

SEC Registered Offering Reform: Key Implications for BDCs, Closed-End Funds and Non-Traded Vehicles

On May 19, 2026, the Securities and Exchange Commission proposed sweeping amendments to the registered offering framework under the Securities Act of 1933 (the "Proposal")¹. The Proposal would materially expand offering flexibility for business development companies ("BDCs") and registered closed-end investment companies conducting registered offerings (collectively, "affected funds").

EXPANDED OFFERING FLEXIBILITY FOR LISTED BDCS AND CLOSED-END FUND PROVISIONS

The Proposal would expand Form S-3 eligibility by eliminating the \$75 million public float requirement; replace the existing well-known seasoned issuer ("WKSI")/seasoned/unseasoned issuer hierarchy with new "Eligible Listed Issuer" and "Seasoned Eligible Listed Issuer" categories; and extend enhanced registration and communication benefits to a significantly wider universe of issuers. For affected funds, the Proposal would significantly revise the registration, communication and offering framework. In particular, listed affected funds would have access to short-form shelf registration on Form N-2 ("Short-Form N-2") without a seasoning or public float requirement.

To implement this revised framework for affected funds, the Proposal would eliminate the WKSI construct as applied to affected funds and establish two new issuer categories under Rule 405 of the Securities Act: exchange-listed affected funds ("ELI Affected Funds") and seasoned exchange-listed affected funds ("SELI Affected Funds").

ELI Affected Funds would be eligible to use Short-Form N-2 without satisfying a minimum public float threshold or one-year reporting seasoning requirement. They also would be permitted to forward incorporate reports filed under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), by reference and conduct shelf takedowns through prospectus supplements rather than post-effective amendments. Certain "ineligible issuers," as defined in Rule 405, would continue to be excluded from eligibility to use Short-Form N-2. Finally, the Proposal would expand the availability to ELI Affected Funds of the Securities Act communication rules and offerings described in our Summary table.

Within the ELI Affected Funds category, SELI Affected Funds would constitute a subset of ELI Affected Funds subject to Exchange Act and Investment Company Act reporting requirements for at least 12 calendar months. Unlike ELI Affected Funds, SELI Affected Funds would be permitted to use automatically effective shelf registration statements on Form N-2.

Beyond the ELI/SELI framework, the Proposal would broaden the communications framework for covered investment funds. Rule 139b would be amended to expand the research report safe harbor to all covered investment funds, including unlisted affected funds, by eliminating the current minimum public float requirement. It would also remove references to affected funds from Rules 164 and 433 and instead direct affected funds to rely on the Rule 482 advertising framework for communications otherwise subject to those rules.

If adopted, the Proposal's expanded availability of Short-Form N-2 and reduced reliance on post-effective amendments would likely accelerate the use of at-the-market ("ATM") programs and opportunistic shelf takedowns by listed BDCs and registered closed-end funds.

¹ Registered Offering Reform, Securities Act Release No. 11418 (May 19, 2026), <https://www.sec.gov/files/rules/proposed/2026/33-11418.pdf>.

In practical terms, issuers would be able to access the capital markets more efficiently in response to favorable market conditions. Together, these changes would reduce transaction execution risk and the administrative burdens associated with maintaining effective shelf registration statements by permitting greater reliance on incorporation by reference and prospectus supplements in lieu of post-effective amendments and related SEC review processes.

NON-TRADED BDCs AND NON-TRADED REITs

In light of the Proposal's extension of preemption of state securities law registration and qualification requirements to all securities sold in offerings registered under the Securities Act, which would significantly expand the scope of "covered securities" under the National Securities Markets Improvement Act of 1996 ("NSMIA") beyond those currently listed on a national securities exchange, the Proposal has important implications for non-traded vehicles, including non-traded BDCs and non-traded real estate investment trusts ("REITs").

In recent years, a growing number of non-traded REITs and non-traded BDCs have elected to become reporting companies through Form 10 registration statements, which automatically go effective 60 days after the initial filing date. These entities use this process to establish Exchange Act reporting status, build a reporting history and position themselves for eventual access to the public capital markets. In addition, because non-traded REITs and BDCs are typically sold in private placements with limited secondary trading, investors face constrained exit opportunities and Exchange Act reporting provides ongoing information to investors and can help support more active secondary resale markets.

However, securities offered by these non-traded vehicles currently remain subject to extensive state blue sky registration and review requirements because they do not qualify as "covered securities" under NSMIA. As a consequence, these issuers frequently must comply with coordinated state review programs and substantive North American Securities Administrators Association guidelines governing offering terms, underwriting compensation, leverage limitations, suitability standards and disclosure practices. Many of these substantive state law restrictions could become significantly less relevant if federal preemption is expanded as proposed.

Because the proposed amendments would significantly expand federal preemption, securities sold by non-traded REITs and non-traded BDCs in offerings would no longer be subject to substantive blue sky review in individual states, even though the issuer is not listed on a national securities exchange. Preemption would materially reduce the time, cost and complexity associated with multi-state offering compliance for non-listed BDCs and non-listed REITs that historically have faced an extensive 50-state review and approval process and incurred substantial legal, filing and administrative burdens. The impact could be particularly meaningful for continuously offered programs that currently must navigate coordinated state review and renewal processes in connection with ongoing capital raising activities. However, and on balance with regard to investor protection, timely periodic reporting and disclosure controls could become increasingly important for non-listed BDCs and non-listed REITs seeking long-term capital markets flexibility by using continuous offering programs.

SUMMARY OF ENHANCED REGISTRATION AND COMMUNICATION BENEFITS FOR AFFECTED FUNDS

BENEFIT IS		UNDER THE CURRENT RULES, BENEFIT IS		UNDER PROPOSED RULES, THE	
RULE	DESCRIPTION OF COMMUNICATION EXEMPTION OR REGISTRATION BENEFIT	AVAILABLE TO:	NOT AVAILABLE TO:	AVAILABLE TO:	NOT AVAILABLE TO:
139	Rule 139b provides a safe harbor for broker-dealers that participate or may participate in a registered offering of the securities of a covered investment fund (“CIF”), as defined by Rule 139b, to publish research reports on covered investment funds, including affected funds, without such reports being deemed impermissible offers under the Securities Act.	CIFs WCSI Affected Funds	Seasoned Affected Funds	CIFs ELI Affected Funds SELI Affected Funds	
163	Rule 163 allows eligible issuers to make certain offers prior to filing a registration statement without violating Section 5(c) of the Securities Act.	WCSI Affected Funds	Seasoned Affected Funds CIFs	ELI Affected Funds SELI Affected Funds	CIFs
163A	Rule 163A allows eligible issuers to make certain pre-filing communications more than 30 days before a registration statement is filed.	WCSI Affected Funds	Seasoned Affected Funds CIFs	ELI Affected Funds SELI Affected Funds	CIFs
164	Rule 164 allows eligible issuers to rely on the free writing prospectus rules.	WCSI Affected Funds	Seasoned Affected Funds CIFs		CIFs ELI Affected Funds SELI Affected Funds
413(b)	Rule 413(b) allows eligible issuers to register an additional class of securities or securities of certain majority-owned subsidiaries via automatically effective post-effective amendments to automatic shelf registration statements.	WCSI Affected Funds	Seasoned Affected Funds CIFs	ELI Affected Funds SELI Affected Funds	CIFs
430B(a)	Rule 430B(a) allows eligible issuers to omit from a base prospectus of an automatic shelf registration statement the following: (1) whether the offering is a primary or secondary offering or a combination; (2) the plan of distribution; (3) a description of securities registered (excluding name or class of securities); and (4) the identity of other issuers.	WCSI Affected Funds	Seasoned Affected Funds CIFs	ELI Affected Funds SELI Affected Funds	CIFs

RULE	DESCRIPTION OF COMMUNICATION EXEMPTION OR REGISTRATION BENEFIT	AVAILABLE TO:	NOT AVAILABLE TO:	AVAILABLE TO:	NOT AVAILABLE TO:
430B(b)	Rule 430B(b) allows eligible issuers to omit from a form of resale prospectus the identity of selling security holders and the amounts of securities registered on their behalf.	✓ Seasoned Affected Funds ✓ WKSI Affected Funds	✗ CIFs	✓ ELI Affected Funds ✓ SELI Affected Funds	✗ CIFs
433	Rule 433 allows eligible issuers to use free writing prospectuses without the free writing prospectus being accompanied or preceded by a Section 10 prospectus.		✗ Seasoned Affected Funds ✗ WKSI Affected Funds ✗ CIFs		✗ CIFs ✗ ELI Affected Funds ✗ SELI Affected Funds
456(b) / 457(r)	Rule 456(b) and 457(r) allow eligible issuers to defer payment of registration filing fees and pay on a “pay-as-you-go” basis.	✓ WKSI Affected Funds	✗ Seasoned Affected Funds ✗ CIFs	✓ ELI Affected Funds ✓ SELI Affected Funds	✗ CIFs
462	Rule 462 allows eligible issuers to file an automatic shelf registration statement or any post-effective amendment that is immediately effective upon filing.	✓ WKSI Affected Funds	✗ Seasoned Affected Funds ✗ CIFs	✓ SELI Affected Funds	✗ CIFs ✗ ELI Affected Funds