to investors. A 10% threshold also is consistent with our definition of

acquisitions and dispositions that involve a significant amount of assets for purposes of Item 2.01 of Form 8-K.<sup>281</sup> To determine whether a portfolio holding is significant, an affected fund would be required to aggregate investments in the same issuer.<sup>282</sup> An affected fund would use the valuation of the portfolio holding prior to the material write-down to determine whether such holding exceeds 10% of total assets and, thus, is a significant investment.

Like Item 2.06 of Form 8-K, an affected fund would not have to file a report under proposed Item 10.02 if the conclusion 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 periodic report is filed on a timely basis, and such conclusion is disclosed in the report.<sup>283</sup>

Rather than propose to require Form 8-K disclosure about a material write-down of a significant investment, we considered proposing to require an affected fund to disclose a significant decline in the value of its investment portfolio as a whole. Specifically, we considered requiring an affected fund to report on Form 8-K when its NAV declines by more than 10% over a specified period. We recognize investors may have an interest in significant NAV declines for affected funds in which they invest since, like a material write-down, a significant decline in NAV will likely impact the value of their investments and may be useful to inform investment decisions.<sup>284</sup> Additionally, a requirement to report a significant decline in NAV would more broadly apply to all affected funds, while the proposed material write-down requirement only applies to affected funds that hold large investments in a

<sup>281</sup> See Instruction 4 to Item 2.01 of Form 8-K.

<sup>282</sup> 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.

<sup>283</sup> See Instruction to Item 2.06 of Form 8-K; proposed Instruction 3 to proposed Item 10.02 of Form 8-K. The relevant periodic reports for registered CEFs would be annual and semi-annual reports to shareholders on Form N-CSR, while the relevant periodic reports for BDCs would be quarterly and annual reports on Form 10-Q and Form 10-K.

<sup>284</sup> While shares of an affected fund do not necessarily trade at NAV, information about an affected fund's NAV could help the market to price an affected fund's shares in certain circumstances and could help an investor otherwise make investment decisions, including by being able to better assess the price of a fund's shares.

<sup>277</sup> See rule 22e-4 under the Investment Company Act [17 CFR 270.22e-4]; Investment Company Liquidity Risk Management Programs, Investment Company Act Release No. 32315 (Oct. 13, 2016) [81 FR 82142 (Nov. 18, 2016)].

<sup>278</sup> For example, there is often little information publicly available about private small and mid-sized businesses in which BDCs often invest. While an investor has access to a BDC's schedule of investments and the fair value of such investments on a quarterly basis, the investor generally has little insight into the operations of a portfolio company or events that may impact its value.

<sup>279</sup> Item 2.06 of Form 8-K requires an operating company to report a material charge for impairment to one or more of its assets, including, without limitation, impairments of securities or goodwill. For purposes of affected funds, we believe it is appropriate to limit the requirement to report material write-downs to only those fund investments that are of a significant size relative to the fund's total portfolio. These material write-downs would be more likely to substantially affect a fund's NAV and would be more relevant to investors.

<sup>280</sup> Based on staff analysis, approximately 14% of affected funds hold investments that are greater than 10% of total assets. We anticipate that fewer funds would be required to file Form 8-K reports under the proposed item since a reporting obligation is not triggered unless a material write-down occurs.



single issuer.<sup>285</sup> This broader scope could potentially enhance the information available to investors.

However, a requirement to report significant declines in NAV could result in a large amount of Form 8-K reporting by affected funds in the event of a general market downturn or, for funds invested in a particular sector, a downturn in that sector. Moreover, investors may already have access to readily-available public information (such as news reports, disclosure of fund strategies and portfolio holdings, and daily or weekly NAV information for some funds) that could reduce the value of this reporting. For example, with respect to affected funds that already publicly disclose their NAVs on a daily or weekly basis,<sup>286</sup> Form 8-K reporting about declines in these funds' NAVs could be less timely than information that is already available to the market. Since affected funds publish their NAVs at different frequencies—from semi-annual to daily NAV reporting—there also is not a clear baseline for measuring declines in NAV across all affected funds. This variability likely would either result in inconsistent reporting standards for affected funds (e.g., if the 10% decline was measured from the most-recently published NAV) or reporting of stale information (e.g., if the 10% decline was measured from the NAV a registered CEF disclosed in its most recent semi-annual shareholder report, even if it publishes a daily NAV). Given these concerns, we preliminarily believe that the requirement to report material write-downs of significant investments in proposed Item 10.02 would be more likely to provide investors with timely, relevant, and consistent information that they cannot otherwise discern from currently-available public disclosures.

We request comment on proposed Item 10.02 of Form 8-K, including potential alternatives for providing investors and the market with timely information about declines in the value of an affected fund's portfolio:

- Should a report under proposed Item 10.02 include different information than what we have proposed? Are there additional types of information that would be helpful to investors or the market?
- Should we modify the timeframe in which an affected fund must file a report under proposed Item 10.02? If so, what is a more appropriate timeframe,

and why should the reporting timeframe be different for proposed Item 10.02 than the reporting timeframe for other items under Form 8-K, particularly Item 2.06?

- Should proposed Item 10.02 only require an affected fund to report a material write-down of certain types of investments, such as investments for which there are no readily available market quotations or investments that do not have publicly-available pricing information? For any investment types that should be excluded, please discuss the potential impact on investors (e.g., whether investors have existing sources of information to identify material declines in the value of significant portfolio holdings of an affected fund) and affected funds (e.g., the impact of the exclusion on an affected fund's reporting burden under proposed Item 10.02).

- Should we limit proposed Item 10.01 to certain types of affected funds? For example, do affected funds that consistently publish daily NAVs provide sufficient information to investors and the market about the value of their portfolios such that information about material write-downs would not be important?

- Should we modify our proposed definition of a significant investment to capture a smaller or larger investment size? If so, what is a more appropriate definition of significant investment for purposes of proposed Item 10.02, and why?

- Should a reporting obligation be triggered under proposed Item 10.02 when the affected fund concludes, in accordance with its valuation procedures, that a material write-down is required under GAAP, as proposed? Does this approach establish a sufficiently concrete guideline for determining when a reporting obligation has been triggered? If not, under what circumstances should an affected fund be required to report about a material write-down determination?

- Should the determination of a significant investment account for a group of investments in the same issuer that are significant in the aggregate? If not, why not? Should a fund also be required to aggregate derivatives investments that provide exposure to the same issuer or reference asset under certain circumstances? If so, when? If an affected fund were required to aggregate derivatives contracts, what values should it use? Because the market value of a derivatives contract will generally be small and will not reflect the market exposure provided by the contract, would it be more appropriate for a fund to aggregate the value of the underlying

reference asset rather than the value of the derivatives contracts? Why or why not?

- Should we allow an affected fund to not file a Form 8-K report if the conclusion that a material write-down is required is made in connection with the preparation, review, or audit of financial statements required to be included in its next Exchange Act periodic report, the periodic report is timely filed, and the conclusion is disclosed in the report, as proposed? Why or why not?

- Do affected funds need more guidance on how to calculate whether a portfolio holding is a significant investment or on any other aspects of proposed Item 10.02?

- Instead of requiring affected funds to report material write-downs of significant investments on Form 8-K, should we require affected funds to use a different approach to provide information about declines in the value of their portfolio investments? For example, should we require affected funds to file Form 8-K reports when their NAVs decline by a specified percent (such as more than 10%) over a specified period? If so, what is the appropriate baseline for measuring a decline in NAV since affected funds publish their NAVs at different frequencies? For instance, should a NAV decline be measured against the most recently published NAV or the NAV disclosed in the fund's most recent periodic report? Is information about a NAV decline relevant for all affected funds, or should this requirement be limited to a subset of affected funds (e.g., those that do not publish a NAV on a daily basis or those that invest in less liquid investments that lack publicly-available pricing information)? How should such a Form 8-K reporting requirement interact with the undertaking in Item 34.1 of Form N-2?<sup>287</sup> What information should we require in a Form 8-K report about a significant decline in NAV (e.g., the amount of the NAV decline, the date of the determination, and the associated impacts on the fund or its investors)?

iii. Impact on Eligibility Under the Proposed Short-Form Registration Instruction of Form N-2 and Safe Harbor

While operating companies generally must timely file Exchange Act reports to be eligible to use Form S-3, there is an

<sup>285</sup> See *supra* footnote 280.

<sup>286</sup> For example, many listed registered CEFs publicly disclose daily or weekly NAVs. See, e.g., Barron's Market Data Center for Closed-End Funds, available at [http://www.barrons.com/mdc/public/page/2\\_3040-CEFmain.html](http://www.barrons.com/mdc/public/page/2_3040-CEFmain.html).

<sup>287</sup> This undertaking provides that an affected fund will amend its prospectus and suspend its offering in the interim if subsequent to the effective date of its registration statement, the NAV declines by more than 10% from its NAV as of the effective date of the registration statement. See Item 34.1 of Form N-2.

exception for failing to timely file reports under certain Form 8-K items.<sup>288</sup> Separately, companies that are required to report on Form 8-K have a limited safe harbor from Exchange Act section 10(b) and rule 10b-5 if they fail to file a report under many of the same Form 8-K items.<sup>289</sup> For parity, we propose to implement this same general approach for affected funds.

As a general matter, the Commission has excluded Form 8-K items from the timeliness requirement of Form S-3 and provided a limited safe harbor for Form 8-K items when they require management to quickly assess the materiality of an event or to determine whether a disclosure obligation has been triggered.<sup>290</sup> Thus, we believe it would be appropriate to allow affected funds to file short-form registration statements even if they fail to timely file reports required solely under proposed Items 10.01 or 10.02, in addition to the other Form 8-K items identified in Form S-3.<sup>291</sup> We also propose to extend the safe harbor to proposed Items 10.01 and 10.02.

Like operating companies that use Form S-3, an affected fund that elects

<sup>288</sup> Form S-3 requires, among other things, that a registrant has timely filed its required reports, other than reports required solely pursuant to Items 1.01, 1.02, 1.04, 2.03, 2.04, 2.05, 2.06, 4.02(a), or 5.02(e) of Form 8-K. See General Instruction I.A.3(b) of Form S-3.

<sup>289</sup> See rules 13a-11(c) and 15d-11(c) under the Exchange Act [17 CFR 240.13a-11(c) and 17 CFR 240.15d-11(c)] (providing 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). Notably, the safe harbor only applies to a failure to file a report on Form 8-K. It does not provide protection from section 10(b) and rule 10b-5 where an affected fund has a duty to disclose information for any reason apart from the Form 8-K requirement. See 2004 8-K Adopting Release, *supra* footnote 245, at 15607. For example, the safe harbor would not protect a fund that files a short-form registration statement from liability under section 10(b) or rule 10b-5 (or other provisions of the federal securities laws) if the fund was engaged in an offering and its failure to file a Form 8-K report under an item covered by the safe harbor would result in the fund having a material misstatement or omission in its registration statement. See, e.g., section 10 of the Exchange Act [15 U.S.C. 78j]; sections 11, 12(a)(2), and 17(a) of the Securities Act [15 U.S.C. 77k, 77l(a)(2), and 77q(a)]; rule 10b-5 under the Exchange Act [17 CFR 240.10b-5]; rule 159 under the Securities Act [17 CFR 230.159].

<sup>290</sup> The Commission also has considered whether a company's sudden loss of eligibility to use Form S-3 under the circumstances could cause a potentially significant negative consequence that is disproportionate to an untimely Form 8-K filing. See 2004 8-K Adopting Release, *supra* footnote 245, at 15606-07.

<sup>291</sup> See proposed General Instruction A.2.a of Form N-2. Thus, an affected fund'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 fund's ability to meet the terms of General Instruction I.A.3(b) of Form S-3 for purposes of the short-form registration instruction of Form N-2.

to file a short-form registration statement on Form N-2 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.<sup>292</sup> In addition, consistent with the approach for operating companies, the safe harbor from section 10(b) and rule 10b-5 included in rules 13a-11 and 15d-11 would extend 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.<sup>293</sup> While we recognize that linking reporting compliance with continued eligibility to file a short-form registration statement on Form N-2 may result in loss of access to shelf registration, other issuers have long faced similar consequences. We believe it would be appropriate to extend the same treatment to affected funds to provide parity with operating companies, consistent with the BDC Act and Registered CEF Act, and in recognition of the important role of timely Exchange Act reporting in the shelf registration system.<sup>294</sup>

We request comment on the proposed impact of delinquent Form 8-K filings on eligibility to file a short-form registration statement on Form N-2 and our proposed safe harbor amendments, particularly with respect to proposed Items 10.01 and 10.02:

- Should an affected fund lose its eligibility to file a short-form registration statement on Form N-2 or be disqualified from the safe harbor from section 10(b) and rule 10b-5 if it fails to timely report under proposed Items 10.01 or 10.02? If so, why should proposed Item 10.02 be treated differently than Item 2.06 of Form 8-K?
- Should affected funds be eligible to use the short-form registration instruction if they fail to timely file Form 8-K reports under other items, beyond those we have proposed? If so, which items, and why should affected funds be treated differently than operating companies for these purposes?
- For purposes of the safe harbor, should a registered CEF be required to disclose Form 8-K information that it has failed to timely report on a more

frequent basis than semi-annually, given that BDCs and operating companies must disclose such information on a quarterly basis? If so, how should we implement such a change since registered CEFs are not subject to similar quarterly reporting requirements?

#### c. Additional Amendments to Form 8-K for Affected Funds

We are proposing certain modifications to the General Instructions in Form 8-K, as well as instructions relating to specific reporting items, to make them more applicable to affected funds, particularly registered CEFs. These modifications will only apply to affected funds.

With respect to the General Instructions to Form 8-K, we propose to add a modified definition of "previously reported" in General Instruction B.3 for registered CEFs. Currently, this instruction makes it clear that registrants are not required to report on Form 8-K if they have previously reported substantially the same information in a statement under section 12 of the Exchange Act, a report under section 13 or 15(d), a definitive proxy statement or information statement under section 14, or a registration statement under the Securities Act.<sup>295</sup> To recognize that registered CEFs also may report information under the Investment Company Act, we propose to amend the instructions to make it clear that registered CEFs are not required to make an additional report on Form 8-K if they have previously reported an event or transaction in a publicly-available filing described in rule 8b-2(i) of the Investment Company Act.<sup>296</sup> This will include certain reports filed under section 30 and registration statements filed under section 8 of the Investment Company Act. Similarly, we propose to add a reference to registration statements filed under the Investment

<sup>295</sup> See rule 12b-2 under the Exchange Act [17 CFR 240.12b-2] (defining "previously reported").

<sup>296</sup> See rule 8b-2(i) under the Investment Company Act [17 CFR 270.8b-2(i)] (defining "previously reported" to include a registration statement filed under section 8 of the Investment Company Act or under the Securities Act, a report filed under section 30 of the Investment Company Act or section 13 or 15(d) of the Exchange Act, a definitive proxy statement filed under section 20 of the Investment Company Act or section 14 of the Exchange Act, or a prospectus filed under the Securities Act). This proposal would not prevent a registered CEF from reporting on Form 8-K information previously reported in a section 30 report for purposes of forward incorporating such information into the registration statement by reference.

<sup>292</sup> See General Instruction A.2.a of Form N-2; General Instruction I.A.3(a) of Form S-3.

<sup>293</sup> This is already the case for BDCs since they are required to file periodic reports on Form 10-Q and Form 10-K. See Item 5 of Form 10-Q and Item 9B of Form 10-K; 2004 Form 8-K Adopting Release, *supra* footnote 245, at 15607. We are proposing to add new Instruction 6.h to Item 24 of Form N-2 to require a registered CEF to disclose in its next shareholder report any information that it was required to disclose in a report on Form 8-K for the relevant half-year period but did not disclose.

<sup>294</sup> See *supra* Part II.B.2.a (discussing the importance of the timely reporting requirement for purposes of Form S-3 and the proposed Form N-2 short-form registration instruction).

Company Act in General Instruction B.5.<sup>297</sup>

As for the amendments to existing reporting items, we are proposing clarifications to the instructions for Items 2.02 and 3.02 of Form 8-K to extend certain allowances to affected funds. With respect to Item 2.02 (Results of Operations and Financial Condition), Instruction 4 to this Item currently states that a registrant is not required to report information under the Item when it is disclosing its results of operations and financial condition in a quarterly report on Form 10-Q or an annual report on Form 10-K. Since registered CEFs do not report information on these forms, we are proposing to provide the same treatment to shareholder reports that registered CEFs file with the Commission under rule 30b2-1 under the Investment Company Act.<sup>298</sup> Similarly, Instruction 2 to Item 3.02 (Unregistered Sales of Equity Securities) allows smaller reporting companies to sell a larger percentage of unregistered securities (relative to the number of shares outstanding of the relevant class of equity securities) than other registrants before triggering a Form 8-K reporting obligation,<sup>299</sup> but small affected funds would be unable to rely on the current provision.<sup>300</sup> We propose to revise Instruction 2 to Item 3.02 to allow small affected funds to use the same 5% threshold available to smaller reporting companies.<sup>301</sup>

<sup>297</sup> Amended General Instruction B.5 would provide that, when considering current reporting on Form 8-K, particularly under Item 7.01 (Regulation FD Disclosure) and Item 8.01 (Other Events), registrants should have due regard for the accuracy, completeness, and currency of information in registration statements filed under the Securities Act and the Investment Company Act that incorporate by reference information in Exchange Act reports, including reports on Form 8-K.

<sup>298</sup> Rule 30b2-1 requires registered management investment companies to file on Form N-CSR any shareholder report required to be transmitted to shareholders under rule 30e-1 and to file a copy of every periodic or interim report or similar communication containing financial statements that is transmitted to a class of shareholders. See 17 CFR 270.30b2-1.

<sup>299</sup> This threshold is less than 5% for smaller reporting companies and less than 1% for other registrants.

<sup>300</sup> Instruction 2 to Item 3.02 currently refers to smaller reporting companies, as defined in Item 10(f)(1) of Regulation S-K. This definition excludes issuers that are investment companies.

<sup>301</sup> We are proposing that an affected fund would be treated like a smaller reporting company for these purposes if it was an investment company identified in 17 CFR 270.0-10 (rule 0-10 under the Investment Company Act). An investment company is considered small under rule 0-10 if the investment company, together with other investment companies in the same group of related investment companies, has net assets of \$50 million or less as of the end of its most recent fiscal year. See 17 CFR 270.0-10.

We request comment on our additional proposed amendments to Form 8-K:

- For purposes of General Instruction B.3 of Form 8-K, are there specific reports that a registered CEF makes under section 30 of the Investment Company Act that we should exclude or include in the definition of “previously reported,” such that a registered CEF would or would not be required to report information on Form 8-K if it previously reported substantially the same information in the relevant report? For example, should the definition of “previously reported” include information reported on Form N-CEN and information publicly reported on Form N-PORT, as proposed?

- With respect to asset-backed securities, Item 1.03 of Form 8-K requires reporting if certain material parties to the asset-backed security enter bankruptcy proceedings or receivership. Should an affected fund be required to file a report on Form 8-K if its investment adviser enters bankruptcy or receivership? Why or why not?

- Is our proposed approach to modifying the definition of “smaller reporting companies” for affected funds appropriate? If not, what category of affected funds should qualify as smaller reporting companies for purposes of Item 3.02 of Form 8-K? For example, should we use a standard similar to that in Item 10(f)(1) of Regulation S-K to define a smaller reporting company?

- Are there other amendments we should make to Form 8-K to improve current reporting by affected funds or to give them comparable treatment to operating companies required to report on Form 8-K?

#### d. Rule 103 of Regulation FD

Rule 100 of Regulation FD generally requires an issuer to make either simultaneous or prompt public disclosure of any material nonpublic information regarding the issuer or its securities that the issuer or a person acting on its behalf has selectively disclosed to certain parties.<sup>302</sup> As recognized above, an issuer may make this public disclosure by filing or furnishing information on Form 8-K.<sup>303</sup> Rule 103(a) of Regulation FD provides that an issuer's failure to make a public disclosure required solely by rule 100 of Regulation FD will not affect whether, for purposes of eligibility to use Form S-3 and certain other forms, an issuer is deemed to have filed all materials

required to be filed pursuant to section 13 or section 15(d) of the Exchange Act (*i.e.*, whether the issuer is “seasoned”) or to have filed such materials in a timely manner (*i.e.*, whether the issuer is “timely”).<sup>304</sup> The BDC Act requires us to amend rule 103(a) to provide that, with respect to BDCs, this section applies for purposes of Form N-2.<sup>305</sup> To implement the BDC Act, and to provide parity for affected registered funds consistent with the Registered CEF Act, we propose to amend rule 103(a) to add references to Form N-2. As a result, for purposes of amended Form N-2, we would not consider an affected fund to have failed to file materials it is required to file pursuant to section 13 or section 15(d) of the Exchange Act, or to have failed to file these materials in a timely manner, if the affected fund fails to make public disclosure that is required solely by rule 100 of Regulation FD. Thus, failure to make a public disclosure required solely under rule 100 of Regulation FD would not impact an affected fund's ability to file a short-form registration statement or qualify as a WKSI.

We request comment on our proposed amendment to rule 103 of Regulation FD:

- Do our proposed amendments to rule 103 of Regulation FD provide affected funds with comparable treatment to operating companies? If not, why not?

#### 4. Online Availability of Information Incorporated by Reference

Above, we discuss our proposal to permit expanded incorporation by reference for affected funds that choose to file a short-form registration statement on Form N-2.<sup>306</sup> We are, in addition, proposing revisions to Form N-2's current General Instruction for Incorporation by Reference, which permits all registered CEFs and BDCs (not just those that would be eligible to file the proposed short-form registration statement) to backward incorporate their financial information into the prospectus or SAI. Specifically, we are proposing to remove the requirement that a fund deliver to new investors information that it has incorporated by reference into the prospectus or SAI, and instead require the fund to make its prospectus, SAI, and the incorporated materials readily available and

<sup>304</sup> 17 CFR 243.103(a); Selective Disclosure and Insider Trading, Exchange Act Release No. 43154 (Aug. 15, 2000) [65 FR 51716, 51725-26 (Aug. 24, 2000)].

<sup>305</sup> See section 803(b)(2)(O) of the BDC Act.

<sup>306</sup> See *supra* footnote 47 and accompanying text.

<sup>302</sup> 17 CFR 243.100 (requiring simultaneous public disclosure in the case of an intentional selective disclosure or prompt public disclosure in the case of a non-intentional selective disclosure).

<sup>303</sup> See *supra* footnote 251.

accessible on a website.<sup>307</sup> Our proposal is designed to make readily available to investors documents that are incorporated by reference, and to facilitate the efficient use of incorporation by reference by affected funds.<sup>308</sup>

Although all registered CEFs and BDCs can “backward incorporate” certain financial information from previous Commission filings into their registration statements, Form N-2 currently requires that a fund provide to new purchasers a copy of all previously-filed materials that the fund incorporated by reference into the prospectus and/or SAI.<sup>309</sup> For example, if the fund sells shares to a new investor, it must deliver to them the prospectus, along with the financial statements (or any other information) that is incorporated by reference into the prospectus. We understand that this requirement creates particular challenges for BDCs, which generally do not take advantage of the backward incorporation permitted by Form N-2 because they are required to include their financial statements in the prospectus.<sup>310</sup> That means that if a BDC incorporates its financial statements by reference into the prospectus, every time it delivers a prospectus to an investor, it must determine whether the investor is a new investor, and if so, must also deliver any incorporated material. To avoid the operational challenges associated with identifying and providing different disclosure documents to new and existing investors, BDCs instead generally set forth the required financial and related information in the prospectus, which can double or even triple the length of a BDC’s prospectus. Registered CEFs, in contrast, are required to include their

financial statements in the SAI,<sup>311</sup> which is delivered only upon request. Because we understand that funds typically receive very few requests for the SAI, registered CEFs, unlike BDCs, are only minimally affected by the requirement to deliver incorporated materials to new investors.

This proposal is designed to make readily available to investors documents that are incorporated by reference by requiring an affected fund to make the incorporated materials, and the corresponding prospectus and SAI, readily available and accessible on a website maintained by or for the fund, as identified in the fund’s prospectus and SAI.<sup>312</sup> Affected funds would also be required to provide incorporated materials upon request free of charge. We do not believe that this proposal would result in a substantial reduction in the amount of information affected funds deliver to investors through the mail or electronically because most affected funds would rely on rules 172 and 173, as we propose to amend them, to satisfy their prospectus delivery obligations. An issuer that uses these rules would satisfy its final prospectus delivery obligations by filing the prospectus with the Commission rather than delivering the prospectus and any incorporated materials to investors.<sup>313</sup>

These proposed requirements mirror parallel requirements for certain operating companies that incorporate by reference, and the requirement to put a fund’s prospectus and SAI on a website is consistent with requirements for open-end funds that choose to use a summary prospectus.<sup>314</sup> In addition, many funds currently post their annual and semi-annual reports and other fund information on their websites.<sup>315</sup> Given

that the website posting of these types of disclosure documents has become commonplace for many operating companies and most funds, we believe it is reasonable to require an affected fund that chooses to incorporate by reference to post its prospectus and SAI online, along with any Exchange Act materials incorporated into those documents,<sup>316</sup> and that investors likely expect to be able to access this information on fund websites. Retail investors, in particular, may be more inclined to look to a fund’s website for its disclosure documents before turning to other sources for information.<sup>317</sup> A retail investor also could request to receive the materials directly.

Finally, we are proposing to streamline Form N-2’s current provisions regarding the disclosure requirements for incorporation by reference, which are spread across several provisions in current General Instruction F. We propose to replace these current instructions with a new General Instruction F.4, which largely mirrors the disclosure requirements in Item 12(c) of Form S-3. The new instruction largely streamlines—but does not substantively change—the disclosure requirements for incorporation by reference currently in Form N-2.<sup>318</sup> The requirement to disclose the fund’s website where the incorporated information may be accessed is a new addition, and is related to the proposed online

address specified in a notice to investors); Enhanced Disclosure and New Prospectus Delivery Option for Registered Open End Management Investment Companies, Investment Company Act Release No. 28584 (Jan. 13, 2009) [74 FR 4546 (Jan. 26, 2009)] (requiring open-end funds that opt to deliver summary prospectuses to investors to post prospectus and other disclosure materials on their websites).

<sup>316</sup> A fund must also deliver the incorporated materials upon request, at no charge. *See* proposed General Instruction F.4.b of Form N-2. Investors without internet access, or those that prefer not to review incorporated materials on a website, could obtain copies of the materials directly from the fund.

<sup>317</sup> Investor testing that the Commission sponsored and conducted in 2011 suggested that an investor looking for a fund’s annual report is most likely to seek it out on the fund’s website, rather than request it by mail or phone or by retrieving it from our Electronic Data, Gathering, Analysis, and Retrieval System (“EDGAR”). *See* Investment Company Reporting Modernization, Investment Company Act Release No. 31610 (May 20, 2015) [80 FR 33590, 33626–27 (June 12, 2015)].

<sup>318</sup> *Compare* proposed General Instruction F.4.b with current General Instruction F.3 of Form N-2; *cf.* Item 12(c) of Form S-3. For example, the proposed instruction, similar to Form N-2’s current instruction, would require a fund to state in the prospectus and SAI that it will provide upon request a copy of the information that has been incorporated by reference into the prospectus or SAI but not delivered with the prospectus or SAI, and provide contact information for any request for incorporated information.

<sup>307</sup> Proposed General Instruction F.4.a of Form N-2 would require a fund to post its prospectus, SAI, and any periodic and current Exchange Act reports that are incorporated by reference on a website maintained by or for the fund. Proposed General Instruction F.4.b of Form N-2 would also require funds to provide to any person to whom a prospectus or SAI is delivered any materials that were incorporated by reference upon request, at no charge.

<sup>308</sup> We would also conform certain incorporation by reference provisions of Form N-2 to mirror parallel provisions in Form N-1A, which has been more recently amended. *See* proposed General Instruction F.2.a–c of Form N-2; *cf.* General Instruction D.1(a)–(c) of Form N-1A.

<sup>309</sup> *See supra* footnote 22. Current General Instruction F.3 of Form N-2 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.

<sup>310</sup> *See* Item 8.6.c and Instruction 1.b to Item 24 of current Form N-2.

<sup>311</sup> *See* Instruction 1.a to Item 24 of current Form N-2.

<sup>312</sup> Proposed General Instruction F.4.a of Form N-2; *cf.* General Instruction VII.F of Form S-1; Proposed General Instruction F.4.b(5) of Form N-2; *cf.* Item 12(c)(1)(v) of Form S-1. We would eliminate current General Instruction F.3, and move its requirement directing a fund to state in the prospectus and SAI that it will furnish, without charge, a copy of the incorporated materials on request, to proposed General Instruction F.4.b.

<sup>313</sup> *See supra* Part II.D.

<sup>314</sup> *Cf.* General Instruction VII.F of Form S-1; Securities Act rule 498(e) [17 CFR 230.498(e)]. We also recently proposed rule 498A, which would, among other things, require variable annuity and variable life insurance contracts that choose to use a summary prospectus to post prospectus(es), SAI, and certain Exchange Act reports online. *See* Variable Contract Summary Prospectus Proposing Release, *supra* footnote 172.

<sup>315</sup> *See also, e.g.,* Optional internet Availability of Investment Company Shareholder Reports, Investment Company Act Release No. 33115 (June 5, 2018) [83 FR 29158 (June 22, 2018)] (providing funds the option of satisfying their obligations to transmit shareholder reports by making such reports and other materials accessible at a website

availability requirements for information that is incorporated by reference.

We request comment generally on these proposed revisions for incorporation by reference, including:

- Should we, as proposed, eliminate the requirement that funds provide a copy of incorporated materials to new investors and instead require funds to make the incorporated materials, prospectus, and SAI available on a website? Why or why not?

- Would this proposal negatively affect investors' ability to receive incorporated information in light of the proposal to permit affected funds to satisfy their final prospectus delivery obligations by filing their prospectus with the Commission under rule 172? If so, how? Would investors without internet access have difficulty requesting the incorporated materials from the fund?

- Form N-2 only permits an affected fund to backward incorporate certain financial information into its prospectus or SAI. We are not proposing to expand the scope of information that may be backward incorporated into a fund's registration statement. Are there other items in Form N-2 that we should also permit to be backward incorporated by reference? If so, which ones and why?

- Does our proposal to require affected funds that incorporate by reference to post on a website their prospectuses, SAIs, and periodic and current reports filed under the Exchange Act that are incorporated by reference into the prospectus or SAI pose any particular challenges for funds? Is there any reason why funds should not be required to post this information on a website if they incorporate the information by reference into their registration statement? Are there other technological approaches that we should consider to make available to investors the information that is incorporated by reference?

- The online posting requirement for incorporated materials, as proposed, mirrors similar requirements in Form S-1. Should we be more specific regarding the criteria for online posting, similar to the requirements for open-end funds that use summary prospectuses?<sup>319</sup> For example, should Form N-2 specify that the website maintained by or for the fund must be publicly-available, free of charge? Similarly, should we specify the format in which materials that are provided upon request must be

delivered (electronically or in paper)? In what format do funds that receive requests for incorporated materials currently deliver such documents?

- Our proposed amendments to Form N-2's current provisions regarding the disclosure requirements for incorporation by reference are designed to streamline—but not substantively change—the disclosure requirements for backward incorporation by reference currently in Form N-2. Do the proposed amendments have this effect?

- Are there any other changes we should make to the proposed incorporation by reference regime?

#### 5. Enhancements to Certain Registered CEFs' Annual Report Disclosure

As a general matter, registered investment companies are required to update their registration statements annually.<sup>320</sup> Registered CEFs may take advantage of an exemption that permits them to forgo an annual update provided that they disclose in their annual reports certain key changes that have occurred during the prior year.<sup>321</sup> For example, the fund must disclose any material changes in its investment objectives or policies that have not been approved by shareholders, and any material changes in the principal risk factors associated with an investment in the fund.<sup>322</sup> We are concerned, however, that funds disclosing important changes may not always provide enough context for investors to understand the implications of those changes. For example, if a fund does not provide sufficient context, a shareholder may have to look at a series of documents—from the fund's prospectus, which could be several years old, plus each subsequent annual report—to understand the fund's current investment strategy or principal risk factors.<sup>323</sup> This may burden investors

<sup>320</sup> Rule 8b-16 under the Investment Company Act requires all registered management investment companies, including registered CEFs, to update their registration statements with the Commission on an annual basis.

<sup>321</sup> Rule 8b-16(b).

<sup>322</sup> The rule 8b-16 exemption is conditioned on disclosure in the annual report of information that repeats or updates certain key prospectus disclosures, specifically: (1) Information about the fund's dividend reinvestment plan; (2) material changes in the fund's investment objectives or policies that have not been approved by shareholders; (3) any change concerning the fund's control provisions that has not been approved by shareholders; (4) material changes in the principal risk factors associated with an investment in the fund; and (5) any portfolio manager changes. Except for information about the fund's dividend reinvestment plan (which requires a complete description of the plan), the fund must only disclose changes that have occurred during the year covered by the annual report.

<sup>323</sup> See, e.g., Comment Letter from Amy Wellington (Sept. 3, 2018) (noting that there is no

and frustrate the goal of providing shareholders with important disclosures.

To allow investors in funds relying on rule 8b-16 to more easily identify and understand key information about their investments, we propose to amend the rule to require funds to describe any changes in enough detail to allow investors to understand each change and how it may affect the fund. For example, 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. This would provide context for the change and identify for the investor the fund's current strategy or principal risk factors. We also propose to require funds to preface such disclosures with a legend clarifying that the disclosures provide only a summary of certain changes that have occurred in the past year, and also state that the summary may not reflect all of the changes that have occurred since the investor purchased the fund.<sup>324</sup>

We request comment on this proposal:

- Would requiring funds that rely on rule 8b-16 to describe changes to the fund in enough detail to allow investors to understand each change and how it may affect the fund, as proposed, improve the quality and scope of the disclosures that investors in these funds currently receive? To what extent are funds already doing this voluntarily?

- We also are proposing to require affected funds to report on Form 8-K if the fund's investment adviser, including any sub-adviser, has determined to implement a material change to the registrant's investment objectives or policies, and such change has not been, and will not be, submitted to shareholders for approval. How would Form 8-K reports affect the benefits to

one location where a registered CEF investor can find a fund's strategies, risks and fees; because the annual report only discloses changes to the fund's strategies and policies, investors must review the original prospectus and each subsequent shareholder report to get all of the fund's information). This comment letter was provided in response to our June 2018 Investor Experience Request for Comment, *see infra* footnote 206, in which we sought input from individual investors on how to enhance fund disclosures.

<sup>324</sup> See proposed rule 8b-16(e) under the Investment Company Act (requiring changes required by paragraphs (b)(2) through (b)(5) of rule 8b-16 to be described in enough detail to allow investors to understand each change and how it may affect the fund, and prefaced with a legend stating that "[t]he following information [in this annual report] is a summary of certain changes since [date]. This may not reflect all of the changes that have occurred since you purchased [this fund].").

<sup>319</sup> Rule 498(e) under the Securities Act [17 CFR 230.498(e)] (mutual funds and ETFs); *see also* Variable Contract Summary Prospectus Proposing Release, *supra* footnote 172 (proposing Securities Act rule 498A(h) for variable contracts).

investors of receiving contextual information in annual reports?

- Would a fund understand what level of detail the proposed rule amendments would require it to disclose? Would a fund understand what it means to describe how a change may affect the fund? Would any additional clarification in the rule text or guidance be helpful?

- What is the adequacy of information about registered CEFs in the secondary market in general? Where can investors in a fund with a stale prospectus look to find information about the fund's current strategies and risks, or other key information? Do registered CEF investors have access to sufficient information to make knowledgeable investment decisions concerning their investments in these funds?

- Should we require funds that rely on rule 8b-16 to update their registration statements on a periodic basis, for example, every 3 years, as required for certain issuers with shelf registration statements to bring the disclosures current? Alternatively, should we require funds to summarize in their annual report certain key information that would be required in a current prospectus that has been annually updated? If so, what information should be required (for example, only the disclosure items that are specified in rule 8b-16, or certain other Form N-2 disclosure items)? Should we consider making any other changes to rule 8b-16? If so, what changes and why?

#### *I. Certain Staff No-Action Letters*

Rule 486(b) permits interval funds to file certain post-effective amendments to their registration statement that become effective automatically, including an amendment to bring the financial statements up to date under section 10(a)(3). The rule is designed to recognize that interval funds may need continuously effective registration statements and would benefit if certain filings could become effective automatically.<sup>325</sup> Our staff has stated that it would not recommend that the Commission 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) on a case-by-case basis regarding their use of rule 486(b).<sup>326</sup>

The amendments we are proposing today are designed to address the process by which affected funds, including listed registered CEFs offering their securities under rule 415(a)(1)(x), may update their registration statements. The amendments would provide a consistent regulatory framework for all affected funds. Staff in the Division of Investment Management are reviewing these no-action letters to determine if they should be withdrawn in connection with any final rules we adopt under this proposal.

We request comment on whether we should make any changes to rule 486(b) to address the concerns expressed by funds that sought no-action assurances from the staff:

- Should we, for example, permit all or a broader group of registered CEFs or BDCs to rely on the rule? Why or why not?
- To what extent would expanding the availability of rule 486(b) complement, or conversely, create any tension with, the amendments we are proposing in this release? For example, if we permitted all affected funds to rely on rule 486(b), would funds that would be eligible to file a short-form registration statement on Form N-2 choose to use rule 486(b) to update their registration statements, or would they choose to file a short-form registration statement and update it through Exchange Act reports incorporated by reference? Which approach would be more efficient for funds and why? Would either approach be more beneficial to investors? If so, which approach and why? Would using rule 486(b) be more or less efficient for BDCs or registered CEFs?

#### *J. Conforming Changes to Form N-2*

In addition to the proposed amendments to Form N-2 discussed throughout this release that are meant to implement the statutory mandates and tailor the disclosure and regulatory framework for affected funds in light of the proposed amendments to the offering rules, we also are proposing certain non-substantive changes to the form. These additional proposed

changes are designed to provide greater consistency with similar or parallel provisions in Forms N-1A, S-1, and S-3, all of which have been more recently amended than Form N-2. For example, we are proposing stylistic changes, including the renumbering of certain items, and the elimination of outdated references, such as the instruction related to paper copies, which are generally no longer filed, and the requirement to provide a table of contents in an affected fund's SAI.<sup>327</sup>

We request comment on these proposed amendments to Form N-2:

- Do commenters agree that the proposed amendments to Form N-2 that are not discussed elsewhere in this release are appropriate?

- Because some affected funds have received exemptive relief to offer different share classes, our proposal to require registered CEFs to include MDFP in their annual shareholder reports includes an instruction requiring funds with multiple share classes to reflect the performance for each class. Should we revise Form N-2 to clarify any other disclosure requirements for multi-class funds?

- Are there additional stylistic or similar changes we should make to Form N-2 to provide greater consistency with similar or parallel provisions in our other disclosure forms or otherwise to improve Form N-2's readability? Which changes and why?

- Should we make any technical changes or corrections to Form N-2? For example, Instruction 1.a. to Item 8.6.c of Form N-2, which requires BDCs to include financial statements in the prospectus, directs BDCs to comply with provisions of Regulation S-X that apply to registered investment companies. This includes a cross-reference to rule 3-18 of Regulation S-X, which includes the financial statement timing requirements for registered investment companies. Rule 3-12 of Regulation S-X, however, specifically prescribes the age of financial statements for Exchange Act reporting companies, like BDCs, as a matter of practice follow rule 3-12. Should we revise the instruction to make clear that BDCs should follow the requirements in rule 3-12 (and not rule 3-18) for financial statement timing purposes? If not, why not?

<sup>325</sup> See Post-Effective Amendments to Investment Company Registration Statements, Securities Act Release No. 7083 (Aug. 17, 1994) [59 FR 43460 (Aug. 24, 1994)] (in adopting rule 486, we noted that "[t]he initial proposal of rule 486 recognized that closed-end interval funds may need continuously effective registration statements and would benefit if certain filings could become effective automatically").

<sup>326</sup> See, e.g., Nuveen California Select Tax-Free Income Portfolio, SEC Staff No-Action Letter (Nov. 21, 2017), PIMCO Dynamic Income Fund, SEC Staff No-Action Letter (Dec. 12, 2017), Eagle Point Credit Company, Inc., SEC Staff No-Action Letter (Feb. 14, 2018), PIMCO Corporate & Income Opportunity Fund and PIMCO Income Opportunity Fund, SEC Staff No-Action Letter (Sep. 13, 2018), and DNP Select Income Fund, Inc., SEC Staff No-Action Letter (Oct. 4, 2018). Our staff has not provided these no-action assurances to any BDC.

<sup>327</sup> We have also adopted certain changes to Form N-2 in the FAST Act rulemaking. See FAST Act Modernization Adopting Release, *supra* footnote 177. Those amendments, as part of a broader initiative to modernize and simplify certain disclosure requirements in Regulation S-K (and related rules and forms), revise certain rules on incorporation by reference, and require all of the information on the cover pages of some Exchange Act forms to be tagged in Inline XBRL format.

• Should we make any other conforming changes to Form N-2? For example, while registered CEFs are required to discuss the material factors and conclusions that formed the basis for the board's approval of any investment advisory contract in its shareholder reports,<sup>328</sup> BDCs are not required to provide this disclosure.<sup>329</sup> Should we create such a requirement for BDCs? Why or why not? If yes, where and when should BDCs provide the disclosure—in any Exchange Act report filed within a certain period after board approval (e.g., 90 days), or only in certain reports (e.g., Form 10-K)? Should the disclosure requirement be set forth in Form N-2, or in the form requirements for any relevant Exchange Act reports (i.e., Forms 10-Q or 10-K), or elsewhere?

#### K. Compliance Date

We propose to provide a transition period after the publication of a final rule in the **Federal Register** to give affected funds sufficient time to comply with four of the proposed new requirements, as follows:

• **Form 8-K.** All affected funds that would be eligible to file a short-form registration statement would be required to comply with the full scope of Form 8-K as proposed,<sup>330</sup> 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 under General Instruction A.2 of Form N-2. All other affected funds would be required to comply 18 months after the date of the publication of a final rule in the **Federal Register**.

• **MDFP.** Any annual report that a registered 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.<sup>331</sup>

• **Structured Data Requirements.** All affected funds subject to the financial statement or prospectus structured data reporting requirements that would be eligible to file a short-form registration statement would be required to comply with those provisions no later than 18 months after the date of publication of

a final rule in the **Federal Register**. All other affected funds subject to those requirements would be required to comply 24 months after publication of a final rule in the **Federal Register**. All filers on Form 24F-2 would be required to comply with the proposed structured data format for this form<sup>332</sup> 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<sup>333</sup> would become effective one year after the publication of a final rule in the **Federal Register**.

We request comment on the proposed compliance dates, and specifically on the following items:

• Are the proposed compliance dates appropriate? If not, why not? Is a longer or shorter period necessary to allow registrants to comply with one or more of these particular amendments? If so, what would be a recommended compliance date?

• Do any other proposed amendments warrant an extended compliance period? If so, which ones, why, and what would be an appropriate compliance date? For example, should affected funds be given a compliance period within which to transition from filing forms of prospectuses that vary from the registration statement pursuant to rule 497 to filing such forms pursuant to rule 424? Are there any complexities about this change in the filing process that would justify providing a compliance period? If so, what are those complexities, and how long would affected funds need to adjust to this change?

• Should we provide affected funds with a different compliance date, or a transition period, before they are required to comply with the full scope of the proposed new Form 8-K requirements? If so, how long should the transition period be, and how should any transition period be structured? For example, should all affected funds be permitted to rely on an extended compliance date or any transition period with respect to filing the new proposed reportable events, or should such accommodations be available only to registered CEFs (because, in contrast to BDCs, they generally have not previously been required to report on Form 8-K)?

### III. General Request for Comment

We request and encourage any interested person to submit comments regarding the proposed rules and forms, specific issues discussed in this release,

and other matters that may have an effect on the proposed rules and forms. With regard to any comments, we note that such comments are of particular assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.

### IV. Economic Analysis

We are proposing amendments to our rules designed to carry out the requirements of section 803 of the BDC Act and section 509 of the Registered CEF Act and tailor the disclosure and regulatory framework for affected funds in light of the proposed amendments to the offering rules applicable to them. Currently, affected funds face regulatory impediments to capital formation as they are not able to use the flexible and less costly offering process that operating companies use when conducting registered securities offerings. This may hinder affected funds' ability to raise capital, take advantage of favorable market conditions as operating companies do, and enjoy lower cost of capital and lower offering costs. Additionally, because of existing rules, affected funds are unable to communicate about an offering before a registration statement is filed, and their post-filing communications are subject to prospectus liability under section 12 of the Securities Act (or must be accompanied or preceded by the statutory prospectus). The proposed rules would provide incremental flexibility to funds in their communications, which may increase the flow of information to investors. As discussed in detail above, the proposed rules would affect numerous distinct aspects of how our securities offering and communications rules apply to affected funds. The proposed rules would:

• Streamline the registration process to allow eligible affected funds to use a short-form registration statement to sell securities "off the shelf" more quickly and efficiently in response to market opportunities;<sup>334</sup>

• Allow affected funds to qualify as WKSIs under rule 405 under the Securities Act;<sup>335</sup>

• Allow affected funds to satisfy final prospectus delivery requirements using the same method as operating companies;<sup>336</sup>

• Allow affected funds to use communications rules currently available to operating companies, such

<sup>328</sup> See Instructions 6.e and 6.f of Item 24 of Form N-2; see also Item 27(d)(6)(i) of Form N-1A (parallel provision for open-end funds).

<sup>329</sup> The relevant disclosure requirement is contained in a sub-part of Instruction 6 of Item 24 of Form N-2, which specifically concerns annual and semi-annual reports required by section 30(e) of the Investment Company Act and rule 30e-1 thereunder. Because BDCs do not file these reports, they are not subject to this instruction.

<sup>330</sup> See *supra* Part II.H.3.

<sup>331</sup> See *supra* Part II.H.2.b.

<sup>332</sup> See *supra* Part II.H.1.d.

<sup>333</sup> See *supra* Part II.G.

<sup>334</sup> See *supra* Part II.B.

<sup>335</sup> See *supra* Part II.C.

<sup>336</sup> See *supra* Part II.D.



as the use of certain factual business information, forward-looking information, a free writing prospectus, and broker-dealer research reports;<sup>337</sup> and

- Modify certain aspects of affected funds' disclosure and regulatory framework in light of the proposed amendments to the offering rules applicable to them.<sup>338</sup> These proposed amendments include structured data requirements to make it easier for investors and others to analyze fund data; new annual report disclosure requirements to provide key information in these reports; a new requirement for registered CEFs to file reports on Form 8-K in parity with operating companies and BDCs, including new Form 8-K items tailored to registered CEFs and BDCs; and a proposal to require interval funds to pay securities registration fees using the same method that mutual funds and ETFs use today.

#### A. Introduction and Baseline

We are sensitive to the economic effects that may result from the rule proposal, including the benefits, costs, and the effects on efficiency, competition, and capital formation. Section 3(f) of the Exchange Act, section 2(b) of the Securities Act, and section 2(c) of the Investment Company Act state that when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in (or, with respect to the Investment Company Act, consistent with) the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Additionally, section 23(a)(2) of the Exchange Act requires us, when making rules or regulations under the Exchange Act, to consider, among other matters, the impact that any such rule or regulation would have on competition and states that the Commission shall not adopt any such rule or regulation which would impose a burden on competition that is not

necessary or appropriate in furtherance of the Exchange Act.

We have considered the potential costs and benefits that would result from the proposed rules, as well as the potential effects on efficiency, competition, and capital formation. Many of the potential economic effects of the proposed rules would stem from the statutory mandates, while others would stem from the discretion we are exercising. We discuss the potential economic effects of the proposed amendments to implement the statutory mandates in Parts IV.B and IV.C. We considered certain alternatives to our proposed approach to implementing the statutory mandate, as discussed in Part IV.D. We are also proposing certain other amendments to tailor affected funds' disclosure and regulatory framework. We discuss the potential economic effects of these discretionary amendments, as well as reasonable alternatives to these provisions, in Part IV.E. We note that, where possible, we have attempted to quantify the costs, benefits, and effects on efficiency, competition, and capital formation expected to result from the proposed rule. In some cases, however, we are unable to quantify the economic effects because we lack the information necessary to provide a reasonable and reliable estimate.

The baseline we use to analyze the potential effects of the proposed rules is the current set of legal requirements and market practices. The proposed rules likely would have a significant impact on the security offering requirements and disclosure practices of affected funds. The overall magnitude of the benefits and the costs associated with the proposed rules will depend on many factors, including the number of affected funds that rely on the proposed rules. We recognize that some affected funds would not satisfy the conditions in certain of the proposed amendments (e.g., those limited to WKSIs or funds that file a short-form registration statement on Form N-2), and other

affected funds may satisfy the conditions but choose not to rely on the proposed rules. The discussion below describes our understanding of the markets and issuers that would be affected by the proposed rules.

#### 1. Number of Affected Funds

The proposed rules would affect BDCs and registered CEFs. As of September 30, 2018, there were 807 affected funds, including 103 BDCs and 704 registered CEFs. To estimate the number of BDCs, we use data from Form 10-K and 10-Q filings as of September 30, 2018, the latest data available.<sup>339</sup> We identify 49 listed BDCs and 54 unlisted BDCs. The average net assets of the listed BDCs is approximately \$729 million, and the average of their total assets is \$1.3 billion. Based on trading data as of June 30, 2018, 44 of the listed BDCs have public float greater than \$75 million (*i.e.*, one of the transaction requirement thresholds for primary offerings under the short-form registration instruction) and 14 of those BDCs have public float greater than \$700 million (*i.e.*, the WKSI public float threshold).<sup>340</sup>

We use data from Morningstar and SEC filings to estimate the number of registered CEFs.<sup>341</sup> We identify 516 registered CEFs that were listed on an exchange as of September 30, 2018, including 1 interval fund. There were 188 unlisted registered CEFs as of September 30, 2018, including 56 interval funds. The average net assets of the listed registered CEFs is approximately \$539 million, while the average net assets of the unlisted registered CEFs is approximately \$461 million.<sup>342</sup> Based on trading data as of June 30, 2018, 457 of the listed registered CEFs have public float greater than \$75 million, and 83 of those funds have public float greater than \$700 million.<sup>343</sup> Information about the types of offerings conducted by different categories of affected funds for the period of January 1, 2014–December 31, 2018 is reflected in the below table.<sup>344</sup>

<sup>337</sup> See *supra* Part II.E.

<sup>338</sup> See *supra* Parts II.F–II.H.

<sup>339</sup> The estimated number of BDCs includes BDCs that have not registered a securities offering on Form N-2. Certain of our proposed amendments, such as the proposed requirement to tag certain Form N-2 prospectus disclosure items in Inline XBRL, would only apply to affected funds that have filed a registration statement on Form N-2. As a result, our quantitative estimates of the costs and paperwork burdens of these proposed amendments with respect to BDCs may be over-estimates in certain respects.

<sup>340</sup> The most recent available data (as of June 30, 2018) on prices and shares outstanding, which are used to calculate the public float, is taken from the

Center for Research of Securities Prices ("CRSP") database. CRSP data on shares outstanding includes all publicly held shares.

<sup>341</sup> The estimated number of registered CEFs includes registered CEFs that have not registered a securities offering under the Securities Act. Certain of our proposed amendments, such as the proposed requirement that registered CEFs report on Form 8-K, generally would not apply to these registered CEFs. See, e.g., *supra* footnote 243. Thus, our quantitative estimates of the costs and paperwork burdens of certain of the proposed amendments with respect to registered CEFs may be over-estimates in certain respects.

<sup>342</sup> The average of net assets of registered interval funds is \$448 million.

<sup>343</sup> This includes the listed interval fund, which had public float of approximately \$76 million as of June 30, 2018. Data on prices and shares outstanding, which are used to calculate the public float, is taken from CRSP.

<sup>344</sup> Data on registered offerings (initial public offerings, equity offerings by seasoned issuers, convertible debt offerings, and public debt offerings) for BDCs and listed registered CEFs are taken from Securities Data Corporation's New Issues database (Thomson Financial). Data on Regulation D offerings was collected from all Form D filings (new filings and amendments) on EDGAR. Data on registered offerings for unlisted registered CEFs was collected from Form N-2 and Form N-CSR filings on EDGAR.



Types of offerings	Offering statistics	Listed BDCs	Unlisted BDCs	Listed registered CEFs	Unlisted registered CEFs
Registered offerings ..	Number of offerings .. Total amount raised .. Average (median) offering amount.	114 ..... \$11.7 bil ..... \$102.8 mil (\$65.5 mil)	24 ..... \$1.7 bil ..... \$7.8 mil (\$7.2 mil) .....	31 ..... \$5.9 bil ..... \$190.5 mil (\$103.1 mil).	144. \$21.4 bil. \$177.3 mil (\$31.0 mil).
Regulation D offerings	Number of offerings .. Total amount raised .. Average (median) offering amount.	13 ..... \$720.8 mil ..... \$55.4 mil (\$32.7 mil)	72 ..... \$20.5 bil ..... \$284.3 mil (\$76.3 mil)	..... ..... .....	167. \$6.4 bil. \$38.3 mil (\$6.5 mil).

## 2. Current Securities Offering Requirements for Affected Funds

The securities offering process for affected funds at present differs from that for operating companies. Affected funds register their securities offerings on Form N-2, while operating companies use other forms (e.g., Form S-1 or Form S-3). As discussed above, registered investment companies and BDCs are excluded from certain offering and communication rules available to operating companies.

Affected funds are expressly excluded from the WKSI definition. As a result, even if they would otherwise meet the WKSI definition, they are unable to, for example, file an automatic shelf registration statement or communicate about an offering before filing a registration statement.

Affected funds currently can make shelf offerings under rule 415(a)(1)(x) if they meet the eligibility criteria for Form S-3, even though affected funds register their securities offerings on Form N-2. Affected funds, however, currently face certain challenges in using the shelf registration system. These challenges are generally due to the fact that, unlike operating companies, affected funds cannot: Forward incorporate information from subsequently-filed Exchange Act reports into their registration statements, rely on Securities Act rule 430B to omit certain information from the “base” prospectus, or use the process that operating companies use to file prospectus supplements.<sup>345</sup> For example, when an affected fund sells or “takes down” securities from a shelf registration statement, like an operating company, its registration statement must include all required information, including any annual update of financial information that section 10(a)(3) of the Securities Act requires. However, unlike an operating company, an affected fund must provide any section 10(a)(3) update to its registration statement by filing a post-effective amendment, with associated expenses and potential delays related to the

fund’s preparation of the amendment and our staff’s review and comment process. In contrast, an operating company filing on Form S-3 would generally make the section 10(a)(3) update by timely filing its annual report on Form 10-K containing the issuer’s audited financial statements for the most recently completed fiscal year. The financial statements would be forward incorporated by reference into the operating company’s registration statement and, thus, the company would avoid the need to file a post-effective amendment to comply with section 10(a)(3).

Currently, affected funds’ communications generally are subject to rule 482 under the Securities Act.<sup>346</sup> Affected funds can use these communications only after a fund has filed a registration statement.<sup>347</sup> These communications are deemed to be prospectuses that are subject to prospectus liability under section 12 of the Securities Act. Rule 138, one of our rules governing research reports published by broker-dealers, does not currently specifically exclude BDCs and registered CEFs from research coverage. The rule’s conditions are designed for operating companies, however, and therefore can effectively preclude broker-dealers from relying on the rule to publish research reports on affected funds. Broker-dealers can, however,

publish research reports on affected funds under rule 139b or rule 482.<sup>348</sup>

As a general matter, affected funds are limited in their ability to incorporate information into their registration statements by reference and are required to deliver a final prospectus to investors. Form N-2 also requires affected funds to provide to new purchasers a copy of all previously-filed materials that the fund incorporated by reference into the prospectus and/or SAI. We understand that this requirement creates particular challenges for BDCs, which generally do not take advantage of the backward incorporation permitted by Form N-2. Instead, BDCs generally include the required financial and related information in the prospectus, which can double or even triple the length of a BDC’s prospectus. For example, the median page length of prospectuses filed by listed BDCs is approximately 234 pages.<sup>349</sup>

## 3. Current Disclosure Obligations of Affected Funds

Affected funds differ in their periodic and current reporting obligations. Like operating companies, BDCs file annual reports with audited financials on Form 10-K, quarterly reports with unaudited financials on Form 10-Q, and current reports on Form 8-K. In 2018, all 49 of the listed BDCs filed form 8-K reports, while only 38 of the 54 unlisted BDCs filed such reports. Registered CEFs file annual reports to shareholders with audited financials and semi-annual reports to shareholders with unaudited financials on Form N-CSR. Listed registered CEFs are also subject to exchange rules that require listed issuers to provide the market current information in response to certain events (e.g., dividends announcements through a press release or report on Form 8-K). In 2018, there were 75 registered CEFs that furnished or filed Form 8-K reports either voluntarily or as a result of current disclosure requirements under exchange rules. Of

<sup>346</sup> Affected funds also may engage in communications that are not deemed a prospectus under section 2(a)(10) of the Securities Act (e.g., communications that are accompanied or preceded by a statutory prospectus). See 15 U.S.C. 77b(a)(10).

<sup>347</sup> We recently issued a proposal that would allow issuers, including affected funds, to engage in oral or written communications with potential investors that are, or are reasonably believed to be, qualified institutional buyers or institutional accredited investors, either prior to or following the filing of a registration statement, to determine whether such investors might have an interest in a contemplated registered securities offering. If this rule is adopted, affected funds would be permitted to engage in certain communications with qualified institutional buyers and institutional accredited investors outside the context of rule 482 or the communications rules we are proposing to extend to affected funds in this release. See Solicitations of Interest Prior to a Registered Public Offering, Securities Act Release No. 10607 (Feb. 19, 2019) [84 FR 6713 (Feb. 28, 2019)].

<sup>348</sup> See *supra* Part II.E.2.

<sup>349</sup> This estimate is based on the most recent Form N-2 filings of the 49 listed BDCs.

<sup>345</sup> See *supra* Part II.B.1.

these, 65 were listed registered CEFs and 10 were unlisted registered CEFs.

*B. Potential Benefits Resulting From the Proposed Implementation of the Statutory Mandates*

As discussed, the proposed amendments to implement the statutory mandates are designed to provide securities offering parity between affected funds and operating companies and streamline the registration process for BDCs and registered CEFs, consistent with the BDC Act and the Registered CEF Act. We believe that the proposed rules would achieve this goal and consequently result in significant benefits in a number of areas, including by improving access to the public capital markets and possibly lowering the cost of capital by, among other things, modifying our rules related to affected funds' ability to qualify as WKSIs, to use the full shelf registration process, and to engage in certain communications during a registered offering.<sup>350</sup> Additionally, as discussed below, we believe that the proposed rules would provide benefits to investors as well, including by increasing the flow of valuable information that could be available to investors to inform their investment decisions. Finally, we believe that the proposed rules would provide cost-saving options to affected fund issuers and underwriters.

**1. Improved Access to Capital and Lower Cost of Capital**

We anticipate that the proposed rules would facilitate capital formation and possibly lower the cost of capital by improving access to the public capital markets for affected funds. The rules are designed to reduce regulatory impediments to capital formation and provide more flexibility to these funds to conduct registered securities offerings. The amount of flexibility accorded by the proposed rules will depend on the characteristics of the affected funds, consistent with our rules' treatment of similarly-situated operating companies. For example, and as explained below, certain affected funds like large listed BDCs and large listed registered CEFs are expected to benefit more from the proposed rules than unlisted BDCs and unlisted registered CEFs, including unlisted interval funds. The proposed rules would provide the most flexibility under the communications rules and the automatic shelf registration system to

eligible WKSIs. Other affected funds, such as seasoned affected funds, also would benefit, albeit to a lesser degree, from the other revisions to the offering process and our communications rules.

The largest increase in capital formation and reduction in cost of capital that the proposed rules could generate would come from allowing affected funds to obtain WKSI status. Affected funds that qualify as WKSIs would enjoy additional flexibility compared to affected funds that are non-WKSIs.<sup>351</sup> There are 97 affected funds (14 listed BDCs and 83 listed registered CEFs) that meet the \$700 million public float criterion as of June 30, 2018.<sup>352</sup> A WKSI's registration statement and any subsequent amendments are automatically effective upon filing. This flexibility would allow affected funds that qualify as WKSIs to promptly tap favorable windows of opportunity in the public market, to structure terms of securities on a real-time basis to accommodate investor demand, and to determine or change the plan of distribution in response to changing market conditions. For example, affected funds, which typically trade at a discount to their NAV,<sup>353</sup> that are WKSIs would be able to act more quickly to raise capital when their shares are trading at a premium,<sup>354</sup> thus increasing the amount of capital raised and enhancing capital formation.

Additionally, WKSIs are not required to pay any registration fees at the time of the filing of the registration statement. They are only required to pay the SEC filing fee at the time securities are taken down and sold off the shelf. This would provide additional flexibility to qualifying affected funds in that they need only incur such filing fees if and when they decide to proceed with an offering. The proposed rules may also lower the cost of capital because they would provide significant flexibility to affected funds that are WKSIs and their underwriters in marketing securities. The proposed communications rules would allow these funds to communicate at any time regarding an offering.

<sup>351</sup> See *supra* Part II.C.

<sup>352</sup> See *supra* Part IV.A.1.

<sup>353</sup> See, e.g., Jonathan B. Berk and Richard Stanton, *Managerial Ability, Compensation, and the Closed-End Fund Discount*, *Journal of Finance*, Vol. 62, 529–556 (2007); Jeffrey Pontiff, *Costly Arbitrage: Evidence from Closed-End Funds*, *Quarterly Journal of Economics*, Vol. 111, 1135–1151 (1996); Charles M.C. Lee, Andrei Shleifer, and Richard H. Thaler, *Investor Sentiment and the Closed-End Fund Puzzle*, *Journal of Finance*, Vol. 46, 76–110 (1991).

<sup>354</sup> See *supra* footnote 27 (discussing restrictions on affected funds' ability to sell their shares at a price below NAV).

Given the important benefits that the WKSI status creates, and the fact that currently only few affected funds would qualify as WKSIs, it is possible that advisers to some affected funds may try, through various means, including raising additional capital and mergers and acquisitions, to increase their funds' public float to the WKSI threshold. Thus, possible effects of the rule may include increased fund size and consolidation of affected funds. Such developments may increase efficiency by allowing the larger resulting funds to benefit from improved access and lower cost of capital. We also recognize that consolidation may be driven by other factors as well, in combination with the effects of the rule, and typically would be subject to certain approvals by a fund's board of directors or shareholders.<sup>355</sup> Potential consolidation and increases in fund size could also reduce costs to investors by, for example, allowing an affected fund to realize greater efficiencies and reduce its total operating expenses over time. However, consolidation also could negatively affect the number of investment opportunities available to investors if it leads to a reduction of the number of strategies funds employ. While barriers to entry in the affected fund industry are relatively low, and it is possible that new funds will enter the market thereby increasing competition and investment opportunities, potential consolidation of affected funds could make it more difficult for new or smaller funds to compete since funds with larger amounts of assets may have better access to certain investment opportunities or may be able to offer lower costs to investors. At present, we are not able to estimate the effects of these competitive dynamics.

Other provisions of the proposed rules could also enhance capital formation and lower the cost of offerings for affected funds that qualify as seasoned funds and file a short-form registration statement on Form N–2.<sup>356</sup> For example, the proposed rules would generally allow these funds to more efficiently use the shelf registration process if, like operating companies, they meet the eligibility requirements of Form S–3.<sup>357</sup> As of June 30, 2018, there were 501 affected funds that met the \$75 million dollar public float criterion for primary offerings under Form S–3 (which criterion would be incorporated

<sup>355</sup> See, e.g., rule 17a–8 under the Investment Company Act [17 CFR 270.17a–8].

<sup>356</sup> See *supra* Part II.B.

<sup>357</sup> The short-form registration instruction refers to the eligibility criteria in Form S–3, with additional references to reporting requirements under the Investment Company Act.

<sup>350</sup> See also *infra* Part IV.E (discussing benefits associated with our discretionary rule amendments).

into the short-form registration instruction of Form N-2).<sup>358</sup> Affected funds that qualify would bear fewer costs associated with updating the information in their registration statements because information in the fund's Exchange Act reports would be incorporated by reference into the fund's registration statement. For example, we estimate that eligible affected funds would file approximately 112 fewer post-effective amendments annually as a result of the proposal, which would result in an annual aggregate cost reduction of approximately \$7,943,376 for these funds.<sup>359</sup> Additionally, we understand that currently BDCs often file prospectus supplements close-in-time to filing their current and periodic Exchange Act reports to make sure the BDC's prospectus disclosure provides the same information as that disclosed in its Exchange Act reports. Under the proposed rules, eligible BDCs would no longer file these prospectus supplements since their Exchange Act reports would be incorporated by reference into their registration statements. As a result, an eligible BDC may, on average, file approximately 14 fewer prospectus supplements on an annual basis under the proposed rules.<sup>360</sup> We anticipate that eligible registered CEFs also would be able to make fewer prospectus supplement filings under the proposed rules, although they likely would not experience as large of a reduction in filings since, among other things, they file periodic reports on a semi-annual basis (rather than quarterly) and generally are not required to report on Form 8-K at present. While we believe that affected funds would likely file fewer prospectus supplements under the proposed amendments, we are unable to estimate any reduction in the number of prospectus supplements that affected funds would file under the proposal, and any associated cost

savings for affected funds, due to certain counterbalancing factors. For example, if the proposal causes affected funds to increase their capital-raising activities, they may need to update their prospectuses more often and may file more prospectus supplements as a result. However, if affected funds begin to use their Exchange Act reports to update their prospectuses, as permitted under the proposed amendments and as we believe they might,<sup>361</sup> they may file fewer prospectus supplements. On average, we believe that affected funds would likely file fewer prospectus supplements under the proposed amendments since they would be able to update their prospectus more efficiently by forward incorporating their Exchange Act reports, although an affected fund that greatly increases its capital-raising activities may not experience the same reduction in filing burdens.

In general, we believe affected funds that qualify for the short-form registration instruction would experience cost savings associated with making fewer filings and would be able to use a more efficient process to update their prospectus disclosure. This would decrease the costs of eligible funds' registered offerings and would also allow them to act more quickly to take advantage of favorable market conditions (e.g., when trading at a premium). Certain seasoned funds registering securities in shelf offerings also would be able to omit certain information from their base prospectuses and use the same process as operating companies to provide omitted information by filing a prospectus supplement, which would generally make the shelf registration process less costly for these funds as compared to the baseline.

The proposed rule also may provide incremental cost savings to affected funds that are eligible to file a short-form registration statement in certain other respects. For example, the proposed rule would reduce the costs of these funds seeking shareholder approval for proposals to authorize, issue, modify, or exchange securities by allowing them to incorporate by reference certain materials rather than delivering these materials to security holders with the proxy statement.<sup>362</sup> We do not anticipate that these cost savings would be substantial, however, as we understand that affected funds do not often make these types of proposals to security holders. Affected funds that are eligible to file a short-form registration

statement also could experience modest cost savings from the proposed amendment to rule 418 since they would no longer be required by that rule to furnish certain information to the Commission or its staff promptly on request.<sup>363</sup>

The proposed rules would generate other benefits for affected funds generally, regardless of whether they are WKSIs or seasoned funds. For example, the proposal to require affected funds to follow the same process that operating companies follow to file prospectuses in rule 424 would require that affected funds file prospectus supplements only if substantive changes from or additions to a previously filed prospectus are made, whereas currently they are required to file every prospectus that varies from any previously filed prospectus under rule 497.<sup>364</sup> Rule 424 also is designed to work together with rule 415(a)(1)(x), and provides additional time for an issuer to file a prospectus. This proposed change could modestly reduce filing burdens and should facilitate eligible funds using the shelf registration process efficiently and in parity with operating companies. Also, the proposed rules would allow an affected fund to satisfy its obligation to deliver a final prospectus by filing it with the Commission, thus decreasing the cost of the offering.<sup>365</sup> For example, the proposed rules would permit affected funds to save on printing and mailing costs for delivering the final prospectus in paper.<sup>366</sup>

The lower costs of registered offerings resulting from the proposed rules would be beneficial to investors in affected funds because funds bear offering expenses. Lowering offering expenses may, all else equal, reduce the size of the discount or increase the size of the premium at which shares of the affected funds trade. In addition, the proposed rules could reduce the cost to underwriters of participating in registered offerings of affected funds, and these potential cost savings could be passed on to the affected funds. Based on the sheer volume and number

<sup>358</sup> See *supra* Part IV.A.1.

<sup>359</sup> For purposes of the PRA, we estimate that this would decrease the aggregate annual burden of Form N-2 by 11,984 hours and would result in a reduction in the cost burden for Form N-2 by \$3,149,776. See *infra* footnote 448. We monetize the internal burden of preparing post-effective amendments by multiplying the burden hours by an estimated wage rate of \$400 per hour (11,984 × \$400 = \$4,793,600). The estimated wage figure is based on analysis in previous rulemakings. The total annual cost is calculated by adding the monetized internal burden (\$4,793,600) to the cost of outside professionals (\$3,149,776).

<sup>360</sup> This analysis assumes that a BDC would file a prospectus supplement for each Form 10-Q filing (3 filings per year), Form 10-K filing (1 filing per year), and Form 8-K filing (estimated to be 10 filings per year), for a total of 14 periodic and current reports per year. See *infra* footnote 415 and associated text.

<sup>361</sup> See *supra* Parts II.B.2.c and II.H.2.a.

<sup>362</sup> See *supra* Part II.F.2.

<sup>363</sup> See *supra* Part II.F.1.

<sup>364</sup> See *supra* Part II.B.2.b.

<sup>365</sup> See *supra* Part II.D.

<sup>366</sup> Because a fund is not required to report the extent to which it relies on Commission guidance, we lack information to estimate the percentage of funds that solely or predominantly rely on electronic delivery under existing Commission guidance. See, e.g., Use of Electronic Media for Delivery Purposes, Investment Company Act Release No. 21399 (Oct. 6, 1995) [60 FR 53458 (Oct. 13, 1995)]. Affected funds that rely to a greater extent on electronic delivery of final prospectuses under existing Commission guidance may realize smaller net cost savings under the proposed rules.

of transactions,<sup>367</sup> underwriters may have more expertise and established procedures for the registered offerings of operating companies, which are subject to the rules we propose to extend to affected funds. In contrast, underwriters probably have less, or more concentrated, expertise regarding the requirements for offerings by affected funds. Standardization in the registered offering space, by making the offerings of affected funds more similar to those of operating companies, could make it easier for underwriters to execute such offerings and may decrease their compliance costs. If underwriters pass some of the cost savings on to affected funds and their investors, this could result in cheaper registered offerings for affected funds, thus encouraging them to raise more capital, which would lead to enhanced capital formation. Lastly, standardization may encourage a broader set of underwriters to participate in this market, potentially decreasing costs for affected funds and investors in these funds.

The proposed rules could level the securities offering playing field between affected funds and operating companies and streamline the registration process for affected funds, consequently making them potentially more competitive in the market for capital raising. The proposed rules may also make certain affected funds more competitive compared to affected funds that either cannot or choose not to rely on these rules. Thus, the proposed rules would likely enhance competition in the public capital markets. The increased competition for capital in turn could lead to potentially better allocation of capital in the market. The proposed rules may also benefit companies in which affected funds invest. Small and mid-size companies, because of their size, type of assets, risk profile, and the general lack of information about their activities and financial condition, typically find it more difficult to raise funds from traditional sources of capital such as bank loans and registered offerings.<sup>368</sup> This difficulty in sourcing

more traditional financing constrains their ability to invest in profitable projects and grow. To the extent that the proposed rules improve capital raising opportunities for BDCs and registered CEFs that invest in these companies, this may result in investments in a greater number of small to mid-size U.S. companies, thus alleviating financial constraints of such companies and contributing to economic growth generally.<sup>369</sup>

## 2. Facilitated Communication With Investors

The proposed rules would provide incremental flexibility to funds in their communications, which may increase the flow of information to investors.<sup>370</sup> Currently, affected funds are unable to communicate about an offering before a registration statement is filed, and their post-filing communications are subject to prospectus liability under section 12 of the Securities Act (or must be accompanied or preceded by the statutory prospectus).

This standardization in the communications processes of affected funds, by making them similar to those of operating companies, would make it easier for underwriters to execute offerings by affected funds and thus may decrease their compliance costs, which in turn may lead to lower offering costs and potentially enhance capital formation. Additionally, under the proposal, affected funds that would qualify as WKSIs would be permitted to engage in the widest range of communications, including free writing prospectuses about an offering before a registration statement is filed. More generally, affected funds would be able to engage in certain other pre-filing communications, use free writing prospectuses after a registration statement is filed, and use certain communications that are not subject to prospectus liability. The proposed changes in the communications rules for affected funds may increase the amount of valuable information that could be provided to investors before they make investment decisions, particularly with respect to WKSIs. We believe that more information could be provided on a timelier basis because the rules would

eliminate regulatory barriers to the dissemination of that information, and the markets may provide incentives for issuers, underwriters, and broker-dealers to produce additional information. We also believe that the increased flexibility of affected funds in their communications with investors under the free writing prospectus rules would maintain appropriate investor protection, consistent with the protections that apply to affected funds' communications under rule 482. For example, the proposed rules that allow affected funds to use free writing prospectuses are designed to assure that written issuer-provided or issuer-used information is publicly available. Additionally, the free writing prospectus will be a section 10(b) prospectus under the Securities Act and, as such, will be subject to liability under section 12(a)(2) as well as the anti-fraud provisions of the federal securities laws.

Increased information flow can help promote efficient capital markets because the market may be able to value securities more accurately. For example, the proposed rules would permit broker-dealers to disseminate research about an affected fund if certain conditions are met. While broker-dealers currently may disseminate such research under rule 482, the proposed amendments to rule 138 would likely reduce certain costs to broker-dealers associated with rule 482 (e.g., filing costs and concerns associated with prospectus liability). This could allow more valuable information about affected funds to reach potential investors. Another benefit of increasing the information flow is that investors may become better informed in making portfolio allocation decisions in accordance with their particular risk-return profiles. In addition, the proposed rules may benefit broker-dealers who provide research reports on affected funds by reducing their potential liability exposure associated with such reports, relative to the baseline, which may encourage them to provide additional research and enhance information flow.

## C. Potential Costs Resulting From the Proposed Implementation of the Statutory Mandates

### 1. Compliance Costs

We expect the rules we are proposing to implement the statutory mandate could increase compliance costs for affected funds in certain respects.<sup>371</sup> We

<sup>367</sup> For example, in 2017 non-fund issuers raised approximately \$1.3 trillion in 1,846 registered debt offerings and \$184 billion in 976 registered equity offerings. See Capital Raising in the U.S.: An Analysis of the Market for Unregistered Securities Offerings, 2009–2017, Division of Economic and Risk Analysis White Paper (Aug. 1, 2018), available at [https://www.sec.gov/dera/staff-papers/white-papers/dera\\_white\\_paper\\_regulation\\_d\\_082018](https://www.sec.gov/dera/staff-papers/white-papers/dera_white_paper_regulation_d_082018).

<sup>368</sup> See, e.g., Alan Berger and Gregory Udell, *The Economics of Small Business Finance: The Roles of Private Equity and Debt Markets in the Financial Growth Cycle*, Journal of Banking and Finance, Vol. 22, 613–673 (1998); Meghana Ayyagari, Asli Demirgüç-Kunt, and Vojislav Maksimovic, *How Important are Financing Constraints? The Role of Finance in the Business Environment*, World Bank

Mimeo (2005); Crowdfunding, Securities Act Release No. 9974 (Oct. 30, 2015) [80 FR 71388 (Nov. 16, 2015)].

<sup>369</sup> See, e.g., Torsten Beck, Asli Demirgüç-Kunt, and Ross Levine, *SMEs, Growth, and Poverty: Cross-Country Evidence*, Journal of Economic Growth, Vol. 10, 197–227 (2005); Ryan Decker, John Haltiwanger, Ron Jarmin, and Javier Miranda, *The Role of Entrepreneurship in U.S. Job Creation and Economic Dynamism*, Journal of Economic Perspectives, July, 3–24 (2014).

<sup>370</sup> See *supra* Part II.E.

<sup>371</sup> See also *infra* Part IV.E (discussing compliance and other costs associated with the proposed discretionary amendments).

are also cognizant of the fact that such an increase could be passed on to funds' investors. A potential cost of the proposed rules is that affected funds could incur increased filing or recordkeeping costs associated with issuer free writing prospectuses,<sup>372</sup> although affected funds currently face many of the same filing and recordkeeping costs under rule 482. For example, the ability of affected funds that qualify as WKSIs to use free writing prospectuses may increase the level of these funds' current communications (including communications prior to filing a registration statement that are presently prohibited), thus increasing the funds' filing and recordkeeping costs. We estimate that affected funds that are WKSIs would have additional annual filing and recordkeeping costs of \$200 per affected fund for free writing prospectuses used before the fund files a registration statement.<sup>373</sup> To the extent affected funds use free writing prospectuses for communications that currently occur under rule 482, the costs associated with free writing prospectuses could increase, and the costs associated with rule 482 advertisements could decrease. We are unable to predict, however, whether affected funds would be more likely to use free writing prospectuses than rule 482 communications or to engage in more communications with investors in practice as a result of the proposed rules.

Affected funds could also incur costs associated with adjusting their internal procedures for filing prospectus supplements.<sup>374</sup> Such costs could stem from the need to augment funds' information technology systems or train funds' employees, although, as recognized above, affected funds likely would be able to file fewer prospectus supplements under the proposal.

Parties that would be required to provide notices under rule 173,<sup>375</sup>

including underwriters and dealers in certain circumstances, may incur additional costs due to the requirement to notify affected fund investors that they have purchased shares in a registered offering. In addition, these same parties would incur costs to establish procedures for receiving and complying with requests for final prospectuses. We believe that providing the notice to investors would not impose a significant incremental cost because the notice can consist of a pre-printed message that is automatically delivered with or as part of the confirmation required by Exchange Act rule 10b-10.<sup>376</sup> Accordingly, we estimate that the cost of complying with rule 173 would be approximately \$0.05 per notice.<sup>377</sup> We estimate the annual cost of providing the notification would be approximately \$1,757,081.<sup>378</sup> For the parties that are required to provide such notices, these additional costs of complying with rule 173 would be mitigated to a certain degree by the proposed elimination of the requirement to supply a final prospectus to each investor.

## 2. Other Costs

Under the proposed rules, affected funds that qualify as WKSIs would be able to file registration statements and post-effective amendments that become automatically effective. To the extent that investors previously benefited from the Commission staff's review of these filings before they become effective, allowing filings of affected funds that are WKSIs to become automatically effective may eliminate such reviews and, as a result, possibly increase the costs to investors. Allowing affected funds that file short-form registration statements on Form N-2 to forward incorporate by reference could have a similar potential impact on investors. However, issuers would still face liability under the federal securities laws for registration statement disclosures (e.g., sections 12 and 17 of the Securities Act and section 10(b) and rule 10b-5 under the Exchange Act), which may ameliorate the potential

costs associated with reduced staff review.<sup>379</sup>

More generally, allowing forward incorporation by reference under the short-form registration instruction could increase the analytical burden and search costs for potential investors. Currently, affected funds provide required information in the prospectus that is delivered to investors, and forward incorporation by reference is not allowed. Under the proposal, instead of having all the information available in one location, investors may need to separately access on a website or request the incorporated materials. As a result, costs to investors for assembling and assimilating necessary information could increase, with a potentially stronger effect for retail investors (e.g., because they generally may not have the technical capabilities or monetary resources to efficiently search through a multitude of information sources). We do not have data to assess if, and to what extent, this proposed revision would be burdensome to investors.

However, an affected fund making a shelf offering under rule 415(a)(1)(x) is required to file a new registration statement every three years, which provides investors with a periodic update of consolidated information.<sup>380</sup> We are also proposing to require that affected funds provide in their annual reports certain information currently disclosed in their prospectuses to make the information more readily available in one document for investors.<sup>381</sup> Further, Securities Act Forms S-3 and F-3 have long permitted incorporation by reference from the issuer's Exchange Act reports, and investors have not indicated they are unduly burdened when investing in offerings registered on these Forms.<sup>382</sup> Studies have shown, however, that the majority of investors in operating companies are institutional investors, whereas the majority of investors in the securities of affected funds are retail investors, who may face relatively higher costs associated with searching for information distributed across multiple documents.<sup>383</sup> In

<sup>372</sup> See *supra* Part II.E.1; *infra* Part V.B.4 (estimating the annual paperwork burden for free writing prospectuses under rules 163 and 433 for purposes of the PRA).

<sup>373</sup> For purposes of the PRA, we estimate that, on average, affected funds that are eligible to be WKSIs (estimated as 104 funds) would file two free writing prospectuses under the proposed amendments to rule 163 each year. We estimate the total incremental burden would be approximately 0.125 hours and \$150 for the service of outside professionals. See *infra* Part V.B.4. We monetize the internal burden of preparing and filing a free writing prospectus by multiplying the burden hours by an estimated wage rate of \$400 per hour (0.125 × \$400 = \$50). The estimated wage figure is based on analysis in previous rulemakings. The total annual cost is calculated by adding the monetized internal burden (\$50) to the cost of outside professionals (\$150).

<sup>374</sup> See *supra* Part II.B.2.b.

<sup>375</sup> See *supra* Part II.D.

<sup>376</sup> See rule 10b-10 under the Exchange Act [17 CFR 240.10b-10].

<sup>377</sup> The Commission has estimated the cost per rule 173 notice to be \$0.05 for operating companies. See Securities Offering Reform Adopting Release, *supra* footnote 5, at 44795. We assume the same cost will apply to rule 173 notices provided to affected fund investors.

<sup>378</sup> For the purpose of the PRA, we estimate that there would be 43,546 notices per year per affected fund. The annual cost of providing rule 173 notification is calculated as the number of affected funds (807) × the number of notices per year (43,546) × the cost per notice (\$0.05). See *infra* Part V.B.5.

<sup>379</sup> Certain of our discretionary amendments may also ameliorate these costs. See *infra* Part IV.E.3 (discussing the benefits and costs of the proposed requirement to disclose material staff comments) and Part IV.E.2 (discussing the benefits and costs of the proposed structured data requirements).

<sup>380</sup> See *supra* footnote 19.

<sup>381</sup> See *supra* Part II.H.2.a.

<sup>382</sup> See Securities Offering Reform Adopting Release, *supra* footnote 5, at 44796.

<sup>383</sup> The average institutional holding is estimated to be approximately 30% for BDCs and 21% for registered CEFs. See CIFRR Adopting Release, *supra* footnote 98, at 64199. The institutional ownership of U.S. public equities was approximately 67% as

addition, the requirement to backward and forward incorporate by reference certain information into a short-form registration statement could increase an affected fund's liability with respect to information that has not previously been incorporated into its registration statement because this information would now be part of the registration statement. This could increase costs for relevant funds, including potential legal costs (e.g., those associated with additional review of materials that would be incorporated by reference into the fund's registration statement or counsel and other costs in connection with potential legal actions). These potential cost increases due to the proposed rules could be passed on to investors of affected funds.

The proposed rules would allow an affected fund to not deliver final prospectuses to investors if the fund files the final prospectus with the Commission. We acknowledge, however, that while this procedure has become commonplace in many aspects of our capital markets, there may be some investors who would prefer to receive the prospectus directly. While an investor could request a copy of the final prospectus under rule 173, there would be burdens on an investor to make such a request (e.g., loss of time while making the request and a delay in receiving the prospectus). Thus, investors without home internet access, depending on their ability and preference to access fund information electronically, might experience a reduction in their ability to access a fund's final prospectus. To the extent that a reduction in this information by such investors decreases how informed they are about affected funds, it could potentially decrease their ability to efficiently allocate capital across affected funds and other investments. However, an investor's purchase commitment and the resulting contract of sale of securities to the investor in the offering generally occur before the final prospectus is required to be delivered under the Securities Act, and this is commonplace in other parts of our capital markets. Moreover, for sales occurring in the secondary market, as a result of our existing rules, investors in securities of reporting issuers generally are not delivered a final prospectus.<sup>384</sup>

of 2010. See Marshall E. Blume and Donald B. Keim, Working Paper, *Institutional Investors and Stock Market Liquidity: Trends and Relationships*, The Wharton School, University of Pennsylvania (Aug. 21, 2012).

<sup>384</sup> See Securities Offering Reform Adopting Release, *supra* footnote 5, at 44782.

#### *D. Alternatives to Proposed Approach To Implementing Statutory Mandates*

We considered certain alternative approaches to implementing the directives in the BDC Act and Registered CEF Act to allow affected funds to use the securities offering rules that are available to operating companies. Although the BDC Act identifies certain required amendments to our rules and forms, we could have, for example, made additional modifications to the relevant provisions for affected funds or further revised the current registration and offering framework affected funds use.

For example, as discussed above, we considered modifying the public float standards in the WKSII definition or the short-form registration instruction by changing the required level of public float or providing alternative eligibility criteria, such as net asset value of a certain size for funds whose shares are not traded on an exchange.<sup>385</sup> These alternatives could have allowed more affected funds to qualify as WKSIs or to file short-form registration statements, with the associated benefits (e.g., lower costs of registered offerings) and costs (e.g., potential higher incidence of disclosures and fund practices that may not comply with applicable law due to reduced staff review) discussed above. For example, most interval funds do not list their securities on an exchange and do not have "public float," and these alternatives therefore could have permitted these interval funds, as well as other unlisted affected funds, to qualify as WKSIs or file short-form registration statements. However, modifying the eligibility criteria in the WKSII definition or the short-form registration instruction could give affected funds that do not have the requisite public float under the current WKSII definition or Form S-3 eligibility requirements an advantage over operating companies. Further, we do not believe that affected funds would be likely to have a level of market following at lower levels of public float than operating companies that would justify a lower public float threshold or alternative metric to qualify as a WKSII or to use a short-form registration statement. In addition, certain of the benefits that flow from WKSII status or the ability to use a short-form registration statement may be less relevant to unlisted affected funds that are engaged in continuous offerings.<sup>386</sup>

Under the BDC Act and the Registered CEF Act, we could have extended the

proposed rules only to BDCs, listed registered CEFs, and interval funds. Under this approach, unlisted registered CEFs would not have been able to take advantage of certain benefits of the proposed rules that would otherwise be available to unlisted BDCs, such as the cost-savings associated with the final prospectus delivery reforms.<sup>387</sup> This alternative also could have saved unlisted registered CEFs certain compliance costs stemming from the proposed rulemaking, such as the requirement to report on Form 8-K. However, excluding unlisted registered CEFs from the proposed rules could create unnecessary competitive disparities between unlisted registered CEFs and unlisted BDCs and would not provide investors in unlisted registered CEFs with the benefits of the new investor protections we are proposing.

#### *E. Discussion of Discretionary Choices*

We discuss below the discretionary amendments that we are proposing, in light of the proposed changes to implement the BDC Act and Registered CEF Act and the associated benefits and costs of those choices. We have tried to quantify the impact of each of the proposals, but in many cases, reliable, empirical evidence about the effects is not readily available to the Commission. We do, however, request that commenters provide us with any empirical evidence relating to these various choices to the extent that they can.

##### *1. New Registration Fee Payment Method for Interval Funds*

We are proposing a modernized approach to registration fee payment for interval funds that would require them to pay securities registration fees using the same method that mutual funds and ETFs use today. Specifically, the proposal would require interval funds to pay their registration fees on a net basis once a year, rather than having to pay registration fees when the fund files its registration statement.<sup>388</sup> We believe this approach would make the registration fee payment process for interval funds more efficient. For example, it would avoid the possibility that an interval fund would inadvertently sell more shares than it had registered and would not require the interval fund to periodically register new shares.

We believe the proposal could also benefit interval funds by reducing their

<sup>385</sup> See *supra* Part II.C.

<sup>386</sup> See *supra* paragraph accompanying footnotes 34–37.

<sup>387</sup> As previously recognized, unlisted registered CEFs would not be eligible for certain of the proposed amendments. See *supra* Part II.A.

<sup>388</sup> See *supra* Part II.G.

initial registration fees. In the table below, we have attempted to quantify	the potential initial cost-savings for interval funds under the proposed	modernized approach to registration fee payment over a 3-year period. <sup>389</sup>
	Current average registration fee (paid upon filing) <sup>390</sup>	Average registration fee that would have been paid under the proposal (paid at the end of the fiscal year) <sup>391</sup>
Year 1 .....	\$31,501	\$7,821
Year 2 .....	.....	6,550
Year 3 .....	.....	20,957

Within the current regime, an interval fund would pay on average \$31,501 at the time of filing, and then issue and repurchase securities over time. Under the proposed regime, the fund would pay its registration fees on a net basis once a year. Since the proposed rule would allow interval funds to shift more of the fee payments to the future, it would decrease their cost of offering securities. An interval fund would, however, be required to annually file Form 24F-2.<sup>392</sup> We estimate the annual burden of filing Form 24F-2 for interval funds would be \$134 per fund.<sup>393</sup>

As an alternative, we considered proposing to allow a wider range of affected funds, such as registered CEFs that are tender offer funds, to rely on rule 24f-2. This approach would have extended the benefits of rule 24f-2 to additional affected funds. However, as discussed above, interval funds have structural similarities to mutual funds and ETFs that other affected funds do not. In particular, interval funds routinely repurchase shares at net asset value and are required to periodically offer to repurchase their shares, and therefore are more likely to realize the operational benefits of computing registration fees on a net annual basis than are funds that are not required to periodically offer to repurchase their shares at net asset value.

## 2. Structured Data Requirements

The proposed rules include new structured data reporting requirements for affected funds. Under the proposal, all affected funds would be required to tag in Inline XBRL format certain Form

N-2 prospectus disclosure items. All affected funds also would be required to tag the information on the cover page of Form N-2 using Inline XBRL in accordance with the EDGAR Filer Manual. Finally, BDCs would be required to tag financial statement information using Inline XBRL.

Under the proposal, affected funds would be required to tag the following Form N-2 prospectus disclosure items using Inline XBRL: Fee Table; Senior Securities Table; Investment Objectives and Policies; Risk Factors; Share Price Data; and Capital Stock, Long-Term Debt, and Other Securities.<sup>394</sup> These items provide important information about an affected fund's key features, costs, and risks and may be particularly useful to investors to inform their investment decisions. With respect to the proposal to require BDCs to tag financial statement information, unlike operating companies and registered investment companies, BDCs currently are not required to report any structured data.<sup>395</sup> This proposed requirement would extend to BDCs a requirement that currently applies to operating companies.

Requiring BDCs to tag financial statement information using Inline XBRL, and all affected funds to tag in Inline XBRL format certain important prospectus disclosure items, would provide important benefits to investors seeking to access information about affected funds, whether directly or through third-party information providers. By providing a standardized, interactive, computer-based framework for reporting, it could further facilitate

more efficient comparisons of important information across affected funds by making it easier to aggregate and analyze information through automated means, which could increase competition for investor capital. The proposed Inline XBRL tagging requirements may also potentially increase the efficiency of capital formation to the extent that making disclosures available in a structured format reduces some of the information barriers facing prospective investors and makes it easier for affected funds to attract investors. Smaller affected funds in particular may benefit more from enhanced exposure to investors. If reporting the disclosures in a structured format increases the availability, or reduces the cost of collecting and analyzing, key information about affected funds, smaller affected funds may benefit from improved coverage by third-party information providers and data aggregators. Further, requiring affected funds to tag certain prospectus disclosures using Inline XBRL would facilitate monitoring of these funds by staff and market participants more generally, which could, for example, increase investor protection by enhancing staff's ability to monitor for regulatory compliance. This could mitigate potential costs associated with other aspects of the proposal, such as automatic shelf registration statements for WKSIs and short-form registration statements for eligible funds, that could affect investor protection.<sup>396</sup>

The proposed cover page tagging requirement would include new

<sup>389</sup> The estimates are based on data collected for interval funds that were active as of June 30, 2018. We used their Form N-2 filings and Form N-CSR filings to identify current registration fees, proceeds from shares issued, and cost of shares redeemed.

<sup>390</sup> The current average registration fee paid in year 1 is the average of the actual fees reported by the interval funds in the Calculation of Registration Fee table in Form N-2. For purposes of this analysis, we assume that interval funds did not register additional securities in years 2 or 3. If they did, the average registration fees under the current framework would be higher than \$31,501.

<sup>391</sup> For each of the interval funds, the fees in years 1, 2, and 3 are estimated as [(dollar proceeds from shares issued + dollar cost of shares redeemed) / \$1,000,000] × \$121.20. The \$121.20 is the fee rate (per million dollars) that funds pay to register shares for fiscal year 2019. Then we calculate the average fees per year.

<sup>392</sup> As discussed below, interval funds and other funds that file on Form 24F-2 would be required to file the form in a structured XML format under the proposed rules.

<sup>393</sup> For PRA purposes, we estimate an annual burden per respondent of filing Form 24F-2 of two hours. See *infra* Part V.B.7. At an estimated wage rate of \$67 per hour, the annual dollar cost for filing Form 24F-2 is \$132 (2 hours × \$67 per hour). This estimate does not account for burdens associated with filing Form 24F-2 in a structured XML format, which are discussed *infra* in Part IV.E.2.

<sup>394</sup> See *supra* Part II.H.1.c.

<sup>395</sup> See *supra* Part II.H.1.a.

<sup>396</sup> See *supra* Part IV.C.2 (discussing these costs).



checkboxes that would help identify whether a registration statement is, for example, an automatic shelf registration statement or a short-form registration statement.<sup>397</sup> We already require registrants to tag all of the information on the cover page of Form 10-K, Form 10-Q, Form 8-K, Form 20-F, and Form 40-F using Inline XBRL in accordance with the EDGAR Filer Manual. The proposed requirement to tag the Form N-2 cover page in Inline XBRL is expected to benefit investors, the Commission, and other data users. Investors would be able to automate their use of the cover page information, including company name, the Act or Acts to which the registration statement relates, and checkboxes relating to the effectiveness of the registration statement. This would enhance investors' ability to identify, count, sort, and analyze registrants and disclosures to the extent these data points otherwise would be formatted, for example, in HTML. The proposed checkboxes, which would be required to be tagged in Inline XBRL format, would allow investors, Commission staff, and other data users to distinguish between different categories of registration statements in much the same way they are currently able to do for operating companies. The availability of information in Inline XBRL could enable data users to capture and analyze cover page information more quickly and at a lower cost, as well as to search and analyze the information dynamically. It could also facilitate comparison of information across filers and reporting periods.

Affected funds would incur some costs to tag and review the required information in Inline XBRL. Some filers may perform the tagging in-house while others may retain outside service providers. We expect the outside service providers to pass along their costs to filers. Various XBRL preparation solutions have been developed and used by operating companies and open-end fund filers, and some evidence suggests that, for operating companies, XBRL tagging costs have decreased over time.<sup>398</sup> Inline XBRL is a specification

of XBRL that allows filers to embed XBRL data directly into an HTML document, eliminating the need to tag a copy of the information in a separate XBRL exhibit,<sup>399</sup> which can make XBRL preparation more efficient and less costly. Costs of Inline XBRL preparation may depend on the familiarity of the filer and/or its service provider with Inline XBRL. Incremental costs of compliance with the proposed tagging requirement would be lower for affected funds whose advisers already are required to report information for other investment products they offer, such as open-end funds, in XBRL. Additionally, in a separate rulemaking, we have required BDCs to tag the cover pages of their 10-K, 10-Q, and 8-K filings.<sup>400</sup> Complying with those amendments would result in BDCs having the ability to also tag the information on the cover page of Form N-2, and at reduced incremental cost. Nevertheless, we recognize that some registrants affected by the proposed requirement, particularly filers with no Inline XBRL experience, likely would incur initial costs to acquire the necessary expertise and/or software as well as ongoing costs of tagging required information in Inline XBRL, and the incremental effect of any initial fixed costs of complying with the Inline XBRL requirement may be greater for smaller affected funds. On an ongoing basis, registrants are expected to expend time to tag and review the tagged information in Inline XBRL using their in-house staff. Some registrants may also incur an initial cost to license filing preparation software with Inline XBRL capabilities from a software vendor, and some may also incur an ongoing licensing cost. Other registrants may incur an initial cost to modify their existing filing preparation software to accommodate Inline XBRL preparation. Some registrants would incur the costs of filing agent services to rely on a filing agent to prepare their Inline XBRL filings. Initial costs involving investments in expertise and modifications to disclosure preparation solutions, or switching to a different software vendor or outside service provider, may result in a higher compliance cost during the first year of using Inline XBRL than in subsequent years. We recognize that some ongoing fixed costs of complying with the Inline XBRL requirement may be greater for smaller affected funds.

The costs of compliance with the proposed Inline XBRL requirements are likely to vary across registrants. On

average we estimate that the compliance cost to BDCs of tagging financial statement information, certain prospectus disclosure items, and Form N-2 cover page information using Inline XBRL would be approximately \$152,324 per BDC per year in the 3 years following the adoption of the proposed rules.<sup>401</sup> We estimate that the compliance cost to registered CEFs of tagging in Inline XBRL format certain prospectus disclosure items and tagging Form N-2 cover page information would be approximately \$7,191 per registered CEF per year in the 3 years following the adoption of the proposed rules.<sup>402</sup> We note that some recent surveys based on operating companies suggest that these current PRA-based burden estimates may be overstated with respect to operating companies, and particularly smaller reporting companies.<sup>403</sup> Below, we request comment on whether our current PRA estimates continue to be appropriate.

As an alternative, we could have proposed to allow but not require affected funds to present cover page, financial statement, and important prospectus disclosure items information in Inline XBRL. Compared to the proposed rules, a fully voluntary Inline XBRL program would lower costs for those filers that do not find Inline XBRL to be cost efficient. We also could have

<sup>401</sup> For BDCs, for the purposes of the PRA, we estimated the average annual compliance costs in the 3 years following the adoption of the rule to be 30,503 burden hours of in-house Inline XBRL preparation and \$3,488,200 in outside services. See *infra* Part V.B.2. We monetize the burden of in-house Inline XBRL preparation by multiplying the burden hours by an estimated wage rate of \$400 per hour (30,503 × \$400 = \$12,201,200). The estimated wage figure is based on analysis in previous rulemakings. The average cost per BDC is calculated by adding the monetized internal burden (\$12,201,200) to the cost of outside services (\$3,488,200) and dividing by the number of BDCs (103).

<sup>402</sup> For registered CEFs, for the purposes of the PRA, we estimated the average annual compliance costs in the 3 years following the adoption of the rule to be 10,725 burden hours of in-house Inline XBRL preparation and \$772,200 in outside services. See *infra* Part V.B.2. We monetize the burden of in-house Inline XBRL preparation by multiplying the burden hours by an estimated wage rate of \$400 per hour (10,725 × \$400 = \$4,290,000). The estimated wage figure is based on analysis in previous rulemakings. The average cost per registered CEF is calculated by adding the monetized internal burden (\$4,290,000) to the cost of outside services (\$772,200) and dividing by the number of registered CEFs (704).

<sup>403</sup> See American Institute of CPAs, *XBRL Costs for Small Companies Have Declined 45%, According to AICPA Study* (Aug. 18, 2018), available at <https://www.aicpa.org/press/pressreleases/2018/xbrl-costs-have-declined-according-to-aicpa-study.html>; CFA Institute, *The Cost of Structured Data: Myth vs. Reality*, available at <https://www.cfainstitute.org/-/media/documents/survey/the-cost-of-structured-data-myth-vs-reality-august-2017.ashx>.

<sup>397</sup> See *supra* Part II.H.1.b.

<sup>398</sup> See, e.g., AICPA sees 45% drop in XBRL costs for small companies, Aug. 15, 2018, Accounting Today (stating that, according to an updated survey by AICPA and XBRL US, the cost of formatting financial statements in XBRL for smaller reporting companies has declined 45% since 2014 and that 68.6% of the companies paid \$5,500 or less on an annual basis (as compared to 29.9% of companies in the 2014 survey) for fully outsourced creation and filing solutions for their XBRL filings, while 11.8% of the companies surveyed paid annual costs between \$5,500 to as much as \$8,000 for their full-service outsourced solutions).

<sup>399</sup> Inline XBRL Adopting Release, *supra* footnote 166, at 40851.

<sup>400</sup> See *supra* footnote 177.

proposed requiring the Inline XBRL requirements only for a subset of affected funds—for example, affected funds that file short-form registration statements on Form N-2 or WKSIs. We also could have proposed to permit more than one structured data format or leave the precise format unspecified. However, a voluntary program or the use of multiple structured data formats would also reduce potential data quality benefits compared to mandatory Inline XBRL, as would a program that captures only a subset of affected funds. If the information were not submitted by the affected funds in a standardized, structured, machine-readable format, investors and other data users who wish to instantly analyze, aggregate, and compare the data would be required to incur the costs of paying a third-party provider to manually rekey the data, review the data for data quality problems during the duplication process, and disseminate the data to the users.<sup>404</sup> Alternatively, investors or data users unwilling to pay a third-party provider would have to incur the time to do that process themselves. In either scenario, the data would not be usable in as timely a manner if it were made machine-readable in a standardized format. In addition, under a voluntary program, data that is not submitted in Inline XBRL would not be validated, thus decreasing the overall data quality of the data submitted. Unlike the machine readable XBRL format, data submitted in unstructured formats (e.g., HTML, ASCII) is not machine readable at the element level and thereby cannot be validated by EDGAR in any way. Thus, data submitted in the HTML format by affected funds that opted not to use Inline XBRL and XBRL data submitted by other affected funds could be different due to the level of pre-submission validation activities. Poor data quality reduces any data user's ability to meaningfully analyze, aggregate, and compare data.

As another alternative, we could propose to require the disclosures to be filed in another structured format, such as the non-Inline XBRL or XML format. Compared to the proposed Inline XBRL requirement, the use of the non-Inline XBRL format entails more duplication, which can adversely affect the quality and usability of the structured data as well as the efficiency and cost of preparation and review of the structured

data. Compared to the proposed requirement to use Inline XBRL, the alternative of requiring the use of XML could result in lower costs for filers. However, compared to the proposed amendments, XML would provide less flexibility in tagging complex information as well as less extensive data quality validation capabilities. Given the complexity of the information required to be tagged and its importance to investors, Commission staff, and other data users, we believe the benefits from the use of Inline XBRL would outweigh its higher cost compared to XML.<sup>405</sup>

As another alternative, we could have expanded the scope of prospectus disclosure information required to be tagged in Inline XBRL under the proposed rules. Compared to the proposed rules, this alternative would improve the timeliness and usability of the required disclosure information, but potentially impose additional costs on affected funds. To the extent that the other required prospectus disclosures of affected funds contain information that is more specific to individual funds without sufficient comparability or aggregation utility, the benefits of having those additional required disclosures in a structured format may be lower than the more limited subset of disclosures required to be filed in Inline XBRL under the proposed rules. As another alternative, we could have narrowed the scope of prospectus disclosure information required to be tagged in Inline XBRL under the proposed rules. Compared to the proposed rules, this alternative could decrease the timeliness and usability of the required disclosure information, but potentially reduce costs for registrants. Overall, the prospectus disclosure information proposed to be filed in Inline XBRL largely parallels the information that is required of mutual funds and ETFs, and we believe it is likely to be of greatest utility for investors and others that seek to use the information in a structured format to assist with investment decisions regarding affected funds.

We also are proposing to require registered investment companies that file Form 24F-2 (including mutual funds and ETFs, as well as interval funds under our proposed rules) to submit the form in a structured XML

format.<sup>406</sup> We believe use of a structured data format would make it easier for issuers to accurately prepare and submit the information required by Form 24F-2 and would make the submitted information more useful to Commission staff. Automated validation processes could help issuers compute registration fees accurately before submitting the filing, which could reduce administrative burdens associated with correcting inaccurate filings. A structured filing format could also facilitate pre-population of previously-filed information. We estimate the cost of tagging Form 24F-2 in a structured XML format to be \$522 per fund.<sup>407</sup>

### 3. Periodic Reporting Requirements

We are proposing certain new annual report requirements for affected funds that file a short-form registration statement on Form N-2. These funds would be required to include in their annual reports certain information that they currently disclose in their prospectus—a table of fees and expenses, share price information, and a table of senior securities—and a discussion of unresolved staff comments.<sup>408</sup> In addition, all BDCs would be required to include financial highlights in their registration statements and annual reports.<sup>409</sup> We also propose to require all registered CEFs to provide management's discussion of fund performance in their annual reports.<sup>410</sup> Finally, registered CEFs that rely on rule 8b-16 under the Investment Company Act to avoid annually updating their registration statements would be required to provide more expansive disclosure about certain key changes in their annual reports.<sup>411</sup> We believe these proposed requirements would promote investor protection by making important information more readily accessible to investors.

With respect to affected funds filing short-form registration statements on Form N-2, the proposed annual report requirements would compile certain information that is already available in a fund's registration statement. This could be beneficial to some investors in these funds since information would be readily available in one document instead of investors having the need to

<sup>406</sup> See *supra* Part II.H.1.d.

<sup>407</sup> We assume that the burden of tagging Form 24F-2 in a structured XML format would be 2 hours for each filing. See *infra* Part V.B.7. At an estimated wage rate of \$261 per hour, the dollar cost for filing Form 24F-2 in a structured XML format is \$522 (2 hours × \$261 per hour) per fund.

<sup>408</sup> See *supra* Part II.H.2.a and Part II.H.2.d.

<sup>409</sup> See *supra* Part II.H.2.c.

<sup>410</sup> See *supra* Part II.H.2.b.

<sup>411</sup> See *supra* Part II.H.5.

<sup>404</sup> Some studies have shown that investors use XBRL files often, even preferring them to non-XBRL files when both are available. See Yu Cong, Hui Du, and Miklos A. Vasarhelyi, *Are XBRL Files Being Accessed? Evidence from the SEC EDGAR Log File Dataset*, Journal of Information Systems, Vol. 32-3, 23-29 (2018).

<sup>405</sup> In contrast, the information provided in Form 24F-2 is less complex and is generally only used by fund issuers and Commission staff for purposes of calculating certain registered investment companies' registration fees, so we have proposed to require Form 24F-2 information in a structured XML format rather than Inline XBRL.

compile it from several sources. As previously noted, given the ability of affected funds to use forward incorporation by reference under the short-form registration instruction, these funds' annual reports may become a more convenient and comprehensive source of information about a particular seasoned fund, relative to that fund's registration statement. At the same time, the proposed annual report requirements may increase the compliance costs for seasoned funds because new information items would have to be added to the annual report. However, because the annual report would be incorporated by reference into the fund's prospectus, requiring disclosure in both the prospectus and annual report should not require duplicative disclosure. Moreover, specifying identical disclosure requirements in both places may facilitate forward incorporation by reference, by making clear that the same required disclosure will satisfy both requirements. Alternatively, we could have proposed to require affected funds to include in their annual reports more or less information from their registration statements. While requiring less information would reduce costs to affected funds by reducing the amount of required annual report disclosure, it could also make it more difficult for investors to find important fund information. Requiring affected funds to include more prospectus information in their annual reports than we have proposed could increase the length and complexity of annual reports and make them less useful to investors overall. This alternative would also increase affected funds' compliance costs.

The proposed requirement to disclose unresolved staff comments in the annual report is designed to mitigate the concern that other aspects of the proposal may eliminate some incentives that certain affected funds may have to resolve staff comments in a timely manner. This requirement may, however, impose certain compliance costs to the extent a seasoned fund does not timely resolve staff comments and hence would be required to provide such disclosure. We do not believe these disclosure costs would be significant because the information would be readily available to the affected fund. We recognize, however, there could be some costs to affected funds associated with compliance and legal review to the extent an affected fund wanted to provide additional information in its annual report disclosure beyond that provided in the fund's written response to the staff's comment (which would

typically already be publicly available on EDGAR).

With respect to the proposal to require BDCs to provide financial highlights information, we believe that investors would benefit from disclosure summarizing a BDC's financial statements. We believe the costs associated with this proposed requirement should be minimal since we understand that it is general market practice for BDCs to include this information in their registration statements.

We believe the proposal to require registered CEFs to include MDFF disclosure would be beneficial to investors by helping them assess a fund's performance over the prior year and complementing other information in the report, which may make the annual report disclosure more understandable as a whole. This requirement would also promote parity between different types of funds, as open-end funds and BDCs are already required to provide similar disclosure in their annual reports. This proposed requirement would likely increase compliance burdens for registered CEFs, to the extent they do not voluntarily provide MDFF disclosure already. We believe that a majority of registered CEFs already provide MDFF-like disclosure in their annual shareholder reports. We estimate the annual cost of providing MDFF disclosure to be \$8,000 per registered CEF,<sup>412</sup> although this cost would likely be lower for affected funds that already provide MDFF-like disclosure.

We considered proposing additional MDFF requirements, such as requirements to: (1) Disclose the impact of particular investments (including large positions and/or significant investments) or investment types that contributed to or detracted from performance; (2) explain a fund's performance in relation to its index; (3) explain how the use of leverage affected fund performance; (4) explain the reason for and effect of any large cash or temporary defensive positions on fund performance; (5) explain the effect of any tax strategies, or the effects of taxes, on fund performance; (6) explain the effect of non-recurring or non-cash income on fund performance; (7) include general discussion of purchases and sales of fund shares and the effects

<sup>412</sup> For the purpose of the PRA, we estimate that the proposed amendments to require registered CEFs to provide MDFF in their annual reports would result in an additional 20 burden hours for registered CEFs. See *infra* Part V.B.3. We monetize the internal burden by multiplying the burden hours by an estimated wage rate of \$400 per hour (20 × \$400 = \$8,000).

of any share repurchases or tender offers on fund performance; and/or (8) disclose whether the fund engages in high portfolio turnover and the effect of portfolio turnover on fund performance. We also considered proposing changes to the proposed average annual total return table to provide additional or more useful information to investors, such as requiring total return based on per-share net asset value, in addition to (as is proposed) total return based on current market price. Although one or more of these changes could result in additional, potentially helpful information for investors, we also considered the administrative costs that additional disclosure requirements would impose and have determined not to propose them at this time.

Under the proposed amendments to rule 8b-16, registered CEFs relying on the rule would be required to describe certain key changes that occurred during the relevant year in enough detail to allow investors to understand each change and how it may affect the fund. We estimate that approximately 489 registered CEFs relied on rule 8b-16 as of December 31, 2018.<sup>413</sup> These registered CEFs also would be required to preface this disclosure with a legend clarifying that the disclosures provide only a summary of certain changes that have occurred in the past year, and that the summary may not reflect all of the changes that have occurred. We believe this new requirement would allow investors in funds relying on rule 8b-16 to more easily identify and understand key information about their investments. Because these funds are already required to disclose the enumerated changes, the proposed new requirement would likely add only a small incremental compliance burden.

#### 4. New Current Reporting Requirements for Affected Funds

Currently, registered CEFs generally are not required to report information on Form 8-K, although listed registered CEFs are subject to exchange rules that require listed issuers to provide the market current information in response to certain events. We are proposing to require that registered CEFs comply with Form 8-K reporting requirements. Notably, Form 8-K would require disclosure within 4 business days of the relevant event, while the existing regime for registered CEFs calls for disclosure on an annual or semi-annual basis, with exchange rules requiring some current disclosure from listed registered CEFs.

We are also proposing amendments to Form 8-K to add certain new reporting

<sup>413</sup> See *infra* footnote 584.

items that would apply to both BDCs and registered CEFs to better tailor Form 8-K disclosure to these types of investment companies. The additional reporting items we propose are designed to recognize certain differences between events that are relevant to affected funds and those that are relevant to operating companies. The new reportable events would be triggered if an affected fund has: (1) A material change to its investment objectives or policies; or (2) a material write-down in fair value of a significant investment.

We believe these amendments would improve current reporting of important information by affected funds to investors and the market, thus promoting investor protection. For example, the proposed requirement to file a Form 8-K report when an affected fund materially changes its investment objectives or policies would provide investors with more timely information about significant changes to a fund's investment strategies, which would allow investors to better assess whether a new investment strategy is aligned with their individual investment goals. Requiring Form 8-K reporting about material write-downs of significant investments would give investors more current information about events that are likely to significantly impact the value of their investments, particularly with respect to affected funds' less liquid holdings where there is a lack of market transparency regarding potential valuation changes between funds' periodic reports.

Additionally, while affected funds may provide certain current information to investors or the market through press releases, and BDCs must report under existing Form 8-K provisions, requiring all affected funds to provide information on Form 8-K—including information that is tailored to the business and structure of affected funds—would better standardize the types of information that affected funds report and would make current information about affected funds more readily accessible in one place (EDGAR). Enhancing the amount of current information about affected funds available to investors and the market could facilitate more efficient pricing of affected funds' shares (to the extent they do not trade at NAV) and could make it easier for an affected fund to develop a market following, which could improve its ability to attract new investors.

Requiring affected funds to provide new current reporting may increase their compliance costs. For example, registered CEFs generally are not required to report information on Form 8-K and currently may not be subject to

any disclosure requirements related to certain Form 8-K events. As discussed above, however, 75 registered CEFs reported information on Form 8-K voluntarily in 2018, whether pursuant to exchange rules or otherwise.<sup>414</sup> Additionally, listed registered CEFs, and any other registered CEFs that make voluntary disclosures on Form 8-K, may be able to leverage their experience with making certain prompt, public disclosures to comply with Form 8-K requirements. Those registered CEFs that are not exchange-listed, and that do not currently report information on Form 8-K, would not have prior experience to leverage, and thus the relative burdens associated with the proposed Form 8-K requirements could be higher for these funds if their advisers do not also advise other funds that file reports on Form 8-K.

Also, we recognize that certain items in Form 8-K are substantively the same as or similar to existing disclosure requirements for registered CEFs, although the existing requirements provide less-timely disclosure. This should reduce burdens to some extent since registered CEFs are already familiar with providing such disclosure. However, we recognize there are certain costs associated with potentially duplicative disclosure requirements, although we believe these costs should not be significant. These costs would be associated with preparing the Form 8-K disclosure. We do not anticipate that the proposed Form 8-K requirements would increase affected funds' compliance costs associated with existing disclosure requirements. The proposed requirements may, to some extent, reallocate certain of affected funds' existing disclosure costs to preparing Form 8-K disclosure since affected funds may be able to use the Form 8-K disclosure to help prepare disclosures that they are currently required to provide in annual or other periodic reports. Further, we believe it would be beneficial to investors to retain existing shareholder report disclosure requirements to reduce potential disruptions to shareholders and limit discrepancies between different types of funds' shareholder reports.

With regard to the new reportable events on Form 8-K that we are proposing, all affected funds would have to monitor for and report these new events on Form 8-K, which would likely increase compliance costs, including costs associated with preparing and filing the new Form 8-K

disclosure. We believe that affected funds will be aware of information regarding these events, as this information is important for their operations, and thus it would not impose substantial costs for them to supply it on Form 8-K. We also believe that these events, along with those currently covered by Form 8-K, will occur relatively infrequently. This should reduce the associated reporting burden. The existing items on Form 8-K generally have not led to frequent reporting obligations for BDCs. For example, over a 3-year period from June 1, 2015 to May 31, 2018, BDCs filed or furnished approximately 3,080 reports on Form 8-K, with an estimated average of 10 reports per BDC per year.<sup>415</sup> Of the 3,080 reports, approximately 931 were furnished or filed under non-mandatory reporting items—Item 7.01 (Regulation FD Disclosure) and Item 8.01 (Other Events).<sup>416</sup> Further, over this 3-year period, BDCs filed or furnished 25 or fewer reports under 15 of the 23 mandatory reporting items applicable to non-ABS issuers. We estimate the overall costs of reporting new information on Form 8-K to be \$19,553,600 per fund for registered CEFs<sup>417</sup> and \$206,000 per fund for BDCs.<sup>418</sup>

Also, we are proposing to extend the safe harbor for failure to report certain Form 8-K items to include the new proposed reporting items for affected funds. Failure to report under these proposed items also would not impact an affected fund's eligibility to file a short-form registration statement on Form N-2. This should limit liability concerns and the potential impact on an

<sup>415</sup> As noted above, as of December 31, 2018, there were 103 BDCs. If we assume there were 103 BDCs over the three-year period and approximately 1,027 reports each year ( $3,080/3 = 1,027$ ) distributed evenly across each BDC, then each BDC would have filed approximately 10 Form 8-K reports each year ( $1,027/103 = 10$ ).

<sup>416</sup> Some of these 931 reports were filed under Item 9.01 (Financial Statements and Exhibits), in addition to Item 7.01 or Item 8.01.

<sup>417</sup> For purposes of the PRA, we estimate the annual incremental paperwork burden for CEFs to prepare and file the Form 8-K under the proposed amendments would be approximately 36,663 burden hours of internal time and a cost of approximately \$4,888,400 for the services of outside professionals. See *infra* Part V.B.6. We monetize the internal burden by multiplying the burden hours by an estimated wage rate of \$400 per hour ( $36,663 \times \$400 = \$14,665,200$ ).

<sup>418</sup> For purposes of the PRA, we estimate the annual incremental paperwork burden for BDCs to prepare and file the Form 8-K under the proposed amendments would be approximately 386.25 burden hours of internal time and a cost of approximately \$51,500 for the services of outside professionals. See *infra* Part V.B.6. We monetize the internal time by multiplying the burden hours by an estimated wage rate of \$400 per hour ( $386.25 \times \$400 = \$154,500$ ).

<sup>414</sup> Only 10 of those 75 registered CEFs were unlisted registered CEFs.

affected fund's ability to raise capital associated with failing to timely file a report under these items.

As an alternative, we could have not proposed to require current reporting on Form 8-K by certain or all registered CEFs. For example, we could have proposed to require Form 8-K reporting for only listed registered CEFs, or only those registered CEFs that qualify as WKSIs or are eligible to use a short-form registration statement. This approach would reduce costs for certain registered CEFs, but it would also create informational disparities among registered CEF investors and disadvantage investors in unlisted registered CEFs. Unlisted registered CEFs already may provide less transparency than listed registered CEFs in certain respects given that unlisted registered CEFs are not required to provide current information under exchange rules. Further, if we excluded all registered CEFs from Form 8-K reporting, this approach would disproportionately advantage registered CEFs as opposed to BDCs and operating companies, particularly with respect to those that are permitted to qualify as WKSIs or seasoned issuers.

We also could have proposed to require affected registered CEFs to file Form 8-K, but not added any new items tailored to BDCs and registered CEFs. Such an alternative may decrease the compliance costs for affected funds, while at the same time addressing the current lack of parity between registered CEFs and BDCs in terms of current reporting to investors and the market. We believe, however, that the proposed reporting items would enhance the information flow to investors and the market by providing timely and important value-relevant information. We also believe that it enhances parity between affected funds and operating companies with respect to the amount of current information available to investors since affected funds are unlikely to report information under several existing Form 8-K items.

As a further alternative, we could have proposed to tailor the Form 8-K requirements to affected funds by identifying certain items these funds would not be required to report. This approach could have reduced costs to affected funds by expressly providing that they are not required to monitor for or report certain events. However, while we believe that certain items will never or very rarely create reporting obligations for affected funds, excluding affected funds from certain reporting requirements may unduly complicate Form 8-K and may not provide tangible benefits since affected funds are

unlikely to be subject to such reporting requirements regardless of whether we provide specific exclusions.

Finally, rather than propose to require affected funds to report information about material write-downs of significant investments, we could have proposed to require them to file Form 8-K reports when they experience a significant decline in NAV. This approach would apply more generally to all affected funds (rather than only those funds that hold significant investments) and would likely result in more Form 8-K reporting by affected funds, which could increase the flow of information to investors that is relevant to their investment decisions. While additional reporting could also increase costs to affected funds, a decline in NAV could be easier for affected funds to monitor and report. However, some affected funds already publicly disclose their NAVs on a daily or weekly basis, which could result in any associated Form 8-K reporting providing stale information. Since affected funds disclose their NAVs at different frequencies—ranging from daily to semi-annually—establishing a baseline for measuring a decline in NAV would present certain difficulties and would likely result in either inconsistent reporting standards across affected funds or less-relevant reporting by certain funds.

#### 5. Online Availability of Information Incorporated by Reference

We are proposing to modernize Form N-2's requirements for backward incorporation by reference by all affected funds.<sup>419</sup> Affected funds would no longer be required to deliver to new investors information that they have incorporated by reference. Instead, we are proposing that these funds make the incorporated materials and corresponding prospectus and SAI readily available and accessible on a website maintained by or for the fund and identified in the fund's prospectus or SAI.

We believe that this new requirement would improve the information's overall accessibility to investors. In particular, this new requirement would make the incorporated information, prospectus, and SAI more accessible to retail investors, who we believe may be more inclined to look at a fund's website for information than to search the EDGAR system.<sup>420</sup> Affected funds would also be

required to provide incorporated materials upon request free of charge. In addition, the proposed rule would increase the likelihood that fund investors view the information in their preferred format, and thereby increase their use of the information to make investment decisions.

We do not expect that this proposal would result in a substantial reduction in the amount of the information affected funds deliver to investors through the mail or electronically, because we expect that most affected funds would rely on rules 172 and 173, as we propose to amend them, to satisfy their prospectus delivery obligations. An issuer that uses these rules will satisfy its final prospectus delivery obligations by filing the prospectus with the Commission rather than delivering the prospectus and any incorporated material to investors.<sup>421</sup>

We do not believe this requirement would generate significant compliance costs for affected funds because many funds currently post their annual and semi-annual reports and other fund information on their websites. We estimate the annual cost to comply with the proposed website posting requirements to be \$478 per fund.<sup>422</sup>

Affected funds may also incur printing and mailing costs under the proposal if some investors request paper copies of the prospectus<sup>423</sup> or of information that has been incorporated by reference into the prospectus or SAI but not delivered with the prospectus or SAI.<sup>424</sup> In another release, the Commission estimated that the annual printing and mailing cost associated with providing copies of prospectuses and other documents upon request would be approximately \$500 per registrant.<sup>425</sup> We are similarly proposing a requirement to send prospectuses and related information here, and we have no reason to assume significant differences in the average lengths of the associated materials or the frequency of

Investment Company Institute (available at <http://www.ici.org/research/stats/factbook>) suggests an increasing trend of U.S. households using the internet for financial purposes.

<sup>421</sup> See *supra* Part II.D.

<sup>422</sup> For the purpose of the PRA, we estimate an average burden to comply with the website posting requirements of 2 hours per fund. See *infra* Part V.B.1. The expected compliance cost associated with the proposed website posting requirements is calculated by multiplying the 2-hour burden by the estimated hourly wage based on published rates for webmasters (\$239). See also Variable Contract Summary Prospectus Proposing Release, *supra* footnote 172, at 61832.

<sup>423</sup> See *supra* footnote 109.

<sup>424</sup> See *supra* Part II.H.4.

<sup>425</sup> See Variable Contract Summary Prospectus Proposing Release, *supra* footnote 172, at 61812, 61832.

<sup>419</sup> See *supra* Part II.H.4.

<sup>420</sup> For example, results from a 2011 investor testing sponsored by the Commission (available at [www.sec.gov/comments/s7-08-15/s70815.shtml](http://www.sec.gov/comments/s7-08-15/s70815.shtml)) suggest that an investor looking for a fund's annual report is most likely to seek it out on the fund's website. Additionally, a 2015 survey by the

investor requests under this proposal. We estimate that the printing and mailing costs associated with the proposed requirements would be approximately \$750 per fund in recognition that the requirement to deliver information that has been incorporated by reference may result in greater overall costs since affected funds that are eligible to file short-form registration statements under the proposal would be able to use incorporation by reference more frequently.<sup>426</sup> We anticipate, however, that investors may be less likely to request copies of materials that have been incorporated by reference into an affected fund's prospectus or SAI, so we believe this requirement would only incrementally increase costs.

Alternatively, we could have left Form N-2's backward incorporation by reference requirements as-is and continued to require funds to deliver incorporated materials to new investors. Because current General Instruction F of Form N-2 does not require affected funds to make incorporated materials available online, funds would not have to incur costs associated with website posting. However, because affected funds that choose to rely on rules 172 and 173, as proposed, would be deemed to have delivered their disclosures upon filing with the Commission instead of giving them to investors, the current backward incorporation delivery requirement would not result in the delivery of incorporated materials to their investors, thus making less accessible the disclosure materials that might affect their investment decision.

#### F. Request for Comments

We request comment on the potential costs and benefits of the proposed rules and whether the rules, if adopted, would promote efficiency, competition, and capital formation or have an impact or burden on competition. Commenters are requested to provide empirical data, estimation methodologies, and other factual support for their views, particularly as they relate to costs and benefits estimates. Our specific questions follow.

- We seek information that would help us quantify or otherwise qualitatively assess the benefits of the proposed rules. Please provide any data, studies, or other evidence that would allow us to quantify some or all of the

benefits. Are there any other benefits from the proposed rules?

- We seek information that would help us quantify compliance and other costs resulting from the proposed rules. Please provide any data, studies, or other evidence that would allow us to quantify some or all of the costs. Are there any other potential costs of the proposed rules?

- Are our estimates of the compliance costs of requiring affected funds to tag in Inline XBRL format certain information reasonable? Is there a fixed component of the XBRL reporting? Are there any other types of costs that should be considered? Are affected funds more likely perform the tagging in-house or retain outside service providers?

- Are our estimates of the compliance costs of requiring registered CEFs to include MDPF disclosure in their annual reports reasonable? Are there any other types of costs that should be considered?

- Are our estimates of the compliance costs of requiring registered CEFs to report information on Form 8-K, and requiring affected funds to provide new current reporting on Form 8-K, reasonable? Are there any other types of costs that should be considered?

- Are our estimates of the compliance costs of requiring affected funds to make the incorporated materials and corresponding prospectus and SAI readily available and accessible on a website maintained by or for the fund reasonable? Are our estimates of the compliance costs of requiring affected funds to deliver a copy of information incorporated by reference into its prospectus or SAI to investors upon request reasonable? Are there any other types of costs that should be considered?

- Are our estimates of the compliance costs of requiring registered investment companies that file Form 24F-2 to file it in an XML format reasonable? Are there any other types of costs that should be considered?

- Are there any other potential effects on competition, efficiency, and capital formation that could result from the proposed rules?

#### V. Paperwork Reduction Act Analysis

##### A. Background

Certain provisions of the proposed amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 (PRA).<sup>427</sup> We are submitting the proposed amendments to the Office

of Management and Budget (OMB) for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The hours and costs associated with preparing disclosure, filing forms, and retaining records constitute reporting and cost burdens imposed by the collections of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The titles for the collection of information are:

Title	OMB control No.
Form N-2 .....	3235-0026
Mutual Fund Interactive Data <sup>428</sup> .....	3235-0642
Rule 30e-1 .....	3235-0025
Form 10-K .....	3235-0063
Family of rules under section 8(b) of the Investment Company Act of 1940 <sup>429</sup> ..	3235-0176
Rule 163 .....	3235-0619
Rule 433 .....	3235-0617
Rule 173 .....	3235-0618
Form 8-K .....	3235-0060
Form 24F-2 .....	3235-0456

The rules, forms, and regulations listed above were adopted under the Securities Act, the Exchange Act, or the Investment Company Act. They set forth the disclosure requirements for registration statements, prospectuses, periodic and current reports, and certified shareholder reports that are prepared by registrants to help investors make informed investment and voting decisions. They also permit additional communications by registrants during a registered offering. The proposed amendments, if adopted, would allow affected funds to use the securities offering rules that are already available to operating companies. In addition, the proposed rules would include amendments to our rules and forms intended to tailor the disclosure and regulatory framework to affected funds.

<sup>428</sup> Recently, we issued a release that, among other things, proposed to retitle this information collection as "Registered Investment Company Interactive Data." See Variable Contract Summary Prospectus Proposing Release, *supra* footnote 172. If adopted, the proposed amendments to require BDCs to provide structured data would be included in this information collection. In light of these proposed amendments, we propose to rename this information collection as "Investment Company Interactive Data" to reflect that this information collection would be applicable to BDCs as well as registered investment companies.

<sup>429</sup> The paperwork burdens for the rules under section 8(b) of the Investment Company Act are imposed through the forms and reports that are subject to the requirements in these rules and are reflected in the PRA burdens of those documents. To avoid a PRA inventory reflecting duplicative burdens and for administrative convenience, we assign a one-hour burden to these rules.

<sup>426</sup> We do not have specific data regarding how often investors may request copies of prospectuses or incorporated materials, how many materials affected funds would incorporate by reference into their prospectuses or SAIs, and how lengthy those materials would be, so we request comment on this estimate.

<sup>427</sup> 44 U.S.C. 3501 *et seq.*

The Mutual Fund Interactive Data collection of information references current requirements for certain registered investment companies to submit to the Commission information included in their registration statements, or information included in or amended by any post-effective amendments to such registration statements, in response to certain items of Form N-1A in interactive data format. It also references the requirement for funds to submit an Interactive Data File to the Commission for any form of prospectus filed pursuant to rule 497(c) or (e) that includes information in response to same items of Form N-1A. The proposed amendments would include several new structured data requirements, including requirements for: (1) BDCs to submit financial statement information using Inline XBRL format; (2) affected funds to include structured cover page information in their registration statements on Form N-2 using Inline XBRL format; and (3) affected funds to tag certain prospectus information using Inline XBRL format.<sup>430</sup> Although the proposed interactive data filing requirements would be included in the proposed Form N-2 instructions, we are separately reflecting the hour and cost burdens for these requirements in the burden estimate for Mutual Fund Interactive Data and not in the estimate for Form N-2.

The information collection requirements related to registration statements and Exchange Act reports would be mandatory. In addition, there would be no mandatory retention period for the information disclosed, and the information gathered would be made publicly available. The information collection requirements related to the communications and prospectus delivery proposals would apply only to affected funds and other offering participants choosing to rely on them. There would be a mandatory record retention period with respect to the communications and prospectus delivery information collections. Under rule 433, issuers and offering participants must retain all free writing prospectuses that have been used, for three years following the date of the initial bona fide offering of the securities in question that were not filed with the Commission. Moreover, free writing prospectuses that are made by or

on behalf of an affected fund, and free writing prospectuses that are broadly disseminated by another offering participant, would have to be filed and would be publicly available on EDGAR, whereas free writing prospectuses prepared by or on behalf of, or used or referred to, by offering participants other than the issuer would not have to be filed.

#### *B. Summary of the Proposed Amendments and Impact on Information Collections*

We are proposing amendments to several rules and forms that would modify the registration, communications, and offering processes for affected funds under the Securities Act and Investment Company Act. The proposals are designed to carry out the requirements of section 803 of the BDC Act and section 509 of the Registered CEF Act. The proposed amendments generally would allow affected funds to use the securities offering rules that are already available to operating companies.

The proposed amendments would principally affect five aspects of the application of our securities offering rules to affected funds. First, the proposed amendments would streamline the registration process under the Securities Act for affected funds to allow them to sell securities more quickly and efficiently under a shelf registration process tailored to affected funds. Second, the proposed amendments would allow affected funds to qualify as WKSIs under rule 405 under the Securities Act. Third, the proposed amendments would allow affected funds to satisfy final prospectus delivery requirements using the same method as operating companies. Fourth, the proposed amendments would allow affected funds to use communications rules currently available to operating companies, such as the use of certain factual business information, forward-looking information, a “free writing prospectus,” and broker-dealer research reports. Finally, the proposed amendments would tailor affected funds’ disclosure and regulatory framework in light of the proposed amendments to the offering rules applicable to them. These amendments include new structured data requirements, new disclosure requirements for annual reports, a new requirement for registered CEFs to file current reports on Form 8-K (including new Form 8-K items tailored to registered CEFs and BDCs), and a proposal to require interval funds to pay securities registration fees using the

same method that mutual funds and ETFs use today.

We anticipate that several provisions of the proposed amendments would increase the burdens and costs for affected funds that would be subject to the proposed amendments. We have estimated the average number of hours an affected fund would spend to prepare and file the information collections and the average hourly rate for the services of outside professionals. In deriving our estimates, we recognize that the burdens will likely vary among individual affected funds based on a number of factors, including their size and the nature of their investment activities. In addition, some affected funds may experience costs in excess of our estimates, and some may experience less than the estimated average costs.

#### **1. Proposed Amendments to Form N-2 Registration Statement**

Form N-2 is the form used by an affected fund to register offerings under the Securities Act and, as applicable, to register as an investment company under the Investment Company Act.

The proposed amendments to Form N-2 would increase the existing disclosure burdens of the form by requiring:

- Affected funds to use new checkboxes on the cover page to provide information about the fund, the purpose of the filing, and the type of offering, including whether the form is being used for automatic shelf registration;<sup>431</sup>
- BDCs to include financial highlights disclosure in their registration statements, as registered CEFs are currently required to do;<sup>432</sup>
- Affected funds to provide new undertakings to be furnished in registration statements being filed pursuant to rule 415;<sup>433</sup> and
- Affected funds to make certain documents available online if they incorporate them by reference, including the prospectus, SAI, and any Exchange Act reports filed under section 13 or section 15(d) of the Exchange Act that are incorporated by reference into the fund’s prospectus or SAI.<sup>434</sup>

At the same time, the proposed amendments to Form N-2 would decrease existing burdens for the form by:

<sup>431</sup> See *supra* Part II.H.1.b; see also proposed checkboxes to Form N-2.

<sup>432</sup> See *supra* Part II.H.2.c; see also proposed amendments to Instruction 1 to Item 4 of Form N-2.

<sup>433</sup> See *supra* footnote 53 and accompanying paragraph; see also proposed Items 34.4-7 of Form N-2.

<sup>434</sup> See *supra* Part II.H.4; see also proposed General Instruction F.4.a of Form N-2.

<sup>430</sup> We are also proposing new requirements for funds that file on Form 24F-2 to submit the form in XML format. We account for the burdens associated with this proposed requirement in *infra* Part V.B.7.



- Permitting eligible affected funds to forward incorporate by reference Exchange Act reports, which would reduce the need for such funds to file a post-effective amendment or a prospectus supplement to update information in the registration statement.<sup>435</sup>

The Commission has previously estimated that there are 136 initial registration statements and 30 post-effective amendments to initial registration statements filed on Form N-2 annually.<sup>436</sup> Under the most-recently approved PRA estimates, we estimate that the hour burden for preparing and filing an initial registration statement on Form N-2 is 515 hours, and the hour burden for preparing and filing a post-effective amendment is 107 hours.<sup>437</sup> Under these estimates, the aggregate annual hour burden for preparing and filing initial registration statements is therefore 70,040 hours (136 initial registration statements × 515 hours), and the current estimated aggregate annual hour burden for preparing and filing post-effective amendments is 3,210 hours (30 post-effective amendments × 107 hours). Thus, under these estimates, the current total annual hour burden for Form N-2 is estimated to be 73,250 hours (70,040 hours + 3,210 hours). In addition, under currently-approved PRA estimates, the aggregate annual cost burden for Form N-2 is \$4,668,396,<sup>438</sup> and the average annual cost burden is approximately \$28,123 per fund.

Based on staff analysis of the number of initial Form N-2 filings and post-effective amendments made during the three-year period from January 1, 2016 through December 31, 2018, we adjusted the currently-approved estimate of Form N-2 filings for purposes of this PRA analysis. Based on the three-year average of this adjusted number of Form N-2 filings, we currently estimate that there are 138 initial registration statements and 302 post-effective amendments to initial registration

statements filed on Form N-2 annually.<sup>439</sup>

We anticipate that the proposed amendments to Form N-2 would, on net, decrease the information collection burdens of the form. Our estimates of the hour and cost burdens of the proposed amendments are based on several estimates and assumptions.

First, we estimated the paperwork burdens of the proposed amendments that would increase the burdens of Form N-2. We expect that the proposed new checkbox requirements and undertakings would incrementally increase the paperwork burden on affected funds because affected funds would be required only to indicate which, if any, of the new checkboxes were applicable, and include the appropriate undertaking if one is required. Accordingly, we estimate that the proposed checkboxes and undertakings together would slightly increase the incremental paperwork burden of the form by 0.5 hours for an aggregate annual burden of 404 hours.<sup>440</sup> The proposed amendment to require BDCs to include financial highlights disclosure would also result in an increase in the burdens associated with the form. However, we note that BDCs currently provide this information in their Form N-2 filings. Accordingly, we estimate the proposed financial highlights disclosure requirement would incrementally increase the paperwork burden by 1.5 hours for an aggregate annual burden of 155 hours.<sup>441</sup> We estimate that the proposed amendment to require funds to make available online its prospectus, SAI, and any Exchange Act reports that are incorporated by reference into the fund's prospectus or SAI would incrementally increase the paperwork burden of the form by 2 hours for an aggregate annual burden of 1,614

hours.<sup>442</sup> In determining this estimate, we assumed that all eligible affected funds would take advantage of the incorporation by reference proposals and that the burdens of website posting of incorporated documents would be comparable to the burdens estimated for similar document posting requirements.<sup>443</sup> Based on this, we estimate that these amendments would increase the aggregate annual burden of Form N-2 by 2,173 hours,<sup>444</sup> and would result in an internal cost equivalent of \$658,419.<sup>445</sup>

We also estimated the paperwork burdens of the amendments that we anticipate would decrease the burdens of Form N-2. As we noted above, the proposal to permit the use of forward incorporation by reference would reduce the need for affected funds eligible to use the proposed short-form registration statement to file a post-effective amendment to update the registration statement. This would result in the filing of fewer post-effective amendments than under the current regulatory regime. Based on the staff's examination of Form N-2 filings during the three-year period from January 1, 2016 through December 31, 2018, we estimate that approximately 544 (or 60%) of the post-effective amendments filed during this period were made to update information in the registration statement under the Securities Act.<sup>446</sup> We estimate that 62% of affected funds (501 out of 807) would be eligible to use forward incorporation by reference under the proposed amendments. Consequently, we assumed that based on the number of affected funds that

<sup>442</sup> We calculated this estimate as follows: 807 (103 BDCs + 704 registered CEFs) funds subject to the requirement × 2 hours.

<sup>443</sup> See, e.g., Variable Contract Summary Prospectus Proposing Release, *supra* footnote 172.

<sup>444</sup> We calculated this estimate as follows: 404 hours (see *supra* footnote 440) + 155 hours (see *supra* footnote 441) + 1,614 hours (see *supra* footnote 442) = 2,173 hours.

<sup>445</sup> The internal time cost equivalent of \$658,419 is calculated by multiplying the hour burden (2,173 hours) by the estimated hourly wage of \$303. The estimated wage figure is based on published rates for Compliance Attorneys (\$352), Senior Programmers (\$319), and Webmasters (\$239). These hourly figures are from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified to account for an 1,800-hour work year; multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead; and adjusted to account for the effects of inflation. The estimated wage rate was further based on the estimate that Compliance Attorneys, Senior Programmers, and Webmasters would divide time equally, resulting in a weighted wage rate of \$303 (((\$352 + \$319 + \$239)/3) = \$303.33).

<sup>446</sup> (290 post-effective amendments in 2016 + 320 post-effective amendments in 2017 + 296 post-effective amendments in 2018 = 906 post-effective amendments) × 60% = approximately 544 post-effective amendments.

<sup>435</sup> See *supra* Part II.B.2.c; see also proposed General Instruction F.3.b of Form N-2.

<sup>436</sup> These estimates are based on the last time the form's information collections were approved, pursuant to a submission for a PRA extension in 2016.

<sup>437</sup> The paperwork burdens for Form N-2 include the burdens of preparing and filing prospectus supplements. While affected funds may file fewer prospectus supplements under the proposed amendments, we are uncertain as to the extent, if any, of the reduction in the number of prospectus supplements that affected funds would file under the proposals. See *supra* Part II.B.

<sup>438</sup> This estimate includes the cost of outside counsel, independent auditors and the services of other professionals retained to assist in the preparation and filing of the form.

<sup>439</sup> Based on staff analysis of the number of Form N-2 filings, the numbers of initial registration statement and post-effective amendments filed on Form N-2 were as follows: 129 initial Form N-2s and 290 post-effective amendments in calendar year 2016; 140 initial Form N-2s and 320 post-effective amendments in calendar year 2017; and 144 initial Form N-2s and 296 post-effective amendments in calendar year 2018.

<sup>440</sup> We calculated this estimate as follows: 807 (103 BDCs + 704 registered CEFs) funds subject to the requirement × 0.5 hours. For convenience, the estimated burden has been rounded to the nearest whole number. Our estimate of costs and paperwork burdens that BDCs could incur may be over-estimates. See *supra* footnote 339 and accompanying text.

<sup>441</sup> We calculated this estimate as follows: 103 BDCs subject to the requirement × 1.5 hours. For convenience, the estimated burden has been rounded to the nearest whole number.

would be eligible to forward incorporate under the proposed amendments, the number of post-effective amendments filed annually to update the registration statement under the Securities Act would be reduced by 62% or approximately 112 filings annually.<sup>447</sup> For purposes of the PRA, we estimate that this would decrease the aggregate annual burden of Form N-2 by 11,984 hours and would result in a reduction in the cost burden for Form N-2 by \$3,149,776.<sup>448</sup>

For purposes of the PRA, we estimate that the proposed amendments to Form N-2 would result in a net reduction of the annual paperwork burden by approximately 9,811 hours of internal personnel time<sup>449</sup> and result in a reduction of the cost by approximately \$2,491,357.<sup>450</sup>

## 2. Proposed Structured Data Reporting Requirements

We are proposing to amend Form N-2, as well as Regulation S-T,<sup>451</sup> to require certain new structured data reporting requirements for registered CEFs and BDCs. Specifically, the proposed amendments would:<sup>452</sup>

- Require BDCs to submit financial statement information using Inline XBRL format;<sup>453</sup>
- Require all affected funds to include structured cover page information in their registration statements on Form N-2 using Inline XBRL, including the tagging of the proposed new checkboxes to the cover page of Form N-2;<sup>454</sup> and
- Require all affected funds to tag certain Form N-2 disclosure items using Inline XBRL.<sup>455</sup>

Operating companies filing registration statements under the Securities Act or reports under the Exchange Act are required to submit the information from the financial statements accompanying their registration statements and reports in Inline XBRL format. BDCs are currently excluded from these Inline XBRL requirements. The Commission previously estimated that operating companies submitting financial information in Inline XBRL format file, on average, 4.5 responses per year that contain interactive data, and that each response required 54 burden hours of internal time to prepare and cost \$6,175 for outside services.<sup>456</sup> The proposed amendments would subject BDCs to the same Inline XBRL reporting requirements. Therefore, we assume that BDCs would on average file the same number of filings containing financial statement information in Inline XBRL and would experience similar burden hours and costs as do operating companies.

The proposed amendments to require affected funds to tag certain Form N-2

prospectus disclosure items using Inline XBRL largely parallel similar information required by Form N-1A risk/return summary that must be tagged in Inline XBRL format. We have previously estimated that mutual funds and ETFs file 1.36 responses per year containing mutual fund risk/return data in Inline XBRL format, and that the risk/return XBRL requirements require funds to expend 10.5 hours of internal time per response and cost \$900 to purchase software and/or acquire the services of consultants or filing agents.<sup>457</sup> Consequently, we assumed that the hour and cost burdens of the proposed requirements to tag certain Form N-2 disclosure items would be similar to the hour and cost burdens of risk/return summary XBRL requirements.

We have also made several adjustments to our burden estimates to reflect certain aspects of the proposed amendments that are distinct from the previous burden estimates of Inline XBRL requirements. We increased our estimate of the initial burden hours and costs of the proposed amendments to reflect one-time compliance costs. Because BDCs and registered CEFs have not previously been subject to Inline XBRL requirements, we assumed that these funds would experience additional burdens related to one-time costs associated with becoming familiarized with Inline XBRL reporting. These costs would include, for example, the acquisition of new software or the services of consultants, and the training of staff. We also assumed that these one-time costs would decline in the second and third year of compliance with the proposed amendments, under the premise that these funds should become more efficient at preparing submissions using Inline XBRL format as the process becomes more routine. We assumed that the one-time cost would result in a 50% incremental increase in the internal burdens and external costs of the financial information and risk/return summary XBRL requirements during the first year,<sup>458</sup> and would subsequently decline in the second and third years by 75% from the immediately-preceding year.<sup>459</sup> Accordingly, we estimate the

<sup>447</sup> We calculated this estimate as follows: (544 post-effective amendments to update information in the registration statement under the Securities Act) / 3 years = approximately 181 post-effective amendments per year)  $\times$  62% = approximately 112 post-effective amendments per year.

<sup>448</sup> We calculated these estimates as follows: 112 post-effective amendments  $\times$  107 hours = 11,984 hours; 112 post-effective amendments  $\times$  \$28,123 = \$3,149,776.

<sup>449</sup> We calculated this estimate as follows: Estimate of increased aggregate annual burden hours (+2,173 hours, *see supra* footnote 444) plus estimate of decreased aggregate annual burden hours (– 11,984 hours, *see supra* footnote 448) = net decrease of 9,811 hours.

<sup>450</sup> We calculated this estimate as follows: Estimate of internal cost equivalent associated with proposed amendments to Form N-2 (\$658,419, *see supra* footnote 445) plus estimate of decreased cost burden associated with proposed amendment to Form N-2 (\$3,149,776, *see supra* footnote 448) = net decrease of \$2,491,357.

<sup>451</sup> 17 CFR 232.10 *et seq.* [OMB Control No. 3235–0424] (which specifies the requirements that govern the electronic submission of documents). Specifically, we are proposing to amend rule 405 of Regulation S-T. The additional collection of information burden that will result from the proposed amendments to rule 405 of Regulation S-T and to Form N-2, to require structured data reporting for affected funds, are included in our burden estimates for the “Investment Company Interactive Data” collection of information, and do not impose any separate burden aside from that described in our discussion of the burden estimates for this collection of information.

<sup>452</sup> We are also proposing amendments to Form 24F-2 to require submission of this filing in a structured XML format. We discuss the PRA burdens of this proposal and other proposed amendments to the form below. *See infra* Part V.B.7.

<sup>453</sup> *See supra* Part II.H.1.a; *see also* proposed amendments to rule 405 of Regulation of S-T.

<sup>454</sup> *See supra* Part II.H.1.b; *see also* proposed General Instruction H.2.a to Form N-2.

<sup>455</sup> *See supra* Part II.H.1.c; *see also* proposed General Instruction H.2.a–c to Form N-2. The proposed amendments would require the following prospectus disclosure items be tagged using Inline XBRL: Fee Table; Senior Securities Table; Investment Objectives and Policies; Risk Factors; Share Price Data; and Capital Stock, Long-Term Debt, and Other Securities.

A seasoned fund filing a short-form registration statement on Form N-2 also would be required to tag any information that is incorporated by reference from an Exchange Act report, such as those on Forms N-CSR, 10-K, or 8-K, in response to a disclosure item of the registration statement that is required to be tagged. *See supra* footnote 186 and accompanying text.

<sup>456</sup> *See* Inline XBRL Adopting Release, *supra* footnote 166, at 40869. A recent survey suggests that these current burden estimates may be overstated with respect to smaller reporting companies. *See* American Institute of CPAs, *XBRL Costs for Small Companies Have Declined 45%, According to AICPA Study* (Aug. 18, 2018), available at <https://www.aicpa.org/press/pressreleases/2018/xbrl-costs-have-declined-according-to-aicpa-study.html>. Below, we request comment on whether our current PRA estimates continue to be appropriate.

<sup>457</sup> *Id.*

<sup>458</sup> Thus, for the proposed financial information XBRL requirement, we estimate that in the first year the one-time cost would be an additional 27 hours (54  $\times$  0.5) and \$3,087.5 in external costs (\$6,175  $\times$  0.5). For the proposed prospectus information XBRL requirements, we estimate the initial increase in burdens would be 5.25 hours (10.5  $\times$  0.5) and \$450 in external costs (\$900  $\times$  0.5).

<sup>459</sup> Thus, we estimate that for the second year the one-time hour burden and cost of the proposed financial information XBRL requirement would be 6.75 hours (27 hours – (27  $\times$  0.75 = 20.25 hours))

(Continued)

burdens for the proposed amendment to require BDCs to submit financial the information in Inline XBRL format would be 65.81 hours of internal time<sup>460</sup> and cost \$7,525.78 for outside services,<sup>461</sup> and we estimate the burdens for the proposed amendments to require affected funds to tag certain information that is required to be included in an affected fund's prospectus using Inline XBRL format would be 12.8 hours in internal time<sup>462</sup> and cost \$1,096.88 for outside services.<sup>463</sup>

We assumed that affected funds would submit a similar number of responses as the number of submitted responses that we currently estimate that contain mutual fund risk/return data in Inline XBRL. Currently, the mutual fund risk/return summary interactive data is required to be submitted with the Form N-1A (or a post-effective amendment thereto), a post-effective amendment under rule 485(b) of the Securities Act, or any form of prospectus filed under rule 497(c) or 497(e) of the Securities Act. The Commission previously estimated that each mutual fund or ETF would submit one response containing Inline XBRL interactive data as an exhibit to a registration statement or a post-effective amendment thereto, and that 36% of these funds would submit an additional response containing Inline XBRL interactive data as an exhibit to a filing pursuant to rule 485(b) or rule 497. Under the proposed amendments, affected funds would be required to submit in Inline XBRL the specified Form N-2 disclosure items with their

and \$771.87  $(\$3,087.5 - (\$3,087.5 \times 0.75 = \$2,315.63))$ . For the third year, we estimate that these hour burdens and costs would be 1.69 hours  $(6.75 \text{ hours} - (6.75 \times 0.75 = 5.06 \text{ hours}))$  and \$192.97  $(\$771.87 - (\$771.87 \times 0.75 = \$578.90))$ . Average yearly change in the initial one-time cost of the proposed financial information XBRL requirement would be  $(27 + 6.75 + 1.69)/3 = 11.81$  hours of internal in-house time, and  $(\$3,087.5 + \$771.87 + \$192.97)/3 = \$1,350.78$  in external costs.

For the second year, we estimate the one-time hour burden and cost of the proposed prospectus information XBRL requirements would be 1.31 hours  $(5.25 \text{ hours} - (5.25 \text{ hours} \times 0.75 = \text{approximately } 3.94 \text{ hours}))$  and \$112.50  $(\$450 - (\$450 \times 0.75 = \$337.5))$ . For the third year, we estimate that these hour burdens and costs would be 0.33 hours  $(1.31 \text{ hours} - (1.31 \text{ hours} \times 0.75 = 0.98 \text{ hours}))$  and \$28.12 in external costs  $(\$112.50 - (\$112.50 \times 0.75 = \$84.38))$ . Average yearly change in the initial one-time cost of proposed prospectus information XBRL requirements would be  $(5.25 + 1.31 + 0.33)/3 = 2.3$  hours of internal in-house time, and  $(\$450 + \$112.50 + \$28.12)/3 = \$196.87$  in external costs.

<sup>460</sup> This estimate was calculated as follows:  $54 + 11.81 = 65.81$  hours.

<sup>461</sup> This estimate was calculated as follows:  $\$6,175 + 1,350.78 = \$7,525.78$ .

<sup>462</sup> This estimate was calculated as follows:  $10.5 + 2.3 = 12.8$  hours.

<sup>463</sup> This estimate was calculated as follows:  $\$900 + 196.87 = \$1,096.87$ .

initial registration statement (or a post-effective amendment thereto), as well as any form of prospectus filed pursuant to rule 424(b) that reflects a substantive change to the specified Form N-2 disclosure items. In the case of a seasoned fund that files a short-form registration statement that incorporates by reference the specified Form N-2 disclosure items from an Exchange Act report, the interactive data would be required to be submitted with that Exchange Act report. We estimate that affected funds would similarly submit one response containing the Inline XBRL interactive data as an exhibit to a registration statement on Form N-2, a post-effective amendment thereto, or to an Exchange Act report, and that 36% of the affected funds would submit an additional response containing Inline XBRL interactive data as an exhibit to a filing pursuant to rule 424.

We do not believe the cover page tagging proposal would result in significant additional burdens for affected funds. We have estimated that requiring operating companies to tag the cover pages of Forms 10-K, 10-Q, 8-K, 20-F, and 40-F using Inline XBRL would result in an incremental increase in the collection burdens by one hour.<sup>464</sup> Accordingly, we similarly estimate that the proposed amendment to require affected funds to tag Form N-2 cover page items would impose an increased paperwork burden of one hour.<sup>465</sup>

Based on these assumptions, we estimate the proposed amendments to require the submission of financial statement information in XBRL format would result in an aggregate yearly burden of approximately 30,503 hours of in-house personnel time<sup>466</sup> and \$3,488,199 in the cost of services of outside professionals.<sup>467</sup> We estimate that for all affected funds the proposed amendments to require the submission of specified Form N-2 disclosure items in Inline XBRL would result in an aggregate yearly burden of approximately 14,048 hours of in-house personnel time<sup>468</sup> and \$885,174 in the

cost of services of outside professionals.<sup>469</sup> We estimate that the proposed amendment to require the tagging of Form N-2 cover page items would result in an aggregate yearly burden of approximately 807 hours of in-house personnel time.<sup>470</sup>

### 3. Proposed New Annual Reporting Requirements Under Rule 30e-1 and Exchange Act Periodic Reporting Requirements for BDCs

Several of the offering reforms that we are proposing, such as the amendments that would allow certain affected funds to use an automatic shelf registration statement or to forward incorporate by reference Exchange Act reports, may raise the importance of an affected fund's Exchange Act reports to investors.<sup>471</sup> In light of this, we are proposing new disclosure requirements for affected funds' annual reports. Specifically, we are proposing to amend:

- Form N-2 to require affected funds using the proposed short-form registration statement to disclose in their annual reports a fee and expense table, share price data, a senior securities table, and unresolved staff comments regarding the fund's periodic or current reports or registration statement;<sup>472</sup>
- Form N-2 to require registered CEFs to provide MDFP in their annual reports;<sup>473</sup> and
- Form N-2 to require BDCs to include financial highlights in their annual reports on Form 10-K;<sup>474</sup> and
- Rule 8b-16 to require registered CEFs to describe certain changes in enough detail to allow investors to understand each change and how it may affect the fund.<sup>475</sup>

The collection of information burdens under the proposed amendments correspond to information collections

year = 14,048.26 burden hours per year. For convenience, the estimated burden has been rounded to the nearest whole number.

<sup>469</sup>  $807 \text{ affected funds} \times \$1,096.87 = \$885,174.09$ .

<sup>470</sup>  $807 \text{ affected funds} \times 1 \text{ hour} = 807 \text{ hours}$ .

<sup>471</sup> See *supra* Part II.H.2.

<sup>472</sup> See *supra* Part II.H.2.a; see also proposed Instruction 4.h(ii) to Item 24 of Form N-2 (fee and expense table); Proposed Instruction 4.h(iii) to Item 24 of Form N-2 (share price data); Proposed Instruction 4.h(i) to Item 24 of Form N-2 (senior securities table). In connection with this proposal, we are also proposing to eliminate the requirement that affected funds disclose the average commission rate paid in their financial highlights disclosure.

<sup>473</sup> See *supra* Part II.H.2.b; see also proposed Instruction 4.g to Item 24 of Form N-2.

<sup>474</sup> See *supra* Part II.H.2.c; see also proposed revisions to Instruction 1 to Item 4 of Form N-2. As discussed above, BDCs also would be required to include financial highlights in their registration statements on Form N-2. See *supra* Part V.B.1.

<sup>475</sup> See *supra* Part II.H.5; see also proposed rule 8b-16(e).

<sup>464</sup> See FAST Act Modernization Adopting Release, *supra* footnote 177.

<sup>465</sup> We do not expect that this requirement would increase the cost for outside services because the cost of tagging the cover page by affected funds would be subsumed in the cost the submission of the Form N-2 disclosure items in Inline XBRL.

<sup>466</sup> For BDCs we calculated our internal hour estimate as follows:  $103 \text{ BDCs} \times 65.81 \text{ hours} \times 4.5 \text{ responses per year} = \text{approximately } 30,502.94 \text{ burden hours per year}$ . For convenience, the estimated burden has been rounded to the nearest whole number.

<sup>467</sup>  $103 \text{ BDCs subject to the requirements} \times 4.5 \text{ responses per year} \times \$7,525.78 = \$3,488,199.03$ .

<sup>468</sup> We calculated this estimate as follows:  $807 \text{ affected funds} \times 12.8 \text{ hours} \times 1.36 \text{ responses per}$

under rule 30e-1 for registered CEFs and Form 10-K for BDCs. Rule 30e-1 generally requires registered investment companies to transmit to their shareholders, at least semi-annually, reports containing the information that is required to be included in such reports by the fund's registration statement form under the Investment Company Act. BDCs, like operating companies, are required to file annual reports on Form 10-K pursuant to section 13 or 15(d) of the Exchange Act. We currently estimate that it takes approximately 88 hours and costs \$31,061 per registered investment company to comply with the collection of information associated with rule 30e-1.<sup>476</sup> For Form 10-K, we currently estimate that it takes each operating company approximately 1,747 hours and costs approximately \$233,044 to comply with the collection of information associated with Form 10-K.<sup>477</sup>

We estimate that the proposed amendments to require affected funds filing a short-form registration statement to disclose fee and expense table, share price data, a senior securities table, and unresolved staff comments would incrementally increase the compliance burden on these funds. However, because current disclosure requirements of Form N-2 already require affected funds to disclose the fee and expense table, share price data, and a senior securities table—and because disclosure of unresolved staff comments would simply be a restatement of comments provided to these funds by the staff—we believe these disclosures should not impose significant new burdens. Accordingly, we estimate that the proposed amendments would incrementally increase the paperwork burden associated with rule 30e-1 and Form 10-K by 3 hours per affected fund that would be eligible to use the short-form registration statement.

Regarding the proposed amendments to require registered CEFs disclose in their annual reports MDFP and any material changes in their investment objectives or policies that have not been approved by shareholders, we believe these additional disclosures would increase the paperwork burden

associated with rule 30e-1 for registered CEFs. For example, MDFP requires, among other things, narrative disclosure about the factors that materially affected a fund's performance during its most recently completed fiscal year, as well as the impact on the fund and its shareholders of policies and practices that the fund may use to maintain a certain level of distributions. We estimate that the proposed amendment to require MDFP would incrementally increase the paperwork burden associated with rule 30e-1 by 16 hours and that the proposed amendment to require disclosure of any material changes in investment objectives or policies that were not approved by shareholders would incrementally increase the paperwork burden associated with rule 30e-1 by 4 hours.

Regarding the proposed amendments to require BDCs to disclose financial highlights information in their registration statements and annual reports, we estimate that this proposed amendment would incrementally increase in the paperwork burden associated with Form 10-K. As we noted above in our PRA analysis of this proposed amendment on Form N-2, BDCs currently provide this information. Accordingly, we estimate the proposed amendment would incrementally increase the paperwork burden associated with Form 10-K by 1.5 hours.

For purposes of the PRA, we estimate the proposed amendments would result in 284 hours of additional total incremental burden under Form 10-K<sup>478</sup> and 15,451 hours of total incremental burden under rule 30e-1.<sup>479</sup>

In connection with our estimate of the total incremental burden of the proposed amendments, we have allocated a portion of those burdens as costs. Based on consultations with operating companies, law firms, fund representatives and other persons who regularly assist funds in preparing and filing reports with the Commission, the staff estimates that 75% of the burden of preparing annual reports under rule 30e-1 and on Form 10-K is undertaken

by the fund internally and that 25% of the burden is undertaken by outside professionals, such as outside counsel and independent auditors, retained by the fund at an average cost of \$400 per hour.<sup>480</sup> Accordingly, we estimate for purposes of the PRA that the total incremental burden for Form 10-K under the proposed amendments would be 213 hours for internal time (284 total incremental burden hours  $\times$  0.75) and \$28,400 (284 total incremental burden hours  $\times$  0.25  $\times$  \$400) for the services of outside professionals. We further estimate for purposes of the PRA that the total incremental burden for rule 30e-1 would be 11,588 hours for internal time (15,451 total incremental burden hours  $\times$  0.75) and \$1,545,100 (15,451 total incremental burden hours  $\times$  0.25  $\times$  \$400) for the services of outside professionals.

#### 4. Securities Offering Communications

Rule 163 permits WKSIs to make unrestricted oral and written offers before filing a registration statement, but any written offer will be considered a free writing prospectus and will generally have to be filed upon filing a registration statement or amendment covering the securities. Rule 433 governs the use of free writing prospectuses by WKSIs and non-WKSI issuers after the filing of a registration statement. A free writing prospectus used by or on behalf of an affected fund, or free writing prospectuses that are broadly disseminated by another offering participant, are required to be filed with the Commission. We are proposing amendments to rules 163 and 433 that would permit affected funds to rely on these rules to use a free writing prospectus.

We calculated our burden estimate for the proposed amendments to rule 163 based on several assumptions. First, we assumed that the burden of filing a free writing prospectus by an affected fund would be the same 0.25 burden hours for filing the document as we estimate operating companies incur.<sup>481</sup> Second, we assumed that only a limited number of affected funds that would qualify as a WKSI would rely on rule 163 to use

<sup>476</sup> These estimates are based on the last time the rule's information collections were approved, pursuant to a submission for a PRA extension in 2016. The estimated aggregate annual hour and cost burden of rule 30e-1 is approximately 1,043,592 hours and \$368,352,399.

<sup>477</sup> These estimates are based on the last time the form's information collections were approved, pursuant to a submission for a PRA extension in 2018. The estimated aggregate annual hour and cost burden of Form 10-K is approximately 14,217,344 hours and \$1,896,280,869.

<sup>478</sup> For BDCs we calculated the total incremental burden as follows: (43 BDCs eligible to use the short-form registration statement  $\times$  3 hours = 129 hours) + (103 BDCs  $\times$  1.5 hours = 154.5 hours) = 283.5 burden hours. For convenience, the estimated burden has been rounded to the nearest whole number.

<sup>479</sup> For registered CEFs we calculated the total incremental burden as follows: (457 registered CEFs eligible to use the short-form registration statement  $\times$  3 hours = 1,371 hours) + (704 registered CEFs required to disclose MDFP and material changes in investment policies  $\times$  20 hours = 14,080 hours) = 15,451 burden hours.

<sup>480</sup> We recognize that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis, we estimate that such costs would be an average of \$400 per hour. This estimate is based on discussions the staff has had with several law and accounting firms to estimate an hourly rate of \$400 as the cost to operating companies and funds for the services of outside professionals retained to assist in the preparation of these filings.

<sup>481</sup> These estimates are based on the last time the rule's information collections were approved, pursuant to a submission for a PRA extension in 2017.

free writing prospectuses.<sup>482</sup> In connection with our estimate of the burden hours of the proposed amendment to rule 163, we have allocated a portion of those burdens as costs. We estimate that 25% of the burden of preparing and filing a free writing prospectus pursuant to rule 163 is undertaken by the issuer internally and that 75% of the burden is undertaken by outside professionals retained by the issuer at an average cost of \$400 per hour.<sup>483</sup> Accordingly, we estimate that for purposes of the PRA the total incremental burden for the proposed amendments to rule 163 would be approximately 0.125 hours<sup>484</sup> and \$150 for the services of outside professionals.<sup>485</sup>

With respect to the burdens of the proposed amendments to rule 433, we assumed that the burden of filing a free writing prospectus by an affected fund would be the same 1.28 burden hours for filing the document as we estimate operating companies incur.<sup>486</sup> Second, we assumed that an affected fund would, on average, file a similar number of free writing prospectuses under rule 433 per year that an operating company files on average annually.<sup>487</sup> For

purposes of the PRA, we estimate that affected funds would annually file approximately 4,360 free writing prospectuses under rule 433.<sup>488</sup> However, the extent to which affected funds would adopt the use of free writing prospectuses under the proposed amendments to rule 433 is uncertain. Affected funds' current communications under rule 482 of the Securities Act may be similar to free writing prospectuses that could be used in reliance on the proposed amendments to rule 433, and funds could continue to rely on rule 482 to engage in post-filing communications if the Commission were to adopt the proposed amendments to rule 433.<sup>489</sup>

Similar to our calculation of the burden estimates for rule 163, we have also allocated a portion of our burden estimates for rule 433 burdens as costs. We estimate that 25% of the burden of preparing and filing a free writing prospectus pursuant to rule 433 is undertaken by the issuer internally and that 75% of the burden is undertaken by outside professionals retained by the issuer at an average cost of \$400 per hour. For purposes of the PRA, we estimate that the annual paperwork burden for affected funds under the proposed amendments to rule 433 would be approximately 1,395 hours<sup>490</sup> of internal personnel time and a cost of approximately \$1,674,240 for the services of outside professionals.<sup>491</sup>

## 5. Prospectus Delivery Requirements

Rule 173 requires an issuer to, if applicable, provide a notice to

of approximately 5.4 free writing prospectuses per year.

<sup>488</sup> We calculated this estimate as follows: 5.4 free writing prospectuses  $\times$  807 affected funds = 4,360 free writing prospectuses (rounded to the nearest whole number).

<sup>489</sup> We note here that certain communications that are currently treated as affected funds' rule 482 advertisements could fall under the rule 138 safe harbor for research reports, as proposed, or the free writing prospectus rules, rules 164 and 433, as proposed. See *supra* Parts IV.B.2 and IV.C.1. This could result in a reduction in the information collection burdens for rule 482 if fewer materials are filed. In connection with the extension of a currently approved collection for rule 482, the Commission will adjust the burdens associated with these collections of information to reflect these changes, as appropriate. At this time, we are requesting comments regarding the overall burden estimates for the proposed rules.

<sup>490</sup> We calculated this estimate as follows: (4,360 free writing prospectuses filed per year  $\times$  1.28 hours per response)  $\times$  0.25 allocation of time = 1,395 hours (rounded to the nearest whole number).

<sup>491</sup> We calculated this estimate as follows: (4,360 free writing prospectuses filed per year  $\times$  1.28 hours per response)  $\times$  0.75 allocation of time  $\times$  \$400 = \$1,674,240 (rounded to the nearest whole number). This estimate includes the cost of outside counsel, filing agents and the services of other professionals retained to assist in the preparation and filing of the document.

purchasers stating that a sale of securities was made based on 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.<sup>492</sup> We are proposing to amend this rule to make it applicable to affected funds.<sup>493</sup>

For purposes of the PRA, we estimate that the annual incremental paperwork burden for affected funds under the proposed amendments to rule 173 would be 586,865 burden hours.<sup>494</sup> In deriving our estimate, we assumed that: (1) There would be 807 affected funds that would become subject to rule 173 under the proposed amendments;<sup>495</sup> (2) each of these affected funds would incur the same 0.0167 average burden hours per response as we estimate operating companies subject to rule 173 do; and (3) each of these affected funds would provide, on average, 43,546 responses per year, as we estimate operating companies subject to rule 173 do.<sup>496</sup>

## 6. Proposed Form 8-K Reporting Requirements

We are proposing amendments to require registered CEFs to report information on Form 8-K.<sup>497</sup> We are also proposing to amend Form 8-K to add two new reporting items for affected funds, and to revise several existing reporting instructions to the form to tailor these requirements to affected funds.<sup>498</sup> Under the proposed new reporting items, an affected fund would be required to file a report on Form 8-K if the fund has: (1) A material change to its investment objectives or policies; or (2) a material write-down in fair value of a significant investment.

First, we estimated the average number of Form 8-K filings an affected fund would make annually. Based on an analysis of Form 8-K filings over a three-year period from June 1, 2015 to May 31, 2018, the staff estimates that

<sup>492</sup> Rule 172 allows issuers, brokers, and dealers to satisfy final prospectus delivery obligations if a final prospectus is or will be on file with the Commission within the time required by the rules 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.

<sup>493</sup> See *supra* Part II.D.

<sup>494</sup> 807 affected funds subject to rule 173  $\times$  43,546 responses per affected fund  $\times$  0.0167 burden hours per response = approximately 586,865 burden hours per year. For convenience, the estimated burden has been rounded to the nearest whole number.

<sup>495</sup> See *supra* Part IV.A.1.

<sup>496</sup> These estimates are based on the last time the rule's information collections were approved, pursuant to a submission for a PRA extension in 2016.

<sup>497</sup> See *supra* Part II.H.3.

<sup>498</sup> *Id.*

<sup>482</sup> For a number of reasons, many issuers that are currently eligible to be WKSIs do not make use of free writing prospectuses in reliance on rule 163. At the time the Commission adopted rule 163, it estimated that 53 free writing prospectuses would be filed under rule 163 per year. However, during the Commission's 2017 fiscal year, only 10 free writing prospectuses in reliance on rule 163 were filed with the Commission. We estimate that 104 affected funds would be eligible to be WKSIs. If current practices regarding the use of free writing prospectus under rule 163 continue with respect to affected funds, we do not believe that these affected funds would significantly increase the number of free writing prospectuses under rule 163. Accordingly, we estimate that, on average, affected funds that are eligible to be WKSIs would file 2 free writing prospectuses under the proposed amendments to rule 163 each year.

<sup>483</sup> The staff estimates an hourly cost of \$400 per hour for the service of outside professionals based on consultations with several issuers and law firms and other persons who regularly assist issuers in preparing and filing documents with the Commission.

<sup>484</sup> We calculated this estimate as follows: (2 free writing prospectuses filed per year  $\times$  0.25 hours per response)  $\times$  0.25 allocation of time = 0.125 hours.

<sup>485</sup> We calculated this estimate as follows: (2 free writing prospectuses filed per year  $\times$  0.25 hours per response)  $\times$  0.75 allocation of time  $\times$  \$400 = \$150. This estimate includes the cost of outside counsel, filing agents and the services of other professionals retained to assist in the preparation and filing of the document.

<sup>486</sup> These estimates are based on the last time the rule's information collections were approved, pursuant to a submission for a PRA extension in 2017. The burden hours for preparing and filing a rule 433 free writing prospectus are greater than the burdens under rule 163 because certain conditions to the use of a free writing prospectus under rule 433 require the free writing prospectus to contain more information than rule 163 requires.

<sup>487</sup> The most recent data that we have available shows that each operating company files an average

BDCs file an average of 10 Form 8-Ks annually.<sup>499</sup> We assumed that registered CEFs would make, on average, the same number of Form 8-K filings per year. Further, we estimate that the proposed new Form 8-K reporting items for affected funds would, on average, result in affected funds filing one more report on Form 8-K per year. Accordingly, we estimate that registered CEFs would make, on average, 11 Form 8-K filings per year under the proposed amendments,<sup>500</sup> and BDCs would make, on average, 1 additional Form 8-K filing per year under the proposed amendments. Thus, we estimate an additional 7,744 filings by registered CEFs and an additional 103 filings by BDCs per year on Form 8-K under the proposed amendments, for an aggregate of 7,847 additional filings on Form 8-K.<sup>501</sup>

Second, we assumed that, on average, completing and filing a Form 8-K that would be required under the new disclosure items would require the same amount of time completing and filing a Form 8-K under many of the current disclosure items required by the form—approximately 5 hours.<sup>502</sup> However, because registered CEFs are not currently required to file Form 8-K reports, we adjusted the estimated average amount of time it would take a registered CEF to prepare and file a Form 8-K. We assumed that the first-year burden for registered CEFs would be greater than that for subsequent years, as a portion of the burdens will reflect one-time expenditures associated with complying with the new reporting requirements, such as implementing new processes for the preparation and collection of information, and training staff. We adjusted the second- and third-year estimates to account for the fact

that the preparation and collection process should become more routine.<sup>503</sup>

Under these assumptions, we estimate that the average amount of time it would take a registered CEF to prepare and file a Form 8-K would be 6.3125 hours per filing.<sup>504</sup>

For purposes of the PRA, we estimate the total annual incremental burden of our proposed amendments to Form 8-K is 48,884 hours for registered CEFs<sup>505</sup> and 515 burden hours for BDCs,<sup>506</sup> for a total of 49,399 burden hours.<sup>507</sup> For Form 8-K, we estimate that 75% of the burden of preparation is carried by the company internally and that 25% of the burden of preparation is carried by outside professionals, such as outside counsel, independent auditors and filing agents retained by the fund at an average cost of \$400 per hour. Thus, the annual incremental paperwork burden for registered CEFs to prepare and file Form 8-K under the proposed amendments would be approximately 36,663 burden hours of internal time and a cost of approximately \$4,888,400 for the services of outside professionals.<sup>508</sup> We estimate that the incremental paperwork burden for BDCs would be 386.25 hours of internal time and a cost of approximately \$51,500 for the services of outside professionals.<sup>509</sup> In total, we estimate that the incremental paperwork burden for all affected funds to prepare and file Form 8-K under the proposed amendments would be approximately 37,049.25 burden hours of internal time<sup>510</sup> and a

cost of approximately \$4,939,900 for the services of outside professionals.<sup>511</sup>

## 7. Form 24F-2

Rule 24f-2 requires any open-end management company, unit investment trust, or face-amount certificate company deemed to have registered an indefinite amount of securities to file a Form 24F-2 not later than 90 days after the end of any fiscal year in which it has publicly offered such securities. Form 24F-2 is the annual notice of securities sold by these funds that accompanies the payment of registration fees with respect to the securities sold during the fiscal year. We are proposing to amend rules 23c-3 and 24f-2 so that interval funds would pay registration fees on the same annual basis using Form 24F-2. We are also proposing to require funds to submit reports on Form 24F-2 in a structured data format.

The Commission has previously estimated that approximately 6,120 funds file Form 24F-2 annually.<sup>512</sup> The current estimated annual internal hour burden per fund of filing Form 24F-2 is two hours of clerical time, with an estimated total annual burden for all respondents of 12,240 hours. At an estimated wage rate of \$67 per hour, the annual cost per respondent of this burden is estimated at \$134, and the total annual cost for all respondents is \$820,080. We estimate that an additional 57 funds would file Form 24F-2 annually under the proposed amendments.<sup>513</sup> In addition, we estimate that the requirement to submit filings of Form 24F-2 in a structured data format would increase the annual internal hour burden by two hours per respondent. At an estimated wage rate of \$261 per programmer hour, we estimate that the annual cost per respondent of this additional burden is about \$522 per year.<sup>514</sup> Accordingly, we estimate that the annual internal hour burden to file Form 24F-2 under the proposed amendments would be about

time for BDCs = 37,049.25 burden hours of internal time for affected funds.

<sup>511</sup> \$4,888,400 for services of outside professionals for registered CEFs + \$51,500 for services of outside professionals for BDCs = \$4,939,900 for services of outside professionals for affected funds.

<sup>512</sup> This estimate is was previously submitted to OMB in connection with the renewal of approval for the collection of information required by Form 24F-2 in 2018.

<sup>513</sup> See *supra* Part IV.A.1 (estimating that there were 57 interval funds as of September 30, 2018).

<sup>514</sup> 2 hours additional burden per fund per year × \$261 per hour = \$522 per fund per year.

<sup>499</sup> See *supra* footnote 415.

<sup>500</sup> While registered CEFs are currently required to use Form 8-K to file notice of a blackout period under rule 104 of Regulation BTR, it is very rare for registered CEFs to trigger this existing reporting requirement. It is similarly rare for BDCs to file notice of a blackout period on Form 8-K. See *supra* footnote 247. Thus, we have allocated all of the estimated 11 annual Form 8-K filings by registered CEFs to the proposed amendments rather than existing regulatory requirements.

<sup>501</sup> 11 additional filings by a registered CEF × 704 registered CEFs = 7,744 filings by registered CEFs. 1 additional filing by a BDC × 103 BDCs = 103 filings by BDCs. 7,744 filings by registered CEFs + 103 filings by BDCs = 7,847 filings total. Our estimate of costs and paperwork burdens that registered CEFs could incur may be over-estimates. See *supra* footnote 341.

<sup>502</sup> This estimate is based on prior approved revisions to the Form 8-K collection requirement in connection with final Commission rules that adopted similar Form 8-K requirements.

<sup>503</sup> We increased the first-year estimate by an additional three hours to reflect these one-time expenditures. We assumed the estimated burden increase in the second and third years would decline by 75% from the immediately-preceding year, with an estimated burden increase of 0.75 hours in the second year (3 hours – (3 hours × 0.75)) and an estimated burden increase of 0.1875 hours in the third year (0.75 hours – (0.75 hours × 0.75)). As a result, we estimate a first-year burden of 8 hours, a second-year burden of 5.75 hours, and a third-year burden of 5.1875 hours.

<sup>504</sup> For registered CEFs we calculated this estimate as follows: (8 hours + 5.75 hours + 5.1875 hours)/3 = 6.3125 burden hours per filing.

<sup>505</sup> 7,744 filings by registered CEFs × 6.3125 burden hours = 48,884 total burden hours for registered CEFs.

<sup>506</sup> 103 filings by BDCs × 5 burden hours = 515 total burden hours for BDCs.

<sup>507</sup> 48,884 total burden hours for registered CEFs + 515 total burden hours for BDCs = 49,399 total burden hours for affected funds.

<sup>508</sup> 48,884 total burden hours for registered CEFs × 0.75 = 36,663 burden hours of internal time. 48,884 total burden hours for registered CEFs × 0.25 × \$400 = \$4,888,400 for services of outside professionals.

<sup>509</sup> 515 total burden hours for BDCs × 0.75 = 386.25 burden hours of internal time. 515 total burden hours for BDCs × 0.25 × \$400 = \$51,500 for services of outside professionals.

<sup>510</sup> 36,663 burden hours of internal time for registered CEFs + 386.25 burden hours of internal

24,708 hours,<sup>515</sup> at a corresponding internal cost of about \$4.1 million.<sup>516</sup>

### C. Request for Comments

We request comment on whether our estimates for burden hours and any external costs as described above are reasonable. Consistent with 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information; (3) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (4) determine whether there are ways to minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

In addition to these general requests for comment, we also request comment specifically on the following issues:

- Our analysis relies upon certain assumptions, as discussed above. Do commenters agree with these assumptions, including assumptions about burdens in the initial year of compliance compared to subsequent years (for example, the estimated burden for a registered CEF to prepare and file Form 8-K in the initial and subsequent years of compliance under the proposed rules)?

- Are the current burden estimates associated with the requirement to submit financial statements and notes in an XBRL still accurate? Have the burdens of preparing this information changed over time, particularly for smaller reporting companies?

The agency has submitted the proposed collection of information to OMB for approval. Persons wishing to submit comments on the collection of information requirements of the proposed amendments should direct them to the Office of Management and Budget, Attention Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and

should send a copy to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090, with reference to File No. S7-03-19. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7-03-19, and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736.

## VI. Initial Regulatory Flexibility Act Analysis

This Initial Regulatory Flexibility Analysis ("IRFA") has been prepared in accordance with section 3 of the Regulatory Flexibility Act ("RFA").<sup>517</sup> It relates to proposed modifications to the registration, communications, and offering processes for affected funds under the Securities Act that would allow affected funds to use the securities offering rules that are already available to operating companies.

### A. Reasons for and Objectives of the Proposed Actions

The BDC Act directs us to allow a BDC to use the securities offering rules that are available to other issuers required to file reports under section 13(a) or section 15(d) of the Exchange Act and specifically enumerates the required revisions. Similarly, the Registered CEF Act directs us to allow any listed registered CEF or interval fund to use the securities offering rules that are available to other issuers that are required to file reports under section 13(a) or section 15(d) of the Exchange Act, subject to appropriate conditions.<sup>518</sup> Pursuant to both Acts, we are proposing rule and form amendments that would modify the registration, communications, and offering processes for affected funds to allow them to use the securities offering rules that are available to other issuers required to file reports under section 13(a) or section 15(d) of the Exchange Act. We are also proposing discretionary rule amendments to tailor the disclosure and regulatory framework for affected funds, in light of the proposed amendments to the offering rules applicable to them. The reasons for, and objectives of, the proposed rules are

further discussed in more detail in Part II above.

### B. Legal Basis

The Commission is proposing the rules and forms contained in this document under the authority set forth in the Securities Act, particularly Sections 6, 7, 8, 10, 19, 27A, and 28 thereof [15 U.S.C. 77a *et seq.*]; the Exchange Act, particularly Sections 2, 3(b), 9(a), 10, 12, 13, 14, 15, 17(a), 21E, 23(a), 35A, and 36 thereof [15 U.S.C. 78a *et seq.*]; the Investment Company Act, particularly Sections 6(c), 8, 20(a), 23, 24, 29, 30, 31, 37, and 38 thereof [15 U.S.C. 80a *et seq.*]; the BDC Act, particularly Section 803(b) thereof [Pub. L. No. 115-141, title VIII]; and the Registered CEF Act, particularly Section 509(a) thereof [Pub. L. No. 115-174].

### C. Small Entities Subject to the Rule

An investment company is a small entity if, together with other investment companies in the same group of related investment companies, it has net assets of \$50 million or less as of the end of its most recent fiscal year.<sup>519</sup> Commission staff estimates that, as of June 2018, 19 BDCs and 32 registered CEFs are small entities.<sup>520</sup>

A broker-dealer is a small entity if it has total capital (net worth plus subordinated liabilities) of less than \$500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to § 240.17a-5(d),<sup>521</sup> and it is not affiliated with any person (other than a natural person) that is not a small business or

<sup>519</sup> 17 CFR 270.0-10(a).

<sup>520</sup> These estimates, reflecting the net assets of registered CEFs and of BDCs, are based on staff review of Forms N-CEN and N-Q filed with the Commission as of June 2018 and are based on the definition of small entity under rule 0-10 of the Investment Company Act [17 CFR 270.0-10]. Such funds would not necessarily be able to meet the transaction requirement to qualify to file a short-form registration statement on Form N-2 (*i.e.*, generally those affected funds with a public float of \$75 million) or to be a WKSI (*i.e.*, generally those affected funds with a public float of \$700 million). See *supra* Part II.B.2.a and II.C.

Based on data from Morningstar Direct as of June 2018, of the 19 BDCs that are small entities, 3 were traded on an exchange with market capitalization below the \$75 million public float threshold for qualifying to file a short-form registration statement on Form N-2. Likewise, of the 32 registered CEFs that qualified as small entities, 3 traded on an exchange with market capitalizations below this same \$75 million threshold; while 2 were traded on the over-the-counter (OTC) market with market capitalizations below \$75 million.

<sup>521</sup> See rule 0-10(c)(1) under the Exchange Act [17 CFR 240.0-10(c)(1)]. Alternatively, if a broker-dealer is "not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than \$500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter)." See *id.*

<sup>515</sup> (2 hours current burden per fund per year + 2 hours for structured data format per fund per year) × (6,120 current funds + 57 interval funds) = 4 burden hours per fund per year × 6,177 funds = 24,708 hours per year.

<sup>516</sup> ((2 hours current burden per fund per year × \$67 per hour) + (2 hours for structured data format per fund per year × \$261 per hour)) × 6,177 funds = (\$134 per fund per year + \$522 per fund per year) × 6,177 funds = \$656 per fund per year × 6,177 funds = \$4,052,112 per year.

<sup>517</sup> 5 U.S.C. 603.

<sup>518</sup> As discussed above, we propose to apply the proposed rules to all registered CEFs (and BDCs), which certain conditions and exceptions.



small organization.<sup>522</sup> Commission staff estimates that, as of December 31, 2018, there are approximately 996 broker-dealers that may be considered small entities.<sup>523</sup> To the extent a small broker-dealer participates in a securities offering or prepares research reports, it may be affected by our proposals. Generally, we believe larger broker-dealers engage in these activities, but we request comment on whether and how these proposals would affect small broker-dealers.<sup>524</sup> We also request comment on the number of small entities that would be affected by our proposal, including any available empirical data.

#### *D. Projected Reporting, Recordkeeping, and Other Compliance Requirements*

The proposed amendments would create, amend, or eliminate current requirements for affected funds and broker-dealers, including those that are small entities discussed in Part VI.C above.<sup>525</sup>

##### **1. Registration Process and Final Prospectus Delivery**

The proposed amendments to the registration process for affected funds would create a short-form registration statement on Form N-2 that will function like a registration statement filed on Form S-3.<sup>526</sup> An affected fund eligible to file this short-form registration statement could use it to register shelf offerings, including shelf registration statements (filed by a WKSI) that become effective automatically.<sup>527</sup> Such a fund also could satisfy Form N-2's disclosure requirement by incorporating by reference information from the fund's Exchange Act reports.<sup>528</sup>

In addition, we are proposing amendments to allow certain affected funds eligible to register a primary offering under the proposed short-form registration instruction to rely on rule 430B to omit information from their base prospectuses, and to permit affected funds to use the process operating companies follow to file prospectus supplements.<sup>529</sup> Affected funds that choose to forward incorporate information by reference into their registration statements, as proposed, would also be able to include additional information in their periodic reports that is not required to be included in these reports in order to update their registration statements.<sup>530</sup> A fund would be able to include this additional information if the fund includes a statement in the report identifying information that it has included for this purpose.<sup>531</sup>

The proposed amendments to the WKSI definition in rule 405 would also permit affected funds to qualify for enhanced offering and communication benefits under our rules.<sup>532</sup> In order for an issuer to qualify as a WKSI, the issuer must meet the registrant requirements of Form S-3, *i.e.*, it must be "seasoned," and generally must have at least \$700 million in public float.<sup>533</sup> Qualifying as a WKSI would allow such funds to file a registration statement or amendment that becomes effective automatically in a broader variety of contexts than non-WKSIs, and to communicate at any time, including through a free writing prospectus, without violating the "gun-jumping" provisions of the Securities Act.<sup>534</sup>

Smaller affected funds would not be able to avail themselves of the aspects of the proposed rule amendments streamlining the registration process for affected funds or that make available the WKSI designation to affected funds. The proposed short-form registration instruction is designed to provide affected funds parity with operating companies by permitting them to use the instruction to register the same transactions that an operating company can register on Form S-3.<sup>535</sup> In order to qualify to use the short-form registration statement under Form N-2, General Instruction A.2 of Form N-2 generally requires an affected fund to meet the public float requirement of \$75 million under the transaction requirements for

Form S-3.<sup>536</sup> Likewise, the WKSI provision of rule 405 contains a public float requirement of \$700 million, as discussed above. Smaller funds would not generally meet the public float thresholds to file a short-form registration statement or qualify as a WKSI and therefore would not generally be subject to either of these proposals.<sup>537</sup> However, smaller affected funds may be affected by these proposed amendments in other ways. For example, smaller affected funds may be more likely to merge to obtain WKSI status, and could experience competitive disadvantages over larger funds that qualify as WKSIs or that file short-form registration statements on Form N-2.<sup>538</sup>

We are also proposing to apply the delivery method for operating company final prospectuses to affected funds. As a result, an affected fund would be allowed to satisfy its final prospectus delivery obligations by filing its final prospectus with the Commission.<sup>539</sup> These proposed requirements would apply to all affected funds, both large and small.<sup>540</sup>

##### **2. Communication Rules**

For smaller affected funds, we are not proposing any new restrictions on communications. As discussed above, the proposed amendments to Securities Act rules 134, 138, 139, 156, 163, 163A, 164, 168, 169, and 433 make available the use of certain types of communications that were previously not available with respect to affected funds.<sup>541</sup> Except as otherwise discussed below, we believe that there are no significant reporting, recordkeeping, or other compliance requirements associated with the proposed amendments. As such, except as otherwise discussed below, we believe that there are no attendant costs and administrative burdens for small

<sup>522</sup> See rule 0-10(c)(2) under the Exchange Act [17 CFR 240.0-10(c)(2)].

<sup>523</sup> This estimate is derived from an analysis of data for the period ending Dec. 31, 2018 obtained from Financial and Operational Combined Uniform Single (FOCUS) Reports that broker-dealers generally are required to file with the Commission and/or SROs pursuant to rule 17a-5 under the Exchange Act [17 CFR 240.17a-5].

<sup>524</sup> See Securities Offering Reform Adopting Release, *supra* footnote 5, at 44797. See also CIFRR Adopting Release, *supra* footnote 98, at 64219.

<sup>525</sup> See also *supra* Part V (discussing the skills necessary to perform the recordkeeping, reporting, and compliance requirements of the proposed rules and form amendments, including those to be performed internally by a fund, and those to be performed externally by professionals). The PRA provides for the hours, costs, and skill level associated with preparing disclosures, filing forms, and retaining records in compliance with our proposed rules. These skills would apply for compliance with the proposed rules by all funds, large and small, and Commission staff further estimates that small funds will incur approximately the same initial and ongoing costs as large funds.

<sup>526</sup> See *supra* Part II.B.2.a.

<sup>527</sup> *Id.*

<sup>528</sup> *Id.*

<sup>529</sup> See *supra* Part II.B.2.b.

<sup>530</sup> See *supra* Part II.B.2.c.

<sup>531</sup> *Id.*

<sup>532</sup> See *supra* Part II.C.

<sup>533</sup> *Id.*

<sup>534</sup> *Id.*

<sup>535</sup> See *supra* footnote 33 and accompanying and preceding text.

<sup>536</sup> See *supra* Parts II.B.2.a and IV.B.1; *supra* paragraph accompanying footnote 33

<sup>537</sup> See *supra* Part IV.B.1; see also *supra* footnote and accompanying text.

<sup>538</sup> See *supra* Part IV.B.1.

<sup>539</sup> See *supra* Part II.D.

<sup>540</sup> Affected funds using the new approach to prospectus delivery would be required to provide a notice to purchasers 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 under the Securities Act. See *supra* footnote 109 and accompanying text.

<sup>541</sup> See *supra* Parts II.E, IV.B.2, IV.C.1, and V.B.4. The proposed amendments to Securities Act rules 163 and 433 [17 CFR 230.163 and 230.433], regarding the use of a free writing prospectus, would create new recordkeeping, filing, and compliance requirements that are addressed further below.

affected funds associated with these proposed amendments.

In addition, the communication rules themselves do not create any new restrictions for small affected funds. Instead, small affected funds now may be able to take advantage of new communications options not previously afforded to them.<sup>542</sup> We also note that rule 163, and the proposed amendments thereto, apply only to WKSIs. Consequently, the proposed amendments to rule 163 would not produce any benefit, or create any burden, for small affected funds because they would likely never qualify as WKSIs, as discussed above.<sup>543</sup>

To the extent that an affected fund uses a free writing prospectus under the proposed rules, any affected fund—large or small—would incur the burden of the requirement to file a free writing prospectus, or retain a record of the free writing prospectus for three years if it was not filed with the Commission.<sup>544</sup> However, we believe that the burden here would be negligible. Affected funds currently use rule 482 of the Securities Act to engage in communications similar to those that would be permitted under the proposed amendments to rule 433, and these funds are required to file their rule 482 communication with either the Commission or, alternatively, with the Financial Industry Regulatory Authority (“FINRA”).<sup>545</sup> The burden associated with the filing requirements that the proposed amendments to rule 433 would entail therefore would not be meaningfully different than the burden associated with the filing requirement for rule 482 communications. Rule 433, as proposed, would also create a recordkeeping requirement. We do not

believe that this requirement would create any significant burden given that records of rule 482 communications must also be retained for a period that would generally exceed that required under rule 433.<sup>546</sup> In addition, the recordkeeping requirement would apply only to affected funds (both large and small) that elect to use rule 433, as proposed to be amended.

The proposal also would affect broker-dealers participating in a registered offering. Specifically, the proposed rules would affect: (1) Broker-dealers’ publication and distribution of research reports on affected funds; and (2) broker-dealers’ use of free writing prospectuses on affected funds.

The proposed amendments to rule 138 would affect both large and small broker-dealers. These proposed amendments would now permit broker-dealers to publish or distribute research reports with respect to a broader class of issuers and securities without this publication or distribution being deemed to constitute an offer that otherwise could be a non-conforming prospectus in violation of section 5 of the Securities Act.<sup>547</sup> Broker-dealers that once used rule 482 ads styled as research reports, and that instead would rely on rule 138 as proposed to be amended to publish or distribute similar communications, would no longer be subject to any filing requirement for these communications. Consequently, we expect that the proposed amendments to rule 138 could result in fewer rule 482 communications being filed with FINRA.<sup>548</sup> This in turn could reduce filing-related administrative costs for broker-dealers publishing or distributing research reports on affected funds under the proposed amendments to rule 138. However, large and small broker-dealers would not be affected

differently by the proposed amendments to rule 138.

In addition, the proposed free writing prospectus rule amendments would permit broker-dealers to engage in these communications on behalf of the affected fund issuer.<sup>549</sup> This would require broker-dealers, both large and small, to file the free writing prospectuses that they use with the Commission, or maintain records of any free writing prospectuses used if it was not filed with the Commission.<sup>550</sup> However, certain of these broker-dealers are already required to file communications made under rule 482.<sup>551</sup> Broker-dealers that once used rule 482 ads and instead will rely on proposed amended rule 433 to publish or distribute similar communications, would no longer be required to file these communications with FINRA. Consequently, the proposed amendments to rule 433 could result in fewer rule 482 communications being filed with FINRA and a potential increase in filings of free writing prospectuses by affected funds with the Commission.<sup>552</sup> However, those broker-dealers that have not previously used rule 482 to publish or distribute the types of communications that the proposed amendments to rule 433 would permit would newly be subject to both the filing and recordkeeping requirements of rule 433.

### 3. New Registration Fee Payment Method for Interval Funds

As discussed above, we are proposing a modernized approach to registration fee payment that would require interval funds to pay securities registration fees using the same method that mutual funds and ETFs use today.<sup>553</sup>

Interval funds, like other affected funds, are not currently permitted to

<sup>542</sup> See *supra* Parts I.I.E., IV.B.2., IV.C.1., and V.B.4. These include, for example, proposed amendments to rule 163A of the Securities Act, which provides a bright-line rule permitting communications more than 30 days before filing a registration statement, and proposed amendments to rule 169 of the Securities Act, which provides affected funds the ability to engage in regular factual business communications.

<sup>543</sup> See *supra* Part VI.D.1.

<sup>544</sup> See proposed rule 433(d) and (g) [17 CFR 230.433(d) and (g)] (Paragraph (d) of the rule provides for the various conditions and exclusions applicable to the general requirement of 433(d)(1) that an issuer or offering participant file its free writing prospectus. Paragraph (g) requires that if a free writing prospectus is not filed pursuant to paragraph (d) or (f) of rule 433, issuers and offering participants must retain all free writing prospectuses that have been used, for three years following the initial bona fide offering of the securities in question).

<sup>545</sup> See rule 482 Note To Paragraph (H) [17 CFR 230.482(h)] (Rule 482 requires that advertisements used in reliance on rule 482 are required to be filed in accordance with the requirements of rule 497, unless they are filed with FINRA). See *supra* footnote 544 and Parts IV.C and V.B.4.; see also rule 497(a) and (i) [17 CFR 230.497(a) and (i)].

<sup>546</sup> See rule 31a–2(a)(3) of the Investment Company Act [17 CFR 270.31a–2(a)(3)] (requiring every registered investment company to preserve for no less than six years from the end of the fiscal year last used, any advertisement, pamphlet, circular form letter, or other sales literature addressed to or intended for distribution to prospective investors). Securities Act rule 433(g) requires an issuer and offering participants to retain all free writing prospectuses that have been used, and that have not been filed pursuant to paragraphs (d) or (f) of the rule, for three years following the initial bona fide offering of the securities in question. However, for a broker or dealer utilizing a free writing prospectus, rule 433 defers to the recordkeeping requirements under rule 17a–4 of the Exchange Act [17 CFR 240.17a–4] (requiring sales literature to be retained for not less than three years).

<sup>547</sup> See proposed rule 138.

<sup>548</sup> See *supra* footnote 545 and FINRA rule 2210(c)(7)(F) (requiring a broker-dealer to file with FINRA an investment company prospectus published pursuant to Securities Act rule 482).

<sup>549</sup> See proposed rule 433(b) (Paragraph (b)(1) states that for WKSIs and seasoned issuers, both an issuer or offering participant may use a free writing prospectus, while paragraph (b)(2) states that for non-reporting and unseasoned issuers, any person participating in the offer or sale of the issuer’s securities may use a free writing prospectus. Although the term “offering participant” is not defined, paragraph (h)(3) of rule 433 gives some context to this term.).

<sup>550</sup> See *supra* footnote 544.

<sup>551</sup> See *supra* footnote 545.

<sup>552</sup> See Part IV.C.1 and V.B.4 (noting that we are unable to predict whether affected funds would engage in more communications with investors as a result of the proposed rules). To the extent affected funds or broker-dealers would use a free writing prospectus for communications that currently occur under rule 482, we would expect an increase in such filings of free writing prospectuses as well as an increase in the number of rule 138 research reports, as amended, and a decrease in the number of 482 ads filed with FINRA. See *supra* footnote 489.

<sup>553</sup> See *supra* Part II.G.

pay registration fees on this same annual “net” basis, and must pay the registration fee at the time of filing the registration statement.<sup>554</sup> However, we believe that interval funds would benefit from the ability to pay their registration fees in the same manner as mutual funds and ETFs, and that this approach is appropriate in light of interval funds’ operations.<sup>555</sup> We believe this proposal would benefit small interval funds and larger interval funds equally, as the proposal would make the registration fee payment process for all interval funds more efficient as discussed above.<sup>556</sup>

#### 4. Disclosure and Reporting Requirements

We are also proposing amendments to our rules and forms intended to tailor the disclosure and regulatory framework for affected funds in light of our proposed amendments to the offering rules applicable to them.<sup>557</sup> These proposed amendments include: Structured data requirements; new periodic and current reporting requirements; amendments to provide affected funds additional flexibility to incorporate information by reference; and proposed enhancements to the disclosures that registered CEFs make to investors when the funds are not updating their registration statements.<sup>558</sup>

#### Structured Data Requirements

We are proposing to require BDCs, like operating companies, to submit financial statement information using Inline XBRL format; to require that affected funds include structured cover page information in their registration statements on Form N-2 using Inline XBRL format; and to require that certain information required in an affected fund’s prospectus be tagged using Inline XBRL format;<sup>559</sup> and to require that filings on Form 24F-2 be submitted in XML format.<sup>560</sup> Large and small affected funds would both incur the burdens associated with these proposed structured data requirements.

Furthermore, as noted above, we recognize that some registrants affected by the proposed requirement, particularly filers with no Inline XBRL experience, likely would incur initial costs to acquire the necessary expertise and/or software as well as ongoing costs of tagging required information in Inline XBRL, and the incremental effect of any fixed costs, including ongoing fixed costs, of complying with the Inline XBRL requirement may be greater for smaller filers.<sup>561</sup> However, we believe that smaller affected funds in particular may benefit more from enhanced exposure to investors that could result from these proposed requirements.<sup>562</sup> If reporting the disclosures in a structured format increases the availability, or reduces the cost of collecting and analyzing, key information about affected funds, smaller affected funds may benefit from improved coverage by third-party information providers and data aggregators.

#### Periodic Reporting Requirements

We are also proposing to require registered CEFs to provide management’s discussion of fund performance (or “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.<sup>563</sup> These proposed requirements are intended to modernize and harmonize our periodic report disclosure requirements for affected funds with those applicable to operating companies and mutual funds and ETFs.

The proposed amendments to require registered CEFs to include an MDFP section in the annual report and for BDCs to provide financial highlights in their registration statement and annual reports would apply to all applicable affected funds, large and small. We do not believe it would be appropriate to treat large and small entities differently for purposes of the proposed MDFP requirement. We believe that this proposed requirement would benefit investors by helping them assess a fund’s performance over the prior year and complementing other information in the report, which may make the annual report disclosure more understandable as a whole.<sup>564</sup> This

investor protection benefit would be equally significant to investors in smaller affected funds as well as larger affected funds.<sup>565</sup>

We similarly believe that the informational benefit of BDCs’ proposed inclusion of the financial highlights in their registration statements should apply equally to investors in large and small BDCs, and therefore we believe this proposed disclosure requirement is appropriate for all BDCs. We also believe the costs associated with this proposed requirement should be minimal for both large and small BDCs, since we understand that it is general market practice for BDCs to include this information in their registration statements.<sup>566</sup>

Finally, with respect to the proposed requirement for affected funds that file a short form registration statement on Form N-2 to disclose material staff comments, this requirement would apply only to those entities that qualify for the short-form registration statement, which generally would not include smaller affected funds.<sup>567</sup>

#### New Current Reporting Requirements for Affected Funds

In order to improve information for investors and to provide parity with BDCs and operating companies, we are also proposing to require all registered CEFs that are reporting companies under section 13(a) or section 15(d) of the Exchange Act to report certain specified events and information on Form 8-K on a current basis, to provide investors and the market with timely information about these events.<sup>568</sup> We believe that the proposed reportable events occur infrequently and thus should not result in a significant burden on affected funds resulting from the proposed Form 8-K requirements.<sup>569</sup>

Additionally, certain items in Form 8-K are substantively the same as or similar to existing disclosure requirements in the annual and semi-

<sup>554</sup> *Id.*

<sup>555</sup> *Id.*

<sup>556</sup> *Id.*; see also Part IV.E.1.

<sup>557</sup> See *supra* Part II.H. Some of the proposed amendments reflect our consideration of the availability of information to investors, as required by the Registered CEF Act. Section 509(a) of the Registered CEF Act.

<sup>558</sup> See *supra* Parts II.H.1—II.H.5.

<sup>559</sup> See *supra* footnote 455 (noting that a seasoned fund filing a short-form registration statement on Form N-2 also would be required to tag information appearing in Exchange Act reports, such as those on Forms N-CSR, 10-K, or 8-K, if that information is required to be tagged in the fund’s prospectus).

<sup>560</sup> See *supra* Parts II.H.1 and IV.E.1.

<sup>561</sup> See *supra* Part IV.E.2. But see *supra* footnote 398 (noting that since 2014, costs incurred utilizing XBRL have significantly reduced for smaller companies).

<sup>562</sup> *Id.*

<sup>563</sup> See *supra* Parts II.H.2.b, II.H.2.c, and II.H.2.d.

<sup>564</sup> See *supra* Part IV.E.3.

<sup>565</sup> See *supra* Part II.H.2.b and II.H.2.c; see also *supra* Part V.B.3 (discussing the burden hours associated with complying with the proposed disclosure requirements for both small and large affected funds).

<sup>566</sup> *Id.*; see also *supra* Parts V.B.1 and V.B.3.

<sup>567</sup> See *supra* footnote 520.

<sup>568</sup> See *supra* Parts II.H.3.a. and IV.E.4; see also *supra* footnote 243.

<sup>569</sup> See *supra* Parts II.H.3.b and IV.E.4. We note in Part IV.E.4 *supra* that existing items on Form 8-K generally have not led to frequent reporting obligations for BDCs. In addition, we are proposing to extend the safe harbor for failure to report certain Form 8-K items to include the new proposed reporting items for affected funds, which would limit liability concerns and the potential impact on an affected fund’s ability to raise capital associated with failing to timely file a report under these items.

annual reports for registered CEFs. We do not believe that requiring similar disclosure on Form 8-K and in a registered CEF's annual or semi-annual reports should result in significant burdens for registered CEFs (including small registered CEFs) since, absent significant changes, they should be able to use their Form 8-K disclosure to more efficiently prepare the corresponding disclosure in any shareholder reports that follow funds' issuance of reports on Form 8-K.<sup>570</sup>

We also propose to amend Form 8-K to add two new reporting items for affected funds and tailor the existing reporting instructions to affected funds.<sup>571</sup> The additional reporting items we propose are designed to recognize certain differences between events that are relevant to affected funds and those that are relevant to operating companies.<sup>572</sup> An affected fund would be required to file a report on Form 8-K if the fund has: (1) A material change to its investment objectives or policies; or (2) a material write-down in fair value of a significant investment. We believe it is appropriate to propose these new reporting items, which would apply to all affected funds, large and small, to better tailor Form 8-K disclosure to these types of investment companies.<sup>573</sup> We do not believe these new items would create a significant burden.<sup>574</sup> Form 8-K is meant to capture important events, many of which may occur at a low frequency and should not result in numerous, persistent reports on Form 8-K by affected funds.<sup>575</sup> These two events are designed to recognize certain events that are important to affected fund investors, regardless of the size of the affected fund, where current information about such events would be beneficial to investors and the market.<sup>576</sup>

#### Online Availability of Information Incorporated by Reference

We are also proposing to modernize Form N-2's requirements for backward incorporation by reference by all affected funds. Affected funds would no longer be required to deliver to new investors information that they have incorporated by reference.<sup>577</sup> Instead, we are proposing that these funds make the incorporated materials and corresponding prospectus and SAI readily available and accessible on a

website maintained by or for the fund and identified in the fund's prospectus or SAI.<sup>578</sup> We do not believe this requirement would generate significant compliance costs for affected funds because many funds currently post their annual and semi-annual reports and other fund information on their websites.<sup>579</sup> Nor do we think it would be appropriate to treat large and small entities differently for purposes of the proposed amendment. The proposed requirement would make the incorporated information, prospectus, and SAI more accessible to retail investors, who we believe may be more inclined to look at a fund's website for information than to search the EDGAR system.<sup>580</sup> The proposed rule would also increase the likelihood that fund investors view the information in their preferred format, and thereby increase their use of the information to make investment decisions.<sup>581</sup> We believe that these investor protection benefits should be available equally for investors in smaller and larger affected funds.

#### Proposed Enhancements to Certain Registered CEFs' Annual Report Disclosure

Finally, the proposed amendments to rule 8b-16 of the Investment Company Act would require funds relying on that rule to describe material changes in their annual reports in enough detail to allow investors to understand each change and how it may affect the fund.<sup>582</sup> The proposed amendments also would require funds to preface such disclosures with a legend.<sup>583</sup> The proposed amendments to rule 8b-16 would only affect that portion of registered CEFs that rely on rule 8b-16.<sup>584</sup> We do not think it would be appropriate to treat large and small entities differently for purposes of the proposed amendments to rule 8b-16, as this new requirement would allow investors in funds relying on the rule to more easily identify and understand key information about their investments.<sup>585</sup> We believe that this investor protection benefit should be available equally for investors in smaller and larger affected funds. In addition, the proposed new requirement would likely add only a

small incremental compliance burden because funds relying on rule 8b-16 are already required to disclose the enumerated changes.<sup>586</sup> The proposed amendments described in Part II.H above would apply to affected funds that are small entities as well as other affected funds unless noted otherwise.<sup>587</sup>

#### E. Duplicative, Overlapping, or Conflicting Federal Rules

Except as otherwise discussed below, the Commission has not identified any federal rules that duplicate, overlap, or conflict with the proposed rules. Both the BDC Act and Registered CEF Act direct the Commission to allow BDCs and certain CEFs to take advantage of the offerings and communications rules under the Securities Act and Exchange Act to affected funds not previously available to them. Consequently, the rules provide an alternative to other procedures and processes currently available to affected funds.

As discussed in detail above, we are proposing to require funds filing a short-form registration statement on Form N-2 to include key information in their annual reports that they currently disclose in their prospectuses.<sup>588</sup> However, because the proposed requirement to include key information in annual reports applies to seasoned affected funds, there would be no impact on smaller affected funds.<sup>589</sup>

The proposed amendments requiring registered CEFs that are Exchange Act reporting companies under section 13(a) or section 15(d) of the Exchange Act to now file Form 8-K also could entail some potential for regulatory duplication.<sup>590</sup> For example, registered CEFs are generally required to provide the information required under Item 4.01 (Changes in Registrant's Certifying Accountant) of Form 8-K in their semi-annual or annual shareholder reports. Further, registered CEFs are required to provide in their semi-annual or annual shareholder reports certain information found in Item 5.07 of Form 8-K about matters submitted to a vote of shareholders. Although certain items in Form 8-K are substantively the same as or similar to existing disclosure requirements for registered CEFs, the existing requirements provide less

<sup>570</sup> See *id.*; see also *supra* footnote 257.

<sup>571</sup> See *supra* Parts II.H.3.b and IV.E.4.

<sup>572</sup> See *supra* Part II.H.3.b.

<sup>573</sup> See *supra* Parts II.H.3.b and IV.E.4.

<sup>574</sup> *Id.*

<sup>575</sup> *Id.*

<sup>576</sup> *Id.*

<sup>577</sup> See *supra* Parts II.H.4 and IV.E.5.

<sup>578</sup> *Id.*

<sup>579</sup> See Part IV.E.5.

<sup>580</sup> *Id.*

<sup>581</sup> *Id.*

<sup>582</sup> See *supra* Parts II.H.5 and IV.E.3.

<sup>583</sup> *Id.*

<sup>584</sup> See *supra* Part IV.E.3. Based on staff review of data derived from Morningstar Direct for the period ending December 31, 2018, approximately 489 traded CEFs currently rely on rule 8b-16. Of these, we estimate that 20 would be small issuers based on net assets of \$50 million or less.

<sup>585</sup> See Part IV.E.3.

<sup>586</sup> *Id.*

<sup>587</sup> See also *supra* Parts IV.E, V.B.1, V.B.2, V.B.3, and V.B.6 (discussing the economic impact, and the estimated compliance costs and burdens, of the proposed rule and form amendments described in Part II.H).

<sup>588</sup> See *supra* Part II.H.2.

<sup>589</sup> See *supra* footnotes 535-536 and accompanying paragraph.

<sup>590</sup> See *supra* Part II.H.3.a and footnote 243.

timely disclosure.<sup>591</sup> As proposed, the Form 8-K requirements would require registered CEFs to disclose certain items within 4 business days of the relevant event, while the existing regime calls for similar disclosure on an annual or semi-annual basis in shareholder reports.<sup>592</sup> We believe it would be appropriate to require registered CEFs to provide more timely and current disclosure on these matters on Form 8-K in order to ensure parity with the reporting requirements to which operating companies and BDCs are subject. We believe this approach should not result in significant burdens for registered CEFs (including small registered CEFs) since, absent significant changes, they should be able to use their Form 8-K disclosure to more efficiently prepare the corresponding disclosure in any shareholder reports that follow funds' issuance of reports on Form 8-K.<sup>593</sup>

We do not anticipate that the proposed Form 8-K requirements would increase the compliance costs of affected funds' existing disclosure requirements, and they may, to some extent, reallocate certain of affected funds' existing disclosure costs to preparing Form 8-K disclosure since affected funds may be able to use the Form 8-K disclosure to help prepare disclosure that they are currently required to provide in annual or other periodic reports. Moreover, we believe that continuing to require the relevant disclosure in shareholder reports may reduce potential disruptions to shareholders who are accustomed to finding certain information in these reports and should limit discrepancies between different types of funds' shareholder reports.

#### F. Significant Alternatives

The RFA directs the Commission to consider significant alternatives that would accomplish our stated objective, while minimizing any significant economic impact on small entities. Although the BDC Act and Registered CEF Act required certain amendments to our rules and forms, we could have, for example, made additional

modifications to the relevant provisions with respect to affected funds that are small entities. Alternatively, we also could have limited the scope to BDCs (as the BDC Act specified) and to interval funds and listed registered CEFs (as the Registered CEF Act specified), which would have excluded from the scope of the proposed rules certain small entities that are registered CEFs but that are not interval funds or listed registered CEFs.<sup>594</sup> Where our proposed amendments reflect an exercise of discretion, we considered the following alternatives for small entities in relation to our proposed amendments:

- Exempting affected funds that are small entities from the proposed disclosure, reporting, or recordkeeping requirements, to account for resources available to small entities;
- Establishing different compliance or reporting requirements or frequency to account for resources available to small entities;
- Clarifying, consolidating, or simplifying the compliance requirements under the amendments for small entities; and
- Using performance rather than design standards.

#### 1. Alternatives to Proposed Approach to Implementing Statutory Mandates

In accordance with the BDC Act and Registered CEF Act, we are proposing to modify the restrictions regarding offerings and communications permitted around the time of a Securities Act registered offering. The proposed flexibility would be greatest for larger and seasoned affected funds, but would also provide greater flexibility to all affected funds and broker-dealers, including small entities.

We considered modifying the public float standards in the WKSI definition or the short-form registration instruction by reducing the required level of public float or providing alternative eligibility criteria, such as net asset value of a certain size for funds whose shares are not traded on an exchange or through the use of "performance" rather than "design" standards.<sup>595</sup> These alternatives would have allowed more affected funds, potentially including small entities, to qualify as WKSIs or file short-form registration statements. However, we believe that modifying the eligibility criteria in the WKSI definition or the short-form registration instruction could weaken the investor protection benefits provided by those criteria.

We also considered extending the proposed rules only to BDCs, listed registered CEFs, and interval funds.<sup>596</sup> However, excluding unlisted registered CEFs from the proposed rules could create unnecessary competitive disparities between unlisted registered CEFs (which would potentially include smaller funds) and unlisted BDCs and would not provide investors in unlisted registered CEFs with the benefits of the new investor protections we are proposing.<sup>597</sup>

#### 2. Alternative Approaches to Discretionary Choices

##### New Registration Fee Payment Method for Interval Funds

We considered, but are not proposing, allowing a wider range of affected funds, such as registered CEFs that are tender offer funds, to rely on rule 24f-2.<sup>598</sup> To the extent that this alternative would have brought in additional small affected funds, it could have extended the benefits of this fee payment method to additional small entities. However, we did not propose this alternative approach because interval funds have structural similarities to mutual funds and ETFs that other affected funds do not.<sup>599</sup>

##### Structured Data Requirements

As an alternative, we could have proposed requiring the Inline XBRL requirements only for a subset of affected funds—for example, affected funds that file short-form registration statements on Form N-2 or WKSIs.<sup>600</sup> This would have lessened the burden associated with the proposed structured data requirements on smaller affected funds. However, a structured data program that captures only a subset of affected funds would reduce potential data quality benefits compared to mandatory Inline XBRL requirements for all affected funds.<sup>601</sup> This in turn would reduce data users' ability to meaningfully analyze, aggregate, and compare data.

However, we are proposing an extended compliance period for the proposed new XBRL reporting requirements for affected funds that would not be eligible to file a short-form registration statement. This extended compliance period—which would apply to affected funds that do not meet the transaction requirement to qualify to file a short-form registration statement on

<sup>591</sup> See *supra* footnote 257 and accompanying paragraph.

<sup>592</sup> *Id.*

<sup>593</sup> See *supra* footnote 257 and accompanying text; see also Part V.B.6 (estimating 704 registered CEFs as of September 2018, and assuming all would file Form 8-K). We estimate that there are 32 registered CEFs that are small entities (see *supra* footnote 520). The Staff further estimates that based on review of EDGAR filings as February 2019 of the 32 registered CEFs, 17 are dually registered under the Securities Act and Investment Company Act. Based on these estimates, these 17 registered CEFs would be required to file 8-Ks under our proposed amendments.

<sup>594</sup> See *supra* Part II.A.

<sup>595</sup> See *supra* Part II.C.

<sup>596</sup> See *supra* Part IV.D.

<sup>597</sup> *Id.*

<sup>598</sup> See *supra* Part IV.E.1.

<sup>599</sup> See *id.*

<sup>600</sup> See *supra* Part V.B.2.

<sup>601</sup> See *id.*

Form N-2 (*i.e.*, generally those affected funds with a public float of \$75 million), and which encompasses the small entities subject to the proposed rule discussed above—should enable small entities to defer the burden of additional cost associated with the proposed XBRL requirements and learn from affected funds that comply earlier.

#### Periodic Reporting Requirements and Online Availability of Information Incorporated by Reference

We also considered a partial or complete exemption from the proposed periodic reporting requirements, and for the proposed requirements to make information incorporated by reference available on a website, for small entities.<sup>602</sup> With respect to the periodic reporting requirements, small entities that are not affected funds currently follow the same requirements that large entities do when filing periodic reports, and we believe that establishing different reporting requirements or frequency for small entities that are affected funds would not be consistent with the Commission's goal of investor protection and industry oversight. For example, we could have proposed to require smaller affected funds to include in their annual reports less information from their registration statements. While requiring less information would reduce costs to smaller affected funds by reducing the amount of required annual report disclosure, it could also make it more difficult for investors in these funds to find important fund information. Similarly, we believe that the investor protection benefits associated with the other proposed periodic reporting requirements that apply to large and small affected funds—for example, the proposed MDFP requirement for registered CEFs and the proposed inclusion of BDCs' financial highlights in their registration statement—should apply equally to investors in large and small affected funds.<sup>603</sup> We also believe that the investor protection benefits stemming from the proposed requirement to make materials incorporated by reference available on a website should be available equally for investors in smaller and larger affected funds, and therefore this proposed rule applies equally to large and small affected funds.<sup>604</sup>

#### New Current Reporting Requirements for Affected Funds

With respect to our proposed amendments to current reports on Form

8-K, we do not believe that small affected fund issuers would have to report more frequently than other issuers. We therefore believe that different reporting requirements or timetables for small entities would interfere with achieving the primary goal of making information about important events promptly available to investors and the public securities markets.<sup>605</sup> Similarly, clarifying, simplifying or consolidating compliance or reporting requirements would potentially create different requirements for smaller funds as compared to larger ones. Such a framework would interfere with the Commission's objective to supply investors and the public securities markets with data that is easily retrievable for all issuers and to supply them with information about funds of all sizes, and their important events, in a timely and relevant manner.<sup>606</sup> We also do not believe such a framework would be consistent with the goal of investor protection.

However, we are proposing an extended compliance period for the proposed new current reporting requirements for affected funds that would not be eligible to file a short-form registration statement. This extended compliance period—which would apply to affected funds that do not meet the transaction requirement to qualify to file a short-form registration statement on Form N-2 (*i.e.*, generally those affected funds with a public float of \$75 million), and which encompasses the small entities subject to the proposed rule discussed above—should enable small entities to defer the burden of additional cost associated with the proposed 8-K requirements and learn from affected funds that comply earlier.

#### G. General Request for Comment

The Commission requests comments regarding this IRFA. We request comments on the number of small entities that may be affected by our proposed rules and guidelines, and whether the proposed rules and guidelines would have any effects not considered in this analysis. We request that commenters describe the nature of any effects on small entities subject to the proposed rules and provide empirical data to support the nature and extent of such effects. We also request comment on the proposed compliance burdens and the effect these burdens would have on smaller entities.

## VII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"),<sup>607</sup> the Commission must advise OMB whether a proposed regulation constitutes a "major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results in or is likely to result in:

- An annual effect on the economy of \$100 million or more;
  - A major increase in costs or prices for consumers or individual industries; or
  - Significant adverse effects on competition, investment, or innovation.
- We request comment on whether our proposal would be a "major rule" for purposes of SBREFA. We solicit comment and empirical data on:
- The potential effect on the U.S. economy on an annual basis;
  - Any potential increase in costs or prices for consumers or individual industries; and
  - Any potential effect on competition, investment, or innovation.

We request that commenters provide empirical data and other factual support for their views to the extent possible.

## VIII. Statutory Authority

The amendments contained in this release are being proposed under the authority set forth in the Securities Act, particularly sections 6, 7, 8, 10, 19, 27A, and 28 thereof [15 U.S.C. 77a *et seq.*]; the Exchange Act, particularly sections 2, 3(b), 9(a), 10, 12, 13, 14, 15, 17(a), 21E, 23(a), 35A, and 36 thereof [15 U.S.C. 78a *et seq.*]; the Investment Company Act, particularly sections 6(c), 8, 20(a), 23, 24, 29, 30, 31, 37, and 38 thereof [15 U.S.C. 80a *et seq.*]; the BDC Act, particularly section 803(b) thereof [Pub. L. 115–141, title VIII]; and the Registered CEF Act, particularly section 509(a) thereof [Pub. L. 115–174].

## Text of Proposed Rules and Forms

### List of Subjects

#### 17 CFR Part 229

Reporting and recordkeeping requirements, Securities.

#### 17 CFR Part 230

Advertising, Confidential business information, Investment Companies, Reporting and recordkeeping requirements, Securities.

#### 17 CFR Part 232

Administrative practice and procedure, Confidential business

<sup>602</sup> See *supra* Part IV.E.3.

<sup>603</sup> See *supra* Part VI.D.4.

<sup>604</sup> See *id.*

<sup>605</sup> See *supra* Part IV.E.4.

<sup>606</sup> See *supra* Part IV.E.4.

<sup>607</sup> Public Law 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C., and as a note to 5 U.S.C. 601).

information, Reporting and recordkeeping requirements, Securities.

**17 CFR Part 240**

Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities.

**17 CFR Part 243**

Reporting and recordkeeping requirements, Securities.

**17 CFR Part 249**

Brokers, Reporting and recordkeeping requirements, Securities

**17 CFR Part 270**

Confidential business information, Fraud, Investment companies, Life insurance, Reporting and recordkeeping requirements, Securities.

**17 CFR Part 274**

Investment companies, Reporting and recordkeeping requirements, Securities.

For reasons set forth in the preamble, we propose to amend Title 17, Chapter II of the *Code of Federal Regulations* as follows:

**PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K**

- 1. The authority citation for part 229 continues to read as follows:

**Authority:** 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78j-3, 78l, 78m, 78n, 78n-1, 78o, 78u-5, 78w, 78ll, 78mm, 80a-8, 80a-9, 80a-20, 80a-29, 80a-30, 80a-31(c), 80a-37, 80a-38(a), 80a-39, 80b-11 and 7201 *et seq.*; 18 U.S.C. 1350; sec. 953(b), Pub. L. 111-203, 124 Stat. 1904 (2010); and sec. 102(c), Pub. L. 112-106, 126 Stat. 310 (2012).

- 2. Amend § 229.601 by revising paragraph (b)(101)(i) introductory text and paragraph (b)(101)(ii)(A) to read as follows.

**§ 229.601 (Item 601) Exhibits.**

\* \* \* \* \*

(b) \* \* \*  
(101) \* \* \*

(i) *Required to be submitted.* Required to be submitted to the Commission in the manner provided by § 232.405 of this chapter if the registrant is not registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*), except that an Interactive Data File:

\* \* \* \* \*

(ii) \* \* \*

(A) Registrant is not registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*); and

\* \* \* \* \*

**PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933**

- 3. The authority citation for part 230 is revised to read, in part, as follows:

**Authority:** 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z-3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78o-7 note, 78t, 78w, 78ll(d), 78mm, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, Pub. L. 112-106, sec. 201(a), sec. 401, 126 Stat. 313 (2012), sec. 803(b), Pub. L. 115-141, 132 Stat. 348 (2018), and sec. 509(a), Pub. L. 115-174, 132 Stat. 1296 (2018), unless otherwise noted.

\* \* \* \* \*

- 4. Amend § 230.134 by revising paragraph (g) to read as follows:

**§ 230.134 Communications not deemed a prospectus.**

\* \* \* \* \*

(g) This section does not apply to a communication relating to an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*), other than a registered closed-end investment company.

- 5. Amend § 230.138 by:

- a. Revising the text to the “*Instruction to paragraph (a)(1)*”; and  
■ b. Revising paragraph (a)(2)(i).

The revisions read as follows:

**§ 230.138 Publications or distributions of research reports by brokers or dealers about securities other than those they are distributing.**

(a) \* \* \*

(1) \* \* \*

*Instruction to paragraph (a)(1):* If the issuer has filed a shelf registration statement under Rule 415(a)(1)(x) (§ 230.415(a)(1)(x)) or pursuant to General Instruction I.D. of Form S-3, General Instruction I.C. of Form F-3 (§ 239.13 or § 239.33 of this chapter), or pursuant to General Instructions A.2 and B of Form N-2 (§ 239.14 and § 274.11a-1 of this chapter) with respect to multiple classes of securities, the conditions of paragraph (a)(1) of this section must be satisfied for the offering in which the broker or dealer is participating or will participate.

(2) The issuer as of the date of reliance on this section:

(i) (A) Is required to file reports, and has filed all periodic reports required during the preceding 12 months (or such shorter time that the issuer was required to file such reports) on Forms 10-K (§ 249.310 of this chapter), 10-Q

(§ 249.308a of this chapter), and 20-F (§ 249.220f of this chapter) pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); or

(B) (1) Is a registered closed-end investment company; and

(2) Is required to file reports, and has filed all periodic reports required during the preceding 12 months (or such shorter time that the issuer was required to file such reports) on Forms N-CSR (§§ 249.331 and 274.128 of this chapter), N-Q (§§ 249.332 and 274.130 of this chapter), N-PORT (§ 274.150 of this chapter), and N-CEN (§§ 249.330 and 274.101 of this chapter) pursuant to section 30 of the Investment Company Act; or

\* \* \* \* \*

**§ 230.138 [Amended]**

- 6. Effective May 1, 2020, amend § 230.138 by removing “N-Q (§§ 249.332 and 274.130 of this chapter),” in paragraph (a)(2)(i)(B)(2).

- 7. Amend § 230.156 by adding paragraph (d) to read as follows:

**§ 230.156 Investment company sales literature.**

\* \* \* \* \*

(d) Nothing in this section may be construed to prevent a business development company or a registered closed-end investment company, from qualifying for an exemption under § 230.168 of this chapter or § 230.169 of this chapter.

- 8. Amend § 230.163 by:

- a. Adding “or” after the semicolon at the end of paragraph (b)(3)(i);  
■ b. Revising paragraph (b)(3)(ii); and  
■ c. Removing paragraph (b)(3)(iii).

The revision to read as follows:

**§ 230.163 Exemption from section 5(c) of the Act for certain communications by or on behalf of well-known seasoned issuers.**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(ii) Communications by an issuer that is an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*), other than a registered closed-end investment company.

\* \* \* \* \*

- 9. Amend § 230.163A by revising paragraph (b)(4) to read as follows:

**§ 230.163A 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.**

\* \* \* \* \*

(b) \* \* \*

(4) Communications made by an issuer that is an investment company



registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), other than a registered closed-end investment company.

\* \* \* \* \*

■ 10. Amend § 230.164 by revising paragraph (f) to read as follows:

**§ 230.164 Post-filing free writing prospectuses in connection with certain registered offerings.**

\* \* \* \* \*

(f) *Excluded issuers.* This section and Rule 433 are not available if the issuer is an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), other than a registered closed-end investment company.

\* \* \* \* \*

■ 11. Amend § 230.168 by revising paragraph (b)(1) introductory text, paragraph (b)(2) introductory text, and paragraph (d)(3) to read as follows:

**§ 230.168 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.**

\* \* \* \* \*

(b) \* \* \*

(1) *Factual business information* means some or all of the following information that is released or disseminated under the conditions in paragraph (d) of this section, including, without limitation, such factual business information contained in reports or other materials filed with, furnished to, or submitted to the Commission pursuant to the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) or the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*):

\* \* \* \* \*

(2) *Forward-looking information* means some or all of the following information that is released or disseminated under the conditions in paragraph (d) of this section, including, without limitation, such forward-looking information contained in reports or other materials filed with, furnished to, or submitted to the Commission pursuant to the Securities Exchange Act of 1934 or pursuant to the Investment Company Act of 1940:

\* \* \* \* \*

(d) \* \* \*

(3) The issuer is not an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), other than a registered closed-end investment company.

■ 12. Amend § 230.169 by revising paragraph (d)(4) to read as follows:

**§ 230.169 Exemption from sections 2(a)(10) and 5(c) of the Act for certain communications of regularly released factual business information.**

\* \* \* \* \*

(d) \* \* \*

(4) The issuer is not an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), other than a registered closed-end investment company.

■ 13. Amend § 230.172 by revising paragraph (d)(1) to read as follows, removing paragraph (d)(2); and redesignating paragraphs (d)(3) and (d)(4) as paragraphs (d)(2) and (d)(3).

**§ 230.172 Delivery of prospectuses.**

\* \* \* \* \*

(d) \* \* \*

(1) Offering of any investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) other than a registered closed-end investment company;

\* \* \* \* \*

■ 14. Amend § 230.173 by revising paragraph (f)(2) to read as follows, removing paragraph (f)(3) and redesignating paragraphs (f)(4) and (f)(5) as paragraphs (f)(3) and (f)(4).

**§ 230.173 Notice of registration.**

\* \* \* \* \*

(f) \* \* \*

(2) Offering of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) other than a registered closed-end investment company;

\* \* \* \* \*

■ 15. Amend § 230.405 by:

■ a. Revising the definition of “Automatic shelf registration statement.”;

■ b. In the definition of “Ineligible user.”:

■ i. Revising paragraph (1)(i);

■ ii. In paragraph (1)(vii) removing the words “years; or” and adding in their place “years;”;

■ iii. In paragraph (1)(viii) removing “offering.” and adding in its place “offering; or”;

■ iv. Adding paragraph (1)(ix) to the definition of “Ineligible issuer.”;

■ c. Adding in alphabetical order the definition “Registered closed-end investment company.”;

■ d. Revising the introductory text of paragraph (1)(i), and paragraphs (1)(i)(B)(2), (1)(v), and (2)(iii) of the definition of “Well-known seasoned issuer.”;

The additions and revisions read as follows:

**§ 230.405 Definitions of terms.**

\* \* \* \* \*

*Automatic shelf registration statement.* The term *automatic shelf registration statement* means a registration statement filed on Form S–3, Form F–3, or Form N–2 (§ 239.13, § 239.33, or § 239.14 and § 274.11a–1 of this chapter) by a well-known seasoned issuer pursuant to General Instruction I.D. of Form S–3, General Instruction I.C. of Form F–3, or General Instruction B of Form N–2.

\* \* \* \* \*

*Ineligible issuer.*

(1) \* \* \*

(i) Any issuer that is required to file reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) or section 30 of the Investment Company Act of 1940 (15 U.S.C. 80a–29) that has not filed all reports and other materials required to be filed during the preceding 12 months (or for such shorter period that the issuer was required to file such reports pursuant to sections 13 or 15(d) of the Securities Exchange Act of 1934 or section 30 of the Investment Company Act of 1940), other than reports on Form 8–K (§ 249.308 of this chapter) required solely pursuant to an item specified in General Instruction I.A.3(b) of Form S–3 (§ 239.13 of this chapter) or General Instruction A.2.a of Form N–2 (§ 239.14 and § 274.11a–1 of this chapter) (or in the case of an asset-backed issuer, to the extent the depositor or any issuing entity previously established, directly or indirectly, by the depositor (as such terms are defined in Item 1101 of Regulation AB (§ 229.1101 of this chapter) are or were at any time during the preceding 12 calendar months required to file reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 with respect to a class of asset-backed securities involving the same asset class, such depositor and each such issuing entity must have filed all reports and other material required to be filed for such period (or such shorter period that each such entity was required to file such reports), other than reports on Form 8–K required solely pursuant to an item specified in General Instruction I.A.2 of Form SF–3);

\* \* \* \* \*

(ix) In the case of an issuer that is a registered closed-end investment company or a business development company, within the past three years any person or entity that at the time was an investment adviser to the issuer, including any sub-adviser, was made the subject of any judicial or administrative decree or order arising

out of a governmental action that determines that the investment adviser aided or abetted or caused the issuer to have violated the anti-fraud provisions of the federal securities laws.

\* \* \* \* \*

*Registered closed-end investment company.* The term registered closed-end investment company means a closed-end company, as defined in section 5(a)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a-5(a)(2)), that is registered under the Investment Company Act.

\* \* \* \* \*

*Well-known seasoned issuer.* \* \* \*

(1)(i) Meets all the registrant requirements of General Instruction I.A. of Form S-3 or Form F-3 (§ 239.13 or § 239.33 of this chapter), or General Instructions A.2.a and A.2.b of Form N-2 (§ 239.14 and § 274.11a-1 of this chapter) and either:

\* \* \* \* \*

(B)(1) \* \* \*

(2) Will register only non-convertible securities, other than common equity, and full and unconditional guarantees permitted pursuant to paragraph (1)(ii) of this definition unless, at the determination date, the issuer also is eligible to register a primary offering of its securities relying on General Instruction I.B.1. of Form S-3 or Form F-3 or is eligible to register a primary offering described in General Instruction I.B.1. of Form S-3 relying on General Instruction A.2 of Form N-2.

\* \* \* \* \*

(v) Is not an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*), other than a registered closed-end investment company.

(2) \* \* \*

(iii) In the event that the issuer has not filed a shelf registration statement or amended a shelf registration statement for purposes of complying with section 10(a)(3) of the Act for sixteen months, the time of filing of the issuer's most recent annual report on Form 10-K (§ 249.310 of this chapter), Form 20-F (§ 249.220f of this chapter), or Form N-CSR (§ 249.331 and § 274.128 of this chapter) (or if such report has not been filed by its due date, such due date).

\* \* \* \* \*

■ 16. Amend § 230.415 by revising paragraphs (a)(1)(x), (a)(1)(xi), and (a)(2) to read as follows:

**§ 230.415 Delayed or Continuous Offering and Sale of Securities.**

(a) \* \* \*

(1) \* \* \*

(x) Securities registered (or qualified to be registered) on Form S-3 or Form

F-3 (§ 239.13 or § 239.33 of this chapter), or on Form N-2 (§ 239.14 and § 274.11a-1 of this chapter) pursuant to General Instruction A.2 of that form, which are to be offered and sold on an immediate, continuous or delayed basis by or on behalf of the registrant, a majority-owned subsidiary of the registrant or a person of which the registrant is a majority-owned subsidiary; or

(xi) Shares of common stock which are to be offered and sold on a delayed or continuous basis by or on behalf of a registered closed-end investment company or business development company that makes periodic repurchase offers pursuant to § 270.23c-3 of this chapter.

\* \* \* \* \*

(2) Securities in paragraph (a)(1)(viii) of this section and securities in paragraph (a)(1)(ix) of this section that are not registered on Form S-3 or Form F-3 (§ 239.13 or § 239.33 of this chapter), or on Form N-2 (§ 239.14 and § 274.11a-1 of this chapter) pursuant to General Instruction A.2 of that form, may only be registered in an amount which, at the time the registration statement becomes effective, is reasonably expected to be offered and sold within two years from the initial effective date of the registration.

\* \* \* \* \*

■ 17. Amend § 230.418 by revising paragraph (a)(3) to read as follows:

**§ 230.418 Supplemental information.**

(a) \* \* \*

(3) Except in the case of a registrant eligible to use Form S-3 (§ 239.13 of this chapter) or Form N-2 (§§ 239.14 and 274.11a-1 of this chapter) under General Instruction A.2 of that form, any engineering, management or similar reports or memoranda relating to broad aspects of the business, operations or products of the registrant, which have been prepared within the past twelve months for or by the registrant and any affiliate of the registrant or any principal underwriter, as defined in Rule 405 (§ 230.405), of the securities being registered except for:

\* \* \* \* \*

■ 18. Amend § 230.424 by revising paragraph (f) to read as follows:

**§ 230.424 Filing of prospectuses, number of copies.**

\* \* \* \* \*

(f) This rule shall not apply with respect to prospectuses of an investment company registered under the Investment Company Act of 1940, other than a registered closed-end investment company. References to “form of prospectus” in paragraphs (a), (b), and

(c) of this section shall be deemed also to refer to the form of Statement of Additional Information.

\* \* \* \* \*

■ 19. Amend § 230.430B by:

■ a. Revising the introductory text to paragraph (b);

■ b. Revising paragraph (f)(4) introductory text and paragraph (f)(4)(ii); and

■ c. Revising paragraph (i).

The revisions read as follows:

**§ 230.430B Prospectus in a registration statement after effective date.**

\* \* \* \* \*

(b) A form of prospectus filed as part of a registration statement for offerings pursuant to Rule 415(a)(1)(i) by an issuer eligible to use Form S-3 or Form F-3 (§§ 239.13 or 239.33 of this chapter) for primary offerings pursuant to General Instruction I.B.1 of such forms, or an issuer eligible to register such a primary offering under General Instruction A.2 of Form N-2 (§§ 239.14 and 274.11a-1 of this chapter), may omit the information specified in paragraph (a) of this section, and may also omit the identities of selling security holders and amounts of securities to be registered on their behalf if:

\* \* \* \* \*

(f) \* \* \*

(4) Except for an effective date resulting from the filing of a form of prospectus filed for purposes of including information required by section 10(a)(3) of the Act or pursuant to Item 512(a)(1)(ii) of Regulation S-K (§ 229.512(a)(1)(ii) of this chapter) or Item 34.4.a(2) of Form N-2 (§ 239.14 and § 274.11a-1 of this chapter), the date a form of prospectus is deemed part of and included in the registration statement pursuant to this paragraph shall not be an effective date established pursuant to paragraph (f)(2) of this section as to:

\* \* \* \* \*

(ii) Any person signing any report or document incorporated by reference into the registration statement, except for such a report or document incorporated by reference for purposes of including information required by section 10(a)(3) of the Act or pursuant to Item 512(a)(1)(ii) of Regulation S-K or Item 34.4.a(2) of Form N-2 (§ 239.14 and § 274.11a-1 of this chapter) (such person except for such reports being deemed not to be a person who signed the registration statement within the meaning of section 11(a) of the Act).

\* \* \* \* \*

(i) Issuers relying on this section shall furnish the undertakings required by

Item 512(a) of Regulation S–K or Item 34.4 of Form N–2 (§ 239.14 and § 274.11a–1 of this chapter) as applicable.

■ 20. Amend § 230.433 by revising paragraphs (b)(1)(i), (b)(1)(iv), and (c)(1)(ii) to read as follows:

**§ 230.433 Conditions to permissible post-filing free writing prospectuses.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) Offerings of securities registered on Form S–3 (§ 239.33 of this chapter) pursuant to General Instruction I.B.1, I.B.2, I.C., or I.D. thereof or on Form SF–3 (§ 239.45 of this chapter) or on Form N–2 (§ 239.14 and § 274.11a–1 of this chapter) pursuant to General Instruction A.2 with respect to the same transactions;

\* \* \* \* \*

(iv) Any other offering not excluded from reliance on this section and Rule 164 of securities of an issuer eligible to use Form S–3 or Form F–3 for primary offerings pursuant to General Instruction I.B.1 of such Forms or an issuer eligible to use General Instruction A.2 of Form N–2 to register a primary offering described in General Instruction I.B.1 of Form S–3.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(ii) Information contained in the issuer's periodic and current reports filed or furnished to the Commission pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) that are incorporated by reference into the registration statement and not superseded or modified, or pursuant to section 30 of the Investment Company Act of 1940 (15 U.S.C. 80a–29).

\* \* \* \* \*

■ 21. Amend § 230.462 by revising paragraph (f) to read as follows:

**§ 230.462 Immediate effectiveness of certain registration statements and post-effective amendments.**

\* \* \* \* \*

(f) A post-effective amendment filed pursuant to paragraph (e) of this section for purposes of adding a new issuer and its securities as permitted by Rule 413(b) (§ 230.413(b)) that satisfies the requirements of Form S–3, Form F–3, or General Instruction A.2 of Form N–2 (§ 239.13, § 239.33, or § 239.14 and § 274.11a–1 of this chapter), as applicable, including the signatures required by Rule 402(e) (§ 230.402(e)), and contains a prospectus satisfying the requirements of Rule 430B (§ 230.430B),

shall become effective upon filing with the Commission.

■ 22. Amend § 230.497 by:

■ a. Removing from paragraphs (c) and (e) the text “Form N–2 (§§ 239.14 and 274.11a–1 of this chapter),”; and

■ b. Adding paragraph (l).

The addition to read as follows:

**§ 230.497 Filing of investment company prospectuses—number of copies.**

\* \* \* \* \*

(l) Except for an investment company advertisement deemed to be a section 10(b) prospectus pursuant to § 230.482 of this chapter, this section shall not apply with respect to prospectuses of a registered closed-end investment company, or a business development company.

**PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS**

■ 23. The authority citation for part 232 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll, 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

\* \* \* \* \*

■ 24. Amend § 232.405 by:

■ a. Revising the introductory text;

■ b. Revising paragraph (a)(2);

■ c. Revising the introductory text of paragraph (a)(3)(i);

■ d. Revising paragraph (a)(3)(ii);

■ e. Revising paragraph (a)(4);

■ f. Revising the introductory text of paragraph (b)(1);

■ g. Revising paragraph (b)(2);

■ h. Adding new paragraph (b)(3); and

■ i. Revising the last sentence of “Note to § 232.405.”

The revisions and addition to read as follows:

**§ 232.405 Interactive Data File submissions.**

This section applies to electronic filers that submit Interactive Data Files. Section 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S–K), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), and General Instruction H.2 of Form N–2 (§§ 239.14 and

274.11a–1 of this chapter) specify when electronic filers are required or permitted to submit an Interactive Data File (§ 232.11), as further described in the note to this section. This section imposes content, format and submission requirements for an Interactive Data File, but does not change the substantive content requirements for the financial and other disclosures in the Related Official Filing (§ 232.11).

(a) \* \* \*

(2) Be submitted only by an electronic filer either required or permitted to submit an Interactive Data File as specified by § 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S–K), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), or General Instruction H.2 of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), as applicable;

(3) \* \* \*

(i) If the electronic filer is neither a management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) nor a business development company as defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), and is not within one of the categories specified in paragraph (f)(1)(i) of this section, as partly embedded into a filing with the remainder simultaneously submitted as an exhibit to:

\* \* \* \* \*

(ii) If the electronic filer is a management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) or a business development company as defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), and is not within one of the categories specified in paragraph (f)(1)(ii) of this section, as partly embedded into a filing with the remainder simultaneously submitted as an exhibit to a filing that contains the disclosure this section requires to be tagged; and

(4) Be submitted in accordance with the EDGAR Filer Manual and, as applicable, either § 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S–K), paragraph (101) of Part

II—Information Not Required to be Delivered to Offerees or Purchasers of Form F-10 (§ 239.40 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20-F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40-F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6-K (§ 249.306 of this chapter), General Instruction C.3.(g) of Form N-1A (§§ 239.15A and 274.11A of this chapter), or General Instruction H.2 of Form N-2 (§§ 239.14 and 274.11a-1 of this chapter).

(b)(1) *Content—categories of information presented.* If the electronic filer is not a management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), an Interactive Data File must consist of only a complete set of information for all periods required to be presented in the corresponding data in the Related Official Filing, no more and no less, from all of the following categories:

\* \* \* \* \*

(2) If the electronic filer is an open-end management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), an Interactive Data File must consist of only a complete set of information for all periods required to be presented in the corresponding data in the Related Official Filing, no more and no less, from the risk/return summary information set forth in Items 2, 3, and 4 of Form N-1A (§§ 239.15A and 274.11A of this chapter).

(3) If the electronic filer is a closed-end management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) or a business development company as defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(48)), an Interactive Data File must consist only of a complete set of information for all periods required to be presented in the corresponding data in the Related Official Filing, no more and no less, from: (i) For a business development company, the information specified in paragraph (b)(1) of this section; (ii) all of the information provided by the electronic filer on the cover page of Form N-2 (§§ 239.14 and 274.11a-1 of this chapter) except the Calculation of Registration Fee table, and (iii) as applicable, Items 3.1, 4.3, 8.2.b, 8.2.d, 8.3.a, 8.3.b, 8.5.b, 8.5.c, 8.5.e, 10.1.a-d, 10.2.a-c, 10.2.e, 10.3, and 10.5 of Form N-2.

\* \* \* \* \*

*Note to § 232.405:* \* \* \* For an issuer that is a management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) or a business development company as defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(48)), General Instruction C.3.(g) of Form N-1A (§§ 239.15A and 274.11A of this chapter) or General Instruction H.2 of Form N-2 (§§ 239.14 and 274.11a-1 of this chapter), as applicable, specifies the circumstances under which an Interactive Data File must be submitted.

## PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 25. The authority citation for part 239 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78o-7 note, 78u-5, 78w(a), 78ll, 78mm, 80a-2(a), 80a-3, 80a-8, 80a-9, 80a-10, 80a-13, 80a-24, 80a-26, 80a-29, 80a-30, and 80a-37; and sec. 107, Pub. L. 112-106, 126 Stat. 312, unless otherwise noted.

\* \* \* \* \*

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 26. The authority citation for part 240 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c-3, 78c-5, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 78o, 78o-4, 78o-10, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, 7201 *et seq.*; and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111-203, 939A, 124 Stat. 1887 (2010); and secs. 503 and 602, Pub. L. 112-106, 126 Stat. 326 (2012), unless otherwise noted.

\* \* \* \* \*

■ 27. Amend § 240.13a-11 by revising paragraphs (b) and (c) to read as follows:

**§ 240.13a-11 Current reports on Form 8-K (§ 249.308 of this chapter).**

\* \* \* \* \*

(b) This section shall not apply to foreign governments, foreign private issuers required to make reports on Form 6-K (17 CFR 249.306) pursuant to § 240.13a-16, issuers of American Depositary Receipts for securities of any foreign issuer, or investment companies required to file reports pursuant to § 270.30a-1 of this chapter under the Investment Company Act of 1940, except where such an investment company is:

(1) Required to file notice of a blackout period pursuant to § 245.104 of this chapter;

(2) Required to file disclosure pursuant to Instruction 2 to § 240.14a-11(b)(1) of information concerning outstanding shares and voting;

(3) Required to file disclosure pursuant to Instruction 2 to § 240.14a-11(b)(10) of the date by which a nominating shareholder or nominating shareholder group must submit the notice required pursuant to § 240.14a-11(b)(10); or

(4) A closed-end company, as defined in section 5(a)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a-5(a)(2)), that is registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*).

(c) No failure to file a report on Form 8-K that is required solely pursuant to Item 1.01, 1.02, 2.03, 2.04, 2.05, 2.06, 4.02(a), 5.02(e), 6.03, 10.02, or 10.03 of Form 8-K shall be deemed to be a violation of 15 U.S.C. 78j(b) and § 240.10b-5.

\* \* \* \* \*

■ 28. Amend § 240.14a-101 by revising paragraph E of Notes and paragraph (b)(1) of Item 13. Financial and other information. (See Notes D and E at the beginning of this Schedule.) to read as follows:

**§ 240.14a-101 Schedule 14A. Information required in proxy statement.**

### Schedule 14A Information

*Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934*

\* \* \* \* \*

### Notes

\* \* \* \* \*

E. In Item 13 of this Schedule, the reference to “meets the requirement of Form S-3” or “meets the requirements of General Instruction A.2 of Form N-2” shall refer to a registrant who meets the following requirements:

(a) A registrant meets the requirements of Form S-3 if:

(1) The registrant meets the requirements of General Instruction I.A. of Form S-3 (§ 239.13 of this chapter); and

(2) One of the following is met:

(i) The registrant meets the aggregate market value requirement of General Instruction I.B.1 of Form S-3; or

(ii) Action is to be taken as described in Items 11, 12, and 14 of this schedule which concerns non-convertible debt or preferred securities issued by a registrant meeting the requirements of General Instruction I.B.2. of Form S-3

(referenced in 17 CFR 239.13 of this chapter); or

(iii) The registrant is a majority-owned subsidiary and one of the conditions of General Instruction I.C. of Form S-3 is met.

(b) A registrant meets the requirements of General Instruction A.2 of Form N-2 (§ 239.14 and § 274.11a-1 of this chapter) if the registrant meets the conditions included in such General Instruction, provided that General Instruction A.2.c of Form N-2 is subject to the same limitations described in paragraph (a)(2) of this Note E.

*Item 13. Financial and other information.* (See Notes D and E at the beginning of this Schedule.)

(b) \* \* \*

(1) S-3 registrants and certain N-2 registrants. If the registrant meets the requirements of Form S-3 or General Instruction A.2 of Form N-2 (see Note E to this Schedule), it may incorporate by reference to previously-filed documents any of the information required by paragraph (a) of this Item, provided that the requirements of paragraph (c) are met. Where the registrant meets the requirements of Form S-3 or General Instruction A.2 of Form N-2 and has elected to furnish the required information by incorporation by reference, the registrant may elect to update the information so incorporated by reference to information in subsequently-filed documents.

■ 29. Amend § 240.15d-11 by revising paragraphs (b) and (c) to read as follows:

**§ 240.15d-11 Current reports on Form 8-K (§ 249.308 of this chapter).**

(b) This section shall not apply to foreign governments, foreign private issuers required to make reports on Form 6-K (17 CFR 249.306) pursuant to § 240.15d-16, issuers of American Depositary Receipts for securities of any foreign issuer, or investment companies required to file reports pursuant to § 270.30a-1 of this chapter under the Investment Company Act of 1940, except where such an investment company is:

(1) Required to file notice of a blackout period pursuant to § 245.104 of this chapter;

(2) Required to file disclosure pursuant to Instruction 2 to § 240.14a-11(b)(1) of information concerning outstanding shares and voting;

(3) Required to file disclosure pursuant to Instruction 2 to § 240.14a-11(b)(10) of the date by which a

nominating shareholder or nominating shareholder group must submit the notice required pursuant to § 240.14a-11(b)(10); or

(4) A closed-end company, as defined in section 5(a)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a-5(a)(2)), that is registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*).

(c) No failure to file a report on Form 8-K that is required solely pursuant to Item 1.01, 1.02, 2.03, 2.04, 2.05, 2.06, 4.02(a), 5.02(e), 6.03, 10.02, or 10.03 of Form 8-K shall be deemed to be a violation of 15 U.S.C. 78j(b) and § 240.10b-5.

## PART 243—REGULATION FD

■ 30. The authority citation for part 243 continues to read as follows:

**Authority:** 15 U.S.C. 78c, 78i, 78j, 78m, 78o, 78w, 78mm, and 80a-29, unless otherwise noted.

■ 31. Amend § 243.103 by revising paragraph (a) to read as follows:

**§ 243.103 No effect on Exchange Act reporting status.**

(a) For purposes of Forms S-3 (17 CFR 239.13), S-8 (17 CFR 239.16b) and SF-3 (17 CFR 239.45) under the Securities Act, or Form N-2 (17 CFR 239.14 and 17 CFR 274.11a-1) under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*), an issuer is deemed to have filed all the material required to be filed pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) or where applicable, has made those filings in a timely manner; or

## PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 32. The authority for part 249 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; 12 U.S.C. 5461 *et seq.*; 18 U.S.C. 1350; Sec. 953(b), Pub. L. 111-203, 124 Stat. 1904; Sec. 102(a)(3), Pub. L. 112-106, 126 Stat. 309 (2012); Sec. 107, Pub. L. 112-106, 126 Stat. 313 (2012), and Sec. 72001, Pub. L. 114-94, 129 Stat. 1312 (2015), unless otherwise noted.

■ 33. Amend Form 8-K (referenced in § 249.308 of this chapter) by:

■ a. Revising the first sentence of B.1. of the “General Instructions” section;

■ b. Adding a new sentence to the end of paragraph B.3. of the “General Instructions” section;

■ c. Adding “or the Investment Company Act” after “Securities Act” in “General Instruction B.5.”;

■ d. Revising Instruction 4 of “Item 2.02 Results of Operations and Financial Conditions.”;

■ e. Revising Instruction 2 of “Item 3.02 Unregistered Sales of Equity Securities.”;

■ f. Adding new section 10 in the section titled “INFORMATION TO BE INCLUDED IN THE REPORT”.

The revisions read as follows:

**Note:** The text of Form 8-K does not, and these amendments will not, appear in the *Code of Federal Regulations*.

## UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

### Form 8-K

### CURRENT REPORT

Pursuant to Section 13 OR 15(d) of The Securities Exchange Act of 1934

### GENERAL INSTRUCTIONS

#### B. \* \* \*

1. A report on this form is required to be filed or furnished, as applicable, upon the occurrence of any one or more of the events specified in the items in Sections 1-6 and 9-10 of this form.

3. \* \* \* For registered closed-end investment companies, the term *previously reported* has the same meaning as in Rule 8b-2 under the Investment Company Act (17 CFR 270.8b-2), provided that such previously reported information is public.

### INFORMATION TO BE INCLUDED IN THE REPORT

#### Item 2.02 Results of Operations and Financial Condition.

##### Instructions.

4. This Item 2.02 does not apply in the case of a disclosure that is made in a quarterly report filed with the Commission on Form 10-Q (17 CFR 249.308a) or an annual report filed with the Commission on Form 10-K (17 CFR 249.310) or, for registered closed-end investment companies, for reports to stockholders filed with the Commission

under Rule 30b2–1 of the Investment Company Act.

\* \* \* \* \*

### Item 3.02 Unregistered Sales of Equity Securities.

\* \* \* \* \*

#### Instructions.

\* \* \* \* \*

2. A smaller reporting company is defined under Item 10(f)(1) of Regulation S–K (17 CFR 229.10(f)(1)). For purposes of this Item, a “smaller reporting company” with respect to a closed-end investment company described in Section 10 of this form means an investment company identified in Rule 0–10 under the Investment Company Act.

\* \* \* \* \*

### Section 10—Closed-End Investment Companies

The Items in this Section 10 only apply to registered closed-end investment companies and to business development companies, as defined in Section 2(a)(48) of the Investment Company Act. Terms used in this Section 10 have the same meaning as in the Investment Company Act and the rules thereunder.

#### Item 10.01 Material Change to Investment Objectives or Policies

If the registrant’s investment adviser has determined to implement a material change to the registrant’s investment objectives or policies, and such change has not been, and will not be, submitted to shareholders for approval, the registrant must disclose:

(a) The date the investment adviser plans to implement the material change to the registrant’s investment objectives or policies; and

(b) a description of the material change to the registrant’s investment objectives or policies.

#### Instructions.

1. For purposes of this Item, investment objectives or policies means the information specified in Item 8.2 of Form N–2. A registrant’s investment adviser includes any sub-advisers.

2. A registrant’s investment adviser has determined to implement a material change if the change would represent a new or different principal portfolio emphasis, including the types of securities in which the registrant invests or will invest or the significant investment practices or techniques that the registrant employs or intends to employ, from that most recently disclosed in the later of the registrant’s prospectus or most recent periodic report. In the case of a business

development company, the most recent periodic report is the most recently filed report on Form 10–Q or Form 10–K. In the case of a registered closed-end investment company, the most recent periodic report is the most recent report to stockholders filed with the Commission under Rule 30b2–1 under the Investment Company Act.

3. No report is required under this Item if the registrant provides substantially the same information in a post-effective amendment to its Securities Act registration statement or in a subsequent prospectus filed under Securities Act Rule 424 (17 CFR 230.424).

#### Item 10.02 Material Write-Downs

If the registrant concludes, in accordance with its valuation procedures, that a material write-down in fair value of a significant investment is required under generally accepted accounting principles applicable to the registrant, disclose the following information:

(a) The date of the conclusion that a material write-down in fair value is required; and

(b) the registrant’s estimate of the amount or range of amounts of the material write down; *provided, however*, that if the registrant determines that at the time of filing it is unable in good faith to make a determination of such estimate, no disclosure of such estimate shall be required; *provided further, however*, that in any such event, the registrant shall file an amended report on Form 8–K under this Item 10.02 within four business days after it makes a determination of such an estimate or range of estimates.

#### Instructions.

1. An investment is deemed to be a significant investment for purposes of this Item if the registrant’s and its other subsidiaries’ investments in a portfolio holding exceed 10% of the total assets of the registrant and its consolidated subsidiaries. Investments in the same issuer must be aggregated for purposes of determining whether the registrant and its subsidiaries have a portfolio holding that is a significant investment. The determination of whether a portfolio holding is a significant investment is based on the valuation of the portfolio holding prior to the material write-down.

2. No filing is required under this Item 10.02 if the conclusion is made in connection with the preparation, review, or audit of financial statements required to be included in the next periodic report due to be filed under the Exchange Act, the periodic report is

filed on a timely basis, and such conclusion is disclosed in the report.

\* \* \* \* \*

### PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 34. The authority citation for part 270 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39, and Pub. L. 111–203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

\* \* \* \* \*

■ 35. Amend § 270.8b–16 by adding paragraph (e) to read as follows:

#### § 270.8b–16 Amendments to registration statement.

\* \* \* \* \*

(e) The changes required to be disclosed by paragraphs (b)(2) through (b)(5) of this section must be described in enough detail to allow investors to understand each change and how it may affect the fund. Such disclosures must be prefaced with the following legend: “The following information [in this annual report] is a summary of certain changes since [date]. This information may not reflect all of the changes that have occurred since you purchased [this fund].”

■ 36. Amend § 270.23c–3 by adding paragraph (e) to read as follows:

#### § 270.23c–3 Repurchase offers by closed-end companies.

\* \* \* \* \*

(e) *Registration of an indefinite amount of securities.* A company that makes repurchase offers pursuant to paragraph (b) of this section shall be deemed to have registered an indefinite amount of securities pursuant to section 24(f) of the Act (15 U.S.C. 80a–24(f)) upon the effective date of its registration statement.

■ 37. Amend § 270.24f–2 by revising the first sentence of paragraph (a) to read as follows:

#### § 270.24f–2 Registration under the Securities Act of 1933 of certain investment company securities.

(a) *General.* Any face-amount certificate company, open-end management company, closed-end management company that makes periodic repurchase offers pursuant to § 270.23c–3(b) of this chapter, or unit investment trust (“issuer”) that is deemed to have registered an indefinite amount of securities pursuant to section 24(f) of the Act (15 U.S.C. 80a–24(f)) must not later than 90 days after the end of any fiscal year during which it has publicly offered such securities, file

Form 24F-2 (17 CFR 274.24) with the Commission. \* \* \*

# **PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940**

■ 38. The authority citation for part 274 is revised to read, in part, as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a-8, 80a-24, 80a-26, 80a-29, Pub. L. 111-203, sec. 939A, 124 Stat. 1376 (2010), and sec. 803(b), Pub. L. 115-141, 132 Stat. 348 (2018), unless otherwise noted.

\* \* \* \* \*

■ 39. Revise Form N-2 (referenced in §§ 239.14 and 274.11a-1 of this chapter) to read as follows:

**Note:** The text of Form N-2 does not, and this amendment will not, appear in the *Code of Federal Regulations*.

UNITED STATES  
SECURITIES AND EXCHANGE  
COMMISSION

Washington, DC 20549

## **FORM N-2**

### **Check appropriate box or boxes**

- ☐ REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933
- ☐ Pre-Effective Amendment No. \_\_\_\_\_
- ☐ Post-Effective Amendment No. \_\_\_\_\_

### **and/or**

- ☐ REGISTRATION STATEMENT UNDER THE INVESTMENT COMPANY ACT OF 1940
- ☐ Amendment No. \_\_\_\_\_

\_\_\_\_\_  
Registrant Exact Name as Specified in Charter

\_\_\_\_\_  
Address of Principal Executive Offices (Number, Street, City, State, Zip Code)

\_\_\_\_\_  
Registrant's Telephone Number, including Area Code

\_\_\_\_\_  
Name and Address (Number, Street, City, State, Zip Code) of Agent for Service

\_\_\_\_\_  
Approximate Date of Commencement of Proposed Public Offering

- ☐ Check box if the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans.
- ☐ Check box if any securities being registered on this Form will be offered on a delayed or continuous basis in reliance on Rule 415 under the Securities Act of 1933 ("Securities Act"), other than securities offered in connection with a dividend reinvestment plan.
- ☐ Check box if this Form is a registration statement pursuant to General Instruction A.2 or a post-effective amendment thereto.
- ☐ Check box if this Form is a registration statement pursuant to General Instruction B or a post-effective amendment thereto that will become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act.
- ☐ Check box if this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction B filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act.

### **It is proposed that this filing will become effective (check appropriate box)**

- ☐ when declared effective pursuant to Section 8(c) of the Securities Act

*The following boxes should only be included and completed if the registrant is a registered closed-end management investment company or business development company which makes periodic repurchase offers under Rule 23c-3 under the Investment Company Act of 1940 ("Investment Company Act") and is making this filing in accordance with Rule 486 under the Securities Act.*

- ☐ immediately upon filing pursuant to paragraph (b)
- ☐ on (date) pursuant to paragraph (b)
- ☐ 60 days after filing pursuant to paragraph (a)
- ☐ on (date) pursuant to paragraph (a)

### **If appropriate, check the following box:**

- ☐ This [post-effective] amendment designates a new effective date for a previously filed [post-effective

amendment] [registration statement].

- ☐ This Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, and the Securities Act registration statement number of the earlier effective registration statement for the same offering is: \_\_\_\_\_
- ☐ This Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, and the Securities Act registration statement number of the earlier effective registration statement for the same offering is: \_\_\_\_\_
- ☐ This Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, and the Securities Act registration statement number of the earlier effective registration statement for the same offering is: \_\_\_\_\_

### **Check each box that appropriately characterizes the Fund:**

- ☐ Registered Closed-End Fund (closed-end company that is registered under the Investment Company Act).
- ☐ Business Development Company (closed-end company that intends or has elected to be regulated as a business development company under the Investment Company Act).
- ☐ Interval Fund (Registered Closed-End Fund or a Business Development Company that makes periodic repurchase offers under Rule 23c-3 under the Investment Company Act).
- ☐ A.2 Qualified (qualified to register securities pursuant to General Instruction A.2 of this Form).
- ☐ Well-Known Seasoned Issuer (as defined by Rule 405 under the Securities Act).
- ☐ Emerging Growth Company (as defined by Rule 12b-2 under the Securities Exchange Act of 1934 ("Exchange Act")).
- ☐ New Registrant (registered or regulated under the Investment Company Act for less than 12 calendar months preceding this filing).

## **CALCULATION OF REGISTRATION FEE UNDER THE SECURITIES ACT OF 1933**

Title of securities being registered	Amount being registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee



**Instructions.**

If the registration statement or amendment is filed under only one of the Acts, omit reference to the other Act from the facing sheet. Include the “Approximate Date of Commencement of Proposed Public Offering” and the table showing the calculation of the registration fee only where shares are being registered under the Securities Act.

If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities, and the amount of registration fee need to appear in the Calculation of Registration Fee table.

If the filing fee is calculated pursuant to Rule 457(r) under the Securities Act, the Calculation of Registration Fee table must state that it registers an unspecified amount of securities of each identified class of securities and must provide that the Fund is relying on Rule 456(b) and Rule 457(r). If the Calculation of Registration Fee table is amended in a post-effective amendment to the registration statement or in a prospectus filed in accordance with Rule 456(b)(1)(ii), the table must specify the aggregate offering price for all classes of securities in the referenced offering or offerings and the applicable registration fee.

Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 457 under the Securities Act.

Fill in the 811–\_\_\_\_, 814–\_\_\_\_ and 33–\_\_\_\_ blanks only if these filing numbers (for the Investment Company Act registration and/or the Securities Act registration, respectively) have already been assigned by the Securities and Exchange Commission.

Form N–2 is to be used by closed-end management investment companies, except small business investment companies licensed as such by the United States Small Business Administration, to register under the Investment Company Act and to offer their shares under the Securities Act. The Commission has designed Form N–2 to provide investors with information that will assist them in making a decision about investing in an investment company eligible to use the Form. The Commission also may use the information provided on Form N–2 in its regulatory, disclosure review, inspection, and policy making roles.

A Registrant is required to disclose the information specified by Form N–2,

and the Commission will make this information public. A Registrant is not required to respond to the collection of information contained in Form N–2 unless the Form displays a currently valid Office of Management and Budget (“OMB”) control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549. The OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. 3507.

*Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.*

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**Signatures****General Instructions****A. Use of Form N–2**

1. *General.* Form N–2 is used by all closed-end management investment companies (“Registrant” or “Fund”), except small business investment companies licensed as such by the United States Small Business Administration, to file: (1) An initial registration statement under Section 8(b) of the Investment Company Act and any amendments to the registration statement, including amendments required by Rule 8b–16 under the Investment Company Act; (2) a registration statement under the Securities Act and any amendment to it; or (3) any combination of these filings.

2. *Optional Use of Form for Certain Funds.* A Fund may elect to file a registration statement pursuant to this General Instruction A.2, including a registration statement used in connection with an offering pursuant to Rule 415(a)(1)(x) under the Securities Act, if it meets all of the following requirements:

a. The Fund meets the requirements of General Instruction I.A. of Form S–3, provided that failing to timely file a report required solely pursuant to Items 10.01 or 10.02 of Form 8–K will not affect the Fund’s ability to meet the terms of General Instruction I.A.3(b) of Form S–3;

b. if the Fund is registered under the Investment Company Act, it has been registered for a period of at least twelve

calendar months immediately preceding the filing of the registration statement on this Form, and has timely filed all reports required to be filed pursuant to Section 30 of the Investment Company Act during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement; and

c. the registration statement to be filed pursuant to this General Instruction A.2 relates to a transaction specified in General Instruction I.B. or I.C of Form S-3, as applicable, and meets all of the conditions to the transaction specified in the applicable instruction.

A registration statement filed pursuant to this instruction shall specifically incorporate by reference into the prospectus and statement of additional information ("SAI") all of the materials specified in General Instruction F.3, pursuant to the requirements set forth in that instruction.

A Fund must indicate that the registration statement is being filed pursuant to this instruction by checking the appropriate box on the facing sheet.

**Note to General Instruction A.2.** Attention is directed to the General Instructions of Form S-3, including General Instructions II.D, F, and G, which contain general information regarding the preparation and filing of automatic and non-automatic shelf registration statements.

## B. Automatic Shelf Offerings by Well-Known Seasoned Issuers

Any Fund that is a Well-Known Seasoned Issuer as defined in Rule 405 of the Securities Act at the most recent eligibility determination date specified in paragraph (2) of that definition may use a registration statement filed under General Instruction A.2 of this Form as an automatic shelf registration statement for registration under the Securities Act of securities offerings, other than pursuant to Rule 415(a)(1)(vii) or (viii) of the Securities Act, only for the transactions that are described in, and consistent with the requirements of, General Instruction I.D. of Form S-3.

**Note to General Instruction B.** Attention is directed to the General Instructions of Form S-3, including General Instructions II.E, F, G and IV.B, which contain general information regarding the preparation and filing of automatic shelf registration statements.

## C. Registration Fees

Section 6(b) of the Securities Act and Rule 457 thereunder set forth the fee requirements under the Securities Act.

## D. Application of General Rules and Regulations

If the registration statement is being filed under both the Securities and Investment Company Acts or under only the Securities Act, the General Rules and Regulations under the Securities Act, particularly Regulation C [17 CFR 230.400 through 497], shall apply. If the registration statement is being filed under only the Investment Company Act, the General Rules and Regulations under the Investment Company Act, particularly those under Section 8(b) [17 CFR 270.8b-1 *et seq.*], shall apply.

## E. Amendments

1. Paragraph (a) of Rule 8b-16 under the Investment Company Act requires closed-end management investment companies to annually amend the Investment Company Act registration statement. Paragraph (b) of Rule 8b-16 exempts a closed-end management investment company from this requirement if it provides certain information specified by that rule to shareholders in its annual report.

2. If Form N-2 is used to file a registration statement under both the Securities and Investment Company Acts, any amendment of that registration statement shall be deemed to be filed under both Acts unless otherwise indicated on the facing sheet.

3. Funds offering securities on a delayed or continuous basis in reliance upon Rule 415 under the Securities Act must provide the undertakings with respect to post-effective amendments required by Item 34 of Form N-2.

4. A post-effective amendment to a registration statement on this Form, or a registration statement filed for the purpose of registering additional shares of common stock for which a registration statement filed on this Form is effective, filed on behalf of a Fund which makes periodic repurchase offers pursuant to Rule 23c-3 under the Investment Company Act may become effective automatically in accordance with Rule 486 under the Securities Act. In accordance with Rule 429 under the Securities Act, a Fund filing a new registration statement for the purpose of registering additional shares of common stock may use a prospectus with respect to the additional shares also in connection with the shares covered by earlier registration statements if such prospectus includes all of the information which would currently be required in a prospectus relating to the securities covered by the earlier statements. The filing fee required by the Securities Act and Rule 457 under

the Securities Act shall be paid with respect to the additional shares only.

## F. Incorporation by Reference

1. *General Requirements.* Incorporation by reference must comply with the requirements of this Form and the following rules on incorporation by reference: Rule 411 under the Securities Act (general rules on incorporation by reference into a prospectus); Rule 303 of Regulation S-T (specific requirements for electronically filed documents); and Rules 0-4, 8b-23, 8b-24 and 8b-32 under the Investment Company Act (additional rules on incorporation by reference for Funds).

2. *Specific Requirements for Incorporation by Reference for Funds Not Relying on General Instruction A.2.*

a. A Fund may not incorporate by reference into a prospectus information that Part A of this Form requires to be included in a prospectus, except as specifically permitted by Part A of this Form or paragraph F.2.d below.

b. A Fund may incorporate by reference any or all of the SAI into the prospectus (but not to provide any information required by Part A to be included in the prospectus) without delivering the SAI with the prospectus.

c. A Fund may incorporate by reference into the SAI or its response to Part C, information that Parts B and C require to be included in the Fund's registration statement.

d. A Fund may incorporate by reference into the prospectus or the SAI in response to Items 4.1 or 24 of this Form the information contained in Form N-CSR or any report to shareholders meeting the requirements of Section 30(e) of the Investment Company Act and Rule 30e-1 thereunder (and a Fund that has elected to be regulated as a business development company may so incorporate into Items 4.1, 4.2, 8.6.c, or 24 of this Form the information contained in its annual report under the Exchange Act), provided:

(1) the material incorporated by reference is prepared in accordance with, and covers the periods specified by, this Form; and

(2) the Fund states in the prospectus or the SAI, at the place where the information required by Items 4.1, 4.2, 8.6.c., or 24 of this Form would normally appear, that the information is incorporated by reference from a report to shareholders or a report on Form N-CSR or an annual report on Form 10-K. (The Fund also may describe briefly, in either the prospectus, the SAI, or Part C of the registration statement (in response to Item 25.1) those portions of the report to shareholders or report on Form N-CSR or Form 10-K that are not

incorporated by reference and are not a part of the registration statement.)

3. *Specific Requirements for Incorporation by Reference for Certain Funds.* If a Fund is filing a registration statement pursuant to General Instruction A.2, the following requirements apply:

a. *Backward Incorporation by Reference.* The documents listed in (1) and (2) below shall be specifically incorporated by reference into the prospectus and SAI by means of a statement to that effect in the prospectus and SAI listing all such documents:

(1) The Fund's latest annual report filed pursuant to Section 13(a) or Section 15(d) of the Exchange Act that contains financial statements for the fund's latest fiscal year for which a Form N-CSR or Form 10-K was required to be filed;

(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 referred to in (1) above; and

(3) if capital stock is to be registered and securities of the same class are registered under Section 12 of the Exchange Act, the description of such class of securities which is contained in a registration statement filed under the Exchange Act, including any amendment or reports filed for the purpose of updating such description.

b. *Forward Incorporation by Reference.* The prospectus and SAI shall also state that all documents subsequently filed by the Fund pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, prior to the termination of the offering shall be deemed to be incorporated by reference into the prospectus and SAI.

c. *Use of Information to be Incorporated.* Any information required in the prospectus and SAI in response to Items 3–13 and Items 16–24 of this Form may be included in the prospectus and SAI through documents filed pursuant to Sections 13(a), 14, or 15(d) of the Exchange Act that are incorporated or deemed incorporated by reference into the prospectus and SAI that are part of the registration statement.

*Instruction.* Attention is directed to Rule 439 under the Securities Act regarding consent to use of material incorporated by reference.

#### 4. *Disclosure.*

a. The Fund must make its prospectus, SAI, and any periodic and current reports filed pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference readily available and accessible on a website maintained by or for the Fund

and containing information about the Fund.

b. The Fund must state in its prospectus and SAI:

(1) That it will provide to each person, including any beneficial owner, to whom a prospectus or SAI is delivered, a copy of any or all information that has been incorporated by reference into the prospectus or SAI but not delivered with the prospectus or SAI;

(2) that it will provide this information upon written or oral request;

(3) that it will provide this information at no charge;

(4) the name, address, telephone number, and email address, if any, to which the request for this information must be made; and

(5) the Fund's website address where the prospectus, SAI, and any incorporated information may be accessed.

*Instruction.* If the Fund sends any of the information that is incorporated by reference into the prospectus or SAI to security holders, it also must send any exhibits that are specifically incorporated by reference into that information.

c. The Fund also must:

(1) Identify the reports and other information that it files with the SEC; and

(2) state that the SEC maintains an internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (<http://www.sec.gov>).

### G. Documents Comprising the Registration Statement or Amendment

1. A registration statement or an amendment to it filed under both the Securities and Investment Company Acts consists of the facing sheet of the Form, Part A, Part B, Part C, required signatures, all other documents filed as a part of the registration statement, and documents or information permitted to be incorporated by reference.

2. A registration statement or amendment to it that is filed under only the Securities Act shall contain all the information and documents specified in paragraph 1 of this Instruction G.

3. A registration statement or an amendment to it that is filed under only the Investment Company Act shall consist of the facing sheet of the Form, responses to all items of Parts A and B except Items 1, 2, 3.2, 4, 5, 6, and 7 of Part A, responses to all items of Part C except Items 25.2.h, 25.2.i, 25.2.n, and 25.2.o, required signatures, and all other documents that are required or which

the Fund may file as part of the registration statement.

### H. Preparation of the Registration Statement or Amendment

1. The following instructions for completing Form N-2 are divided into three parts. Part A relates to the prospectus required by Section 10(a) of the Securities Act. Part B relates to the SAI that must be provided upon request to recipients of the prospectus. Part C relates to other information that is required to be in the registration statement.

#### 2. *Interactive Data Files.*

a. An Interactive Data File as defined in Rule 11 of Regulation S-T is required to be submitted to the Commission in the manner provided by Rule 405 of Regulation S-T for any registration statement or post-effective amendment thereto on Form N-2 containing the cover page information specified in Rule 405 of Regulation S-T. The Interactive Data File must be submitted either with the filing, or as an amendment to the registration statement to which it relates that is submitted on or before the date the registration statement or post-effective amendment that contains the related information becomes effective.

b. An Interactive Data File is required to be submitted to the Commission in the manner provided by Rule 405 of Regulation S-T for any form of prospectus filed pursuant to Rule 424 under the Securities Act that includes information provided in response to Items 3.1, 4.3, 8.2.b, 8.2.d, 8.3.a, 8.3.b, 8.5.b, 8.5.c, 8.5.e, 10.1.a–d, 10.2.a–c, 10.2.e, 10.3, or 10.5 that varies from the registration statement. The Interactive Data File must be submitted with the filing made pursuant to Rule 424.

c. If a Fund is filing a registration statement pursuant to General Instruction A.2, an Interactive Data File is required to be submitted to the Commission in the manner provided by Rule 405 of Regulation S-T for any of the documents listed in General Instruction F.3.a or General Instruction F.3.b that include or amend information provided in response to Items 3.1, 4.3, 8.2.b, 8.2.d, 8.3.a, 8.3.b, 8.5.b, 8.5.c, 8.5.e, 10.1.a–d, 10.2.a–c, 10.2.e, 10.3, or 10.5. The Interactive Data File must be submitted with the filing of the document(s) listed in General Instruction F.3.a or General Instruction F.3.b.

d. The Interactive Data File must be submitted in accordance with the specifications in the EDGAR Filer Manual, and must be submitted in such a manner that—for any information that does not relate to all of the classes of a

Fund—will permit each class of the Fund to be separately identified.

### **I. Registration of Additional Securities**

With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the Fund may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the Fund chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in such a registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). See Rules 411(c), 439(b), and 483(c) under the Securities Act.

### **Part A: The Prospectus**

The purpose of the prospectus is to provide essential information about the Fund in a way that will help investors make informed decisions about whether to purchase the securities being offered. *The information in the prospectus should be clear, concise, and understandable. avoid the use of technical or legal terms, complex language, or excessive detail.*

Responses to the items of Part A should be as simple and direct as possible and should include only information needed to understand the fundamental characteristics of the Fund. Descriptions of practices that are required by law generally should not include detailed discussions of the law itself. No response is required for inapplicable items.

### **Part B: Statement of Additional Information**

The items in Part B call for additional information about the Fund that may be of interest to some investors. Part B also allows the Fund to augment discussions of matters described in the prospectus with additional information the Fund believes may be of interest to some investors. If information is included in

the prospectus, it need not be repeated in the SAI, and a Fund need not prepare a SAI or refer to it in the prospectus (or provide the undertaking required by Item 34.8) if all of the information required to be in the SAI is included in the prospectus. A Fund placing information in Part B should not repeat information that is in the prospectus, except where necessary to make Part B understandable.

Information in the SAI need not be included in the prospectus or be sent to investors with the prospectus provided that the cover page of the prospectus states that the SAI is available upon oral or written request and without charge, and includes a toll-free telephone number and email address, if any, for use by prospective investors to request the SAI. If the request is made prior to delivery of a confirmation with respect to a security offered by the prospectus, the SAI must be sent in a manner reasonably calculated for it to arrive prior to the confirmation. The SAI may be sent to the address to which the prospectus was delivered, unless the requester provides an alternate address for delivery of the SAI.

### **General Instructions for Parts A and B**

1. The information in the prospectus and the SAI should be organized to make it easy to understand the organization and operation of the Fund. The information need not be in any particular order, with the exception that Items 1, 2, 3, and 4 must appear in order in the prospectus and may not be preceded or separated by any other information.

2. The prospectus or the SAI may contain more information than called for by this Form, provided the information is not incomplete, inaccurate, or misleading and does not, because of its nature, quantity, or manner of presentation, obscure or impede understanding of required information.

3. The requirements for dating the prospectus apply equally to dating the SAI for purposes of Rule 423 under the Securities Act. The SAI should be made available at the same time that the prospectus becomes available for purposes of Rules 430 and 460 under the Securities Act.

4. The prospectus should not be presented in fold-out or road-map type fashion.

5. Instructions for charts, graphs, and sales literature:

(a) A registration statement may include any chart, graph, or table that is not misleading; however, only the fee table and the table of contents (required by Rule 481(c) under the Securities Act)

may precede the financial highlights specified in Item 4.

(b) If “sales literature” is included in the prospectus, (1) it should not significantly lengthen the prospectus nor obscure essential disclosure, and (2) members of the Financial Industry Regulatory Authority (“FINRA”) are not relieved of the filing and other FINRA requirements for investment company sales literature. (See Securities Act Release No. 5359, Jan. 26, 1973 [38 FR 7220 (Mar. 19, 1973)]).

### **Part A—Information Required in a Prospectus**

#### *Item 1. Outside Front Cover*

1. The outside front cover must contain the following information:

- a. The Fund’s name;
- b. identification of the type of Fund (e.g., bond fund, balanced fund, business development company, etc.) or a brief statement of the Fund’s investment objective(s);
- c. the title and amount of securities offered and a brief description of such securities (unless not necessary to indicate the material terms of the securities, as in the case of an issue of common stock with full voting rights and the dividend and liquidation rights usually associated with common stock);
- d. a statement that (A) the prospectus sets forth concisely the information about the Fund that a prospective investor ought to know before investing; (B) the prospectus should be retained for future reference; and (C) additional information about the Fund has been filed with the Commission and is available upon written or oral request and without charge (this statement should explain how to obtain the SAI, and whether any of it has been incorporated by reference into the prospectus). This statement should also explain how to obtain the Fund’s annual and semi-annual reports to shareholders. Provide a toll-free (or collect) telephone number for investors to call, and email address, if any, to request the Fund’s SAI; annual report; semi-annual report; or other information about the Fund; and to make shareholder inquiries. Also state whether the Fund makes available its SAI and annual and semi-annual reports, free of charge, on or through the Fund’s website at a specified internet address. If the Fund does not make its SAI and shareholder reports available in this manner, disclose the reasons why it does not do so (including, where applicable, that the Fund does not have an internet website). Also include the information that the Commission maintains a website (<http://www.secdatabase.com>)

www.sec.gov) that contains the SAI, material incorporated by reference, and other information regarding funds;  
 e. the date of the prospectus and the date of the Statement of Additional Information;

f. if any of the securities being registered are to be offered for the account of shareholders, a statement to that effect;  
 g. information in substantially the tabular form indicated as to all

securities being registered that are to be offered for cash (estimate, if necessary):

Price to public	Sales load	Proceeds to registrant or other persons
Per Share		
Total		

#### Instructions.

1. If it is impracticable to state the price to the public, briefly explain how the price will be determined (*e.g.*, by reference to net asset value). If the securities will be offered at the market, indicate the market involved and the market price as of the latest practicable date.

2. The term “sales load” is defined in Section 2(a)(35) of the Investment Company Act. Subject to Instruction 3, only include the portion of the sales load that consists of underwriting discounts and commissions, and include any commissions paid by selling shareholders (the term “commissions” is defined in paragraph 17 of Schedule A of the Securities Act).

Commissions paid by other persons and other consideration to underwriters shall be noted in the second column and briefly described in a footnote.

3. Include in the table as sales load amounts borrowed to pay underwriting discounts and commissions or any other offering costs that are required to be repaid in less than one year. Exclude from the table, but include in a note thereto, the amount of funds borrowed to pay such costs that are required to be repaid in more than one year, and provide a cross-reference to the prospectus discussion of the borrowed amounts and the effect of repayment on fund assets available for investment.

4. Where an underwriter has received an over-allotment option, present

maximum-minimum information in the price table or in a note thereto, based on the purchase of all or none of the shares subject to the option. The terms of the option may be described briefly in response to Item 5 rather than on the prospectus cover page.

5. If the securities are to be offered on a best efforts basis, set forth the termination date of the offering, any minimum required purchase, and any arrangements to place the funds received in an escrow, trust, or similar arrangement. If no arrangements have been made, so state. Set forth the following table in lieu of the “Total” information called for by the required table.

Price to public	Sales load	Proceeds to registrant or other persons
Total Minimum		
Total Maximum		

6. Set forth in a note to the proceeds column the total of other expenses of issuance and distribution called for by Item 27, stated separately for the Fund and for the selling shareholders, if any.

h. the statements required by paragraphs (1) and (2) of Rule 481(b) under the Securities Act;

i. if the Fund’s securities have no history of public trading, a prominent statement to that effect and a statement describing the tendency of closed-end fund shares to trade frequently at a discount from net asset value and the risk of loss this creates for investors purchasing shares in the initial public offering;

*Instruction.* A Fund may omit the discount statement if it believes that, as a result of its investment or other policies, its capital structure, or the markets in which its shares trade, its shares are unlikely to trade at a discount from net asset value.

j. a cross-reference to the prospectus discussion of any factors that make the offering speculative or one of high risk, printed in bold face common type at least as large as ten point modern type and at least two points leaded; and

*Instruction.* No cross-reference is required where the risks associated with securities in which the Fund is authorized to invest are only the basic risks of investing in securities (*e.g.*, the risk that the value of portfolio securities may fluctuate depending upon market conditions, or the risks that debt securities may be prepaid and the proceeds from the prepayments invested in debt instruments with lower interest rates). Include the cross-reference if the nature of the Fund’s investment objectives, investment policies, capital structure, or the trading markets for the Fund’s securities increase the likelihood that an investor could lose a significant portion of his or her investment.

k. any other information required by Commission rules or by any other governmental authority having jurisdiction over the Fund or the issuance of its securities.

l. A statement to the following effect, if applicable:

Beginning on [date], as permitted by regulations adopted by the Securities and Exchange Commission, paper copies of the Registrant’s shareholder reports will no longer be sent by mail, unless you specifically request paper copies of the reports from the Registrant [or from your financial intermediary, such as a broker-dealer or bank]. Instead, the reports will be made available on a website, and you will be notified by mail each time a report is posted and provided with a website link to access the report.

If you already elected to receive shareholder reports electronically, you will not be affected by this change and you need not take any action. You may

elect to receive shareholder reports and other communications from the Registrant [or your financial intermediary] electronically by [insert instructions].

You may elect to receive all future reports in paper free of charge. You can inform the Registrant [or your financial intermediary] that you wish to continue receiving paper copies of your shareholder reports by [insert instructions]. Your election to receive reports in paper will apply to all funds held with [the fund complex/your financial intermediary].

2. The cover page may include other information if it does not, by its nature,

quantity, or manner of presentation impede understanding of the required information.

*Item 2. Cover Pages; Other Offering Information*

1. Disclose whether any national securities exchange or the Nasdaq Stock Market lists the securities offered, naming the particular market(s), and identify the trading symbol(s) for those securities on the inside front or outside back cover page of the prospectus, unless the information appears on the front cover page.

2. Provide the information required by paragraph (d) of Rule 481 under the

Securities Act in an appropriate place in the prospectus.

3. Provide the information required by paragraph (e) of Rule 481 under the Securities Act on the outside back cover page of the prospectus.

*Item 3. Fee Table and Synopsis*

1. If the prospectus offers common stock of the Fund, include information about the costs and expenses that the investor will bear directly or indirectly, using the captions and tabular format illustrated below:

**SHAREHOLDER TRANSACTION EXPENSES:**

Sales Load (as a percentage of offering price) .....	_____	%
Dividend Reinvestment and Cash Purchase Plan Fees .....	_____	%

**ANNUAL EXPENSES** (as a percentage of net assets attributable to common shares):

Management Fees .....	_____	%
Interest Payments on Borrowed Funds .....	_____	%
Other expenses .....	_____	%
_____	_____	%
_____	_____	%
Total Annual Expenses .....	_____	%

Example

1 year

3 years

5 years

10 years

You would pay the following expenses on a \$1,000 investment, assuming a 5% annual return:

\$ \_\_\_\_\_ %

\$ \_\_\_\_\_ %

\$ \_\_\_\_\_ %

\$ \_\_\_\_\_ %

*Instructions.*

*General Instructions*

1. Immediately after the table, provide a brief narrative explaining that the purpose of the table is to assist the investor in understanding the various costs and expenses that an investor in the fund will bear directly or indirectly. Include, where appropriate, cross-references to the relevant sections of the prospectus for more complete descriptions of the various costs and expenses.

2. Any caption not applicable to the Fund may be omitted from the table.

3. Round all dollar figures to the nearest dollar and all percentages to the nearest hundredth of one percent.

*Shareholder Transaction Expenses*

4. "Dividend Reinvestment and Cash Purchase Plan Fees" include all fees (except brokerage commissions) that are charged to participating shareholder accounts. The basis on which such fees are imposed should be described briefly in a note to the table.

5. If the Fund (or any other party under an agreement with the Fund) charges any other transaction fee, add another caption describing it, and list the maximum amount of the fee or basis on which the fee is deducted.

Underwriters' compensation that is paid with the proceeds of debt that is not to be repaid within one year need not be identified as sales load, but should be

set forth as a shareholder transaction expense with a brief narrative following the table explaining the nature of such payments.

*Annual Expenses*

6. State the basis on which payments will be made. "Other Expenses" should be estimated and stated (after any expense reimbursement or waiver) as a percentage of net asset value attributable to common shares. State in the narrative following the table that "Other Expenses" are based on estimated amounts for the current fiscal year.

7. a. "Management Fees" include investment advisory fees (including any component thereof based on the performance of the Fund), any other management fees payable to the investment adviser or its affiliates, and administrative fees payable to the investment adviser or its affiliates not included as "Other Expenses," and any expenses incurred within the Fund's own organization in connection with the research, selection, and supervision of investments. Where management fees are "tiered" or based on a "sliding scale," they should be calculated based on the fund's asset size after giving effect to the anticipated net proceeds of the present offering. In the case of a performance fee arrangement, assume the base fee. With respect to a best-efforts offering with breakpoints,

assume the maximum fee will be payable.

b. In lieu of the information about management fees required by Item 3.1, a business development company with a fee structure that is not based solely on the aggregate amount of assets under management should provide disclosure concerning the fee arrangement to allow investors to assess its impact on the Fund's expenses; a business development company may use any appropriate expense categories and may include items that may not, for accounting purposes, be treated as expenses. A business development company with special fee arrangements should provide a cross-reference, where applicable, to the discussion in Item 9.1.a of special management compensation plans.

8. "Interest Payments on Borrowed Funds" include all interest paid in connection with outstanding loans (including interest paid on funds borrowed to pay underwriting expenses), bonds, or other forms of debt. Show interest expenses as a percentage of net assets attributable to common shares and not the face amount of debt.

9. "Other Expenses" include all expenses (except fees and expenses reported in other items in the table) that are deducted from the Fund's assets and will be reflected as expenses in the Fund's statement of operations

(including increases resulting from complying with paragraph 2(g) of Rule 6–07 [17 CFR 210.6–07] of Regulation S–X).

10. *a.* If the Fund invests, or intends to invest based upon the anticipated net proceeds of the present offering, in shares of one or more “Acquired Funds,” add a subcaption to the “Annual Expenses” portion of the table directly above the subcaption titled “Total Annual Expenses.” Title the additional subcaption: “Acquired Fund Fees and Expenses.” Disclose in the subcaption fees and expenses incurred

indirectly by the Fund as a result of investment in shares of one or more Acquired Funds. For purposes of this Item, an “Acquired Fund” means any company in which the Fund invests or intends to invest (A) that is an investment company or (B) that would be an investment company under Section 3(a) of the Investment Company Act but for the exceptions to that definition provided for in Sections 3(c)(1) and 3(c)(7) of the Investment Company Act. If a Fund uses another term in response to other requirements of this Form to refer to Acquired Funds,

it may include that term in parentheses following the subcaption title. In the event the fees and expenses incurred indirectly by the Fund as a result of investment in shares of one or more Acquired Funds do not exceed 0.01 percent (one basis point) of average net assets of the Fund, the Fund may include these fees and expenses under the subcaption “Other Expenses” in lieu of this disclosure requirement.

*b.* Determine the “Acquired Fund Fees and Expenses” according to the following formula:

$$AFFE = [(F1/FY) * AI1 * D1] + [(F2/FY) * AI2 * D2] + [(F3/FY) * AI3 * D3] + \text{Transaction Fees} + \text{Incentive Allocations}$$

Average Net Assets of the Fund

Where:

AFFE .....	Acquired Fund fees and expenses;
F1, F2, F3, . . . ..	Total annual operating expense ratio for each Acquired Fund;
FY .....	Number of days in the relevant fiscal year;
AI1, AI2, AI3, . . . ..	Average invested balance in each Acquired Fund;
D1, D2, D3, . . . ..	Number of days invested in each Acquired Fund;
“Transaction Fees” .....	The total amount of sales loads, redemption fees, or other transaction fees paid by the Fund in connection with acquiring or disposing of shares in any Acquired Funds during the most recent fiscal year; and
“Incentive Allocations” .....	Any allocation of capital from the Acquiring Fund to the adviser of the Acquired Fund (or its affiliate) based on a percentage of the Acquiring Fund’s income, capital gains and/or appreciation in the Acquired Fund.

*c.* Calculate the average net assets of the Fund for the most recent fiscal year, as provided in Item 4.1 (see Instruction 15 to Item 4.1), and include the anticipated net proceeds of the present offering.

*d.* The total annual operating expense ratio used for purposes of this calculation (F1) is the annualized ratio of operating expenses to average net assets for the Acquired Fund’s most recent fiscal period as disclosed in the Acquired Fund’s most recent shareholder report. If the ratio of expenses to average net assets is not included in the most recent shareholder report or the Acquired Fund is a newly formed fund that has not provided a shareholder report, then the ratio of expenses to average net assets of the Acquired Fund is the ratio of total annual operating expenses to average annual net assets of the Acquired Fund for its most recent fiscal period as disclosed in the most recent communication from the Acquired Fund to the Fund. If the Fund has a written fee agreement with the Acquired Fund that would affect the ratio of expenses to average net assets as disclosed in the Acquired Fund’s most recent shareholder report, the Fund should determine the ratio of expenses to average net assets for the Acquired Fund’s most recent fiscal period using the written fee agreement. For purposes of this instruction: (i) Acquired Fund expenses include increases resulting from brokerage service and expense offset arrangements and reductions

resulting from fee waivers or reimbursements by the Acquired Funds’ investment advisers or sponsors; and (ii) Acquired Fund expenses do not include any expenses (*i.e.*, performance fees) that are calculated solely upon the realization and/or distribution of gains, or the sum of the realization and/or distribution of gains and unrealized appreciation of assets distributed in-kind. If an Acquired Fund has no operating history, include in the Acquired Funds’ expenses any fees payable to the Acquired Fund’s investment adviser or its affiliates stated in the Acquired Fund’s registration statement, offering memorandum or other similar communication without giving effect to any performance.

*e.* If a Fund has made investments in the most recent fiscal year, to determine the average invested balance (AI1), the numerator is the sum of the amount initially invested in an Acquired Fund during the most recent fiscal year (if the investment was held at the end of the previous fiscal year, use the amount invested as of the end of the previous fiscal year) and the amounts invested in the Acquired Fund no less frequently than monthly during the period the investment is held by the Fund (if the investment was held through the end of the fiscal year, use each month-end through and including the fiscal year-end). Divide the numerator by the number of measurement points included in the calculation of the numerator (*i.e.*, if an investment is made during the fiscal year and held for 3

succeeding months, the denominator would be 4).

*f.* For investments based upon the anticipated net proceeds from the present offering, base the “Acquired Fund Fees and Expenses” on: (i) Assumptions about specific funds in which the Fund expects to invest, (ii) estimates of the amount of assets the Fund expects to invest in each of those Acquired Funds, and (iii) an assumption that the investment was held for all of the Fund’s most recent fiscal year and was subject to the Acquired Funds’ fees and expenses for that year. Disclose in a footnote to the table that Acquired Fund fees and expenses are based on estimated amounts for the current fiscal year.

*g.* If an Acquired Fund charges an Incentive Allocation or any other fee based on income, capital gains and/or appreciation (*i.e.*, performance fee), the Fund must include a footnote to the “Acquired Fund Fees and Expenses” subcaption that:

(1) Discloses the typical Incentive Allocation or such other fee (expressed as a percentage) to be paid to the investment advisers of the Acquired Funds (or an affiliate);

(2) discloses that Acquired Funds’ fees and expenses are based on historic fees and expenses; and

(3) states that future Acquired Funds’ fees and expenses may be substantially higher or lower because certain fees are based on the performance of the Acquired Funds, which may fluctuate over time.



*h.* If the Fund is a Feeder Fund, reflect the aggregate expenses of the Feeder Fund and the Master Fund in the “Acquired Fund Fees and Expenses.” The aggregate expenses of the Master-Feeder Fund must include the fees and expenses incurred indirectly by the Feeder Fund as a result of the Master Fund’s investment in shares of one or more companies (A) that are investment companies or (B) that would be investment companies under Section 3(a) of the Investment Company Act but for the exceptions to that definition provided for in Sections 3(c)(1) and 3(c)(7) of the Investment Company Act. For purposes of this instruction, a “Master-Feeder Fund” means a two-tiered arrangement in which one or more investment companies registered under the Investment Company Act (each a “Feeder Fund”) holds shares of a single management investment company registered under the Investment Company Act (the “Master Fund”) in accordance with Section 12(d)(1)(E) of the Investment Company Act.

*i.* The Fund may clarify in a footnote to the fee table that the total annual expenses item under Item 3.1 is different from the ratio of expenses to average net assets given in response to Item 4.1, which reflects the operating expenses of the Fund and does not include Acquired Fund fees and expenses.

*Example*

11. For purposes of the Example in the table:

*a.* Assume that the rates listed under “Annual Expenses” remain the same each year, except to reduce annual expenses to reflect the scheduled maturity of outstanding debt or the completion of organization expense amortization;

*b.* assume reinvestment of all dividends and distributions at net asset value;

*c.* reflect all recurring and nonrecurring fees including underwriting discounts and commissions; and

*d.* prominently disclose that the Example should not be considered a representation of future expenses and that actual expenses may be greater or lesser than those shown.

2. Include a synopsis of information contained in the prospectus when the prospectus is long or complex. Normally, a synopsis should not be provided where the prospectus is twelve or fewer printed pages.

*Instruction.* The synopsis should provide a clear and concise description of the key features of the offering and the Fund, with cross-references to

relevant disclosures elsewhere in the prospectus or Statement of Additional Information.

3. In the case of a business development company, include the information required by Item 101(e) of Regulation S-K [17 CFR 229.101(e)] (concerning reports and other information filed with the Commission).

*Item 4. Financial Highlights*

1. *General.* Furnish the following information for the Fund, or for the Fund and its subsidiaries, consolidated as prescribed in Rule 6–03 [17 CFR 210.6–03] of Regulation S–X:

Financial Highlights

Per Share Operating Performance

- a. Net Asset Value, Beginning of Period
  - (1) Net Investment Income
  - (2) Net Gains or Losses on Securities (both realized and unrealized)
- b. Total From Investment Operations
- c. Less Distributions
  - (1) Dividends (from net investment income)
    - (A) To Preferred Shareholders
    - (B) To Common Shareholders
  - (2) Distributions (from capital gains)
    - (A) To Preferred Shareholders
    - (B) To Common Shareholders
  - (3) Returns of Capital
    - (A) To Preferred Shareholders
    - (B) To Common Shareholders
- d. Total Distributions
- e. Net Asset Value, End of Period
- f. Per Share Market Value, End of Period
- g. Total Investment Return

Ratios/Supplemental Data

- h. Net Assets, End of Period
- i. Ratio of Expenses to Average Net Assets
- j. Ratio of Net Income to Average Net Assets
- k. Portfolio Turnover Rate

*Instructions.*

*General Instructions*

1. [Removed and reserved.]

2. Briefly explain the nature of the information contained in the table and its source. The auditor’s report as to the financial highlights need not be included in the prospectus. Note that the auditor’s report is contained elsewhere in the registration statement, specify its location, and state that it can be obtained by shareholders.

3. Present the information in comparative columns for each of the last ten fiscal years of the Fund (or for the life of the Fund and its immediate predecessors, if less), but only for periods subsequent to the effective date of the Fund’s first Securities Act registration statement. In addition, present the information for the period

between the end of the latest fiscal year and the date of the latest balance sheet or statement of assets and liabilities. Where the period for which the Fund provides financial highlights is less than a full fiscal year, the ratios set forth in the table may be annualized but the fact of this annualization must be disclosed in a note to the table.

4. List per share amounts at least to the nearest cent. If the offering price is computed in tenths of a cent or more, state the amounts on the table in tenths of a cent. Present all information using a consistent number of decimal places.

5. Provide all information in the table, including distributions to preferred shareholders, on a common share equivalent basis.

6. Make, and indicate in a note, appropriate adjustments to reflect any stock split or stock dividend during the period.

7. If the investment adviser has been changed during the period covered by this Item, indicate the date(s) of the change(s) in a note.

8. The financial highlights for at least the latest five fiscal years must be audited and must so state.

*Per Share Operating Performance*

9. Derive the amount for caption a(1) by adding (deducting) the increase (decrease) per share in undistributed net investment income for the period to (from) dividends from net investment income per share for the period. The increase (decrease) may be derived by comparing the per share figures obtained by dividing undistributed net investment income at the beginning and end of the period by the number of shares outstanding on those dates. Other methods may be acceptable but should be explained briefly in a note to the table.

10. The amount shown at caption a(2) is the balancing figure derived from the other figures in the statement. The amount shown at this caption for a share outstanding throughout the year may not agree with the change in the aggregate gains and losses in the portfolio securities for the year because of the timing of sales and repurchases of the Fund’s shares in relation to fluctuating market values for the portfolio.

11. For any distributions made from sources other than net investment income and capital gains, state the per share amounts thereof separately at caption c(3) and note the nature of the distributions.

12. In caption e, use the net asset value for the end of each period for which information is being provided. If the Fund has not been in operation for a full fiscal year, state its net asset value

immediately after the closing of its first public offering in a note to the caption.

#### Total Investment Return

13. When calculating "total investment return" for caption g:

a. Assume a purchase of common stock at the current market price on the first day and a sale at the current market price on the last day of each period reported on the table;

b. note that the total investment return does not reflect sales load; and

c. assume reinvestment of dividends and distributions at prices obtained by the Fund's dividend reinvestment plan or, if there is no plan, at the lower of the per share net asset value or the closing market price of the Fund's shares on the dividend/distribution date.

14. A Fund also may include, as a separate caption, total return based on per share net asset value, provided the Fund briefly explains in a note the differences between this calculation and the calculation required by caption g.

#### Ratios and Supplemental Data

15. Compute "average net assets" for captions i and j based on the value of net assets determined no less frequently than the end of each month. Indicate in a note that the expense ratio and net investment income ratio do not reflect the effect of dividend payments to preferred shareholders.

16. Compute the "ratio of expenses to average net assets" using the amount of expenses shown in the Fund's statement of operations for the relevant fiscal year, including increases resulting from complying with paragraph 2(g) of Rule 6-07 of Regulation S-X, and including reductions resulting from complying

with paragraphs 2(a) and (f) of Rule 6-07 regarding fee waivers and reimbursements. If a change in the methodology for determining the ratio of expenses to average net assets results from applying paragraph 2(g) of Rule 6-07, explain in a note that the ratio reflects fees paid with brokerage commissions and fees reduced in connection with specific agreements only for fiscal years ending after September 1, 1995.

17. Compute portfolio turnover rate as follows:

a. Divide (A) the lesser of purchases or sales of portfolio securities for the fiscal year by (B) the monthly average of the value of portfolio securities owned by the Fund during the fiscal year. Calculate the monthly average by totaling the values of portfolio securities as of the beginning and end of the first month of the fiscal year and as of the end of each of the succeeding eleven months and dividing the sum by 13.

b. Exclude from both the numerator and denominator all securities, including options, whose maturity or expiration date at the time of acquisition was one year or less. Include all long-term securities, including U.S. Government securities. Purchases include cash paid upon conversion of one portfolio security into another and the cost of rights or warrants. Sales include net proceeds of the sale of rights or warrants and net proceeds of portfolio securities that have been called or for which payment has been made through redemption or maturity.

c. If during the fiscal year the Fund acquired the assets of another investment company or of a personal

holding company in exchange for its own shares, exclude from purchases the value of securities so acquired, and, from sales, all sales of the securities made following a purchase-of-assets transaction to realign the Fund's portfolio. Appropriately adjust the denominator of the portfolio turnover computation, and disclose the exclusions and adjustments.

d. Include in purchases and sales short sales that the Fund intends to maintain for more than one year and put and call options with expiration dates more than one year from the date of acquisition. Include proceeds from a short sale in the value of portfolio securities sold during the period; include the cost of covering a short sale in the value of portfolio securities purchased during the period. Include premiums paid to purchase options in the value of portfolio securities purchased during the reporting period; include premiums received from the sale of options in the value of portfolio securities sold during the period.

2. *Business Development Companies.* If the Fund is regulated as a business development company under the Investment Company Act, furnish in a separate section the information required by Items 301, 302, and 303 of Regulation S-K.

3. *Senior Securities.* Furnish the following information as of the end of the last ten fiscal years for each class of senior securities (including bank loans) of the Fund. If consolidated statements were prepared as of any of the dates specified, furnish the information on a consolidated basis:

(1)	(2)	(3)	(4)	(5)
Year .....	Total Amount Outstanding Exclusive of Treasury Securities	Asset Coverage Per Unit	Involuntary Liquidating Preference Per Unit	Average Market Value Per Unit (Exclude Bank Loans)

#### Instructions.

1. Instructions 2, 3, and 8 to Item 4.1 also apply to this sub-item.

2. Use the method described in Section 18(h) of the Investment Company Act to calculate the asset coverage to be set forth in column (3). However, in lieu of expressing asset coverage in terms of a ratio, as described in Section 18(h), express it for each class of senior securities in terms of dollar amounts per share (in the case of preferred stock) or per \$1,000 of indebtedness (in the case of senior indebtedness).

3. Column (4) need be included only with respect to senior stock.

4. Set forth in a note to the table the method used to determine the averages called for by column (5) (e.g., weighted, monthly, daily, etc.).

5. Briefly explain the terms used in the headings of the columns.

#### Item 5. Plan of Distribution

Briefly describe how the securities being registered will be distributed. Include the following information:

1. For each principal underwriter distributing the securities being offered set forth:

a. Its name and principal business address;

b. a brief discussion of the nature of any material relationship with the Fund

(other than that of principal underwriter), including any arrangement under which a principal underwriter or its affiliates will perform administrative or custodial services for the Fund;

*Instruction.* Any material relationship between the underwriter (or its affiliates) and the investment adviser (or its affiliates) of the Fund relating to the business or operation of the Fund constitutes a material relationship of the underwriter with the Fund.

c. the amount of securities underwritten; and

d. the nature of the obligation to distribute the Fund's securities.

*Instruction.* All that is required to be disclosed as to the nature of the underwriter's obligation is whether the underwriter will be committed to take and pay for all the securities if any are taken, or whether it is merely an agency or "best-efforts" arrangement under which the underwriter is required to take and pay for only such securities as it may sell to the public. Conditions precedent to the underwriter's taking the securities, including "market outs," need not be described, except in the case of an agency or "best-efforts" arrangement.

2. The price to the public.

*Instructions.*

1. If it is impracticable to state the price to the public, concisely explain the manner in which the price will be determined, including a description of the valuation procedure used by the Fund in determining the price. If the securities are to be offered at the market price, or if the offering price is to be determined by a formula related to market price, indicate the market involved and the market price as of the latest practicable date.

2. For restrictions on distributions and repurchases of closed-end company securities, see Section 23 of the Investment Company Act, and Investment Company Act Rel. No. 3187 (Feb. 6, 1961) [26 FR 1275 (Feb. 15, 1961)].

3. Briefly explain the basis for any differences in the price at which securities are offered to the public, as individuals and/or as groups, and to officers, directors and employees of the Fund, its adviser or underwriter.

3. To the extent not set forth on the cover page of the prospectus, state the amount of the sales load, if any, as a percentage of the public offering price, and concisely describe the commissions to be allowed or paid to (i) underwriters, including all other items that would be deemed by FINRA to constitute underwriting compensation for purposes of FINRA's rules regarding securities offerings, underwriting and compensation, and (ii) dealers, including all cash, securities, contracts, and/or other considerations to be realized by any dealer in connection with the sale of securities.

*Instruction.* If any dealers are to act in the capacity of sub-underwriters and are allowed or paid any additional discounts or commission for acting in such capacity, a general statement to that effect will suffice without giving the additional amounts to be sold.

4. If the underwriting agreement provides for indemnification by the Fund of the underwriters or their controlling persons against any liability

arising under the Securities Act or Investment Company Act, briefly describe such indemnification provisions.

5. Provide the identity of any finder and, if applicable, concisely describe the nature of any material relationship between such finder and the Fund, its officers, directors, principal shareholders, finders or promoters or the principal underwriter(s), or the managing underwriter(s), if any, and, in each case, the affiliates or associates thereof.

6. Indicate the date by which investors must pay for the securities.

7. If the securities are being offered in conjunction with any retirement plan, provide a statement regarding the manner in which further information about the plan can be obtained.

8. If investors' funds will be forwarded to an escrow account, identify the escrow agent, and briefly describe the conditions for release of the funds, whether such funds will accrue interest while in escrow, and the manner in which the monies in such account will be distributed if such conditions are not satisfied, including how accrued interest, if any, will be distributed to investors.

9. If the securities offered by the Fund are not being listed on a national securities exchange, disclose whether any of the underwriters intends to act as a market maker with respect to such unlisted securities.

10. Briefly outline the plan of distribution of any securities that are to be offered other than through underwriters.

a. If the securities are to be offered through the selling efforts of brokers or dealers, concisely describe the plan of distribution and the terms of any agreement, arrangement, or understanding entered into with broker(s) or dealer(s) prior to the effective date of the registration statement, including volume limitations on sales, parties to the agreement, and the conditions under which the agreement may be terminated. If known, identify the broker(s) or dealer(s) that will participate in the offering, and state the amount to be offered through each.

b. If any of the securities being registered are to be offered other than for cash, describe briefly the general purposes of the distribution, the basis upon which the securities are to be offered, the amount of compensation and other expenses of distribution, and the person(s) responsible for such expenses.

c. If the distribution is to be made under a plan of acquisition, reorganization, readjustment, or

succession, provide a statement regarding the general effect of the plan and when it becomes operative. As to any material amount of assets to be acquired under the plan, furnish the information required by Instruction 4 to Item 7.1 below.

#### *Item 6. Selling Shareholders*

If any securities being registered are to be offered for the account of shareholders, furnish the information required by Item 507 of Regulation S-K [17 CFR 229.507].

#### *Item 7. Use of Proceeds*

1. State the principal purposes for which the net proceeds of the offering are intended to be used and the approximate amount intended to be used for each purpose.

*Instructions.*

1. If any substantial portion of the proceeds will not be allocated in accordance with the investment objectives and policies of the Fund, a statement to that effect should be made together with a statement of the amount involved and an indication of how that amount will be invested.

2. If a material part of the proceeds will be used to discharge indebtedness, state the interest rate and maturity of the indebtedness.

3. If the Fund intends to incur loans to pay underwriting commissions or any other organizational or offering expenses, disclose this fact and state the name of the lender, the amount of the first installment, the rate of interest, the date on which payments will begin, the dates and amounts of subsequent installments, and the final maturity date. Explain that the interest paid on such borrowing will not be available for investment purposes and will increase the expenses of the fund.

4. If any material part of the proceeds will be used to acquire assets other than in the ordinary course of business, briefly describe the assets, the names of the persons from whom they are to be acquired, the cost of the assets to the Fund, and how the costs were determined.

2. Disclose how long it is expected to take to fully invest net proceeds in accordance with the Fund's investment objectives and policies, the reasons for any anticipated lengthy delay in investing the net proceeds, and the consequences of any delay.

#### *Item 8. General Description of the Registrant*

Concisely discuss the organization and operation, or proposed operation, of the Fund. Include the information specified below.

1. *General.* Briefly describe the Fund, including:

a. The date and form of organization and the name of the state or other jurisdiction under whose laws it is organized; and

b. the classification and subclassification under Sections 4 and 5 of the Investment Company Act.

2. *Investment Objectives and Policies.* Concisely describe the investment objectives and policies of the Fund that will constitute its principal portfolio emphasis, including the following:

a. If these objectives may be changed without a vote of the holders of a majority of voting securities, a brief statement to that effect;

b. how the Fund proposes to achieve its objectives, including:

(1) The types of securities in which the Fund invests or will invest principally;

(2) the identity of any particular industry or group of industries in which the Fund proposes to concentrate.

*Instruction.* Concentration, for purposes of this Item, is deemed 25 percent or more of the value of the Fund's total assets invested or proposed to be invested in a particular industry or group of industries. The policy on concentration should not be inconsistent with the Fund's name.

c. identify other policies of the Fund that may not be changed without the

vote of a majority of the outstanding voting securities, including those policies that the Fund deems to be fundamental within the meaning of Section 8(b) of the Investment Company Act; and

d. briefly describe the significant investment practices or techniques that the Fund employs or intends to employ (such as risk arbitrage, reverse repurchase agreements, forward delivery contracts, when-issued securities, stand-by commitments, options and futures contracts, options on futures contracts, currency transactions, foreign securities, investing for control of management, and/or lending of portfolio securities) that are not described pursuant to subparagraph 2.c above or subparagraph 3 below.

3. *Risk Factors.* Concisely describe the risks associated with an investment in the Fund, including the following:

a. *General.* Discuss the principal risk factors associated with investment in the Fund specifically as well as those factors generally associated with investment in a company with investment objectives, investment policies, capital structure, or trading markets similar to the Fund's.

b. *Effects of Leverage.* If the prospectus offers common stock of the Fund and the Fund has outstanding or

is offering a class of senior securities as defined in Section 18 of the Investment Company Act, then:

(1) Set forth the annual rate of interest or dividend payments on the senior securities;

*Instruction.* If payments will vary because the interest or dividend rate is variable, provide the initial rate or, if the security is currently outstanding, the current rate.

(2) set forth the annual return that the Fund's portfolio must experience in order to cover annual interest or dividend payments on senior securities; and

(3) provide a table illustrating the effect on return to a common stockholder of leverage (using senior securities) in the format illustrated below, using the captions provided, and assuming annual returns on the Fund's portfolio (net of expenses) of minus ten, minus five, zero, five, and ten percent.

(4) The table should be accompanied by a brief narrative explaining that the purpose of the table is to assist the investor in understanding the effects of leverage. Indicate that the figures appearing in the table are hypothetical and that actual returns may be greater or less than those appearing in the table.

Assumed Return on Portfolio (Net of Expenses) .....	- 10%	- 5%	0%	- 5%	10%
Corresponding Return to Common Stockholder .....	%	%	%	%	%

#### *Instructions.*

1. Round all percentages to the nearest hundredth of one percent.

2. A Fund may assume additional rates of return on its portfolio; however, to the extent a Fund shows an additional positive rate of return, it must also show an additional negative rate of return of the same magnitude. A Fund may show the positive rate of return at which the corresponding rate of return to the common stockholder is zero without showing the corresponding negative rate of return.

3. Compute the "corresponding return to common stockholder" as follows: Multiply the total amount of fund assets at the beginning of the period by the assumed rate of return; subtract from the resulting product all interest accrued or dividends declared on senior securities that would be made during the year following the offering; and divide the resulting difference by the total amount of fund assets attributable to common stock. If payments will vary because the interest or dividend rate is variable, use

the initial rate or, if the security is currently outstanding, the current rate.

4. *Other Policies.* Briefly discuss the types of investments that will be made by the Fund, other than those that will constitute its principal portfolio emphasis (as discussed in Item 8.2 above), and any policies or practices relating to those investments.

#### *Instructions.*

1. This discussion should receive less emphasis in the prospectus than that required by Item 8.2 and, if appropriate in light of Instructions 2 and 3 below, may be omitted or limited to the information necessary to identify the type of investment, policy, or practice.

2. Do not discuss a policy that prohibits a particular practice or permits a practice that the Fund has not used within the past twelve months (or since its initial public offering, if that period is shorter) and does not intend to use in the future.

3. If a policy limits a particular practice so that no more than five percent of the Fund's net assets are at risk, or if the Fund has not followed that

practice within the last year (or since its initial public offering, if such period is shorter) in such a manner that more than five percent of net assets were at risk and does not intend to follow such practice so as to put more than five percent of net assets at risk, limit the prospectus disclosure about such practice to that necessary to identify the practice. Disclose whether or not the Fund will provide prior notice to security holders of its intention to commence or expand the use of such practice.

The amount of the Fund's net assets that are at risk for purposes of determining whether "more than five percent of net assets are at risk" is not limited to the initial amount of the Fund's assets that are invested in a particular practice, e.g., the purchase price of an option. The amount of net assets at risk is determined by reference to the potential liability or loss that may be incurred by the Fund in connection with a particular practice.

5. *Share Price Data.* If the prospectus offers common stock or other type of

common equity security (collectively “common stock”) and if the Fund’s common stock is publicly held, provide the following information:

a. Identify the principal United States market or markets in which the common stock is being traded. Where there is no established public trading market, furnish a statement to that effect.

*Instruction.* The existence of limited or sporadic quotations should not itself be deemed to constitute an “established public trading market.”

b. If the principal United States market for the common stock is an exchange, state the high and low sales prices for the stock for each full quarterly period within the two most recent fiscal years and each full fiscal quarter since the beginning of the current fiscal year, as reported in the consolidated transaction reporting system or, if not so reported, as reported on the principal exchange market for the stock. If the principal United States market for the common stock is not an exchange, state the range of high and low bid information for the common stock for the periods described in the preceding sentence, as regularly quoted in the automated quotation system of a registered securities association or, if not so quoted, the range of reported high and low bid quotations, indicating the source of the quotations.

*Instructions.*

1. This information should be set forth in tabular form.

2. Indicate, as applicable, that such over-the-counter market quotations reflect inter-dealer prices, without retail mark-up, mark-down, or commission and may not necessarily represent actual transactions.

3. Where there is an absence of an established public trading market, qualify reference to quotations by an appropriate explanation.

4. With respect to each quotation, disclose the net asset value and the discount or premium to net asset value (expressed as a percentage) represented by the quotation.

5. Where the shares of the Fund trade at their high or low share price for more than one day during the period, the Fund should provide the discount or premium information for the day on which the premium or discount was greatest.

c. Include share price and corresponding net asset value and premium/discount information as of the latest practicable date.

d. Disclose whether the Fund’s common stock has historically traded for an amount less than, equal to, or exceeding net asset value. Disclose any methods undertaken or to be undertaken

by the Fund that are intended to reduce any discount (such as the repurchase of fund shares, providing for the ability to convert to an open-end investment company, guaranteed distribution plans, etc.), and briefly discuss the effects that these measures have or may have on the Fund.

e. If the shares of the Fund have no history of public trading, discuss the tendency of closed-end fund shares to trade frequently at a discount from net asset value and the risk of loss this creates for investors purchasing shares in the initial public offering. If the Fund has omitted the statement required by Item 1.i, describe the basis for the Fund’s belief that its shares will not trade at a discount from net asset value.

6. *Business Development Companies.* A Fund that is a business development company should, in addition, provide the following information:

a. *Portfolio Companies.* For each portfolio company in which the Fund is investing, disclose: (1) The name and address; (2) nature of business; (3) title, class, percentage of class, and value of portfolio company securities held by the Fund; (4) amount and general terms of all loans to portfolio companies; and (5) the relationship of the portfolio companies to the Fund.

*Instructions.*

1. The description of the nature of the business of a portfolio company in which the Fund is investing may vary according to the extent of the Fund’s investment in the particular portfolio company. The Fund need only briefly identify the nature of the business of a portfolio company in which the Fund’s investment constitutes less than five percent of the Fund’s assets.

2. In describing the nature of the business of a portfolio company, include matters such as the competitive conditions of the business of the company; its market share; dependence on a single or small number of customers; importance to it of any patents, trademarks, licenses, franchises, or concessions held; key operating personnel; and particular vulnerability to changes in government regulation, interest rates, or technology.

3. In describing the relationship of portfolio companies to the Fund, include a discussion of the extent to which the Fund makes available significant managerial assistance to its portfolio companies. Disclose any other material business, professional, or family relationship between the officers and directors of the Fund and any portfolio company, its officers, directors, and affiliates (as defined in Rule 12b-2 under the Exchange Act).

b. *Certain Subsidiaries.* If the Fund has a wholly-owned small business investment company subsidiary, disclose: (1) Whether the subsidiary is regulated as a business development company or investment company under the Investment Company Act; (2) the percentage of the Fund’s assets invested in the subsidiary; and (3) material information about the small business investment company’s operations, including the special risks of investing in a portfolio heavily invested in securities of small and developing or financially troubled businesses.

c. *Financial Statements.* Unless the business development company has had less than one fiscal year of operations, provide the financial statements of the Fund.

*Instructions.*

1. a. Furnish, in a separate section following the responses to the above items in Part A of the registration statement, the financial statements and schedules required by Regulation S-X [17 CFR part 210]. A business development company should comply with the provisions of Regulation S-X generally applicable to registered management investment companies. (See Section 210.3-18 and Sections 210.6-01 through 210.6-10 of Regulation S-X.)

b. A business development company should provide an indication in its Schedule of Investments of those investments that are not qualifying investments under Section 55(a) of the Investment Company Act and, in a footnote, briefly explain the significance of non-qualification.

2. Notwithstanding the requirements of Instruction 1 above, the following statements and schedules required by Regulation S-X may be omitted from Part A and included in Part C of the Registration statement:

a. The statement of any subsidiary that is not a majority-owned subsidiary; and

b. columns C and D of Schedule IV [17 CFR 210.12-03] in support of the most recent balance sheet.

3. A business development company with less than one fiscal year of operations should provide its financial statements in the Statement of Additional Information in response to Item 24.

d. *Prior Operations.* If the Fund has had an operating history prior to electing to be regulated as a business development company, disclose any anticipated changes in its operations as a result of coming into compliance with Section 55(a) of the Investment Company Act. This information may be omitted in a prospectus used a sufficient

time after election to be regulated as a business development company so that it is no longer material.

e. *Special Risk Factors.* To the extent not disclosed in response to this Item or Item 8.3, concisely describe the special risks of investing in a business development company, including the risks associated with investing in a portfolio of small and developing or financially troubled businesses. (See Section 64(b)(1) of the Investment Company Act.)

#### Item 9. Management

1. *General.* Describe concisely how the business of the Fund is managed, including:

a. *Board of Directors.* A description of the responsibilities of the board of directors with respect to the management of the Fund;

##### *Instructions.*

1. In responding to this Item, it is sufficient to include a general statement as to the responsibilities of the board of directors under the applicable laws of the Fund's jurisdiction of organization.

2. A Fund that has elected to be regulated as a business development company should briefly describe the terms of any special compensation plans available to management.

b. *Investment Advisers.* For each investment adviser of the Fund:

(1) Its name and principal business address, a description of its experience as an investment adviser, and, if the investment adviser is controlled by another person, the name of that person and the general nature of its business;

*Instruction.* If the investment adviser is subject to more than one level of control, it is sufficient to provide the name of the ultimate control person.

(2) A description of the services provided by the investment adviser;

##### *Instructions.*

1. If, in addition to providing investment advice, the investment adviser or persons employed by or associated with the investment adviser are subject to the authority of the board of directors, responsible for overall management of the Fund's business affairs, it is sufficient to state that fact instead of listing all services provided.

2. A Fund that has elected to be regulated as a business development company should describe briefly the type of managerial assistance that is or will be provided to the businesses in which it is investing and the qualifications of the investment adviser to render such management assistance.

(3) A description of its compensation; and

##### *Instructions.*

1. State generally what the adviser's fee is or will be as a percentage of

average net assets, including any breakpoint. It is not necessary to include precise details as to how the fee is computed or paid.

2. If the investment advisory fee is paid in some manner other than on the basis of average net assets, briefly describe the basis of payment.

(4) A statement, adjacent to the disclosure required by paragraph 1.b(3) of this Item, that a discussion regarding the basis for the board of directors approving any investment advisory contract of the Fund is available in the Fund's annual or semi-annual report to shareholders, as applicable, and providing the period covered by the relevant annual or semi-annual report.

c. *Portfolio Management.* The name, title, and length of service of the person or persons employed by or associated with the Fund or an investment adviser of the Fund who are primarily responsible for the day-to-day management of the Fund's portfolio ("Portfolio Manager"). Also state each Portfolio Manager's business experience during the past 5 years. Include a statement, adjacent to the foregoing disclosure, that the SAI provides additional information about the Portfolio Manager's(s') compensation, other accounts managed by the Portfolio Manager(s), and the Portfolio Manager's(s') ownership of securities in the Fund.

*Instruction.* If a committee, team, or other group of persons associated with the Fund or an investment adviser of the Fund is jointly and primarily responsible for the day-to-day management of the Fund's portfolio, information in response to this Item is required for each member of such committee, team, or other group. For each such member, provide a brief description of the person's role on the committee, team, or other group (e.g., lead member), including a description of any limitations on the person's role and the relationship between the person's role and the roles of other persons who have responsibility for the day-to-day management of the Fund's portfolio. If more than five persons are jointly and primarily responsible for the day-to-day management of the Fund's portfolio, the Fund need only provide information for the five persons with the most significant responsibility for the day-to-day management of the Fund's portfolio.

d. *Administrators.* The identity of any other person who provides significant administrative or business affairs management services (e.g., an "Administrator" or "Sub-Administrator"), a description of the

services provided, and the compensation to be paid;

e. *Custodians.* The name and principal business address of the custodian(s), transfer agent, and dividend paying agent;

f. *Expenses.* The type of expenses for which the Fund is responsible, and, if organization expenses of the Fund are to be paid out of its assets, how the expenses will be amortized and the period over which the amortization will occur; and

g. *Affiliated Brokerage.* If the Fund pays (or will pay) brokerage commissions to any broker that is an (1) affiliated person of the Fund, (2) affiliated person of such person, or (3) affiliated person of an affiliated person of the Fund, its investment adviser, or its principal underwriter, a statement to that effect.

2. *Non-resident Managers.* If any non-resident officer, director, underwriter, investment adviser, or expert named in the registration statement has a substantial portion of its assets located outside the United States, identify each person, and state how the enforcement by investors of civil liabilities under the federal securities laws may be affected. This disclosure should indicate whether:

a. Investors will be able to effect service of process within the United States upon these persons;

b. investors will be able to enforce, in United States courts, judgments against these persons obtained in such courts predicated upon the civil liability provisions of the federal securities laws;

c. the appropriate foreign courts would enforce judgments of United States courts obtained in actions against these persons predicated upon the civil liability provisions of the federal securities laws; and

d. the appropriate foreign courts would enforce, in original actions, liabilities against these persons predicated solely upon the federal securities laws.

*Instruction.* If any portions of this disclosure are stated to be based upon an opinion of counsel, name the counsel in the prospectus, and include an appropriate manually signed consent to the use of counsel's name and opinion as an exhibit to the registration statement.

3. *Control Persons.* Identify each person who, as of a specified date no more than 30 days prior to the date of filing the registration statement (or amendment to it), controls the Fund.

*Instruction.* For the purposes of this Item, "control" means (1) the beneficial ownership, either directly or through one or more controlled companies, of

more than 25 percent of the voting securities of a company; (2) the acknowledgment or assertion by either the controlled or controlling party of the existence of control; or (3) an adjudication under Section 2(a)(9) of the Investment Company Act, which has become final, that control exists.

*Item 10. Capital Stock, Long-Term Debt, and Other Securities*

1. **Capital Stock.** For each class of capital stock of the Fund, state the title of the class and briefly describe all of the matters listed in paragraphs 1.a through 1.f that are relevant:

a. Concisely discuss the nature and most significant attributes, including, where applicable, (1) dividend rights, policies, or limitations; (2) voting rights; (3) liquidation rights; (4) liability to further calls or to assessments by the Fund; (5) preemptive rights, conversion rights, redemption provisions, and sinking fund provisions; and (6) any material obligations or potential liability associated with ownership of the security (not including investment risks);

*Instructions.*

1. A complete legal description of the securities should not be given.

2. If the Fund has a policy of making distribution or dividend payments at predetermined times and minimum rates, disclosure should include a statement that, if the fund's investments do not generate sufficient income, the fund may be required to liquidate a portion of its portfolio to fund these distributions, and therefore these payments may represent a reduction of the shareholders' principal investment. The tax consequences of such payments also should be described briefly.

b. with respect to preferred stock, (1) state whether there are any restrictions on the Fund while there is an arrearage in the payment of dividends or sinking fund installments, and, if so, concisely describe the restrictions and (2) briefly describe provisions restricting the declaration of dividends, requiring the maintenance of any ratio or assets, requiring the creation or maintenance of reserves, or permitting or restricting the issuance of additional securities;

c. if the rights of holders of the security may be modified other than by a vote of a majority or more of the shares outstanding, voting as a class, so state, and briefly explain;

d. if rights evidenced by, or the amounts payable with respect to, any class of securities being described are, or may be, materially limited or qualified by the rights of any other authorized class of securities, include sufficient information regarding the

other securities to enable investors to understand such rights and limitations;

e. if the Fund has a dividend reinvestment plan, briefly discuss the material aspects of the plan including, but not limited to, whether the plan is automatic or whether shareholders must affirmatively elect to participate; (2) the method by which shareholders can elect to reinvest stock dividends or, if the plan is automatic, to receive cash dividends; (3) from whom additional information about the plan may be obtained (including a telephone number or address); (4) the method of determining the number of shares that will be distributed in lieu of a cash dividend; (5) the income tax consequences of participation in the plan (*i.e.*, that capital gains and income are realized, although cash is not received by the shareholder); (6) how to terminate participation in the plan and rights upon termination; (7) if applicable, that an investor holding shares that participate in the dividend reinvestment plan in a brokerage account may not be able to transfer the shares to another broker and continue to participate in the dividend reinvestment plan; (8) the type and amount (if known) of fees, commissions, and expenses payable by participants in connection with the plan; and (9) if a cash purchase plan option is available, any minimum or maximum investment required; and

f. briefly describe any provision of the Fund's charter or bylaws that would have an effect of delaying, deferring, or preventing a change of control of the Fund and that would operate only with respect to an extraordinary corporate transaction involving the Fund, such as a merger, reorganization, tender offer, sale or transfer of substantially all of its assets, or liquidation.

*Instruction.* Provisions and arrangements required by law or imposed by governmental or judicial authority need not be discussed. Provisions or arrangements adopted by the Fund to effect or further compliance with laws or governmental or judicial mandate must be described where compliance does not require the specific provisions or arrangements adopted.

2. **Long-Term Debt.** If the Fund is issuing or has outstanding a class of long-term debt, state the title of the debt securities and their principal amount, and concisely describe any of the matters listed in paragraphs 2.a through 2.e that are relevant:

a. Provisions concerning maturity, interest, conversion, redemption, amortization, sinking fund, and/or retirement;

b. provisions restricting the declaration of dividends, requiring the

maintenance of any ratio or assets, and/or requiring the creation or maintenance of reserves;

c. provisions permitting or restricting the issuance of additional securities, the ability to incur additional debt, the release or substitution of assets securing the issue, and/or the modification of the terms of the securities;

*Instruction.* A complete legal description of the securities should not be given.

d. for each trustee, its name, the nature of any material relationship it has with the Fund or any of its affiliates, the percentage of securities necessary to require the trustee to take action, and any indemnification the trustee may require before proceeding against assets of the Fund; and

e. to the extent not otherwise disclosed in response to this Item, whether the rights evidenced by the long-term debt are, or may be, materially limited or qualified by the rights of any other authorized class of securities, and, if so, include sufficient information regarding such other securities to enable investors to understand such rights and limitations.

3. **General.** Concisely describe the significant attributes of each other class of the Fund's authorized securities. The description should be comparable to that called for by paragraphs 1 and 2 of this Item. If the securities are subscription warrants or rights, state the title and amount of securities called for and the period during which, and the prices at which, the warrants or rights are exercised.

4. **Taxes.** Concisely describe the tax consequences to investors of an investment in the securities being offered. If the Fund intends to qualify for treatment under Subchapter M of the Internal Revenue Code of 1986 [26 U.S.C. 851–856], it is sufficient, in the absence of special circumstances, to state that: (i) The Fund will distribute all of its net investment income and gains to shareholders and that these distributions are taxable as ordinary income or capital gains; (ii) shareholders may be proportionately liable for taxes on income and gains of the Fund but shareholders not subject to tax on their income will not be required to pay tax on amounts distributed on them; and (iii) the Fund will inform shareholders of the amount and nature of the income or gains.

*Instructions.*

1. The description should not include detailed discussions of applicable law.

2. The Fund should specifically address whether shareholders will be subject to the alternative minimum tax.



5. *Outstanding Securities.* Furnish the following information, in substantially the tabular form indicated, for each

class of authorized securities of the Fund. The information must be current within 90 days of the filing of this

registration statement or amendment to it.

(1)	(2)	(3)	(4)
Title of Class	Amount Authorized	Amount Held by Registrant or for its Account	Amount Outstanding Exclusive of Amount Shown Under (3)

6. *Securities Ratings.* If the prospectus relates to senior securities of the Fund that have been assigned a rating by a nationally recognized securities rating organization and the rating is disclosed in the prospectus, briefly discuss the significance of the rating, the basis upon which ratings are issued, any conditions or guidelines imposed by the NRSRO for the Fund to maintain the rating, and whether or not the Fund intends, or has any contractual obligation, to comply with these conditions or guidelines. In addition, disclose the material terms of any agreement between the Fund or any of its affiliates and the NRSRO under which the NRSRO provides such rating. If the prospectus relates to securities other than senior securities of the Fund that have been assigned a rating by a NRSRO, the information required by this paragraph may be provided in the Statement of Additional Information unless the rating criteria will materially affect the investment policies of the Fund (e.g., if the rating agency establishes criteria for selection of the Fund's portfolio securities with which the Fund intends to comply), in which case it should be included in the prospectus.

*Instructions.*

1. The term "nationally recognized securities rating organization" has the same meaning as used in Rule 15c3-1(c)(2)(vi)(F) under the Exchange Act.

2. Rule 436(g)(1) of Regulation C under the Securities Act [17 CFR 230.436(g)(1)] provides that a security rating assigned by an NRSRO to a class of debt securities, a class of convertible debt securities, or a class of preferred stock is not considered a part of the registration statement for purposes of Sections 7 and 11 of the Securities Act. Therefore, in the case of disclosure of a rating assigned to these types of securities issued by the Fund, the Fund need not include a written consent of the NRSRO as an exhibit to the registration statement as required by Item 25.2.n but must provide the disclosure called for by this Item.

3. Reference should be made to the statement of the Commission's policy on security ratings set forth under the section "General" in Regulation S-K [17 CFR 229.10] for the Commission's views on other important matters to be

considered in disclosing securities ratings.

*Item 11. Defaults and Arrears on Senior Securities*

1. State the nature, date, and amount of default of payment of principal, interest, or amortization for each issue of long-term debt of the Fund that is in default on the date of filing.

2. If an issue of capital stock has any accumulated dividend in arrears at the date of filing, state the title of each issue and the amount per share in arrears.

*Item 12. Legal Proceedings*

Describe briefly any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the Fund, any subsidiary of the Fund, or the Fund's investment adviser or principal underwriter is a party. Include the name of the court where the case is pending, the date instituted, the principal parties, a description of the factual basis alleged to underlie the proceeding, and the relief sought. Include similar information as to any proceeding instituted by a governmental authority or known to be contemplated by a governmental authority.

*Instruction.* Legal Proceedings, for purposes of this Item, are material only to the extent that they are likely to have a material adverse effect upon: (1) The ability of the investment adviser or principal underwriter to perform its contract with the Fund; or (2) the Fund.

*Item 13. [Removed and Reserved]*

**Part B—Information Required in a Statement of Additional Information**

*Item 14. Cover Page*

1. The outside cover page must contain the following information:

- The Fund's name;
- a statement or statements (1) that the Statement of Additional Information is not a prospectus, (2) that the Statement of Additional Information should be read with the prospectus, and (3) how a copy of the prospectus may be obtained;
- the date of the Statement of Additional Information;

d. the date of the related prospectus and any other identifying information that the Fund deems appropriate; and

e. the statement required by paragraph (b)(2) of Rule 481 under the Securities Act.

2. The cover page may include other information, provided that it does not, by its nature, quantity, or manner of presentation, impede understanding of required information.

*Item 15. Table of Contents*

List the contents of the Statement of Additional Information, and, where useful, provide a cross-reference to related disclosure in the prospectus.

*Item 16. General Information and History*

If the Fund has engaged in a business other than that of an investment company during the past five years, state the nature of the other business and give the approximate date on which the Fund commenced business as an investment company. If the Fund's name was changed during that period, state its former name and the approximate date on which it was changed. If the change in the Fund's business or name occurred in connection with any bankruptcy, receivership, or similar proceeding or any other material reorganization, readjustment, or succession, briefly describe the nature and results of the same.

*Item 17. Investment Objective and Policies*

1. Describe clearly and concisely the investment policies of the Fund. It is not necessary to repeat information contained in the prospectus, but, in augmenting the disclosure about those types of investments, policies, or practices that are briefly discussed or identified in the prospectus, the Fund should refer to the prospectus when necessary to clarify the additional information called for by this Item.

2. Concisely describe any fundamental policy of the Fund not described in the prospectus with respect to each of the following activities:

- The issuance of senior securities;
- short sales, purchases on margin, and the writing of put and call options;

c. the borrowing of money (describe briefly any fundamental policy that limits the Fund's ability to borrow money, and state the purpose for which the proceeds will be used);

d. the underwriting of securities of other issuers (include any fundamental policy concerning the acquisition of restricted securities, *i.e.*, securities that must be registered under the Securities Act before they may be offered or sold to the public);

e. the concentration of investments in a particular industry or groups of industries;

f. the purchase or sale of real estate and real estate mortgage loans;

g. the purchase or sale of commodities or commodity contracts, including futures contracts;

h. the making of loans (for purposes of this item, the term "loans" does not include the purchase of a portion of an issue of publicly distributed bonds, debentures, or other securities, whether or not the purchase was made upon the original issuance of the securities; however, the term "loan" includes the loaning of cash or portfolio securities to any person); and

i. any other policy that the Fund deems fundamental.

*Instructions.*

1. For purposes of this Item, the term "fundamental policy" is defined as any policy that the Fund has deemed to be fundamental or that may not be changed without the approval of a majority of the Fund's outstanding voting securities.

2. If the Fund reserves freedom of action with respect to any of the foregoing activities (other than the activity described in paragraph e), it must disclose the maximum percentage

of assets to be devoted to the particular activity.

3. Describe fully any significant investment policies of the Fund not described in the prospectus that are not deemed fundamental and that may be changed without the approval of the holders of a majority of the voting securities (*e.g.*, investing for control of management, investing in foreign securities, or arbitrage activities).

*Instruction.* The Fund should disclose the extent to which it may engage in the above policies and the risks inherent in such policies.

4. Briefly explain any significant change in the Fund's portfolio turnover rates over the last two fiscal years. If the Fund anticipates a significant change in the portfolio turnover rate from that reported under caption k of Item 4.1 for its most recent fiscal year, so state. In the case of a new registration, the Fund should state its policy with respect to portfolio turnover.

*Item 18. Management*

*General Instructions.*

1. For purposes of this Item 18, the terms below have the following meanings:

a. The term "family of investment companies" means any two or more registered investment companies that:

(1) Share the same investment adviser or principal underwriter; and

(2) Hold themselves out to investors as related companies for purposes of investment and investor services.

b. The term "fund complex" means two or more registered investment companies that:

(1) Hold themselves out to investors as related companies for purposes of investment and investor services; or

(2) Have a common investment adviser or have an investment adviser that is an affiliated person of the investment adviser of any of the other registered investment companies.

c. The term "immediate family member" means a person's spouse; child residing in the person's household (including step and adoptive children); and any dependent of the person, as defined in Section 152 of the Internal Revenue Code [26 U.S.C. 152].

d. The term "officer" means the president, vice-president, secretary, treasurer, controller, or any other officer who performs policy-making functions.

2. When providing information about directors, furnish information for directors who are interested persons of the Fund, as defined in Section 2(a)(19) of the Investment Company Act and the rules thereunder, separately from the information for directors who are not interested persons of the Fund. For example, when furnishing information in a table, you should provide separate tables (or separate sections of a single table) for directors who are interested persons and for directors who are not interested persons. When furnishing information in narrative form, indicate by heading or otherwise the directors who are interested persons and the directors who are not interested persons.

1. Provide the information required by the following table for each director and officer of the Fund, and, if the Fund has an advisory board, member of the board. Explain in a footnote to the table any family relationship between the persons listed.

(1)	(2)	(3)	(4)	(5)	(6)
Name, Address, and Age	Position(s) Held with Registrant	Term of Office and Length of Time Served	Principal Occupation(s) During Past 5 Years	Number of Portfolios in Fund Complex Overseen by Director	Other Directorships Held by Director

*Instructions.*

1. For purposes of this paragraph, the term "family relationship" means any relationship by blood, marriage, or adoption, not more remote than first cousin.

2. For each director who is an interested person of the Fund, as defined in Section 2(a)(19) of the Investment Company Act and the rules thereunder, describe, in a footnote or otherwise, the relationship, events, or transactions by reason of which the director is an interested person.

3. State the principal business of any company listed under column (4) unless

the principal business is implicit in its name.

4. Indicate in column (6) directorships not included in column (5) that are held by a director in any company with a class of securities registered pursuant to Section 12 of the Exchange Act or subject to the requirements of Section 15(d) of the Exchange Act or any company registered as an investment company under the Investment Company Act, and name the companies in which the directorships are held. Where the other directorships include directorships overseeing two or more portfolios in the same fund complex,

identify the fund complex and provide the number of portfolios overseen as a director in the fund complex rather than listing each portfolio separately.

2. For each individual listed in column (1) of the table required by paragraph 1 of this Item 18, except for any director who is not an interested person of the Fund, as defined in Section 2(a)(19) of the Investment Company Act and the rules thereunder, describe any positions, including as an officer, employee, director, or general partner, held with affiliated persons or principal underwriters of the Fund.

*Instruction.* When an individual holds the same position(s) with two or more registered investment companies that are part of the same fund complex, identify the fund complex and provide the number of registered investment companies for which the position(s) are held rather than listing each registered investment company separately.

3. Describe briefly any arrangement or understanding between any director or officer and any other person(s) (naming the person(s)) pursuant to which he was selected as a director or officer.

*Instruction.* Do not include arrangements or understandings with directors or officers acting solely in their capacities as such.

4. For each non-resident director or officer of the Fund listed in column (1) of the table required by paragraph 1, disclose whether he has authorized an agent in the United States to receive notice and, if so, disclose the name and address of the agent.

5. a. Briefly describe the leadership structure of the Fund's board, including whether the chairman of the board is an interested person of the Fund, as defined in Section 2(a)(19) of the Investment Company Act. If the chairman of the board is an interested person of the Fund, disclose whether the Fund has a lead independent director and what specific role the lead independent director plays in the leadership of the Fund. This disclosure should indicate why the Fund has determined that its leadership structure is appropriate given the specific characteristics or circumstances of the Fund. In addition, disclose the extent of the board's role in the risk oversight of

the Fund, such as how the board administers its oversight function, and the effect that this has on the board's leadership structure.

b. Identify the standing committees of the Fund's board of directors, and provide the following information about each committee:

- (1) A concise statement of the functions of the committee;
- (2) The members of the committee;
- (3) The number of committee meetings held during the last fiscal year; and

(4) If the committee is a nominating or similar committee, state whether the committee will consider nominees recommended by security holders and, if so, describe the procedures to be followed by security holders in submitting recommendations.

6. a. Unless disclosed in the table required by paragraph 1 of this Item 18, describe any positions, including as an officer, employee, director, or general partner, held by any director who is not an interested person of the Fund, as defined in Section 2(a)(19) of the Investment Company Act and the rules thereunder, or immediate family member of the director, during the two most recently completed calendar years with:

- (1) The Fund;
- (2) An investment company, or a person that would be an investment company but for the exclusions provided by Sections 3(c)(1) and 3(c)(7) of the Investment Company Act, having the same investment adviser or principal underwriter as the Fund or having an investment adviser or principal underwriter that directly or indirectly controls, is controlled by, or

is under common control with an investment adviser or principal underwriter of the Fund;

(3) An investment adviser, principal underwriter, or affiliated person of the Fund; or

(4) Any person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Fund.

b. Unless disclosed in the table required by paragraph 1 of this Item 18 or in response to paragraph 6.a of this Item 18, indicate any directorships held during the past five years by each director in any company with a class of securities registered pursuant to Section 12 of the Exchange Act or subject to the requirements of Section 15(d) of the Exchange Act or any company registered as an investment company under the Investment Company Act, and name the companies in which the directorships were held.

*Instruction.* When an individual holds the same position(s) with two or more portfolios that are part of the same fund complex, identify the fund complex and provide the number of portfolios for which the position(s) are held rather than listing each portfolio separately.

7. For each director, state the dollar range of equity securities beneficially owned by the director as required by the following table:

- a. In the Fund; and
- b. On an aggregate basis, in any registered investment companies overseen by the director within the same family of investment companies as the Fund.

(1)	(2)	(3)
Name of Director	Dollar Range of Equity Securities in the Registrant	Aggregate Dollar Range of Equity Securities in All Registered Investment Companies Overseen by Director in Family of Investment Companies

*Instructions.*

1. Information should be provided as of the end of the most recently completed calendar year. Specify the valuation date by footnote or otherwise.

2. Determine "beneficial ownership" in accordance with Rule 16a-1(a)(2) under the Exchange Act.

3. In disclosing the dollar range of equity securities beneficially owned by a director in columns (2) and (3), use the

following ranges: None, \$1-\$10,000, \$10,001-\$50,000, \$50,001-\$100,000, or over \$100,000.

8. For each director who is not an interested person of the Fund, as defined in Section 2(a)(19) of the Investment Company Act and the rules thereunder, and his immediate family members, furnish the information required by the following table as to

each class of securities owned beneficially or of record in:

- a. An investment adviser or principal underwriter of the Fund; or
- b. person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Fund:

(1)	(2)	(3)	(4)	(5)	(6)
Name of Director	Name of Owners and Relationships to Director	Company	Title of Class	Value of Securities	Percent of Class

*Instructions.*

1. Information should be provided as of the end of the most recently completed calendar year. Specify the valuation date by footnote or otherwise.

2. An individual is a “beneficial owner” of a security if he is a “beneficial owner” under either Rule 13d-3 or Rule 16a-1(a)(2) under the Exchange Act.

3. Identify the company in which the director or immediate family member of the director owns securities in column (3). When the company is a person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter, describe the company’s relationship with the investment adviser or principal underwriter.

4. Provide the information required by columns (5) and (6) on an aggregate basis for each director and his immediate family members.

9. Unless disclosed in response to paragraph 8 of this Item 18, describe any direct or indirect interest, the value of which exceeds \$120,000, of each director who is not an interested person of the Fund, as defined in Section 2(a)(19) of the Investment Company Act and the rules thereunder, or immediate family member of the director, during the two most recently completed calendar years, in:

a. An investment adviser or principal underwriter of the Fund; or

b. A person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Fund.

*Instructions.*

1. A director or immediate family member has an interest in a company if he is a party to a contract, arrangement, or understanding with respect to any securities of, or interest in, the company.

2. The interest of the director and the interests of his immediate family members should be aggregated in determining whether the value exceeds \$120,000.

10. Describe briefly any material interest, direct or indirect, of any director who is not an interested person of the Fund, as defined in Section 2(a)(19) of the Investment Company Act and the rules thereunder, or immediate family member of the director, in any transaction, or series of similar transactions, during the two most recently completed calendar years, in which the amount involved exceeds \$120,000 and to which any of the following persons was a party:

a. The Fund;

b. An officer of the Fund;

c. An investment company, or a person that would be an investment company but for the exclusions provided by Sections 3(c)(1) and 3(c)(7) of the Investment Company, having the same investment adviser or principal underwriter as the Fund or having an investment adviser or principal underwriter that directly or indirectly controls, is controlled by, or is under common control with an investment adviser or principal underwriter of the Fund;

d. An officer of an investment company, or a person that would be an investment company but for the exclusions provided by Sections 3(c)(1) and 3(c)(7) of the Investment Company Act, having the same investment adviser or principal underwriter as the Fund or having an investment adviser or principal underwriter that directly or indirectly controls, is controlled by, or is under common control with an investment adviser or principal underwriter of the Fund;

e. An investment adviser or principal underwriter of the Fund;

f. An officer of an investment adviser or principal underwriter of the Fund;

g. A person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Fund; or

h. An officer of a person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Fund.

*Instructions.*

1. Include the name of each director or immediate family member whose interest in any transaction or series of similar transactions is described and the nature of the circumstances by reason of which the interest is required to be described.

2. State the nature of the interest, the approximate dollar amount involved in the transaction, and, where practicable, the approximate dollar amount of the interest.

3. In computing the amount involved in the transaction or series of similar transactions, include all periodic payments in the case of any lease or other agreement providing for periodic payments.

4. Compute the amount of the interest of any director or immediate family member of the director without regard to the amount of profit or loss involved in the transaction(s).

5. As to any transaction involving the purchase or sale of assets, state the cost of the assets to the purchaser and, if acquired by the seller within two years

prior to the transaction, the cost to the seller. Describe the method used in determining the purchase or sale price and the name of the person making the determination.

6. Disclose indirect, as well as direct, material interests in transactions. A person who has a position or relationship with, or interest in, a company that engages in a transaction with one of the persons listed in paragraphs 10.a through 10.h of this Item 18 may have an indirect interest in the transaction by reason of the position, relationship, or interest. The interest in the transaction, however, will not be deemed “material” within the meaning of paragraph 10 of this Item 18 where the interest of the director or immediate family member arises solely from the holding of an equity interest (including a limited partnership interest, but excluding a general partnership interest) or a creditor interest in a company that is a party to the transaction with one of the persons specified in paragraphs 10.a through 10.h of this Item 18, and the transaction is not material to the company.

7. The materiality of any interest is to be determined on the basis of the significance of the information to investors in light of all the circumstances of the particular case. The importance of the interest to the person having the interest, the relationship of the parties to the transaction with each other, and the amount involved in the transaction are among the factors to be considered in determining the significance of the information to investors.

8. No information need be given as to any transaction where the interest of the director or immediate family member arises solely from the ownership of securities of a person specified in paragraphs 10.a through 10.h of this Item 18 and the director or immediate family member receives no extra or special benefit not shared on a pro rata basis by all holders of the class of securities.

9. Transactions include loans, lines of credit, and other indebtedness. For indebtedness, indicate the largest aggregate amount of indebtedness outstanding at any time during the period, the nature of the indebtedness and the transaction in which it was incurred, the amount outstanding as of the end of the most recently completed calendar year, and the rate of interest paid or charged.

10. No information need be given as to any routine, retail transaction. For example, the Fund need not disclose that a director has a credit card, bank or brokerage account, residential mortgage,

or insurance policy with a person specified in paragraphs 10.a through 10.h of this Item 18 unless the director is accorded special treatment.

11. Describe briefly any direct or indirect relationship, in which the amount involved exceeds \$120,000, of any director who is not an interested person of the Fund, as defined in Section 2(a)(19) of the Investment Company Act and the rules thereunder, or immediate family member of the director, that existed at any time during the two most recently completed calendar years, with any of the persons specified in paragraphs 10.a through 10.h of this Item 18. Relationships include:

a. Payments for property or services to or from any person specified in paragraphs 10.a through 10.h of this Item 18;

b. Provision of legal services to any person specified in paragraphs 10.a through 10.h of this Item 18;

c. Provision of investment banking services to any person specified in paragraphs 10.a through 10.h of this Item 18, other than as a participating underwriter in a syndicate; and

d. Any consulting or other relationship that is substantially similar in nature and scope to the relationships listed in paragraphs 11.a through 11.c of this Item 18.

*Instructions.*

1. Include the name of each director or immediate family member whose relationship is described and the nature of the circumstances by reason of which the relationship is required to be described.

2. State the nature of the relationship and the amount of business conducted between the director or immediate family member and the person specified in paragraphs 10.a through 10.h of this Item 18 as a result of the relationship during the two most recently completed calendar years.

3. In computing the amount involved in a relationship, include all periodic

payments in the case of any agreement providing for periodic payments.

4. Disclose indirect, as well as direct, relationships. A person who has a position or relationship with, or interest in, a company that has a relationship with one of the persons listed in paragraphs 10.a through 10.h of this Item 18 may have an indirect relationship by reason of the position, relationship, or interest.

5. In determining whether the amount involved in a relationship exceeds \$120,000, amounts involved in a relationship of the director should be aggregated with those of his immediate family members.

6. In the case of an indirect interest, identify the company with which a person specified in paragraphs 10.a through 10.h of this Item 18 has a relationship; the name of the director or immediate family member affiliated with the company and the nature of the affiliation; and the amount of business conducted between the company and the person specified in paragraphs 10.a through 10.h of this Item 18 during the two most recently completed calendar years.

7. In calculating payments for property and services for purposes of paragraph 11.a of this Item 18, the following may be excluded:

a. Payments where the transaction involves the rendering of services as a common contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority; or

b. Payments that arise solely from the ownership of securities of a person specified in paragraphs 10.a through 10.h of this Item 18 and no extra or special benefit not shared on a pro rata basis by all holders of the class of securities is received.

8. No information need be given as to any routine, retail relationship. For example, the Fund need not disclose that a director has a credit card, bank or brokerage account, residential mortgage,

or insurance policy with a person specified in paragraphs 10.a through 10.h of this Item 18 unless the director is accorded special treatment.

12. If an officer of an investment adviser or principal underwriter of the Fund, or an officer of a person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Fund, served during the two most recently completed calendar years, on the board of directors of a company where a director of the Fund who is not an interested person of the Fund, as defined in Section 2(a)(19) of the Investment Company Act and the rules thereunder, or immediate family member of the director, was during the two most recently completed calendar years, an officer, identify:

a. The company;

b. The individual who serves or has served as a director of the company and the period of service as director;

c. The investment adviser or principal underwriter or person controlling, controlled by, or under common control with the investment adviser or principal underwriter where the individual named in paragraph 12.b of this Item 18 holds or held office and the office held; and

d. The director of the Fund or immediate family member who is or was an officer of the company; the office held; and the period of holding the office.

13. In the case of a Fund that is not a business development company, provide the following for all directors of the Fund, all members of the advisory board of the Fund, and for each of the three highest paid officers or any affiliated person of the Fund with aggregate compensation from the Fund for the most recently completed fiscal year in excess of \$60,000 ("Compensated Persons").

a. Furnish the information required by the following table:

COMPENSATION TABLE

(1)	(2)	(3)	(4)	(5)
Name of Person, Position	Aggregate Compensation From Fund	Pension or Retirement Benefits Accrued As Part of Fund Expenses	Estimated Annual Benefits Upon Retirement	Total Compensation From Fund and Fund Complex Paid to Directors

*Instructions.*

1. For column (1), indicate, if necessary, the capacity in which the remuneration is received. For Compensated Persons that are directors of the Fund, compensation is amounts received for service as a director.

2. If the Fund has not completed its first full year since its organization, furnish the information for the current fiscal year, estimating future payments that would be made pursuant to an existing agreement or understanding. Disclose in a footnote to the

Compensation Table the period for which the information is furnished.

3. Include in column (2) amounts deferred at the election of the Compensated Person, whether pursuant to a plan established under Section 401(k) of the Internal Revenue Code [26

U.S.C. 401(k)] or otherwise for the fiscal year in which earned. Disclose in a footnote to the Compensation Table the total amount of deferred compensation (including interest) payable to or accrued for any Compensated Person.

4. Include in columns (3) and (4) all pension or retirement benefits proposed to be paid under any existing plan in the event of retirement at normal retirement date, directly or indirectly, by the Fund, any of its subsidiaries, or other companies in the Fund Complex. Omit column (4) where retirement benefits are not determinable.

5. For any defined benefit or actuarial plan under which benefits are determined primarily by final compensation (or average final compensation) and years of service, provide the information required in column (4) in a separate table showing estimated annual benefits payable upon retirement (including amounts attributable to any defined benefit supplementary or excess pension award plans) in specified compensation and years of service classifications. Also provide the estimated credited years of service for each Compensated Person.

6. Include in column (5) only aggregate compensation paid to a director for service on the board and all other boards of investment companies in a Fund Complex specifying the number of such other investment companies.

b. Describe briefly the material provisions of any pension, retirement, or other plan or any arrangement other than fee arrangements disclosed in paragraph (a) pursuant to which Compensated Persons are or may be compensated for any services provided, including amounts paid, if any, to the Compensated Person under any such arrangements during the most recently completed fiscal year. Specifically include the criteria used to determine amounts payable under the plan, the length of service or vesting period required by the plan, the retirement age or other event which gives rise to payments under the plan, and whether the payment of benefits is secured or funded by the Fund.

14. In the case of a Fund that is a business development company, provide the information required by Item 402 of Regulation S-K [17 CFR 229.402].

15. *Codes of Ethics.* Provide a brief statement disclosing whether the Fund and its investment adviser and principal underwriter have adopted codes of ethics under Rule 17j-1 under the Investment Company Act and whether these codes of ethics permit personnel subject to the codes to invest in

securities, including securities that may be purchased or held by the Fund. Also, explain in the statement that these codes of ethics are available on the EDGAR Database on the Commission's internet site at <http://www.sec.gov>, and that copies of these codes of ethics may be obtained, after paying a duplicating fee, by electronic request at the following email address: [publicinfo@sec.gov](mailto:publicinfo@sec.gov).

*Instruction.* A Fund that is not required to adopt a code of ethics under Rule 17j-1 under the Investment Company Act is not required to respond to this Item.

16. Unless the Fund invests exclusively in non-voting securities, describe the policies and procedures that the Fund uses to determine how to vote proxies relating to portfolio securities, including the procedures that the Fund uses when a vote presents a conflict between the interests of the Fund's shareholders, on the one hand, and those of the Fund's investment adviser; principal underwriter; or any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act and the rules thereunder) of the Fund, its investment adviser, or its principal underwriter, on the other. Include any policies and procedures of the Fund's investment adviser, or any other third party, that the Fund uses, or that are used on the Fund's behalf, to determine how to vote proxies relating to portfolio securities. Also, state that information regarding how the Fund voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; sending an email to a specified email address, if any; or on or through the Fund's website at a specified internet address; and (ii) on the Commission's website at <http://www.sec.gov>.

*Instructions.*

1. A Fund may satisfy the requirement to provide a description of the policies and procedures that it uses to determine how to vote proxies relating to portfolio securities by including a copy of the policies and procedures themselves.

2. If a Fund discloses that the Fund's proxy voting record is available by calling a toll-free (or collect) telephone number or sending an email to a specified email address, if any, and the Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for this information, the Fund (or financial intermediary) must send the information disclosed in the Fund's most recently filed report on Form N-PX, within 3 business days of receipt of

the request, by first-class mail or other means designed to ensure equally prompt delivery.

3. If a Fund discloses that the Fund's proxy voting record is available on or through its website, the Fund must make available free of charge the information disclosed in the Fund's most recently filed report on Form N-PX on or through its website as soon as reasonably practicable after filing the report with the Commission. The information disclosed in the Fund's most recently filed report on Form N-PX must remain available on or through the Fund's website for as long as the Fund remains subject to the requirements of Rule 30b1-4 under the Investment Company Act and discloses that the Fund's proxy voting record is available on or through its website.

17. For each director, briefly discuss the specific experience, qualifications, attributes, or skills that led to the conclusion that the person should serve as a director for the Fund at the time that the disclosure is made, in light of the Fund's business and structure. If material, this disclosure should cover more than the past five years, including information about the person's particular areas of expertise or other relevant qualifications.

#### *Item 19. Control Persons and Principal Holders of Securities*

Furnish the following information as of a specified date no more than 30 days prior to the date of filing of the registration statement or amendment to it.

1. State the name and address of each person who controls the Fund, and briefly explain the effect of such control on the voting rights of other shareholders. For each control person, state the percentage of the Fund's voting securities owned or any other basis of control. If the control person is a company, disclose the state or other jurisdiction under the laws of which it is organized. List all parents of each control person.

*Instructions.*

1. The term "control" is defined in the instruction to Item 9.3 of this Form.

2. A Fund that is controlled by its adviser or underwriter(s) before the effective date of the registration statement need not respond to this Item if, immediately after the public offering, there will be no control person.

2. State the name, address, and percentage of ownership of each person who owns of record or is known by the Fund to own of record or beneficially five percent or more of any class of the Fund's outstanding equity securities.

*Instructions.*

1. Calculate the percentages on the basis of the amount of common stock outstanding.

2. If securities are being registered in connection with or pursuant to a plan of acquisition, reorganization, readjustment, or succession, indicate, to the extent practicable, the status to exist upon consummation of the plan on the basis of present holdings and commitments.

3. If, to the knowledge of the Fund or any principal underwriter of its securities, five percent or more of any class of voting securities of the Fund are or will be held subject to any voting trust or other similar agreement, disclose this fact.

4. Indicate whether the securities are owned both of record and beneficially, or of record only, or beneficially only, and disclose the respective percentage owned in each manner.

3. Disclose all equity securities of the Fund owned by all officers, directors, and members of the advisory board of the Fund as a group, without naming them. In any case where the amount owned by directors and officers as a group is less than one percent of the class, a statement to that effect is sufficient.

#### *Item 20. Investment Advisory and Other Services*

1. Furnish the following information about each investment adviser:

- a. The names of all controlling persons, the basis of such control, and, if material, the business history of any organization that controls the adviser;
- b. the names of any affiliated person of the Fund who is also an affiliated person of the investment adviser and a list of all capacities in which such person named is affiliated with the Fund and/or with the investment adviser; and

*Instruction.* If an affiliated person of the Fund, either alone or together with others, is a controlling person of the investment adviser, the Fund must disclose that fact but need not supply the specific amount of percentage of the outstanding voting securities of the investment adviser that are owned by the controlling person.

c. the method of computing the advisory fee payable by the Fund, including:

- (1) The total dollar amounts paid to the adviser by the Fund under the investment advisory contract for the last three fiscal years;
- (2) if applicable, any credits that reduced the advisory fee for any of the last fiscal years; and
- (3) any expense limitation provision.

#### *Instructions.*

1. If the advisory fee payable by the Fund varies depending on the Fund's investment performance in relation to some standard, set forth the standard along with a fee schedule in tabular form. The Fund may include examples showing the fees the adviser would earn at various levels of performance, but such examples must include calculations showing the maximum and minimum fee percentages that could be earned under the contract.

2. State each type of credit or offset separately.

3. Where the Fund is subject to more than one expense limitation provision, describe only the most restrictive provision.

2. Concisely describe all services performed for or on behalf of the Fund that are supplied or paid for wholly or in substantial part by the investment adviser in connection with the investment advisory contract.

3. Describe briefly all fees, expenses, and costs of the Fund that are to be paid by persons other than the investment adviser or the Fund, and identify such persons.

4. Summarize any management-related service contract under which services are provided to the Fund that is not otherwise disclosed in response to an Item of this Form and may be of interest to a purchaser of the Fund's securities, indicating the parties to the contract and the total dollars paid, and by whom, for the past three years.

#### *Instructions.*

1. A "management-related service contract" includes any agreement whereby another person contracts with the Fund to keep, prepare, and/or file accounts, books, records, or other documents that the Fund may be required to keep under federal or state law, or to provide any similar services with respect to the daily administration of the Fund, but does not include the following: (1) Any contract with the Fund to provide investment advice; (2) any agreement to act as custodian, transfer agent, or dividend-paying agent; and (3) bona fide contracts for outside legal or auditing services, or bona fide contracts for personal employment entered into in the ordinary course of business.

2. No information is required about the service of mailing proxies or periodic reports to shareholders of the Fund.

3. In summarizing the substantive provisions of a management-related service contract, include: (1) The name of the person providing the service; (2) any direct or indirect relationship of that person with the Fund, its investment adviser, or its principal

underwriter; (3) the nature of the services provided; and (4) the basis of the compensation paid for the last three fiscal years.

5. If any person (other than a bona fide director, officer, member of an advisory board, employee of the Fund, or a person named as an investment adviser in response to paragraph 1 of this Item), pursuant to any understanding, whether formal or informal, regularly furnishes advice to the Fund or the investment adviser of the Fund with respect to the desirability of the Fund's investing in, purchasing, or selling securities or other property, or is empowered to determine which securities or other property should be purchased or sold by the Fund, and receives direct or indirect remuneration from the Fund, furnish the following information:

- a. The name of the person;
- b. a description of the nature of the arrangement and the advice or information given; and
- c. any remuneration (including, for example, participation, directly or indirectly, in commissions or other compensation paid in connection with transactions in the Fund's portfolio securities) paid for the advice or information, and a statement as to how and by whom such remuneration was paid for the last three fiscal years.

*Instruction.* No information is required with respect to any of the following:

1. Persons whose advice was furnished solely through uniform publications distributed to subscribers;
2. persons who furnished only statistical and other factual information, advice regarding economic factors and trends, or advice as to occasional transactions in specific securities, but without generally furnishing advice or making recommendations regarding the purchase or sale of securities by the Fund;
3. a company that is excluded from the definition of "investment adviser" of an investment company by reason of Section 2(a)(20)(iii) of the Investment Company Act;
4. any person the character and amount of whose compensation for such service must be approved by a court; or
5. such other persons as the Commission has by rules and regulations or order determined not to be an "investment adviser" of an investment company.

6. Furnish the name and principal business address of each of the Fund's custodians, the nature of the business of each such person, and a general description of the services performed by each.



7. Furnish the name and principal business address of the Fund's independent public accountant, and provide a general description of the services performed by such person.

8. If an affiliated person of the Fund, or an affiliated person of an affiliated person of the Fund, acts as custodian, transfer agent, or dividend-paying agent for the Fund, furnish a description of the services performed by that person and the basis for remuneration (e.g., the method by which that person's fee is calculated).

#### *Item 21. Portfolio Managers*

1. *Other Accounts Managed.* If a Portfolio Manager required to be identified in response to Item 9.1.c is primarily responsible for the day-to-day management of the portfolio of any other account, provide the following information:

- a. The Portfolio Manager's name;
- b. The number of other accounts managed within each of the following categories and the total assets in the accounts managed within each category:
  - (1) Registered investment companies;
  - (2) Other pooled investment vehicles; and
  - (3) Other accounts.
- c. For each of the categories in Item 21.1.b, the number of accounts and the total assets in the accounts with respect to which the advisory fee is based on the performance of the account; and
- d. A description of any material conflicts of interest that may arise in connection with the Portfolio Manager's management of the Fund's investments, on the one hand, and the investments of the other accounts included in response to Item 21.1.b, on the other. This description would include, for example, material conflicts between the investment strategy of the Fund and the investment strategy of other accounts managed by the Portfolio Manager and material conflicts in allocation of investment opportunities between the Fund and other accounts managed by the Portfolio Manager.

##### *Instructions.*

1. Provide the information required by Item 21.1 as of the end of the Fund's most recently completed fiscal year, except that, in the case of an initial registration statement or an update to the Fund's registration statement that discloses a new Portfolio Manager, information with respect to any newly identified Portfolio Manager must be provided as of the most recent practicable date. Disclose the date as of which the information is provided.

2. If a committee, team, or other group of persons that includes the Portfolio Manager is jointly and primarily

responsible for the day-to-day management of the portfolio of an account, include the account in responding to Item 21.1.

2. *Compensation.* Describe the structure of, and the method used to determine, the compensation of each Portfolio Manager required to be identified in response to Item 9.1.c. For each type of compensation (e.g., salary, bonus, deferred compensation, retirement plans and arrangements), describe with specificity the criteria on which that type of compensation is based, for example, whether compensation is fixed, whether (and, if so, how) compensation is based on the Fund's pre- or after-tax performance over a certain time period, and whether (and, if so, how) compensation is based on the value of assets held in the Fund's portfolio. For example, if compensation is based solely or in part on performance, identify any benchmark used to measure performance and state the length of the period over which performance is measured.

##### *Instructions.*

1. Provide the information required by Item 21.2 as of the end of the Fund's most recently completed fiscal year, except that, in the case of an initial registration statement or an update to the Fund's registration statement that discloses a new Portfolio Manager, information with respect to any newly identified Portfolio Manager must be provided as of the most recent practicable date. Disclose the date as of which the information is provided.

2. Compensation includes, without limitation, salary, bonus, deferred compensation, and pension and retirement plans and arrangements, whether the compensation is cash or non-cash. Group life, health, hospitalization, medical reimbursement, and pension and retirement plans and arrangements may be omitted, provided that they do not discriminate in scope, terms, or operation in favor of the Portfolio Manager or a group of employees that includes the Portfolio Manager and are available generally to all salaried employees. The value of compensation is not required to be disclosed under this Item.

3. Include a description of the structure of, and the method used to determine, any compensation received by the Portfolio Manager from the Fund, the Fund's investment adviser, or any other source with respect to management of the Fund and any other accounts included in the response to Item 21.1.b. This description must clearly disclose any differences between the method used to determine the Portfolio Manager's compensation with

respect to the Fund and other accounts, e.g., if the Portfolio Manager receives part of an advisory fee that is based on performance with respect to some accounts but not the Fund, this must be disclosed.

3. *Ownership of Securities.* For each Portfolio Manager required to be identified in response to Item 9.1.c, state the dollar range of equity securities in the Fund beneficially owned by the Portfolio Manager using the following ranges: None; \$1–\$10,000; \$10,001–\$50,000; \$50,001–\$100,000; \$100,001–\$500,000; \$500,001–\$1,000,000; or over \$1,000,000.

##### *Instructions.*

1. Provide the information required by Item 21.3 as of the end of the Fund's most recently completed fiscal year, except that, in the case of an initial registration statement or an update to the Fund's registration statement that discloses a new Portfolio Manager, information with respect to any newly identified Portfolio Manager must be provided as of the most recent practicable date. Specify the valuation date.

2. Determine "beneficial ownership" in accordance with Rule 16a-1(a)(2) under the Exchange Act.

#### *Item 22. Brokerage Allocation and Other Practices*

1. Concisely describe how transactions in portfolio securities are or will be effected. Provide a general statement about brokerage commissions and mark-ups on principal transactions and the aggregate amount of any brokerage commissions paid by the Fund during the three most recent fiscal years. Concisely explain any material change in brokerage commissions paid by the Fund during the most recent fiscal year as compared to the two prior fiscal years.

2. a. State the total dollar amount, if any, of brokerage commissions paid by the Fund during the three most recent fiscal years to any broker that: (1) Is an affiliated person of the Fund; (2) is an affiliated person of an affiliated person of the Fund; or (3) has an affiliated person that is an affiliated person of the Fund, its investment adviser, or principal underwriter. In the case of an initial public offering, disclose whether or not the Fund intends to use any brokers described in this subparagraph, a. Identify each broker, and state the relationships that cause the broker to be identified in this Item.

b. State for each broker identified in response to paragraph 2.a of this Item:

- (1) The percentage of the Fund's aggregate brokerage commissions paid

to the broker during the most recent fiscal year; and

(2) the percentage of the Fund's aggregate dollar amount of transactions involving the payment of commissions effected through the broker during the most recent fiscal year.

c. Where there is a material difference in the percentage of brokerage commissions paid to, and the percentage of transactions effected through, any broker identified in response to paragraph 2.a of this Item, state the reasons for the difference.

3. Describe briefly how brokers will be selected to effect securities transactions for the Fund and how evaluations will be made of the overall reasonableness of brokerage commissions paid, including the factors considered.

*Instructions.*

1. If the receipt of products or services other than brokerage or research services is a factor considered in the selection of brokers, specify the products and services.

2. If the receipt of research services is a factor in selecting brokers, identify the nature of the research services.

3. State whether persons acting on behalf of the Fund are authorized to pay a broker a commission in excess of that which another broker might have charged for effecting the same transaction because of the value of brokerage or research services provided by the broker.

4. If applicable, explain that research services furnished by brokers through whom the Fund effects securities transactions may be used by the Fund's investment adviser in servicing all of its accounts and that not all the services may be used by the investment adviser in connection with the Fund; or, if other policies or practices are applicable to the Fund with respect to the allocation of research services provided by brokers, concisely explain the policies and practices.

5. Funds should refer to Rule 17e-1 under the Investment Company Act with respect to securities transactions executed by exchange members.

4. If during the last fiscal year the Fund or its investment adviser, pursuant to an agreement or understanding with a broker or otherwise through an internal allocation procedure, directed the Fund's brokerage transactions to a broker because of research services provided, state the amount of the transactions and related commissions.

5. If the Fund has acquired during its most recent fiscal year or during the period of time since organization, whichever is shorter, securities of its

regular brokers or dealers, as defined in Rule 10b-1 under the Investment Company Act, or their parents, identify those brokers or dealers, and state the value of the Fund's aggregate holdings of the securities of each subject issuer as of the close of the Fund's most recent fiscal year.

*Instruction.* The Fund need only disclose information with respect to the parent of a broker or dealer that derived more than fifteen percent of its gross revenues from the business of a broker, a dealer, an underwriter, or an investment adviser.

*Item 23. Tax Status*

Provide information about the Fund's tax status that is not required to be in the prospectus but that the Fund believes is of interest to investors, including, but not limited to, an explanation of the legal basis for the Fund's tax status. If the Fund is qualified or intends to qualify under Subchapter M of the Internal Revenue Code and has not disclosed that fact in the prospectus, then disclosure of that fact will be sufficient. If not otherwise disclosed, concisely describe any special or unusual tax aspects of the Fund, e.g., taxes resulting from foreign investment or from status as a personal holding company, or any tax loss carry-forward to which the Fund may be entitled.

*Item 24. Financial Statements*

Provide the financial statements of the Fund.

*Instructions.*

1. a. Furnish, in a separate section following the responses to the above items in Part B of the registration statement, the financial statements and schedules required by Regulation S-X [17 CFR part 210]. (See Section 210.3-18 and Sections 210.6-01 through 210.6-10 of Regulation S-X.)

b. A business development company that has had at least one fiscal year of operations need provide financial statements under Item 8.6.c of Part A only. A business development company with less than one fiscal year of operations should refer to Item 8.6.c of Part A and Instructions 1 and 2 thereunder in responding to this Item 24.

2. Notwithstanding the requirements of Instruction 1 above, the following statements and schedules required by Regulation S-X may be omitted from Part B and included in Part C of the registration statement:

a. The statement of any subsidiary that is not a majority-owned subsidiary; and

b. Columns C and D of Schedule III [17 CFR 210.12-14].

3. In addition to the requirements of Rule 3-18 of Regulation S-X [17 CFR 210.3-18], any company registered under the Investment Company Act that has not previously had an effective registration statement under the Securities Act shall include in its initial registration statement under the Securities Act such additional financial statements and financial highlights (which need not be audited) as are necessary to make the financial statements and financial highlights included in the registration statement as of a date within 90 days prior to the date of filing.

4. Every annual report to shareholders required by Section 30(e) of the Investment Company Act and Rule 30e-1 thereunder shall contain the following information:

a. The audited financial statements required by Regulation S-X for the periods specified by Regulation S-X, modified to permit the omission of the statements and schedules that may be omitted from Part B of the registration statement by Instruction 2 above and as permitted by Instruction 7 below;

b. the financial highlights required by Item 4.1 of this Form, for the five most recent fiscal years, with at least the most recent year audited;

c. unless shown elsewhere in the report as part of the financial statements required by a above, the aggregate remuneration paid by the company during the period covered by the report (1) to all directors and to all members of any advisory board for regular compensation; (2) to each director and to each member of an advisory board for special compensation; (3) to all officers; and (4) to each person of whom any officer or director of the company is an affiliated person;

d. the information concerning changes in and disagreements with accountants and on accounting and financial disclosure required by Item 304 of Regulation S-K [17 CFR 229.304];

e. the management information required by paragraph 1 of Item 18; and

f. a statement that the SAI includes additional information about directors of the Fund and is available, without charge, upon request, and a toll-free (or collect) telephone number and email address, if any, for shareholders to use to request the SAI.

g. *Management's Discussion of Fund Performance.* Disclose the following information:

(1) Discuss the factors that materially affected the Fund's performance during the most recently completed fiscal year, including the relevant market

conditions and the investment strategies and techniques used by the Fund. The information presented may include tables, charts, and other graphical depictions.

(2) (A) Provide 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 (or for the life of the Fund, if shorter), but only for periods subsequent to the effective date of the Fund's registration statement. Assume a \$10,000 initial investment at the beginning of the first fiscal year in an appropriate broad-based securities market index for the same period.

1. *Line Graph Computation.*

(a) Assume that the initial investment was made at the offering price last calculated on the business day before the first day of the first fiscal year.

(b) Base subsequent account values on the market price (or, if shares are not listed, the net asset value) of the Fund on the last business day of the first and each subsequent fiscal year.

(c) Calculate the final account value by assuming the account was closed and sale was at the market price (or, if shares are not listed, the net asset value) on the last business day of the most recent fiscal year.

(d) Base the line graph on the Fund's required minimum initial investment if that amount exceeds \$10,000.

2. *Multiple Class Funds.* The Fund can select which Class to include, consistent with the requirements of Instruction 3(a) to Item 4(b)(2) of Form N-1A.

(B) In a table placed within or next to the graph, provide the Fund's average annual total returns for the 1-, 5-, and 10-year periods as of the end of the last day of the most recent fiscal year (or for the life of the Fund, if shorter), but only for periods subsequent to the effective date of the Fund's registration statement. Average annual total returns should be computed in accordance with Item 26(b)(1) of Form N-1A, except with respect to reinvestments of dividends and distributions, which must be calculated consistent with Item 4 of this Form. Include a statement accompanying the graph and table to the effect that past performance does not predict future performance and that the graph and table do not reflect the deduction of taxes that a shareholder would pay on fund distributions or the sale of fund shares.

(C) *Sales Load.* Reflect any sales load (or any other fees charged at the time of purchasing shares or opening an account) by beginning the line graph at the amount that actually would be invested (*i.e.*, assume that the maximum

sales load, and other charges deducted from payments, is deducted from the initial \$10,000 investment). For a Fund whose shares are subject to a contingent deferred sales load, assume the deduction of the maximum deferred sales load (or other charges) that would apply for a complete sale that received the market price (or, if shares are not listed, the net asset value) on the last business day of the most recent fiscal year. For any other deferred sales load, repurchase fee, or withdrawal charge, assume that the deduction is in the amount(s) and at the time(s) that the sales load, repurchase fee, or withdrawal charge actually would have been deducted.

(D) *Dividends and Distributions.*

Assume reinvestment of all of the Fund's dividends and distributions on the reinvestment dates during the period, and reflect any sales load imposed upon reinvestment of dividends or distributions or both.

(E) *Account Fees.* Reflect recurring fees that are charged to all accounts.

1. For any account fees that vary with the size of the account, assume a \$10,000 account size.

2. Reflect, as appropriate, any recurring fees charged to shareholder accounts that are paid other than by sale of the Fund's shares.

3. Reflect an annual account fee that applies to more than one Fund by allocating the fee in the following manner: Divide the total amount of account fees collected during the year by the Funds' total average market price, multiply the resulting percentage by the average account value for each Fund and reduce the value of each hypothetical account at the end of each fiscal year during which the fee was charged.

(F) *Appropriate Index.* For purposes of this Item, an "appropriate broad-based securities market index" is one that is administered by an organization that is not an affiliated person of the Fund, its investment adviser, or principal underwriter, unless the index is widely recognized and used. Adjust the index to reflect the reinvestment of dividends on securities in the index, but do not reflect the expenses of the Fund.

(G) *Additional Indexes.* A Fund is encouraged to compare its performance not only to the required broad-based index, but also to other more narrowly based indexes that reflect the market sectors in which the Fund invests. A Fund also may compare its performance to an additional broad-based index, or to a non-securities index (*e.g.*, the Consumer Price Index), so long as the comparison is not misleading.

(H) *Change in Index.* If the Fund uses an index that is different from the one used for the immediately preceding fiscal year, explain the reason(s) for the change and compare the Fund's annual change in the value of an investment in the hypothetical account with the new and former indexes.

(I) *Other Periods.* The line graph may cover earlier fiscal years and may compare the ending values of interim periods (*e.g.*, monthly or quarterly ending values), so long as those periods are after the effective date of the Fund's registration statement.

(J) *Scale.* The axis of the graph measuring dollar amounts may use either a linear or a logarithmic scale.

(K) *New Funds.* A New Fund is not required to include the information specified by this Item in its prospectus (or annual report), unless Form N-2 (or the annual report) contains audited financial statements covering a period of at least 6 months.

(L) *Change in Investment Adviser.* If the Fund has not had the same investment adviser for the previous 10 fiscal years, the Fund may begin the line graph on the date that the current adviser began to provide advisory services to the Fund so long as:

1. Neither the current adviser nor any affiliate is or has been in "control" of the previous adviser under Section 2(a)(9) of the Investment Company Act;

2. The current adviser employs no officer(s) of the previous adviser or employees of the previous adviser who were responsible for providing investment advisory or portfolio management services to the Fund; and

3. The graph is accompanied by a statement explaining that previous periods during which the Fund was advised by another investment adviser are not shown.

(3) Discuss the effect of any policy or practice of maintaining a specified level of distributions to shareholders on the Fund's investment strategies and per share net asset value during the last fiscal year. Also discuss the extent to which the Fund's distribution policy resulted in distributions of capital.

h. If the Fund has filed a registration statement pursuant to General Instruction A.2:

(1) *Senior Securities.* Include the information required by Item 4.3.

(2) *Fee and Expense Table.* Include the information required by Item 3.1.

(3) *Share Price Data.* Include the information required by Item 8.5.

(4) *Unresolved Staff Comments.* If the Fund has received written comments from the Commission staff regarding its periodic or current reports under the Exchange Act or Investment Company

Act or its registration statement not less than 180 days before the end of its fiscal period to which the annual report relates, and such comments remain unresolved, disclose the substance of any such unresolved comments that the Fund believes are material. Such disclosure may provide other information including the position of the Fund with respect to any such comment.

5. Every report to shareholders required by Section 30(e) of the Investment Company Act and Rule 30e-1 thereunder, except the annual report, shall contain the following information (which need not be audited):

a. The financial statements required by Regulation S-X for the period commencing either with (1) the beginning of the company's fiscal year (or date of organization, if newly organized); or (2) a date not later than the date after the close of the period included in the last report conforming with the requirements of Rule 30e-1 and the most recent preceding fiscal year, modified to permit the omission of the statements and schedules that may be omitted from Part B of the registration statement by Instruction 2 above and as permitted by Instruction 7 below;

b. the financial highlights required by Item 4.1 of this Form, for the period of the report as specified by subparagraph a of this instruction, and the most recent preceding fiscal year;

c. unless shown elsewhere in the report as part of the financial statements required by subparagraph a of this instruction, the aggregate remuneration paid by the company during the period covered by the report (1) to all directors and to all members of any advisory board for regular compensation; (2) to each director and to each member of an advisory board for special compensation; (3) to all officers; and (4) to each person of whom an officer or director of the company is an affiliated person; and

d. the information concerning changes in and disagreements with accountants and on accounting and financial disclosure required by Item 304 of Regulation S-K.

6. Every annual and semi-annual report to shareholders required by Section 30(e) of the Investment Company Act and Rule 30e-1 thereunder shall contain the following information:

a. One or more tables, charts, or graphs depicting the portfolio holdings of the Fund by reasonably identifiable categories (e.g., type of security, industry sector, geographic region, credit quality, or maturity) showing the

percentage of net asset value or total investments attributable to each. The categories and the basis of presentation (e.g., net asset value or total investments) should be selected, and the presentation should be formatted, in a manner reasonably designed to depict clearly the types of investments made by the Fund, given its investment objectives. If the Fund depicts portfolio holdings according to credit quality, it should include a description of how the credit quality of the holdings were determined, and if credit ratings, as defined in Section 3(a)(60) of the Exchange Act, assigned by a credit rating agency, as defined in Section 3(a)(61) of the Exchange Act, are used, explain how they were identified and selected. This description should be included near, or as part of, the graphical representation.

b. *Statement Regarding Availability of Quarterly Portfolio Schedule.* A statement that: (i) The Fund files its complete schedule of portfolio holdings with the SEC for the first and third quarters of each fiscal year as an exhibit to its reports on Form N-PORT; (ii) the Fund's Form N-PORT reports are available on the Commission's website at <http://www.sec.gov>; (iii) if the Fund makes the information on Form N-PORT available to shareholders on its website or upon request, a description of how the information may be obtained from the Fund.

c. A statement that a description of the policies and procedures that the Fund uses to determine how to vote proxies relating to portfolio securities is available (1) without charge, upon request, by calling a specified toll-free (or collect) telephone number or sending an email to a specified email address, if any; (2) on the Fund's website, if applicable; and (3) on the Commission's website at <http://www.sec.gov>; and

d. A statement that information regarding how the Fund voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (1) without charge, upon request, by calling a specified toll-free (or collect) telephone number; sending an email to a specified email address, if any; or on or through the Fund's website at a specified internet address; and (2) on the Commission's website at <http://www.sec.gov>.

e. If the Fund's board of directors approved any investment advisory contract during the Fund's most recent fiscal half-year, discuss in reasonable detail the material factors and the conclusions with respect thereto that formed the basis for the board's

approval. Include the following in the discussion:

(1) Factors relating to both the board's selection of the investment adviser and approval of the advisory fee and any other amounts to be paid by the Fund under the contract. This would include, but not be limited to, a discussion of the nature, extent, and quality of the services to be provided by the investment adviser; the investment performance of the Fund and the investment adviser; the costs of the services to be provided and profits to be realized by the investment adviser and its affiliates from the relationship with the Fund; the extent to which economies of scale would be realized as the Fund grows; and whether fee levels reflect these economies of scale for the benefit of the Fund's investors. Also indicate in the discussion whether the board relied upon comparisons of the services to be rendered and the amounts to be paid under the contract with those under other investment advisory contracts, such as contracts of the same and other investment advisers with other registered investment companies or other types of clients (e.g., pension funds and other institutional investors). If the board relied upon such comparisons, describe the comparisons that were relied on and how they assisted the board in concluding that the contract should be approved; and

(2) If applicable, any benefits derived or to be derived by the investment adviser from the relationship with the Fund such as soft dollar arrangements by which brokers provide research to the Fund or its investment adviser in return for allocating the Fund's brokerage.

f. Board approvals covered by Instruction 6.e to this Item include both approvals of new investment advisory contracts and approvals of contract renewals. Investment advisory contracts covered by Instruction 6.e include subadvisory contracts. Conclusory statements or a list of factors will not be considered sufficient disclosure under Instruction 6.e. Relate the factors to the specific circumstances of the Fund and the investment advisory contract and state how the board evaluated each factor. For example, it is not sufficient to state that the board considered the amount of the investment advisory fee without stating what the board concluded about the amount of the fee and how that affected its decision to approve the contract. If any factor enumerated in Instruction 6.e(1) to this Item is not relevant to the board's evaluation of an investment advisory contract, note this and explain the reasons why the factor is not relevant.

g. Include on the front cover page or at the beginning of the annual or semi-annual report a statement to the following effect, if applicable:

Beginning on [date], as permitted by regulations adopted by the Securities and Exchange Commission, paper copies of the Fund's shareholder reports like this one will no longer be sent by mail, unless you specifically request paper copies of the reports from the Fund [or from your financial intermediary, such as a broker-dealer or bank]. Instead, the reports will be made available on a website, and you will be notified by mail each time a report is posted and provided with a website link to access the report.

If you already elected to receive shareholder reports electronically, you will not be affected by this change and you need not take any action. You may elect to receive shareholder reports and other communications from the Fund [or your financial intermediary] electronically by [insert instructions].

You may elect to receive all future reports in paper free of charge. You can inform the Fund [or your financial intermediary] that you wish to continue receiving paper copies of your shareholder reports by [insert instructions]. Your election to receive reports in paper will apply to all funds held with [the fund complex/your financial intermediary].

h. Disclose any information the Fund was required to disclose in a report on Form 8-K and that the Fund has not reported during the relevant period. If disclosure of such information is made under this instruction, it need not be repeated in a report on Form 8-K that would otherwise be required to be filed with respect to such information or in a subsequent annual or semi-annual report to shareholders.

i. A Fund that files a registration statement pursuant to General Instruction A.2, and includes in any annual or semi-annual report to shareholders or periodic report filed under the Exchange Act information not otherwise required to be included in the report in order to update the Fund's prospectus or SAI, must include a statement in the report identifying all information included for this purpose.

7. *Schedule IX—Summary schedule of investments in securities of unaffiliated issuers* [17 CFR 210.12–12C] may be included in the financial statements required under Instructions 4.a and 5.a of this Item in lieu of *Schedule I—Investments in securities of unaffiliated issuers* [17 CFR 210.12–12] if:

a. The Fund states in the report that the Fund's complete schedule of

investments in securities of unaffiliated issuers is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number or sending an email to a specified email address, if any; (ii) on the Fund's website, if applicable; and (iii) on the Commission's website at <http://www.sec.gov>; and

b. whenever the Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for the Fund's schedule of investments in securities of unaffiliated issuers, the Fund (or financial intermediary) sends a copy of Schedule I—Investments in securities of unaffiliated issuers within 3 business days of receipt by first-class mail or other means designed to ensure equally prompt delivery.

8. a. When a Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for a description of the policies and procedures that the Fund uses to determine how to vote proxies, the Fund (or financial intermediary) must send the information most recently disclosed in response to Item 18.16 of this Form or Item 7 of Form N-CSR within 3 business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

b. If a Fund discloses that the Fund's proxy voting record is available by calling a toll-free (or collect) telephone number or sending an email to a specified email address, if any, and the Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for this information, the Fund (or financial intermediary) must send the information disclosed in the Fund's most recently filed report on Form N-PX, within 3 business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

c. If a Fund discloses that the Fund's proxy voting record is available on or through its website, the Fund must make available free of charge the information disclosed in the Fund's most recently filed report on Form N-PX on or through its website as soon as reasonably practicable after filing the report with the Commission. The information disclosed in the Fund's most recently filed report on Form N-PX must remain available on or through the Fund's website for as long as the Fund remains subject to the requirements of Rule 30b1–4 under the Investment Company Act and discloses

that the Fund's proxy voting record is available on or through its website.

9. See General Instruction F regarding Incorporation by Reference.

10. Every annual report filed under the Exchange Act by a business development company must contain the information required by Instructions 4.b and 4.h, and every periodic report filed under the Exchange Act by a business development company must include the information required by Instruction 6.i, if applicable.

## Part C—Other Information

### Item 25. *Financial Statements and Exhibits*

List all financial statements and exhibits filed as part of the registration statement.

1. Financial statements.

*Instruction.* Identify those financial statements that are included in Parts A and B of the registration statement.

2. Exhibits.

Subject to General Instruction F regarding incorporation by reference and Rule 483 under the Securities Act, file the exhibits listed below as part of the registration statement. Letter or number the exhibits in the sequence indicated, unless otherwise required by Rule 483. Reflect any exhibit incorporated by reference in the list below and identify the previously filed document containing the incorporated material.

a. Copies of the charter as now in effect.

b. Copies of the existing bylaws or instruments corresponding thereto.

c. Copies of any voting trust agreement with respect to more than five percent of any class of equity securities of the Fund.

d. Copies of the constituent instruments defining the rights of the holders of the securities.

e. A copy of the document setting forth the Fund's dividend reinvestment plan, if any.

f. Copies of the constituent instruments defining the rights of the holders of long-term debt of all subsidiaries for which consolidated or unconsolidated financial statements are required to be filed (The instrument relating to any class of long-term debt of the Fund or any subsidiary need not be filed if the total amount of securities authorized thereunder amounts to less than two percent of the total assets of the Fund and its subsidiaries on a consolidated basis, and if the Fund files an agreement to furnish such copies to the Commission upon request.).

g. Copies of all investment advisory contracts relating to the management of the assets of the Fund.

h. Copies of each underwriting or distribution contract between the Fund and a principal underwriter, and specimens or copies of all agreements between principal underwriters and dealers.

i. Copies of all bonus, profit sharing, pension, or other similar contracts or arrangements wholly or partly for the benefit of directors or officers of the Fund in their capacity as such (a reasonably detailed description of any plan that is not set forth in a formal document should be furnished).

j. Copies of all custodian agreements and depository contracts entered into in conformance with Section 17(f) of the Investment Company Act or rules thereunder with respect to securities and similar investments of the Fund, including the schedule of remuneration.

k. Copies of all other material contracts not made in the ordinary course of business that are to be performed in whole or in part at or after the date of filing the registration statement.

l. An opinion of counsel and consent to its use as to the legality of the securities being registered, indicating whether they will be legally issued, fully paid, and nonassessable.

m. If a non-resident director, officer, investment adviser, or expert named in the registration statement has executed a consent to service of process within the United States, a copy of that consent to service.

n. Copies of any other opinions, appraisals, or rulings, and consents to their use, relied on in preparing the registration statement, and consents to the use of accountants' reports relating to audited financial statements required by Section 7 of the Securities Act.

o. All financial statements omitted from Items 8.6 or 24.

p. Copies of any agreements or understandings made in consideration for providing the initial capital between or among the Fund, the underwriter, adviser, promoter, or initial stockholders and written assurance from the promoters or initial stockholders that their purchases were made for investment purposes without any present intention of reselling.

q. Copies of the model plan used in the establishment of any retirement plan in conjunction with which the Fund offers its securities, any instructions to it, and any other documents making up the model plan (such form(s) should disclose the costs and fees charged in connection with the plan).

r. Copies of any codes of ethics adopted under Rule 17j-1 under the Investment Company Act and currently applicable to the Fund (*i.e.*, the codes of

the Fund and its investment advisers and principal underwriters). If there are no codes of ethics applicable to the Fund, state the reason (*e.g.*, the Fund is a Money Market Fund).

*Instructions.*

1. Subject to the rules on incorporation by reference and Instruction 2 below, the foregoing exhibits shall be filed as a part of the registration statement. Exhibits required by paragraphs 2.h, 2.l, 2.n, and 2.o above need to be filed only as part of a Securities Act registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference. Exhibits incorporated by reference may bear the designation given in a previous filing. Where exhibits are incorporated by reference, the reference shall be made in the list of exhibits. The reference shall include the form, file number and date of the previous filing, and the exhibit number (*i.e.*, exhibit 2.a, 2.b, etc.) under which the exhibit was previously filed.

2. A Fund need not file an exhibit as part of a post-effective amendment, if the exhibit has been filed in the Fund's initial registration statement or in a previous post-effective amendment, unless there has been a change in the exhibit, or unless the exhibit is a copy of a consent required by Section 7 of the Securities Act or is a financial statement omitted from Items 8.6 or 24. The reference to this exhibit shall include the number of the previous filing (*e.g.*, pre-effective amendment No. 1) where such exhibit was filed.

3. If an exhibit to a registration statement (other than an opinion or consent), filed in preliminary form, has been changed (1) only to insert information as to interest, dividend or conversion rates, redemption or conversion prices, purchase or offering prices, underwriters' or dealers' commissions, names, addresses or participation of underwriters or similar matters, which information appears elsewhere in an amendment to the registration statement or a prospectus filed pursuant to Rule 424(b) under the Securities Act or (2) to correct typographical errors, insert signatures or make other similar immaterial changes, then, notwithstanding any contrary requirement of any rule or form, the Fund need not refile the exhibit as so amended. Any incomplete exhibit may not, however, be incorporated by reference into any subsequent filing under any Act administered by the Commission. If an exhibit required to be executed (*e.g.*, an underwriting agreement) is filed in final form, a copy of an executed copy shall be filed.

*Item 26. Marketing Arrangements*

Briefly describe any arrangements known to the Fund or to any person named in response to Item 5, or to any person specified in Item 19.2, made for any of the following purposes:

1. To limit or restrict the sale of other securities of the same class as those to be offered for the period of distribution;
2. to stabilize the market for any of the securities to be offered; or
3. to hold each underwriter or dealer responsible for the distribution of his or her participation.

*Instruction.* If the answer to this Item is contained in an exhibit, the Item may be answered by cross-reference to the relevant paragraph(s) of the exhibit.

*Item 27. Other Expenses of Issuance and Distribution*

Furnish a reasonably itemized statement of all expenses in connection with the issuance and distribution of the securities being registered, other than underwriting discounts and commissions. If any of the securities being registered are to be offered for the account of securityholders, indicate the portion of expenses to be borne by securityholders.

*Instruction.* Insofar as practicable, separately itemize registration fees, federal taxes, state taxes and fees, trustees' and transfer agents' fees, costs of printing and engraving, rating agency fees, and legal and accounting fees. The information may be given subject to future contingencies. Provide estimates if the amounts of any items are not known.

*Item 28. Persons Controlled by or Under Common Control*

Furnish a list or diagram of all persons directly or indirectly controlled by, or under common control with, the Fund, and as to each of these persons indicate (1) if a company, the state or other jurisdiction under whose laws it is organized, and (2) the percentage of voting securities owned or other basis of control by the person, if any, immediately controlling it.

*Instructions.*

1. The list or diagram shall include the Fund and shall show clearly the relationship of each company named to the Fund and to other companies named. If the company is controlled by the direct ownership of its securities by two or more persons, so indicate by appropriate cross-reference.

2. Identify, by appropriate symbols: (1) Subsidiaries for which separate financial statements are filed; (2) subsidiaries included in the respective consolidated financial statements; (3)

subsidiaries included in the respective group financial statements filed for unconsolidated subsidiaries; and (4) other subsidiaries, indicating briefly why statements of these subsidiaries are not filed.

**Item 29. Number of Holders of Securities**

State in substantially the tabular form indicated, as of a specified date within 90 days prior to the date of filing, the number of record holders of each class of securities of the Fund.

(1)	(2)
Title of Class	Number of Record Holders

**Item 30. Indemnification**

State the general effect of any contract, arrangement, or statute under which any director, officer, underwriter, or affiliated person of the Fund is insured or indemnified in any manner against any liability that may be incurred in such capacity, other than insurance provided by any member of the board of directors, officer, underwriter, or affiliated person for his or her own protection.

*Instruction.* In responding to this Item, the Fund should note the requirements of Rules 461(c) and 484 under the Securities Act and Section 17 of the Investment Company Act. (See Investment Company Act Rel. No. 11330 (Sept. 4, 1980) [45 FR 62423 (Sept. 19, 1980)] and Investment Company Act Rel. No. 7221 (June 9, 1972) [37 FR 12790 (June 29, 1972)].)

**Item 31. Business and Other Connections of Investment Adviser**

Describe briefly any other business, profession, vocation, or employment of a substantial nature in which each investment adviser of the Fund, and each director, executive officer, or partner of any such investment adviser, is or has been, at any time during the past two fiscal years, engaged for his or her own account or in the capacity of director, officer, employee, partner, or trustee.

*Instructions.*

1. State the name and principal business address of any company with which any person specified above is connected in the capacity of director, officer, employee, partner, or trustee and the nature of the connection.

2. The names of investment advisory clients need not be provided.

3. For purposes of this Item, the term "executive officer" means the investment adviser's president, any other officer who performs a policy-

making function for the investment adviser in connection with its management of the closed-end fund, or any other person who performs a similar policy-making function for the investment adviser. Executive officers of subsidiaries of the investment adviser may be deemed executive officers of the investment adviser, if they perform such policy-making functions for the investment adviser.

**Item 32. Location of Accounts and Records**

Furnish the name and address of each person maintaining physical possession of each account, book, or other document required to be maintained by Section 31(a) of the Investment Company Act and the rules thereunder.

*Instruction.* The Fund may omit this information to the extent it is provided in its most recent report on Form N-CEN.

**Item 33. Management Services**

Furnish a summary of the substantive provisions of any management-related service contract not discussed in Part A or B of the registration statement (because the contract was not believed to be of interest to a purchaser of the Fund's securities), indicating the parties to the contract, the total dollars paid, and by whom, for the last three fiscal years.

*Instructions.*

1. The instructions to Item 20.4 of this Form shall also apply to this Item.

2. Information need not be provided for any service for which total payments of less than \$5,000 were made during each of the last three fiscal years.

**Item 34. Undertakings**

Furnish the following undertakings in substantially the following form in all registration statements filed under the Securities Act, as applicable:

1. An undertaking to suspend the offering of shares until the prospectus is amended if (1) subsequent to the effective date of its registration statement, the net asset value declines more than ten percent from its net asset value as of the effective date of the registration statement or (2) the net asset value increases to an amount greater than its net proceeds as stated in the prospectus.

2. An undertaking to file a post-effective amendment with certified financial statements showing the initial capital received before accepting subscriptions from more than 25 persons, if the Fund proposes to raise its initial capital under Section 14(a)(3) of the Investment Company Act.

3. If the securities being registered are to be offered to existing shareholders pursuant to warrants or rights, and any securities not taken by shareholders are to be reoffered to the public, an undertaking to supplement the prospectus, after the expiration of the subscription period, to set forth the results of the subscription offer, the transactions by underwriters during the subscription period, the amount of unsubscribed securities to be purchased by underwriters, and the terms of any subsequent reoffering thereof. If any public offering by the underwriters of the securities being registered is to be made on terms differing from those set forth on the cover page of the prospectus, the Fund shall undertake to file a post-effective amendment to set forth the terms of such offering.

4. If the securities are being registered in reliance on Rule 415 under the Securities Act, an undertaking:

a. To file, during any period in which offers or sales are being made, a post-effective amendment to the registration statement:

(1) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(2) to reflect in the prospectus any facts or events after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement.

Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement.

(3) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

*Provided, however,* that paragraphs a(1), a(2), and a(3) of this section do not apply if the registration statement is filed pursuant to General Instruction A.2 of this Form and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed



with or furnished to the Commission by the Fund pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference into the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

b. that, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of those securities at that time shall be deemed to be the initial bona fide offering thereof;

c. to remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering;

d. that, for the purpose of determining liability under the Securities Act to any purchaser:

(1) If the Fund is relying on Rule 430B:

(A) Each prospectus filed by the Fund pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(B) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (x), or (xi) for the purpose of providing the information required by Section 10(a) of the Securities Act shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date,

supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date; or

(2) if the Fund is subject to Rule 430C: Each prospectus filed pursuant to Rule 424(b) under the Securities Act as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

e. that for the purpose of determining liability of the Fund under the Securities Act to any purchaser in the initial distribution of securities:

The undersigned Fund undertakes that in a primary offering of securities of the undersigned Fund pursuant to this registration statement, 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 any of the following communications, the undersigned Fund will be a seller to the purchaser and will be considered to offer or sell such securities to the purchaser:

(1) Any preliminary prospectus or prospectus of the undersigned Fund relating to the offering required to be filed pursuant to Rules 424 under the Securities Act;

(2) free writing prospectus relating to the offering prepared by or on behalf of the undersigned Fund or used or referred to by the undersigned Funds;

(3) the portion of any other free writing prospectus or advertisement pursuant to Rule 482 under the Securities Act relating to the offering containing material information about the undersigned Fund or its securities provided by or on behalf of the undersigned Fund; and

(4) any other communication that is an offer in the offering made by the undersigned Fund to the purchaser.

5. If the Fund is filing a registration statement permitted by Rule 430A under the Securities Act, an undertaking that:

a. For the purpose of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the Fund under Rule 424(b)(1) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective; and

b. for the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of the securities at that time shall be deemed to be the initial bona fide offering thereof.

6. *Filings Incorporating Subsequent Exchange Act Documents by Reference.* Include the following if the registration statement incorporates by reference any Exchange Act document filed subsequent to the effective date of the registration statement:

The undersigned Fund hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Fund's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 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 shall be deemed to be the initial bona fide offering thereof.

7. *Request for acceleration of effective date or filing of registration statement becoming effective upon filing.* Include the following if acceleration is requested of the effective date of the registration statement pursuant to Rule 461 under the Securities Act, or if a registration statement filed pursuant to General Instruction A.2 of this Form will become effective upon filing with the Commission pursuant to Rule 462(e) or (f) under the Securities Act, and:

a. Any provision or arrangement exists whereby the Fund may indemnify a director, officer or controlling person of the Fund against liabilities arising under the Securities Act, or

b. The underwriting agreement contains a provision whereby the Fund indemnifies the underwriter or controlling persons of the underwriter against such liabilities and a director, officer or controlling person of the Fund is such an underwriter or controlling

person thereof or a member of any firm which is such an underwriter, and

c. The benefits of such indemnification are not waived by such persons:

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Fund pursuant to the foregoing provisions, or otherwise, the Fund has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Fund of expenses incurred or paid by a director, officer or controlling person of the Fund in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Fund will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

8. An undertaking to send by first class mail or other means designed to ensure equally prompt delivery, within two business days of receipt of a written or oral request, any prospectus or Statement of Additional Information.

**Signatures**

Pursuant to the requirements of the Securities Act of 1933 and/or the Investment Company Act of 1940, the Registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of \_\_\_\_\_, and State of \_\_\_\_\_, on the \_\_\_\_\_d day of \_\_\_\_\_.

\_\_\_\_\_  
Registrant  
By \_\_\_\_\_  
\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Title  
Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following person in the capacities and on the dates indicated.

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Title  
\_\_\_\_\_  
Date

40. Amend Form 24F-2 (referenced in § 274.24 of this chapter) by:

a. Revising the first sentence of paragraph A.1. of the “INSTRUCTIONS” section; and

b. Revising the first sentence of paragraph A.3. of the “INSTRUCTIONS” section.

The revisions read as follows:

**Note:** The text of Form 24F-2 does not, and these amendments will not, appear in the *Code of Federal Regulations*.

UNITED STATES  
SECURITIES AND EXCHANGE  
COMMISSION

**Washington, DC 20549**

**FORM 24F-2**

**Annual Filing Under Rule 24f 2 of the Investment Company Act of 1940**

**INSTRUCTIONS**

A. \* \* \*

1. This Form should be used by an open-end management investment company, closed-end management company that makes periodic repurchase offers pursuant to § 270.23c-3(b) of this chapter, face amount certificate company, or unit investment trust (“issuer”) for annual filings required by rule 24f-2 under the Investment Company Act of 1940 [15 U.S.C. 80a] (“Investment Company Act”). \* \* \*

\* \* \* \* \*

3. Pursuant to rule 101(a)(1)(iv) of Regulation S-T [17 CFR 232.101(a)(1)(iv)] this Form must be submitted in electronic format using the Commission’s Electronic Data Gathering, Analysis, and Retrieval (“EDGAR”) system. \* \* \*

\* \* \* \* \*

By the Commission.  
Dated: March 20, 2019.

**Eduardo A. Aleman,**  
*Deputy Secretary.*

[FR Doc. 2019-05776 Filed 4-9-19; 8:45 am]

**BILLING CODE 8011-01-P**