INVESTMENT COMPANY INSTITUTE®

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June 10, 2019

Ms. Vanessa Countryman
Acting Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *Securities Offering Reform for Closed-End Investment Companies (File No. S7-03-19)*

Dear Ms. Countryman:

The Investment Company Institute[1] supports the Securities and Exchange Commission's proposal to modernize the registration, communications, and offering processes for business development companies ("BDCs") and registered closed-end funds (collectively, "funds").[2] We welcome the proposal, as it will provide cost savings to fund shareholders and potentially stimulate economic growth, while maintaining necessary investor protections.

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[1] The Investment Company Institute ("ICI") is the leading association representing regulated funds globally, including mutual funds, exchange-traded funds ("ETFs"), closed-end funds, and unit investment trusts in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's members manage total assets of US$23.1 trillion in the United States, serving more than 100 million US shareholders, and US$6.9 trillion in assets in other jurisdictions. ICI carries out its international work through ICI Global, with offices in London, Hong Kong, and Washington, DC.

[2] *See* Securities Offering Reform for Closed-End Investment Companies, Investment Company Act Release No. 33427 (March 20, 2019) ("Proposing Release"), *available at* https://www.sec.gov/rules/proposed/2019/33-10619.pdf. We use the term "closed-end fund" in this letter to refer to closed-end funds registered under the Investment Company Act of 1940, including interval funds. At times, we will reference "interval funds" separately, as necessary. An "interval fund" is a closed-end fund that relies on Rule 23c-3 under the Investment Company Act to periodically offer to repurchase a limited percentage of outstanding shares from shareholders pursuant to a fundamental policy (*i.e.*, one that cannot be changed without shareholder approval), as set forth in its prospectus.

The rulemaking aims to extend to funds the same offering benefits that certain operating companies enjoy.[3] The proposed rules would streamline the registration process and modernize prospectus delivery methods to save fund shareholders money, ease fund filing burdens, and allow funds to better manage their securities offerings. Having new alternatives to convey important information also would give funds the opportunity to improve information flow to investors and the broader marketplace.

Our comments seek to ensure that any final rules cover the appropriate universe of funds and are tailored to account for the differences between funds and operating companies. To accomplish that, we recommend that the Commission:

- Expand the types of funds that can use the streamlined registration process to include certain funds that are not listed on a securities exchange. Doing so would reduce costs for those funds' shareholders without sacrificing investor protections.

- Expand the types of funds that can net repurchases against sales to calculate registration fees and compute and pay fees based on shares sold. Doing so would allow more funds to benefit from the efficiencies of the process, with no detriment to fund shareholders.

- Omit from any final rule a requirement for certain funds to publicly disclose material, unresolved SEC staff comments. Disclosing unresolved comments is contrary to the Commission's efforts to limit staff guidance and improve disclosure for retail investors.

- Eliminate from any final rule a requirement for all closed-end funds to provide current reports on Form 8-K. This requirement would provide little benefit to closed-end fund shareholders and impose significant costs.

- Continue to permit certain closed-end funds' registration statements to become effective automatically when only filed to update financial statements or to make non-material changes. To do otherwise, would disrupt those funds' existing operations.

[3] Consistent with the use of the term in the Proposing Release, we generally use the term "operating company" to refer to issuers that are not investment companies and that currently are eligible to rely on the streamlined offering rules.

I. Background

Congress recently enacted legislation related to BDCs[4] and closed-end funds[5] that serve as the basis for this rulemaking. Congress intended the legislation to (i) reduce unnecessary regulatory burdens and provide cost savings to fund shareholders; (ii) enhance the ability of funds to serve as financing sources for portfolio companies; and (iii) stem the decline in closed-end fund offerings.[6] For example, when introducing the bill for the CEF Act, Congressman Sean Duffy (R-WI) stated that:

> By simplifying the closed-end fund offering process and liberalizing existing restrictions on communications, the legislation would reduce unnecessary regulatory burdens that raise costs for investors. In turn, this would enhance the ability of closed-end funds to act as a source of financing for the economy.[7]

The House Report for the CEF Act also noted the decline from 2007 to 2016 in the number of:

- closed-end funds from 662 to 530; and
- new closed-end fund offerings from 42 to 8.[8]

At the end of calendar year 2018, the number of closed-end funds fell to 506 with 15 new closed-end fund issuances.[9]

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[4] *See* Section 803(b) of Small Business Credit Availability Act, Pub. L. No. 115–141, 132 Stat. 348 (2018) ("BDC Act").

[5] *See* Section 509(a) of Economic Growth, Regulatory Relief, and Consumer Protection Act, Pub. L. No. 115–174, 132 Stat. 1296 (2018) ("CEF Act").

[6] *See*, *e.g.*, House Report No. 115-646 (2018) (discussing the BDC Act); House Report No. 115-517 (2017-18) (discussing the CEF Act).

[7] *See* 164 Cong. Rec. H183 (daily ed. Jan. 16, 2018) (statement of Rep. Duffy). *See also* House Report No. 115-517 (2017-18).

[8] *See* House Report No. 115-517 (2017-18).

[9] *See* Duvall, James, "The Closed-End Fund Market, 2018," ICI Research Perspective 25, No. 2 (April 2019), *available at* www.ici.org/pdf/per25-02.pdf.

The Commission's rulemaking package implements the legislation. Given the persistent downward trend in the number of existing closed-end funds and the sparse number of new closed-end fund offerings, it is vital for the Commission's rulemaking to reflect Congress's intent to reduce unnecessary regulatory burdens and costs, and promote capital formation.

II. Amendments to Streamline Registration, Communications, and Offering Rules

The proposal allows funds to rely on the more flexible registration, communications, and offering rules already available to operating companies.[10] As more fully discussed below, we generally support each of these proposed amendments but strongly recommend that the Commission not apply a "public float" standard to determine whether a fund qualifies as a "seasoned fund" or "well-known seasoned issuer fund" ("WKSI fund").

A. Facilitate Fund Offerings with Registration Reforms

The Commission proposes to allow funds that meet the criteria of a "seasoned fund" to file short-form registration statements[11] and "forward incorporate by reference" information from future filings into those registration statements.[12] Seasoned funds that meet the criteria of a "well-known seasoned issuer" or "WKSI" additionally could use automatic shelf registration for registration statements.[13]

We support these proposed amendments. Today, in sharp contrast to the proposal, most funds generally only can offer additional shares to the public by first registering the shares via filing a

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[10] *See* Securities Offering Reform, Securities Act Release No. 8591 (July 19, 2005) ("2005 Offering Reform Release"), *available at* https://www.sec.gov/rules/final/33-8591.pdf.

[11] A "short-form" registration statement contains condensed information and references past or future filings for additional information.

[12] "Incorporation by reference" is the act of including an additional document within another document by referencing the additional document. "Forward incorporation by reference" simply refers to the incorporation by reference of documents that have yet to be filed.

[13] A company that uses a shelf registration statement may issue securities under a previously filed registration statement and offer them to the public on a continuous or delayed basis. "Automatically effective shelf registration statements" or "automatic shelf registration statements," as their names suggest, become effective immediately without SEC staff review and comment.

new registration statement and responding to any staff comments.[14] Such a fund must then update the registration statement annually,[15] which also is generally subject to SEC review and comment.[16] The fund can sell the shares registered on that registration statement as market conditions dictate for a period of up to three years.[17] The proposed process is far superior.

Seasoned funds will benefit from being able to limit the length and number of their filings. Under the proposal, seasoned funds no longer will have to file post-effective amendments to shelf registration statements to update their financial statements. Instead, that information will be in annual reports and incorporated by reference into their registration statements.

WKSI funds will be able to better time their offerings because they no longer will have to account for uncertain delay due to SEC staff review. The streamlined process will permit WKSI funds to better manage their offerings, the timing of which is critical to an offering's success. Because the Investment Company Act generally restricts a closed-end fund from offering new shares below its net asset value ("NAV") (exclusive of any sales charge),[18] a typical closed-end fund must ensure that the offering occurs when the market price for its outstanding shares is at or above its NAV. Any delays to this timing, including those caused by the staff review and comment process, could result in a fund shares' market price moving from a "premium" to NAV to a "discount," disrupting, or even scuttling, the entire offering.

B. Tailor Standards for "Seasoned Funds" and "WKSI Funds"

The Commission proposes to require seasoned funds generally to have at least $75 million in aggregate market value. The Commission proposes to require WKSI funds generally to have at least $700 million in aggregate market value. "Aggregate market value," commonly referred to as "public float," means the aggregate market value of voting and non-voting common equity

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[14] Interval funds may file post-effective amendments to register additional shares that become effective automatically. *See* Rule 486 under the Securities Act.

[15] Funds generally must assure that their financial statements are never more than 16 months old. *See* Section 10(a)(3) of the Securities Act.

[16] Interval funds and certain funds that have received relief under Rule 486(b) under the Securities Act may file post-effective amendments that become effective automatically. *See infra* Section V.A.

[17] *See* Rule 415(a)(5) under the Securities Act. Interval fund registration statements are not subject to this three-year limitation.

[18] *See* Section 23(b) of the Investment Company Act.

shares traded on public trading markets.[19] Accordingly, certain types of funds that are not exchange-listed will not have public float, including many interval funds, tender offer funds, and BDCs.[20] Therefore, they could not meet the standards for being deemed either a seasoned fund or WKSI fund.

The Commission proposes to use a "public float" standard to determine "seasoned fund" and "WKSI fund" status, reasoning that a public float standard is a proxy for the amount of scrutiny a company receives. Citing to the 2005 Offering Reform Release, the Commission states that companies with higher public float have more analyst coverage[21] and that

> high levels of analyst coverage, institutional ownership, and trading volume are useful indicators of the scrutiny that an issuer receives from the market.[22]

The Commission concludes that it is appropriate to provide entities with higher public float with more flexibility around registration and communications, including funds, given their active participation in the markets and wide following among market participants, the media, and institutional investors.[23] Additionally, the Commission points to the legislation as directing it to "provide funds covered in [the legislation] the securities offering rules available to operating companies"[24] as another reason for using public float as a metric. The Commission requests comment on whether it should adopt a different metric for a fund to qualify as a seasoned fund or WKSI fund and, if so, what metric and why.

We strongly recommend that the Commission not categorize a fund as a seasoned fund or a WKSI fund using a public float standard but allow them to qualify solely based on the other elements of the proposed standards.[25] Requiring a public float standard—and the related

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[19] *See* Proposing Release at note 12. *See also* 2005 Offering Reform Release at note 50.

[20] A "tender offer" fund is a closed-end fund that conducts periodic repurchases at the discretion of the fund's board pursuant to Rule 13e-4 under the Securities Exchange Act of 1934. The vast majority of interval funds and tender offer funds are not listed on an exchange.

[21] *See* Proposing Release at text surrounding note 88. *See also* 2005 Offering Reform Release at note 52.

[22] *See* Proposing Release at text surrounding note 88.

[23] *See* Proposing Release at text surrounding notes 86-95. The Commission acknowledges, however, that no one statistic can fully capture the extent to which the market follows an issuer.

[24] *See* Proposing Release at text following note 95.

[25] These would require funds to meet the other registrant and transaction requirements of Form S-3, which include, in part, that the funds timely have filed all reports and other materials under the Exchange Act during the

analyst scrutiny—is less meaningful for funds because they have a limited scope of business and are subject to the Investment Company Act, which, among other things, requires funds to value their portfolio holdings and disclose these values in a standardized format. The legislation also effectively requires the Commission to proceed without a public float standard to enable interval funds to qualify as seasoned funds and WKSI funds.

Because operating companies typically engage in a multitude of activities, analysts must cover them comprehensively to assess operations and value their securities. The fundamental value and transaction prices of operating company shares often depend on more variables than a simpler calculation of the value of a fund's portfolio holdings. These variables include a market's assessment of the company's business, management, earnings, cash flows, and the market's perception of its future success. This dependence on numerous variables makes an operating company's share prices sensitive to news and earnings reports from the company. Operating companies are not subject to the same valuation requirements as investment companies, often valuing their assets such as equipment at cost, rather than the current market or fair value. Operating companies also may have assets (*e.g.*, intellectual property) and liabilities (*e.g.*, pension plan obligations) that involve highly subjective valuations and may warrant further analyst scrutiny.

Funds, on the other hand, are much less complex; they are pass-through investment vehicles that primarily invest in securities. They are subject to important requirements under the Investment Company Act, including valuing their investments under board-approved valuation procedures and ongoing board oversight.[26] These valuations must be in accordance

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prior year. In addition, closed-end funds would have to be registered for at least 12 calendar months and timely have filed all reports required under Section 30 of the Investment Company Act. Further, among other things, funds could not be "ineligible issuers" under proposed amended Rule 405 under the Securities Act of 1933 (*i.e.*, they cannot have investment advisers or sub-advisers that, within the last three years, were the subject of a judicial or administrative decree or order arising out of a governmental action that determines the investment adviser aided or abetted or caused the issuer to have violated the anti-fraud provisions of the federal securities laws).

Further, to the extent that the Commission permits any fund to qualify as a seasoned fund or a WKSI fund, it should consider providing guidance (similar to that provided for operating companies) on how funds that have not been timely with either an Exchange Act or Investment Company Act filing necessary to qualify could seek a waiver to utilize the short-form registration statement, forward incorporation by reference, and automatic shelf registration statement provisions.

[26] Funds generally use market values to value portfolio securities for which market quotations are readily available. When market quotations are not readily available, funds must value portfolio securities and all other assets using "fair value" as determined in good faith by a fund's board. *See* Section 2(a)(41) of the Investment Company Act. Rule 38a-1 requires funds to adopt policies and procedures for fair valuing a fund's securities. *See*

with the Investment Company Act[27] and relevant accounting standards.[28] The Act's valuation requirements are important and distinguishing because, as all funds are subject to the same requirements and guidelines, it gives fund shareholders, and the market, comfort that the valuations are appropriate and comparable.

Further, fund valuations and holdings are highly transparent. Funds periodically, often daily, disclose their NAVs and provide fund holdings at least quarterly,[29] to provide an updated picture of their assets. This transparency provides shareholders with a standard mechanism to review and assess the value of fund holdings. For example, shareholders can take a fund's disclosed NAV as determined consistent with regulations and compare it to a fund's market price to get information on how the market might perceive the fund.[30] For funds that do not have a market price, the disclosed NAV gives shareholders a good sense of the value of the holding at the time the NAV is determined. Given a fund's obligation to value assets consistent with regulations and related guidance and the periodic transparency of its holdings and valuations thereof, analyst coverage plays a much different—and lesser—role for funds than for other types of issuers.[31]

Compliance Programs of Investment Companies and Investment Advisers, Investment Company Act Release No. 26299 (December 24, 2003).

[27] To meet periodic disclosure requirements, funds must compute and provide their NAVs at least quarterly. More than 90 percent of closed-end funds calculate the value of their portfolios every business day, while others calculate their portfolio values weekly or on some other basis. *See* ICI, A Guide to Closed-End Funds (April 2018), *available at* https://www.ici.org/cef/background/bro_g2_ce.

[28] *See* FASB ASC 946-320-35-1.

[29] *See*, *e.g.*, Section 30(e) (requiring registered investment company semi-annual reports to include a list and values of securities owned); Form N-PORT (requiring registered investment company holdings for the first and third quarters of a fiscal year to be publicly disclosed, including the values of each investment); Forms 10-K and 10-Q (requiring a BDC to report its NAV on its statements of assets and liabilities and its holdings and the values of its holdings on its consolidated schedule of investments at least quarterly).

[30] As part of this rulemaking, the Commission also proposes to require funds to disclose market share price information in their annual shareholder reports. *See infra* Section IV.A.i. The new requirement would enable fund shareholders to more easily compare the market price of a fund that trades on a public trading market to its NAV to determine how the market perceives the fund.

[31] Investors in some funds acquire and sell their shares at NAV (*e.g.*, interval funds) or at prices that are at or close to NAV (*e.g.*, tender offer funds). Transacting at these prices makes market scrutiny and analyst coverage even less necessary, as shareholders would be exchanging shares at prices based on the aggregate value of the fund's portfolio holdings rather than a market price.

Additional substantive regulations and both board and regulatory oversight also make market scrutiny and analyst coverage less necessary as compared to operating companies. For example, as the Commission notes, "the Investment Company Act directly govern[s] the operations of investment companies, such as prohibitions on management self-dealing, breaches of fiduciary duty, or changes in an investment company's business or investment policies without shareholder approval."[32] In addition, the Investment Company Act subjects funds to governance requirements (including independent board oversight),[33] restrictions on leverage and capital structures,[34] custody requirements,[35] and mandatory compliance programs.[36] To ensure compliance with the Act (as well as all other applicable federal securities laws and regulations), the Commission periodically inspects funds and their managers, including detailed reviews of fund books and records, investments, corporate governance structures, capital structures, and custody arrangements.[37]

Further, adopting a rule that does not use public float to measure funds' eligibility would be consistent with Congressional intent. Section 509(a) of the CEF Act states that:

> The Commission shall finalize any rules, as appropriate, to allow any closed-end company . . . that *makes periodic repurchase offers* pursuant to [Rule 23c-3 under the Investment Company Act][38] to use the securities offering and proxy rules.[39] (Emphasis added.)

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[32] *See* Proposing Release at notes 101-03.

[33] *See, e.g.*, Section 10(a) of the Investment Company Act (requiring at least 40 percent of registered investment company boards to comprise of independent directors); Section 56 of the Investment Company (requiring independent directors of BDCs to constitute a majority of the board to engage in certain types of transactions).

[34] *See, e.g.*, Section 18 of the Investment Company Act (restricting leverage for registered investment companies); Section 61 of the Investment Company Act (restricting leverage for BDCs).

[35] *See, e.g.,* Section 17(f) of the Investment Company Act (imposing custody requirements on funds).

[36] *See, e.g.*, Rule 38a-1 under the Investment Company Act (requiring funds to adopt written compliance procedures designed to prevent violation of the federal securities laws and appoint a chief compliance officer).

[37] In addition, although funds currently may have less analyst coverage than operating companies, permitting them to benefit from the registration relief (*i.e.*, allowing them to qualify as seasoned funds and WKSI funds) could reduce fund expenses, spurring more interest and growth. This interest and growth could lead to more analyst coverage.

[38] As noted above, Rule 23c-3 under the Investment Company Act establishes and governs interval funds.

[39] *See* CEF Act at Section 509(a).

Notably, when voting on the bill, the House of Representatives explicitly discussed creating legislation to require the SEC to adopt rules resulting in "closed-end funds that are listed *or have periodic redemptions—interval funds*—to be treated as well-known seasoned issuers, WKSIs."[40] (Emphasis added.)

Yet, the proposed public float standard currently would permit only one interval fund to potentially qualify as a seasoned fund or a WKSI fund.[41] This is not consistent with the plain language of the legislation and its history. The proposed treatment also is inconsistent with the US Department of Treasury's recommendation that the Commission review its interval fund rules to determine whether more flexible provisions might encourage the creation of closed-end funds that invest in offerings of smaller public companies and private companies whose shares have limited or no liquidity.[42]

If the Commission determines that a different, more tailored, metric is appropriate for funds to qualify as seasoned funds or WKSI funds, then we recommend that the Commission use a metric based on the aggregate net assets of the fund (*i.e.*, NAV x aggregate number of outstanding shares). In doing so, the Commission could apply its proposed seasoned issuer and WKSI thresholds of $75 million and $700 million to funds. A NAV metric could serve as a good proxy for public float. The Investment Company Act and accounting principles dictate how a fund must calculate its aggregate net assets. A NAV metric at the prescribed levels also would indicate that the markets have accepted the fund as a viable investment and that they have confidence in the fund's operations. Market acceptance and confidence indicate that a fund has sufficient stature in the industry to warrant streamlined regulatory treatment. Further, a NAV metric would permit unlisted funds, including interval funds, to qualify as seasoned funds and WKSI funds, consistent with the legislation.

We believe that the CEF Act clearly gives the Commission the flexibility to provide different qualification standards for funds. In fact, the Commission has exercised discretion in other portions of this proposed rulemaking, including determining not to permit broker-dealers to provide certain research reports about funds under Rule 139. This determination was made despite the fact that Rule 139 was one of the rules that Congress specifically mandated the SEC to amend as part of the BDC Act and Registered CEF Act.[43] We strongly encourage the

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[40] *See* 164 Cong. Rec. H183 (daily ed. Jan. 16, 2018) (statement of Rep. Foster).

[41] The Commission notes that there is only one interval fund that is exchange-listed. *See* Proposing Release at 34.

[42] *See* US Department of the Treasury, A Financial System that Creates Economic Opportunities–Capital Markets (2017) at 37, *available at* https://www.treasury.gov/press-center/press-releases/documents/a-financial-system-capital-markets-final-final.pdf.

[43] *See* Proposing Release at text surrounding notes 137-45 (explaining that, notwithstanding the BDC Act and CEF Act, the SEC is not proposing amendments to Rule 139).

Commission to similarly exercise discretion to take a different, more tailored approach to determine which funds may qualify as seasoned funds or WKSI funds.

C. Reduce Shareholder Costs with Prospectus Delivery Reforms

The Commission proposes to permit each BDC and closed-end fund to satisfy its final prospectus delivery obligations by filing its final prospectus with the Commission. We strongly support the Commission's proposal because it would reduce prospectus printing and delivery costs for fund investors, while providing investors with the ability to obtain a prospectus.

D. Improve Information Flow with Communications Reforms

The Commission proposes to allow BDCs, closed-end funds, and others to rely on several safe harbors to communicate with the public, both prior to, and following, the filing of a fund's registration statement.[44] We strongly support these aspects of the Commission's proposal. Permitting funds and their related parties more flexibility could facilitate greater availability of information for investors and the marketplace.

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[44] The proposed amendments would:

- Permit funds to use certain communications prescribed by Rule 134 under the Securities Act to publish factual information about the issuer or the offering, including "tombstone ads";
- Permit funds to rely on Rule 163A under the Securities Act, which provides issuers a bright-line period, ending 30 days prior to filing a registration statement, to communicate without violating communications restrictions;
- Permit funds that are reporting companies to rely on Rule 168 under the Securities Act to publish or disseminate regularly released factual business information and forward-looking information;
- Permit funds to rely on Rule 169 under the Securities Act to publish or disseminate regularly released factual business information that is intended for use by persons other than in their capacity as investors or potential investors;
- Permit funds to rely on Rules 164 and 433 under the Securities Act to use a "free writing prospectus";
- Permit WKSI funds 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; and
- Permit broker-dealers participating in the distribution of a fund's common stock and similar securities to rely on Rule 138 under the Securities Act to publish or distribute research about that affected fund's fixed-income securities, and vice versa, if it publishes or distributes that research in the regular course of its business.

III. Amendments to Registration Fee Payment Method

The Commission proposes to amend the manner in which interval funds pay SEC registration fees to coincide with the method that mutual funds and ETFs use today. Interval funds, like many operating companies, currently register, and pay registration fees for, a finite number of shares at the time they register the offering, regardless of whether (or if) they sell the registered shares. Under the proposed method, interval funds, like mutual funds and ETFs, would register an indefinite amount of securities. The funds then would pay registration fees based on their "net" issuance of shares, no later than 90 days after the fund's fiscal year. The net fees paid would be calculated by taking the total price of the securities sold during the fiscal year and reducing that by the total price of shares repurchased that year.

We strongly support the proposed registration fee amendments for interval funds and recommend expanding the net registration fee payment method to tender offer funds and all other funds. Providing tender offer funds with a "redemption credit" will lower the registration fees paid, redounding to the benefit of fund shareholders. In addition, the proposed payment method would allow funds to delay registration fees payments until shortly after a fund's fiscal year, so the fund would pay the SEC a precise registration fee calculated based on the actual number of shares it sold over the fiscal year. Permitting tender offer funds and all other funds to calculate fees in this manner would eliminate the guesswork those funds currently engage in when they register a finite number of shares based on the predicted number of shares they will sell. It also eliminates the risk that a fund might underestimate the number of shares sold, requiring the filing of another registration statement to offer more shares.

IV. Amendments to Disclosure and Reporting Regime

The proposal imposes additional periodic and current reporting requirements on funds. We do not object to many of the new disclosure requirements but, as further discussed below, we strongly oppose requiring certain seasoned funds to disclose material, unresolved SEC staff comments and requiring closed-end funds to adhere to the Form 8-K reporting regime.

A. Improve Periodic Report Disclosures but Exclude Material, Unresolved Staff Comments

The Commission proposes to require funds to make several enhanced annual shareholder report disclosures, reasoning that, under the proposed offering reform regime, periodic reports will become a more important source of updated information. To do so, the Commission would require, among other things:

- seasoned funds using a short-form registration statement to disclose in annual reports certain key information that they currently disclose in their prospectuses about fees and expenses, share price data, and outstanding senior securities;[45]

- seasoned funds using a short-form registration statement to disclose material, unresolved staff comments;[46] and

- all closed-end funds to disclose a management's discussion of fund performance ("MDFP"), consistent with mutual funds and ETFs.

i. Include Basic Fund Information

As noted above, the Commission proposes to require the annual shareholder reports of seasoned funds using a short-form prospectus to contain the fee table,[47] market share data,[48] and

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[45] Specifically, the Commission proposes to require seasoned funds that use a short-form registration statement to include the following information: the fee and expense table (Item 3.1 of Form N-2); information about the share price of the registrant's stock as well as any premium or discount that the share price reflects to NAV (Item 8.5 of Form N-2); and information about each of its classes of senior securities, including bank loans (Item 4.3 of Form N-2). *See infra* notes 47-49.

[46] The Commission proposes to require those funds to disclose in their annual reports any unresolved written comments about their registration statement or periodic reports under the Exchange Act that they believe are material. *See* Proposing Release at notes 236 to 242 and surrounding text.

[47] The Commission would require such funds to provide the fee and expense table required in their prospectuses. *See* Item 3.1 of Form N-2.

[48] The Commission would require such funds to provide market share data from their prospectuses. This generally requires funds to identify the principal markets on which a fund's common stock is traded and 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. *See* Item 8.5 of Form N-2.

the senior securities table[49] required in the funds' prospectuses. We agree with the Commission's approach of incorporating this information into the annual shareholder report. As the Commission continues to consider ways to enhance the fund retail investor experience, we urge it to rethink the content of the annual report more comprehensively.[50]

ii. Omit Material, Unresolved Comments Disclosure

The Commission proposes to require seasoned funds using short-form registration statements to disclose in their annual reports material, unresolved written SEC staff comments regarding registration statements and current and periodic reports.[51] The Commission reasons that, because the staff generally no longer would declare annual updates effective, funds would have less incentive to resolve staff comments.[52] The Commission requests feedback on whether it should proceed with the proposed requirement.

We strongly oppose imposing this requirement because it is inconsistent with two of the Commission's recently articulated and important over-arching policy objectives:

- It would be at odds with recent statements about the non-binding nature of SEC staff guidance; and

- It would be inconsistent with Commission efforts to simplify disclosure and focus on key information important to investors.

First, requiring this disclosure is inconsistent with recent statements about the non-binding nature of SEC staff guidance. SEC staff comments and staff guidance share a common element. Both are staff, not Commission, statements and as such should not be binding on registrants.

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[49] The Commission would require such funds to provide the following information as of the last ten years about each class of a fund's senior securities: year; total amount outstanding exclusive of treasury securities; asset coverage per unit; involuntary liquidating preference per unit; average market value per unit (excluding bank loans). *See* Item 4.3 of Form N-2.

[50] *See, e.g.*, Letter from Susan Olson, General Counsel, ICI, to Brent J. Fields, Secretary, SEC, dated October 24, 2018 ("October Comment Letter") (recommending a summary shareholder report), *available at* https://www.sec.gov/comments/s7-12-18/s71218-4932121-178430.pdf.

[51] This requirement only would apply to comments that were issued more than 180 days before the end of the fiscal year covered by the annual report.

[52] *See* Proposing Release at text surrounding notes 236-42.

Chairman Clayton recently acknowledged the difference between staff and Commission statements, stating that:

> The Commission's longstanding position is that all staff statements are nonbinding and create no enforceable legal rights or obligations of the Commission or other parties . . . As we carry out our market oversight functions, I believe we at the Commission should keep this important distinction in mind . . . it is the Commission and only the Commission that adopts rules and regulations that have the force and effect of law.[53]

Requiring registrants to disclose the substance of, and responses to, staff comments seems to elevate their prominence and importance and varies from Chairman Clayton's sentiment.

Also, imposing the requirement seems at odds with the Commission's recent efforts to simplify disclosures and focus on key information important to investors. Last year, the Commission solicited comments seeking to improve the fund retail experience.[54] In its release, the Commission stated that

> [a] modern fund disclosure system should provide investors streamlined and user-friendly information that is material to an investment decision, while providing them the ability to access additional, more in-depth information on-demand.[55]

The requirement to disclose material unresolved staff comments in an annual report may obscure more important information that truly influences an investment decision.

In addition, the practical application of such a requirement would be challenging with little or no benefit for investors in that:

- SEC staff can apply varying standards and make inconsistent or differing comments in similar circumstances; and

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[53] *See* Chairman Jay Clayton, *Statement Regarding SEC Staff Views* (Sept. 13, 2018), *available at* https://www.sec.gov/news/public-statement/statement-clayton-091318.

[54] *See* Request for Comment on Fund Retail Investor Experience and Disclosure, Investment Company Act Release No. 33113 (June 11, 2018) ("Fund Retail Investor Experience Release"), *available at* https://www.sec.gov/rules/other/2018/33-10503.pdf.

[55] *Id.* at 6.

- It may be unworkable because it is not always clear what "material" and "unresolved" mean.

The SEC staff can apply seemingly objective standards differently and may make inconsistent or differing comments in similar circumstances. This has been a historic challenge for registrants who have spent countless hours responding to staff comments. For example, some registrants may receive comments on certain disclosures that others do not. We acknowledge, and appreciate, that the current Division of Investment Management staff recognize the potential for inconsistency and are taking several steps to improve the review process. That said, given that approximately 60 different staff are tasked with providing comments, inconsistency is unlikely to be completely eradicated. To then require a registrant to include a particular staff member's view in a document, for which the registrant and its directors could face potential liability, is unreasonable and could result in unintended consequences.[56] Moreover, if there is an egregious circumstance, the SEC staff can request that the Commission issue a stop order to prevent the offering from going forward.

Similarly, the proposed standard may be unworkable because it will not be clear what "material" and "unresolved" means in every circumstance. The Commission states that funds would determine what "material" means. As with SEC staff comments, however, funds may make different determinations under seemingly objective standards. For example, one fund may determine that a comment is material, while another may determine that the same comment is not. These varied determinations would lead to inconsistent disclosures. Likewise, it is not always clear what "unresolved" means. A fund may respond in writing to an SEC staff comment believing that the response resolves the outstanding comment. The SEC staff, however, may think differently. If the staff later informs the fund of the discrepancy, would the fund need to redistribute an already printed annual report at a significant cost? These determinations are subject to interpretation and may make the standard practically unworkable.[57]

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[56] The Commission recognizes that certain seasoned funds will bear serious liability for content in their annual reports, which presumably would include disclosure regarding material, unresolved staff comments. *See* Proposing Release at 31 (noting that "[a]n 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."). In addition, fund directors and trustees could potentially face liability under Sections 11 and 12 of the Securities Act with respect to such information.

[57] Furthermore, the Commission often already makes SEC staff comment letters and responses to those comment letters public as Correspondence on the Commission's Electronic Data Gathering, Analysis and Retrieval System ("EDGAR") System. These correspondences are searchable in the EDGAR System, so if an investor wants to

The Commission requests comment on whether mutual funds and ETFs that file post-effective amendments under Rule 485(b) also should be required to disclosure material, unresolved written staff comment. For the same reasons, we strongly oppose making this requirement applicable to mutual funds and ETFs.

iii. Include Management Discussion of Fund Performance

We support the proposed requirement for closed-end funds to include MDFPs and related graphical presentations in their periodic reports.[58] MDFP information can assist investors with understanding fund performance and market conditions over the reporting period from the fund manager's perspective.[59]

The Commission requests comment on whether changes should be made to the proposed MDFP disclosure requirements to specifically articulate the factors that the Commission considers to "materially affect a fund's performance," such as the impact of particular investments or investment types that contributed to or detracted from performance.

The SEC should not require specific information that each MDFP must contain. Fund managers should have the flexibility to discuss factors that they believe are most important to

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review the comments on a registration statement and responses to the comments, he or she already has the ability to do so.

As a more technical matter, it is unclear how long a fund would be obligated to report unresolved comments. For example, if a fund has been in existence for fifteen years, would it be required to report an unresolved comment from its initial year of existence? Relatedly, staff comments and responses thereto evolve over time, so the disclosure surrounding a previously unaddressed comment may not accurately portray subsequent discussions with the staff.

[58] The Commission proposes, among other things, to require funds to provide a table comparing the funds' average annual total returns for the 1-, 5-, and 10-year periods using the funds' market price per share (or NAV, if the shares are not listed on an exchange). *See* Proposing Release at note 217 and accompanying text. The instruction for the proposed requirement, however, simply refers to Item 26(b)(1) of Form N-1A to compute average annual total return. *See* Proposed Instruction 4(g)(2)(B) of Item 24 of Form N-2. Item 26(b)(1) of Form N-1A uses the term "ending redeemable value" in the formula for computing average annual total return. "Ending redeemable values" are inapplicable to most funds because those funds do not issue redeemable securities. We therefore recommend that the Commission clarify in the instructions to the requirement that average annual total return for funds should be based on market prices or NAVs (for unlisted funds), rather than on ending redeemable values.

[59] We made a similar recommendation in the October Comment Letter after determining that many closed-end funds already provide this type of information in their annual shareholder reports despite not being required to do so.

fund performance. This should result in information more tailored to the fund than if each fund had to recite a rote set of factors.

B. Omit Current Reporting Requirements

Certain public operating companies and BDCs are required to disclose on a current basis on Form 8-K, among other matters, 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 shareholder vote.

In contrast, a closed-end fund only is required to file Form 8-K in the rare instance that it has to file a notice of a blackout period under Rule 104 of Regulation Blackout Trading Restriction ("Regulation BTR"). Nevertheless, some closed-end funds file Form 8-K voluntarily to satisfy certain public reporting requirements under Regulation Fair Disclosure ("Regulation FD") and/or rules of the stock exchanges on which they trade.[60] Other closed-end funds choose to make these disclosures by issuing a press release or through other Regulation FD compliant methods.

Under the proposal, *all* publicly-traded closed-end funds would, for the first time, be required to report information on Form 8-K to the same extent as operating companies and BDCs.[61] In addition, the Commission proposes to add two new fund-only reporting requirements to Form 8-K requiring reporting when there is: (i) a material change to the fund's investment objectives or policies; or (ii) a material write-down in fair value of a significant investment.[62]

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[60] *See, e.g.*, NYSE Listed Company Manual Sections 202.05 and 202.06 (providing the following examples 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).

[61] Consistent with operating companies that currently are required to file reports on Form 8-K, only closed-end funds that are Exchange Act reporting companies under Section 13(a) or Section 15(d) of the Exchange Act would be subject to the proposed Form 8-K requirements.

[62] *See* Proposing Release at 106. In this regard, the Commission proposes to exempt funds from filing a Form 8-K if the conclusion to materially write down a significant investment is: (i) 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; (ii) the periodic report is timely filed; and (iii) the conclusion is disclosed in the report. *See* Proposing Release at text surrounding note 283. In addition to Exchange Act reports, closed-end funds prepare and file schedules of investments compliant with Regulation S-X at Part F of Form N-PORT at the end of their first and third fiscal quarters under the Investment Company Act. We recommend that, for consistency, the Commission also exempt funds from filing a Form 8-K 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

The purpose of such a requirement ostensibly is to improve current information available to closed-end fund shareholders and to more closely align closed-end funds' current reporting requirements with those of BDCs and operating companies. The Commission asks whether all closed-end funds should be required to disclose current information on Form 8-K and whether investors and the market need more current disclosure about important events impacting closed-end funds.

i. Form 8-K Filings Would Not Meaningfully Improve Available Information

We strongly oppose this aspect of the proposal. The regulatory and disclosure framework in which closed-end funds operate works well. Pursuant to this framework, closed-end funds already provide current and prospective investors with material information in a timely manner. Moreover, imposing this new disclosure requirement would be at odds with the Commission's recent actions streamlining the disclosure process.[63]

As the Commission acknowledges, closed-end funds already provide material updates (*e.g.*, changes to a fund's investment objectives or strategies, portfolio management changes, dividend announcements, significant board or management changes) via Rule 497 filings (in the case of continuously offered funds), press releases (*e.g.*, pursuant to exchange rules) or in other disclosure documents, such as shareholder reports, voluntary Form 8-K filings, proxy statements or post-effective amendments. In addition, closed-end funds generally provide information on websites, including daily NAVs and current trading discount information.[64]

In fact, closed-end funds have a greater regulatory filing burden than operating companies. A typical operating company files a Form 10-K, three Form 10-Qs, and a proxy statement every year. A typical closed-end fund files semi-annual shareholder reports on Form N-CSR, annual census-type information on Form N-CEN, detailed portfolio holdings information on Form N-PORT (compiled monthly and filed quarterly), and annual proxy voting reports on Form N-PX. In addition, listed closed-end funds typically file an annual proxy statement. Further, closed-end funds have a complex and robust framework of policies and procedures in place to ensure that they meet their many reporting obligations.

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periodic report under the Investment Company Act or any schedules of investments included at Part F of Form N-PORT.

[63] *See, e.g.*, Fund Retail Investor Experience Release, *supra* note 54.

[64] Many closed-end fund sponsors also have personnel available to answer questions about the fund and to provide written information.

This disclosure regime is fulsome and well developed, responding to both regulatory and market influences over the course of many years.

Neither the market (*e.g.*, investors and closed-end fund analysts) nor regulators (*e.g.*, the Commission and stock exchanges) have indicated that the current closed-end fund disclosure regime is inadequate or would benefit from different reporting requirements. In this regard, we once again note the Commission's statements in its Fund Retail Investor Experience Release that "[a] modern fund disclosure system should provide investors streamlined and user-friendly information that is material to an investment decision . . . . "[65] We are not aware of any investor demand or other evidence that extending the Form 8-K filing requirements to closed-end funds would provide useful information for investment decisions. In sum, this proposed requirement would be contrary to the Commission's goal of streamlining disclosure and would increase costs to shareholders, perhaps substantially, without a corresponding benefit.[66]

ii. Form 8-K Parity is Not Necessary

The disclosure framework for closed-end funds has evolved differently from other publicly-traded companies for justifiable reasons. Perhaps most importantly, closed-end funds operate in a highly regulated industry under the Investment Company Act, which includes many substantive investor protection provisions.[67]

Significantly, the Commission has considered requiring registered investment companies, including closed-end funds, to file Form 8-K with abbreviated content, yet it has never suggested that closed-end funds adhere to the full Form 8-K filing regime. We see no reason for the Commission to change its approach.

The Commission created Form 8-K in 1936, before the passage of the Investment Company Act, as the form to be used by companies to file "current" reports when specific extraordinary corporate events occurred.[68] Following the passage of the Investment Company Act, the

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[65] *See* Fund Retail Investor Experience Release, *supra* note 54 at 6.

[66] The Commission notes in the Proposing Release that they estimate the overall costs of reporting new information on Form 8-K for closed-end funds to be $19,553,600 per fund. *See* Proposing Release at text surrounding note 417. While we believe the estimate to be inadvertently high, we nonetheless agree that the increased costs to closed-end funds would be substantial.

[67] *See, e.g., supra* Section II.B

[68] *See* Exchange Act Release No. 925 (Nov. 11, 1936).

Commission considered whether investment companies should be required to file Form 8-K. It ultimately determined to exempt investment companies filing quarterly reports from mandatory current reporting on Form 8-K.[69]

Following the passage of the Sarbanes-Oxley Act of 2002, the Commission considered whether registered investment companies should be required to file Form 8-K in connection with notices of blackout periods pursuant to Regulation BTR. Notably, at that time, the Commission did not extend any other Form 8-K requirements to registered investment companies. And, as the Commission acknowledged, this requirement would not even apply to most registered investment companies because they typically do not maintain pension plans because they do not have employees.[70]

The Commission next faced this issue in 2010, determining that registered investment companies should disclose limited items on Form 8-K under the Proxy Access Rule, which rule was subsequently vacated.[71]

Importantly, in that instance, although the Commission expanded the narrow circumstances under which closed-end funds have to file Form 8-K, it did not even mention the possibility of going further to subject closed-end funds to the full scope of Form 8-K reporting.

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[69] Rule 13a-11 under the Exchange Act states that the rule "shall not apply to . . . investment companies required to file reports pursuant to [Rule 30b1-1 and Rule 30a-1 under the Investment Company Act], except where such an investment company is required to file: (1) Notice of a blackout period . . . (2) Disclosure . . . of information concerning outstanding shares and voting; or (3) Disclosure . . . of the date by which a nominating shareholder or nominating shareholder group must submit the notice required . . . ." *See* Rule 13a-11 under the Exchange Act; Registration and Reporting Rules and Rules of General Application, Exchange Act Release No. 4194 (Jan. 17, 1949).

[70] *See* Insider Trades During Pension Fund Blackout Periods, Exchange Act Release No. 47225 (Jan. 22, 2003) (explaining that, as a practical matter, for registered investment companies, generally there would be no blackout periods that would trigger a Form 8-K reporting requirement).

[71] The proposed rule sought to require registered investment companies "to file a Form 8-K disclosing the date by which the shareholder notice must be provided if the company did not hold an annual meeting during the prior year, or if the date of the meeting has changed by more than 30 calendar days from the prior year." The Commission noted in its adopting release that it decided to require investment companies to make these disclosures on Form 8-K, rather than through another method, because "the information that we are requiring is important information that should be filed with the Commission and accessible on EDGAR rather than merely disclosed on a Web site or in a press release." *See* Facilitating Shareholder Direct Nominations, Investment Company Act Release No. 29384 (Aug. 25, 2010) at text surrounding note 713, *available at* https://www.sec.gov/rules/final/2010/33-9136.pdf.

Further, the US Court of Appeals for the DC Circuit's opinion, which vacated the rule, recognized that operating companies and investment companies differ, noting that "[i]nvestment companies . . . are subject to different requirements, providing protections for shareholders not applicable to publicly traded stock companies."[72]

iii. If Adopted, Tailor Form 8-K for Closed-end Funds

The Commission states that, unlike its approach to asset-backed issuers, it intentionally has not proposed to exclude funds from certain reporting requirements. The Commission concluded that such an approach would "unduly complicate Form 8-K and may not provide tangible benefits *since [funds] are unlikely to be subject to such reporting requirements regardless of whether [the Commission] provide[s] specific exclusions.*"[73] (Emphasis added.) The Commission therefore leaves it to closed-end funds to determine what parts of Form 8-K do, and do not, apply.

We strongly disagree with this approach. We instead recommend that if the Commission requires closed-end funds to adhere to a Form 8-K reporting regime, then the Commission should specify certain items in Form 8-K that would apply only to closed-end funds, as the Commission reasonably determined to do for asset-backed issuers filing Form 8-K.

Given that a fund that fails to timely make a Form 8-K filing with respect to certain items may lose its seasoned fund or WKSI fund status[74] or be required to report on insufficient disclosure controls for purposes of Sarbanes-Oxley certifications, more certainty is essential. The Commission, at a minimum, should specify which items it expects would apply to funds.

Accordingly, to the extent any final rule requires closed-end funds to file Form 8-K, we urge the Commission only require closed-end funds to file a Form 8-K upon the occurrence of the following items:

- notice of delisting or failure to satisfy a continued listing rule or standard, transfer of listing (Item 3.01);
- unregistered sales of equity securities (Item 3.02);
- amendments to articles of incorporation or bylaws (portions of Item 5.03);
- Regulation FD disclosure (Item 7.01);

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[72] *See* Business Roundtable v. SEC, No. 10-1305, slip op. at 18 (D.C. Cir. July 22, 2011).

[73] *See* Proposing Release at note 261.

[74] Under the proposal, a fund would lose its ability to file a short-form registration statement if it fails to timely file a Form 8-K, other than reports pursuant to existing Items 1.01, 1.02, 1.04, 2.03, 2.04, 2.05, 2.06, 4.02(a), or 5.02(e) and proposed Items 10.01 and 10.02.

- other events (not called for by the form–at registrant's option) (Item 8.01);
- any material changes in the fund's investment objective or fundamental investment policies (Proposed Item 10.01); and
- a fund concludes that a material write-down in fair value of a significant investment is required under GAAP applicable to the fund (Proposed Item 10.02).

Alternatively, the Commission could specify in any adopting release those items that are not relevant to closed-end funds. In addition, it could explicitly state that departures of certain officers, which could have a substantial impact on the day-to-day operations and share price of an operating company, are not typically meaningful for a closed-end fund, where fund officers typically are not actively involved in the day-to-day management of the fund's investment portfolio.[75]

V. Other Items

A. Retain or Codify No-Action Positions Under Rule 486(b)

Rule 486(b) permits interval funds to file post-effective amendments containing non-material changes, updates to financial statements, or specified other changes that become effective automatically. The SEC staff has provided no-action relief since 2010, only on an individual fund basis, to other types of closed-end funds to utilize Rule 486(b). The Commission requests comment on whether any changes should be made to Rule 486(b) under the Securities Act, and whether the SEC should withdraw no-action letters issued relevant to that provision.

Under the proposal, only WKSI funds' registration statements and amendments thereto would become effective automatically. Because non-WKSI funds currently utilize the no-action relief to update their registration statements and receive automatic effectiveness, withdrawing the letters without any corresponding replacement would be highly disruptive.[76] We therefore strongly recommend that the Commission retain the letters. Alternatively, the Commission

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[75] To the extent an officer's departure would be material to a closed-end fund, this currently is disclosed via Rule 497 filings, press releases, and/or other disclosure documents, such as shareholder reports.

[76] The staff has issued letters to more than 30 different funds over the past nine years. *See*, *e.g.*, Nuveen S&P 500 Dynamic Overwrite Fund (pub. avail. April 26, 2019); Voya Prime Rate Trust (pub. avail. Apr. 8, 2019); Invesco Senior Income Trust, et al. (pub. avail. January 25, 2017); Tortoise Energy Infrastructure Corporation, et al. (pub. avail. April 23, 2010). If the SEC moves forward with the rest of the proposal, non-WKSI funds could not file registration statements that become effective automatically. Instead, those funds would have to undergo the SEC review process to update their registration statements to make non-material changes.

should codify the position in a rule, but it should not withdraw the letters until it completes such an effort.

B. Permit Tender Offer Funds to Rely on Rule 486

Given their similarities to open-end funds and interval funds, the Commission should permit all tender offer funds to rely on Rule 486 under the Securities Act. The Commission created the rule as a complement to Rule 485 under the Securities Act, because it recognized that interval funds, like open-end funds, are continuously offered and would benefit if certain filings could become effective automatically.[77] Because tender offer funds likewise are continuously offered and would benefit from filings that become effective automatically, we recommend that the Commission also permit those funds to use Rule 486.

C. Permit New Registration Fee Payment Method to be Employed Immediately

The Commission proposes to provide various transition periods to give funds sufficient time to comply with several of the proposed new requirements. For the new registration fee payment method, the SEC proposes that the proposed amendments to Rule 23c-3 and Rule 24f-2 become effective one year after the publication of a final rule in the Federal Register.

We recommend that the amendments to Rule 23c-3 and Rule 24f-2 related to the new registration fee payment method take effect immediately for *new* funds.[78] This will permit them to pay registration fees based on the net issuance of shares sold during their initial fiscal year. Such an approach will allow these funds to realize more immediate cost savings without removing any investor protections.[79]

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[77] *See* Post-Effective Amendments to Investment Company Registration Statements, Investment Company Act Release No. 20486 (Aug. 17, 1994) (adopting Rule 486 under the Securities Act permitting, among other things, post-effective amendments to an interval fund registration statement to become effective automatically), *available at* https://www.govinfo.gov/content/pkg/FR-1994-08-24/html/94-20624.htm. Rule 485 under the Securities Act permits post-effective amendments to an open-end fund or unit investment trust registration statement to become effective automatically.

[78] The related Form 24f-2 amendments (related to new structured data requirements for that form) should take effect, as proposed, no later than 18 months after the publication of a final rule in the Federal Register. In this regard, we note that the Commission's rules requiring investment companies to file risk/return data in inline eXtensible Business Reporting Language format will take effect on September 17, 2020 for funds in "large fund complexes" and September 17, 2021 for funds in "small fund complexes." *See* Inline XBRL Filing of Tagged Data, Investment Company Act Release No. 33139 (June 28, 2018) at 42-43, *available at* https://www.sec.gov/rules/final/2018/33-10514.pdf. We believe that, in any event, any new inline XBRL requirements should have a compliance date later than those dates.

[79] *See supra* Section III.

When adopting any final rules that permit existing funds to utilize the net registration fee payment method, the Commission should provide guidance on how a fund that currently registers and pays for a finite number of shares upon registration can transition to registering and paying for an indefinite number of shares at the end of the fund's fiscal year. We recommend that the Commission permit existing funds to use the new payment method as soon as possible thereafter.

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We appreciate the Commission's consideration of our recommendations. If you have any questions or require further information, please contact me (202-326-5813 or solson@ici.org), Dorothy Donohue, Deputy General Counsel (202-218-3563 or ddonohue@ici.org), or Kenneth C. Fang, Assistant General Counsel (202-371-5430 or kenneth.fang@ici.org).

Sincerely,

/s/ Susan Olson

Susan Olson
General Counsel

cc: The Honorable Jay Clayton
The Honorable Robert J. Jackson Jr.
The Honorable Hester M. Peirce
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