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Session III

Closed-End and Alternative Strategy Funds and BDCs

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WHY CLOSED-END FUNDS, ALTERNATIVE STRATEGY FUNDS, AND BDCS?

- Many advisers recommend alternative assets or alternative strategies and structures as part of an investor's diversified investment portfolio
- For closed-end funds and BDCs:
 - Access to less liquid investments
 - No daily redemptions (captive capital or limited repurchase opportunities)



WHAT ARE THE TYPES OF STRATEGIES OUTSIDE OF STANDARD EQUITY AND BOND MUTUAL FUNDS?

- Mutual funds using “hedge fund”-like strategies
 - Long/short equity funds
 - “Macro” funds using multi-manager, multi-strategy model
 - “Macro” multi-strategy fund of funds
 - Event-driven funds (special situations)
 - Event-linked funds (catastrophe bond)
 - Global macro/managed futures
 - Risk weighted multi-asset funds
 - Emerging market or frontier market investments
- Commodities Exposure (also ETPs that are not investment companies)
- Energy master limited partnership funds (MLPs in open and closed-end funds)
- Closed-end funds, including BDCs, and illiquid and less liquid strategies



WHAT ARE THE DIFFERENT TYPES OF CLOSED-END FUNDS AND BDCS?

- **Closed-end funds**

- Exchange-listed funds (IPO)
- Interval fund funds (continuously-offered)
- Tender offer funds (continuously-offered)

Another consideration: publicly offered or privately placed?

- **BDCs**

- Private
- Public
 - Exchange-listed
 - Continuously offered



WHAT ARE THE KEY REGULATORY DIFFERENCES BETWEEN TYPES OF CLOSED-END FUNDS AND BDCS?

- Shares offered continuously or exchange-listed
- Shares offered publicly or in private placements
- Share classes
- Share pricing
- Share registration and annual updates
- Share liquidity
- Repurchase/redemption amount, procedures, and fees
- Borrowing
- Portfolio liquidity requirements
- Distribution fees and sales charges
- Independent trustee requirement



ACTIVIST INVESTOR ISSUES

- Activists often engage in proxy fights with closed-end funds
- Activists often utilize 14a-8 proposals to:
 - Seek seats on closed-end fund boards
 - Force a Fund Tender Offer
 - Liquidate the fund
 - Open-end the fund
- SEC has often sided with activist investors under rubric of shareholder democracy



PROPOSED RULES - OFFERING REFORM (AND BURDENSOME REGULATIONS)

- **March 2018** - the Small Business Credit Availability Act
 - Allows BDCs to increase debt-to-equity ratio from 1:1 to 2:1
 - Enables BDCs to follow the more lenient reporting requirements and communications restrictions applicable to traditional public operating companies
 - Was scheduled to be effective on March 23, 2019
- **May 24 2018** - Economic Growth, Regulatory Relief, and Consumer Protection Act
 - Directs the SEC to adopt rules to allow exchange listed closed-end funds and interval funds to use the more streamlined securities offering and proxy rules
 - Requires the SEC to propose certain rules by May 24, 2019 and finalize them by May 24, 2020
 - If deadlines are not met, then exchange listed closed-end funds and interval funds will be deemed to be “eligible issuers” under the SEC’s rules
- **March 20, 2019** - SEC proposes rules
 - If adopted, would extend securities offering modernization reforms to all registered closed-end funds and BDCs



HOW DOES THE PROPOSAL AFFECT ISSUERS?

- Potential **benefits**:
 - Streamlined shelf offering process
 - WKSI status
 - Prospectus delivery and communication relief
 - New method for interval funds to pay registration fees
 - Make incorporated materials readily available on a website (instead of delivering)
- Potential **burdens**:
 - Structured data requirements
 - Annual report requirements
 - Reporting on Form 8-K



STATUS OF PROPOSED RULES

- The SEC requested comment on several aspects of the proposed rules
- Comments were due June 10, 2019
- Certain aspects of the proposals that closed-end funds and BDCs are concerned with are:
 - 8-K requirement
 - MDFP in a registered closed-end fund annual report
 - Adopt alternative NAV test for determining whether WKSIs
 - Expanding types of funds that could use streamlined registration process
 - Omit disclosure of unresolved staff comment
 - Expand types of funds that can utilize Rule 24f-2 for share registration
 - Codify no-action positions under Rule 486(b) for shelf offerings





Appendix I – Offering Reform Proposal



REGISTRATION PROVISIONS

Rule	Summary Description of Rule	Entities Affected by Proposed Changes
Securities Act Rule 415	Permits registration of securities to be offered on a delayed or a continuous basis.	Seasoned Funds*
Proposed General Instructions A.2 and F.3 of Form N-2	Provide for backward and forward incorporation by reference.	Seasoned Funds
Proposed General Instruction F.4.a	Requires online posting of information incorporated by reference.	Affected Funds
Securities Act Rule 430B	Permits certain issuers to omit certain information from their “base” prospectuses and update the registration statement after effectiveness.	Seasoned Funds
Securities Act Rules 424 and 497	Provide the processes for filing prospectus supplements.	Affected Funds
Securities Act Rule 462	Provides for effectiveness of registration statements immediately upon filing with the SEC.	WKSIs
Securities Act Rule 418	Exempts some registrants from an obligation to furnish certain engineering, management, or similar reports.	Seasoned Funds
1940 Act Rule 22c-3	Subjects interval funds to the registration fee payment system based on annual net sales.	Interval Funds

Source: SEC Release Nos. 33-10619, 34-85382 and IC-33427

* 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.



COMMUNICATIONS PROVISIONS

Rule	Summary Description of Rule	Entities Affected by Proposed Changes
Securities Act Rule 134	Permits issuers to publish factual information about the issuer or the offering, including “tombstone ads.”	Affected Funds
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
Securities Act Rules 168 and 169	Permit the publication and dissemination of regularly released factual and forward-looking information.	Affected Funds
Securities Act Rules 164 and 433	Permit use of a “free writing prospectus.”	Affected Funds
Securities Act Rule 163	Permits oral and written communications by WKSIs at any time.	WKSIs
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

Source: SEC Release Nos. 33-10619, 34-85382 and IC-33427.



Rule	Summary Description of Rule	Entities Affected by Proposed Changes
PROXY STATEMENT PROVISION		
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
PROSPECTUS DELIVERY PROVISIONS		
Securities Act Rules 172 and 173	Permit issuers, brokers, and dealers to satisfy final prospectus delivery obligations if certain conditions are satisfied.	Affected Funds
STRUCTURED DATA REPORTING PROVISIONS		
Structured Financial Statement Data	A requirement that BDCs tag their financial statements using Inline eXtensible Business Reporting Language (“Inline XBRL”) format.	BDCs
Prospectus Structured Data Requirements	A requirement that registrants tag certain information required by Form N-2 using Inline XBRL.	Affected Funds
Form 24F-2 Structured Format	A requirement that filings on Form 24F-2 be submitted in a structured format.	Form 24F-2 Filers

Source: SEC Release Nos. 33-10619, 34-85382 and IC-33427.



PERIODIC REPORTING PROVISIONS

Rule	Summary Description of Rule	Entities Affected by Proposed Changes
1940 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
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
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
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
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
Item 4 of Form N-2	Requires disclosure of certain financial information.	BDCs
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

Source: SEC Release Nos. 33-10619, 34-85382 and IC-33427.



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