



June 5, 2019

Submitted via email to rule-comments@sec.gov

U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Attention: Vanessa A. Countryman, Acting Secretary

**Re: Securities Offering Reform for Closed-End Investment Companies
(File Number S7-03-19)**

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ is writing to respond to the invitation of the Securities and Exchange Commission (the “Commission”) for public comment on the proposed rules and related amendments that would permit business development companies (“BDCs”) and registered closed-end fund investment companies (“CEFs” and, together with BDCs, “Affected Funds”) to use certain securities offering and proxy rules that are already available to operating companies, as set forth in the Commission’s Proposed Rule Release No. 33-10619 (the “Release”).² We appreciate the opportunity to provide comments to the Commission on the Release.

We commend the Commission’s efforts to implement the Congressional mandates set forth in the Small Business Credit Availability Act and the Economic Growth, Regulatory Relief, and Consumer Protection Act by proposing rules and amendments that modernize and streamline certain public offering and communications processes applicable to Affected Funds. As discussed in more detail below, we agree with the Commission’s assessment that many of the proposals contained in the Release will facilitate capital formation and lower the cost of capital for Affected Funds in a manner that does not compromise investor protection.

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry’s nearly one million employees, we advocate on legislation, regulation, and business policy affecting retail and institutional investors, equity and fixed income markets, and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. With offices in New York and Washington, DC, SIFMA is the U.S. regional member of the Global Financial Markets Association.

² See 84 Fed. Reg. 14,448 (April 10, 2019).

In this letter, we respond to the Commission’s general request for comment and express our support for certain proposals set forth in the Release that we believe are particularly constructive.

I. Overview

As noted by the Commission in the Release, current registration and communication rules applicable to Affected Funds are less efficient and flexible than the rules applicable to public operating companies, resulting in additional costs, uncertainty and delays for Affected Funds that seek to raise capital in the public markets. We agree with the Commission’s assessment that many of the proposals set forth in the Release would level the securities offering playing field between Affected Funds and operating companies and streamline the registration process for Affected Funds, thus facilitating capital raising. Furthermore, consistent with the Commission’s own analysis, we believe that promoting the standardization of the registered offering space, by making the offerings of Affected Funds more comparable to those of operating companies, will make it easier for underwriters to execute offerings and will lead to decreased costs, which may encourage more capital formation.

In this regard, we would like to express our support for several specific proposals set forth in the Release, which we believe may have a particularly meaningful impact on improving access to the capital markets for Affected Funds.

II. Comments on Specific Proposals

▪ *II.B.2. Proposed Amendments to the Registration Process for Affected Funds*

We support the proposal that would permit eligible Affected Funds to file short-form registration statements on Form N-2 that will function like Form S-3 registration statements currently utilized by operating companies. We believe that this proposal and associated rule amendments reflect a welcome change to the shelf registration process available to BDCs and CEFs under current Commission rules, and will enable such funds to access capital markets more efficiently, predictably and often more quickly, as market circumstances warrant. Accordingly, we support the proposed rule and form amendments that (1) permit seasoned³ Affected Funds to (a) incorporate information into short-form registration statements that has been contained or will be contained in reports filed under the Securities Exchange Act of 1934 and (b) omit certain information from the “base” prospectus in reliance on Rule 430B under the Securities Act of 1933 (the “Securities Act”), and (2) provide automatic effectiveness for short-form registration statements filed by Affected Funds that qualify as well-known seasoned issuers (“WKSIs”).

³ In this letter, we use the term “seasoned” in a manner consistent with the Release.

- ***II.C. Well-Known Seasoned Issuer Status***

We strongly support the proposed amendments that would allow an Affected Fund to qualify as a WKSII. Since the Commission first created the WKSII category in 2005, operating companies that qualify as WKSII have benefited from many provisions of the Commission's offering and communications rules that provide additional flexibility to WKSII. We believe that this flexibility has been instrumental in facilitating capital formation for issuers qualifying as WKSII by streamlining and expediting the registration process, including by providing for automatic effectiveness of certain registration statements and amendments and permitting certain communications by WKSII at any time, including through the use of a free writing prospectus. As with operating companies, providing Affected Funds the ability to qualify as WKSII would enable such funds to promptly take advantage of favorable windows of opportunity in the public markets, accommodate investor demand, and adapt to market conditions. Furthermore, we agree with the Commission that this additional flexibility may actually be particularly significant for some Affected Funds (relative to operating companies), by enabling such funds to more efficiently raise capital during limited windows when their shares are trading at premiums to net asset value.

- ***II.D. Final Prospectus Delivery Reforms***
- ***II.H.4. Online Availability of Information Incorporated by Reference***

We also express our support for the proposed amendments to Rules 172 and 173 under the Securities Act that would allow Affected Funds, brokers, and dealers to satisfy their 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. We similarly support the Commission's proposed amendments to Form N-2 that would remove the requirement that an Affected Fund deliver to new investors information that it has incorporated by reference into the prospectus or statement of additional information ("SAI"), and instead require the fund to make its prospectus, SAI, and the incorporated materials readily available and accessible on a website. As noted by the Commission in the Release, these procedures and practices have become commonplace in many aspects of modern capital markets. By reducing the offering costs incurred by Affected Funds and their underwriters in connection with secondary offerings, we believe that these proposals will encourage capital formation for Affected Funds by making such offerings more attractive and efficient for issuers and underwriters alike. Furthermore, we agree with the Commission that these proposals adequately protect investors who would like to receive hard copies of materials by permitting investors to obtain copies, free of charge, upon request.

- ***II.E. Communications Reforms***

Finally, we express our support for the proposed amendments that would remove the exclusions for Affected Funds from various of the Commission's "communications rules" that provide operating companies and other parties (such as underwriters) increased flexibility in their communications regarding certain registered securities offerings. Since their adoption, these rules have benefited investors in operating companies by facilitating the flow of additional issuer information under conditions that preserve important investor protections. Accordingly, we commend the Commission's efforts to promote the standardization of the communications

processes of Affected Funds, by making them comparable to those of operating companies, and permitting eligible funds to engage in certain pre-filing communications, use free writing prospectuses after a registration statement is filed, and use certain communications that are not subject to prospectus liability. We also concur with the Commission's view that these changes will make it easier to execute offerings by Affected Funds and will decrease costs, which in turn will lead to lower offering costs and potentially enhance capital formation. We do not believe that investor protections will be negatively impacted as a result of these reforms.

* * *

We appreciate the efforts of the Commission and its staff to encourage greater participation in our public markets in a manner consistent with investor protection, and we look forward to continued engagement with you on efforts to facilitate capital formation.

Sincerely,



Aseel M. Rabie
Managing Director and Associate General Counsel
Securities Industry and Financial Markets Association

cc: Chairman Jay Clayton
Commissioner Robert J. Jackson Jr.
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Commissioner Elad L. Roisman
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