



June 10, 2019

*By Electronic Submission*

rule-comments@sec.gov  
Vanessa Countryman, Acting Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

**RE: Comment on Proposed Rules Related to Securities Offering Reform for Closed-End Investment Companies (File No. S7-03-19)**

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Dear Ms. Countryman:

Invesco Ltd. (“Invesco”)<sup>1</sup> is pleased to have the opportunity to comment on the Securities and Exchange Commission’s (the “Commission”) proposed rule regarding Securities Offering Reform for Closed-End Investment Companies, published in the Federal Register on March 20, 2019 (the “Proposed Rule”).<sup>2</sup> Invesco is a leading independent global investment manager with approximately \$1.2 trillion in assets under management as of May 31, 2019. Invesco is a global company focused on investment management, and our services are provided through a wide range of strategies and vehicles, including traditional open-end mutual funds, closed-end funds (“CEFs”), exchange-traded funds (“ETFs”), collective trust funds, separately managed accounts, real estate investment trusts, unit investment trusts and other pooled vehicles. Our indirect wholly-owned U.S. registered investment adviser subsidiaries, including Invesco Advisers, Inc., Invesco Capital Management LLC, Invesco Senior Secured Management, Inc. and Invesco Capital Markets, Inc., advise or sponsor mutual funds, ETFs, CEFs and other products for a broad client base.

The Proposed Rule would affect Invesco’s current suite of exchange-listed CEFs that have combined assets under management of approximately \$13.1 billion as of May 31, 2019. Invesco’s CEFs invest in a broad range of asset classes, including structured products, municipal securities, bank loans, and high yield and investment grade fixed income. Invesco also offers a closed-end senior loan interval fund that conducts monthly tender offers. In addition, Invesco serves as managing owner and sponsor, as applicable, to a family of twenty exchange-traded products that have shares registered under the Securities Act of 1933, as amended (the “1933 Act”), but are not “investment companies” under the

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<sup>1</sup> As used herein, “Invesco” may refer to Invesco Ltd. or one of its affiliates.

<sup>2</sup> Release Nos. 33-10619; IC-33427; File No. S7-03-19. Available on the Federal Register at 17 CFR Parts 229, 230, 232, 239, 240, 243, 249, 270 and 274 (the “Proposing Release”).



Investment Company Act of 1940, as amended (the “1940 Act”), and that hold commodities and currencies with total assets of over \$4 billion (the “1933 Act Funds”). Since the 1933 Act Funds are not registered under the 1940 Act, they do not benefit from the share registration and fee payment treatment that is applicable to open-end investment companies (mutual funds and ETFs).

The Proposed Rule’s intent is to streamline the registration, communications and offering practices for CEFs as well as business development companies (“BDCs”). Invesco is generally supportive of the Proposed Rule as we believe the CEF registration and offering processes are in need of modernization. We believe that as a result of these proposed changes (with some modifications as recommended herein), CEFs and other affected funds and their shareholders will benefit from reduced costs, and shareholders will be able to access more comprehensive information regarding their investments.

This letter (the “Comment Letter”) addresses some specific issues raised in the Proposing Release, and also, importantly, proposes that the Commission permit additional categories of issuers, such as the 1933 Act Funds, to utilize a similar registration and payment structure. Lastly, Invesco supports and is in agreement with the positions expressed by the Investment Company Institute (“ICI”) in its letter to the Commission dated June 10, 2019 (the “ICI Letter”).

## **I. Amendments to Closed-End Fund Registration and Offering Rules**

Invesco strongly supports the proposed changes to the CEF registration and offering rules described in the Proposing Release. CEFs currently have a disadvantage when offering additional shares through the shelf registration process as there is no comparable option for a short-form registration statement. The short-form registration statement on Form N-2 as proposed would relieve CEFs of the following burdens, among others:

1. The inability of CEFs to forward-incorporate information from reports filed with the Commission at a later date;
2. The requirement to include a substantial amount of information on the CEF’s registration statement, including current financial information; and
3. Delays caused by filings of post-effective amendments.

The proposed short-form Form N-2 would save CEFs time and expense, and the Commission would be able to expedite its review of registration statements. CEFs would greatly benefit from the flexibility of a more streamlined and cost-effective process that would be provided by the short-form registration statement. As indicated in the Proposing Release, “[a]ffected funds in particular may want greater flexibility to control the timing of their capital raising because section 23(b) of the [1940 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. 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.”<sup>3</sup>

Many CEFs trade at a discount to NAV, and these discounts can continue for extended periods of time. The window when a CEF may be trading at a premium to NAV may fluctuate and/or be short-lived. Delays caused by adherence to the current regulatory requirements may close this available window for CEFs to take advantage of their shelf registrations. In addition, there would be a reduced likelihood of offerings being suspended due to a gap between the expiration of a registration statement and the effectiveness of a new registration statement if the short-form N-2 were available.

Although many Invesco CEFs would satisfy a level of “public float” at \$700 million, we believe this figure would exclude too many potentially eligible funds from taking advantage of the short-form registration proposal. Invesco notes that the number of new CEF offerings has been on the decline for several years, and the total number of CEFs has also declined.<sup>4</sup> Most recently launched public CEFs have had relatively small offering sizes, making each ineligible for treatment as a “seasoned fund” or a “well-known seasoned issuer” (“WKSI Fund”). To encourage new CEF issuances and give existing, smaller CEFs the opportunity to grow through the issuance of additional shares, the public float requirement should be reconsidered. Invesco agrees with the ICI that the Commission not categorize a fund as a seasoned fund or WKSI Fund using a public float standard but allow it to qualify solely based on the other elements of the Proposed Rule.<sup>5</sup> In the event that the Commission believes that a calculable metric should be applied in the determination for seasoned funds and WKSI Funds, we agree with the recommendation included in the ICI Letter that the Commission should develop a metric based on the aggregate net assets of a fund to determine whether it qualifies as a seasoned fund or a WKSI Fund.<sup>6</sup>

Invesco also recommends that unlisted funds, including interval funds, be included in these components of the Proposed Rule. We do not believe there are compelling reasons to deny unlisted funds the benefits of a short-form registration statement.

## **II. New Registration Fee Payment for Interval Funds**

Invesco applauds the Commission’s inclusion in the Proposed Rule of a modernization of the approach to share registration and fee payments applicable to interval funds. Invesco agrees with the view of the Commission articulated in the Proposing Release that interval funds would benefit from the ability to pay their registration fees in the same manner as mutual funds and ETFs and that the approach is appropriate in light of interval funds’ operations.<sup>7</sup> Existing rules for interval funds require payment of a registration fee to the Commission each time a registration statement is filed for a finite number of shares, and this fee must be paid regardless of whether these shares are sold. By contrast, open-end funds pay registration

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<sup>3</sup> Proposing Release at page 19.

<sup>4</sup> ICI Letter at page 3; see House Report No. 115-517 (2017-18).

<sup>5</sup> ICI Letter at page 6.

<sup>6</sup> ICI Letter at page 10.

<sup>7</sup> Proposing Release at pages 62-64.



fees within 90 days after the fund's fiscal year end based on their "net" issuance of shares during the year. Invesco strongly supports the amendments in the Proposed Rule that would allow interval funds to take advantage of the net registration fee method. The current fee requirement for interval funds results in an in-depth analysis of the potential share issuance and related registration fee on at least an annual basis. In many instances an interval fund might purposely overestimate the number of shares required to be registered in order to ensure that an adequate amount is available and to avoid the risk of filing an additional registration statement. This is an unnecessary expense for these funds and creates an additional administrative burden.

In the Proposing Release the Commission has asked whether it should permit additional categories of issuers to utilize a similar registration and payment structure.<sup>8</sup> Invesco greatly appreciates the opportunity to voice its opinion on this topic, as we believe that exchange-traded products that are not regulated under the 1940 Act but operate in a substantially similar manner as ETFs, particularly with respect to daily creation and redemption of shares at NAV, should also benefit from the same treatment.

As mentioned above, Invesco serves as managing owner and sponsor, as applicable, to the 1933 Act Funds. The 1933 Act Funds are not registered under the 1940 Act and as a result do not benefit from the share registration and fee payment treatment that is applicable to open-end investment companies. Rather, the 1933 Act Funds register a finite number of shares on Forms S-1 and S-3 and must pay the applicable fees at the time of registration (instead of on an annual net basis). Invesco believes that due to the nature of the 1933 Act Funds' operations and the risks associated with the current share registration regime, a modernization of the approach, similar to what is proposed for interval funds, is appropriate and would ultimately benefit shareholders.

Except with respect to the share registration process, the issuance, creation and redemption of 1933 Act Fund shares is essentially the same as ETFs. Each trading day, 1933 Act Funds offer shares on a continuous basis to authorized participants ("APs"), which are typically large institutions. The APs may hold such shares for their own account or trade them on an exchange. Further, the 1933 Act Funds redeem shares from APs on a continuous basis, and both the creation and redemption activity occurs at a value equal to the NAV per share when next calculated (usually, the end of the trading day). Beyond this "primary market" activity, 1933 Act Fund shares are traded throughout the day on an exchange in "secondary market" transactions at prices that may deviate from the NAV per share. However, because the APs are able to continuously create and redeem shares, and therefore capitalize on any variance between a 1933 Act Fund's share trading price and NAV per share, shares on an exchange tend to trade at minimal premiums or discounts to NAV (a concept frequently referred to as the "arbitrage mechanism"). This framework is the same for ETFs registered under the 1940 Act.

When shares of a 1933 Act Fund are created, they are drawn against the total number of shares previously registered. When 1933 Act Fund shares are redeemed, they are extinguished and are not added back to the total number of shares available for issuance. As such, Invesco dedicates significant resources to monitoring share availability for each of its 1933 Act Funds, in an effort to minimize the risk of running

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<sup>8</sup> Proposing Release at page 65.



out of registered shares. By regularly reviewing historical creation and redemption trends, as well as economic or other relevant forecasting, Invesco estimates likely share drawdowns and, when necessary, registers additional shares to avoid exhausting the supply. Despite this monitoring system, however, it is impossible to eliminate the risk of a 1933 Act Fund running out of shares. Sudden demand for shares that outpaces historical trend lines can easily deplete the available shares, particularly given that the process to register new shares (which includes development of the registration statement, necessary internal and third party reviews, as well as the role the Commission plays in reviewing and declaring such registration statement effective) can extend well beyond a month or more. As such, even if the increase in demand is identified quickly, the available shares may nonetheless run out while the 1933 Act Fund works to replenish the supply of shares. Accordingly, 1933 Act Funds are incentivized to err on the side of overestimating the share registration needs and act quickly to register more shares when potential upward trends present themselves, both of which result in additional expense and administrative burden.

A 1933 Act Fund exhausting its supply of registered shares available for issuance can have a significant impact on shareholders. When a 1933 Act Fund runs out of shares, it must cease creation activity in the primary market, which immediately impacts the trading of shares on the secondary market. As noted above, the ability of APs to create (and redeem) shares continuously is critical to the “arbitrage mechanism” that acts to align share trading prices with NAV per share. If a 1933 Act Fund cannot accept creation orders from APs, share trading prices typically will begin trading at a sharp premium, a condition that will remain until creation activity is resumed. Such occurrence can have significant negative implications for shareholders. Additionally, the risk exists that a 1933 Act Fund sponsor may not detect that the supply of shares has been exhausted and inadvertently continue to accept creation orders, essentially selling unregistered shares.

In light of the risks described above, and the reasoning articulated by the Commission in the Proposing Release with respect to modernizing the share registration framework for interval funds, Invesco strongly urges the Commission to expand the scope of its modernization effort to include exchange-traded products that create and redeem shares on a continuous basis. Although such funds fall outside of the scope of the 1940 Act, Invesco nonetheless believes such treatment could be effectuated with minimal revisions to Commission rules under the 1933 Act as follows:

- **Scope:** Invesco believes the revision to the share registration and fee payment framework should be applicable to all issuers that fall within the purview of Rule 415(a)(1)(ix) of the 1933 Act. In leveraging such rule, the Commission would define the parameters of the rulemaking in such a way to capture only the applicable issuers (*i.e.*, 1933 Act Funds) without including issuers that should otherwise not be in scope.
- **Amendment to Rule 456 under the 1933 Act:** Similar to the Commission’s proposal to amend Rules 23c-3 and 24f-2 under the 1940 Act, so that interval funds would pay registration fees on an annual net basis, conforming amendments could be made to Rule 456 under the 1933 Act to provide for the same registration fee payment system for issuers that fall within the scope noted above. Such amendments could include a requirement for in-scope issuers to file Form 24F-2,



with applicable revisions to capture such issuers, or file a separate form substantially the same in content as Form 24F-2, but tailored to such issuers.

- *Amendment to Forms S-1 and S-3:* As a technical matter, related amendments to Forms S-1 and S-3 could be made to reflect the ability of in-scope issuers to register an unlimited number of shares and pay fees on an annual net basis. This would likely only require minor changes to the cover pages of such Forms.

### III. Amendments to Prospectus Delivery Rules

Invesco commends the Commission for including amendments to prospectus delivery requirements in the Proposed Rule.<sup>9</sup> Under the Proposed Rule, a registered CEF can satisfy its obligation to deliver a final prospectus by filing its final prospectus with the Commission upon the satisfaction of certain conditions and within a specified time period. Eliminating the requirement to deliver paper or electronic copies of a final prospectus to shareholders will reduce fund costs and the related administrative burden.

### IV. Periodic Reporting Requirements

#### a. Shareholder Report Disclosure

The Proposed Rule would require CEFs and BDCs that use a short-form registration statement to expand the information provided in the annual report to shareholders.<sup>10</sup> This information includes a fee and expense table, share price data, outstanding senior securities and management's discussion of fund performance ("MDFP"). Invesco generally agrees with this approach and believes that investors benefit from these types of annual report disclosures that provide investors with a more in-depth narrative description of a fund's performance over the previous year. CEFs that do not regularly update registration statements rely on shareholder reports to describe key changes to a fund, and this is Invesco's current practice. Invesco also provides an MDFP section in all CEF annual reports, which we believe benefits the funds' shareholders. However, we do not believe that the information provided in a CEF's MDFP should precisely mirror that which is used for open-end mutual funds and ETFs due to the inherent differences between these types of funds and CEFs, such as the latter's more extensive use of leverage and the fact that shares may trade at a premium or discount to NAV. There should not be specific requirements to disclose the impact of particular investments, a fund's performance in relation to its index and other requirements suggested in the Proposing Release.<sup>11</sup> Due to the unique features of CEFs, flexibility should be allowed for these funds to craft MDFP disclosure that would be most relevant for a particular CEF and therefore most useful to its shareholders when evaluating a CEF's performance.

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<sup>9</sup> Proposing Release at pages 47-48.

<sup>10</sup> Proposing Release at pages 81-94.

<sup>11</sup> Proposing Release at page 90.



b. Material Unresolved SEC Staff Comments

The Proposed Rule would require funds using short-form registration statements to disclose all material, unresolved written comments from the Commission staff.<sup>12</sup> Invesco strongly objects to such a requirement, and agrees with the views expressed in the ICI Comment Letter.<sup>13</sup> Issues raised by this proposal include the following:

1. How is materiality of the comments to be determined?
2. Can the Commission ensure that comments will be consistent across all affected funds?
3. What process would determine “resolution” of Commission comments?

We further note that SEC staff comments and responses are available to the public, and we believe that generally, this correspondence is of little use to shareholders due to the technical nature of that correspondence and lack of meaningful context provided by such correspondence.

V. Current Reporting Requirements

Invesco disagrees with the proposed requirement to report certain specified events and information on a current basis on Form 8-K, including material changes to investment objectives or policies and material write-downs in fair value of a significant investment.<sup>14</sup> Currently, CEFs have a number of available avenues with which they can disclose current information to shareholders. Typically, when an important event occurs (e.g., a change in investment policy, portfolio management changes, and preferred share issuances), a CEF will issue a press release promptly following board approval of such change and/or occurrence of the event. Such press releases are generally concurrently posted to the CEF’s website, and relevant information will also be included in the next report to shareholders. Exchange-listed CEFs are also bound by the rules of the exchange on which they trade, which have robust requirements regarding disclosure of material events to shareholders. It is more likely that shareholders will receive the information in a timely fashion through one of these existing practices than having to search for Form 8-K filings on the Commission’s Electronic Data Gathering, Analysis and Retrieval System (“EDGAR”). In addition, regular filings of Form 8-K will increase costs for the applicable funds and add to the already significant filing burden of CEFs.

Conclusion

In summary, Invesco commends the Commission for its efforts to streamline the registration process for CEFs, BDCs and other affected funds. We believe that, with some modifications as described herein, the

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<sup>12</sup> Proposing Release at pages 95-96.

<sup>13</sup> ICI Letter at pages 14-17.

<sup>14</sup> Proposing Release at pages 98-102.



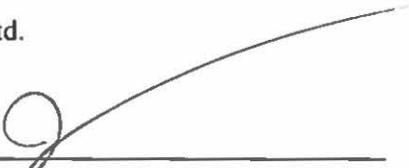
Proposed Rule will benefit existing funds and help to encourage product development that will expand the universe of CEFs.

Thank you for the opportunity to submit this Comment Letter and for your consideration of these comments. Questions regarding this Comment Letter may be directed to the undersigned.

Sincerely,

Invesco Ltd.

By: \_\_\_\_\_

  
Jeffrey H. Kupor  
Head of Legal, Americas

CC: The Honorable Jay Clayton  
The Honorable Kara M. Stein  
The Honorable Robert J. Jackson Jr.  
The Honorable Hester M. Peirce  
The Honorable Elad L. Roisman  
Ms. Dalia Blass, Director, Division of Investment Management