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STATEMENT

OF

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PRESIDENT & CEO
INVESTMENT COMPANY INSTITUTE

BEFORE THE

US HOUSE OF REPRESENTATIVES

COMMITTEE ON FINANCIAL SERVICES

SUBCOMMITTEE ON CAPITAL MARKETS, SECURITIES AND INVESTMENT

ON

**LEGISLATIVE PROPOSALS TO IMPROVE SMALL BUSINESSES' AND COMMUNITIES'
ACCESS TO CAPITAL**

NOVEMBER 3, 2017

EXECUTIVE SUMMARY

Closed-End Fund Legislation

- ICI fully supports Representative Hollingsworth’s discussion draft of the “Expanding Investment Opportunities Act.” The legislation would modernize the offering and proxy rules for closed-end funds, enabling them to utilize already existing offering and communications rules that traditional operating companies have relied on since 2005.
- 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 in the economy.
- Specifically, the legislation would require the Securities and Exchange Commission (“SEC”) to amend its rules within one calendar year to provide several technical, but tangible, benefits to closed-end funds and their shareholders:
 - Closed-end funds that meet the criteria of a “well-known seasoned issuer” (having at least \$700 million common equity outstanding and having timely made required filings for the preceding 12 calendar months) could register and offer additional shares more quickly through the “automatic shelf registration” process to take advantage of current market conditions.
 - Closed-end funds that meet the criteria of a “seasoned issuer” (having at least \$75 million in common equity outstanding and having timely made required filings for the preceding 12 calendar months) could incorporate information from subsequent filings into their registration statements automatically.
 - Closed-end funds that meet the conditions of several existing safe harbors could rely on those safe harbors to communicate with investors and potential investors more freely during a registered offering.
 - Closed-end funds and, ultimately, their shareholders could save on the costs of prospectus delivery under certain conditions.

Business Development Company Legislation

- Congress created business development companies (“BDCs”) as a specialized type of closed-end fund whose principal activities consist of investing in, and offering to provide “significant managerial assistance” to, small, growing, or financially troubled operating companies. BDCs are regulated under the Investment Company Act of 1940, but Congress provided BDCs with greater operating flexibility than other closed-end funds or mutual funds.
- Congress already has granted BDCs more flexibility to utilize leverage than other registered investment companies. Consistent with that approach, the BDC legislative proposal would lower the asset coverage requirement for senior securities, *i.e.*, debt and preferred stock, to 150 percent from 200 percent. We do not object to this change.
- ICI supports the proposed offering and communications reforms for BDCs for the same reasons ICI supports the proposed offering and communications reforms for closed-end funds.

Money Market Fund Legislation

- The Securities and Exchange Commission has modernized and strengthened the regulatory requirements for money market funds from time to time as circumstances have warranted—most recently in 2010 and 2014 in response to the 2008 financial crisis.
- The 2010 and 2014 SEC reforms add layers of transparency and redundant safeguards that more than adequately address any risks that may have existed in 2008.
- The Consumer Financial Choice and Capital Markets Protection Act of 2017 (“H.R. 2319”) would rescind many of the 2014 reforms including the requirement that prime institutional and tax-exempt institutional money market funds float their NAVs. Although some ICI members have expressed strong interest and support for the bill, other members believe that a third round of regulatory changes to money market funds is neither appropriate nor desirable.
- As a result of these strongly differing member views regarding H.R. 2319, ICI takes no position on the proposed legislation.

Statement of Paul Schott Stevens

I. Introduction

My name is Paul Schott Stevens. I am President and CEO of the Investment Company Institute (“ICI”), the leading association representing regulated funds globally, including mutual funds, exchange-traded funds, closed-end funds, and unit investment trusts in the United States (“registered funds”), 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\$20.9 trillion in the United States, serving more than 100 million US shareholders, and US\$6.6 trillion in assets in other jurisdictions. Thank you, Chairman Huizenga, Ranking Member Maloney, and members of the Subcommittee for inviting me to testify on “Legislative Proposals to Improve Small Businesses’ and Communities’ Access to Capital.”

In addition to serving as the vehicles through which more than 100 million Americans save for retirement or pursue other important financial goals, registered funds play an important role in the US economy. They channel capital from fund investors to the markets which, in turn, stimulates economic growth and job creation. The injection of capital through fund investments benefits underlying businesses that rely on the markets as an important source of financing. The underlying businesses utilize the capital to hire employees, fund their enterprises, and develop new technologies, sparking continued innovation and growth.

My testimony focuses on Mr. Hollingsworth’s discussion draft of the “Expanding Investment Opportunities Act,” legislation that would modernize the offering and proxy rules for one type of registered fund—closed-end funds (“Discussion Draft”). Notwithstanding the benefits these funds provide to investors and the capital markets, the last several years have seen a steady decline in the number of closed-end funds and new closed-end fund offerings. By simplifying the closed-end fund offering process and liberalizing existing restrictions on communications with investors before and during an offering, the legislation would reduce unnecessary regulatory burdens that raise costs for investors. These changes, which would conform closed-end fund offering rules to those for traditional operating companies, could encourage new closed-end fund offerings and lead to a concomitant increase in the long-term capital these funds supply to companies in which they invest. For these reasons, ICI strongly supports this legislation.

In the sections that follow, I first provide background information on closed-end funds and their comprehensive regulatory framework (Section II). I then describe how the Discussion Draft would change the current requirements for closed-end fund offerings and communications, and explain the benefits of these changes for closed-end funds and their shareholders and, by extension, capital formation (Section III). I conclude with brief comments on pending legislative proposals concerning business development companies and money market funds (Section IV).

II. Background on Registered Closed-End Funds

To provide context for ICI's views, it is important to understand what closed-end funds are and how they are regulated.

A closed-end fund, like other types of investment companies, is a pooled investment vehicle that is **professionally managed in accordance with the fund's investment objectives and policies**. Generally, a closed-end fund is created by issuing a fixed number of common shares to investors during an initial public offering. Subsequent issuances of common shares can occur through secondary or follow-on offerings. A closed-end fund may raise additional capital by issuing debt securities and one class of preferred stock in addition to common shares. The holders of the common stock experience a gain or loss depending on whether the fund earns a rate of return on its assets that is higher or lower than the amounts that it pays to the holders of its debt securities and preferred stock.

After a fund's initial public offering, investors generally buy and sell shares of a closed-end fund in the open market (typically on a securities exchange such as the New York Stock Exchange), rather than directly from or to the fund. Some closed-end funds, however, may adopt share repurchase programs or periodically make tender offers for shares. The market price of a closed-end fund share fluctuates like that of other publicly traded securities and is determined by supply and demand in the marketplace. In contrast to a mutual fund, which must stand ready to meet shareholder redemptions on a daily basis and therefore must invest mostly in liquid assets, a closed-end fund has the flexibility to invest a significant percentage of its assets in less liquid securities. For example, a closed-end fund may invest in securities issued by small private companies and long-term tax-free investments.

The flexibility that closed-end funds have to invest in these types of assets and to issue debt securities and preferred stock allows closed-end funds to:

- provide enhanced income and cash flow (through investments in longer term or less liquid higher yielding assets);
- maximize after-tax efficiency (through investments in certain tax-free investments); and
- broaden diversification (through investments in specialized asset classes).

Registered closed-end funds are comprehensively regulated under the federal securities laws and related **Securities and Exchange Commission ("SEC")** regulations, which serve to protect the interests of fund investors. Closed-end funds, like publicly traded operating companies, are subject to the Securities Act of 1933 ("1933 Act"), which governs the way public offerings are conducted. Closed-end funds file registration statements with the SEC on Form N-2 to register the offering of their securities under the 1933 Act and to register as investment companies under the Investment Company Act of 1940

(“Investment Company Act”). The Form N-2 contains three parts, including a prospectus, which includes required disclosures about the fund.

In addition, closed-end funds are subject to regulation under the Securities Exchange Act of 1934 (“Exchange Act”). Like most publicly traded operating companies, closed-end funds file annual and semi-annual reports as well as quarterly reports.¹ Each of these periodic reports includes certifications from the principal executive officer and the principal financial officer. Like operating companies, closed-end funds also are subject to the proxy and tender offer provisions of the Exchange Act.

In contrast to publicly traded operating companies, closed-end funds are subject to further substantive regulation under the Investment Company Act. The Investment Company Act restricts, among other things, a closed-end fund’s ability to use leverage, offer new shares below net asset value, engage in affiliated transactions, and imposes strict requirements on the custody, diversification (for a diversified closed-end fund) and transparency of fund assets. The Investment Company Act also requires a registered closed-end fund to have a board of directors with a specified proportion of directors that are independent of the fund’s manager.² In addition, it requires registered closed-end funds to have a chief compliance officer who oversees the day-to-day operations of the fund under a board-approved fund compliance program and policies.

With their ability to provide enhanced income and cash flow, closed-end funds serve as an important retirement savings and investment vehicle for retail investors. As of June 2017, there were 533 closed-end funds with total assets of \$271 billion. We estimate that approximately 3 million retail investors rely on closed-end funds to help meet their investment needs.

III. Importance of the Closed-End Fund Discussion Draft

Despite their numerous benefits, the number of closed-end funds has declined steadily over the last several years. Since 2007, the number of closed-end funds has dropped 19 percent (from 662 funds at year-end 2007 to 533 funds in June 2017). In addition, the number of new closed-end fund offerings has dropped. In 2007, there were 42 new closed-end fund issuances; in 2016, there were only eight.³ That is an 81 percent decline.

The Discussion Draft would help reverse these trends by reducing the burdens of certain requirements under current SEC registration and communications regulations that apply to closed-end funds. Existing requirements impose substantial costs on closed-end funds and their shareholders without commensurate investor protection benefits. Closed-end funds offer and sell their shares in the same

¹ Closed-end funds file annual and semi-annual shareholder reports on Form N-CSR and file quarterly reports on Form N-Q. Operating companies make periodic filings on Form 10-K and Form 10-Q.

² In practice, most boards have 75 percent or more independent members.

³ This is based on the last full year of data. See Antoniewicz, Rochelle, and Julieth Saenz. 2016. “The Closed-End Fund Market, 2016” ICI Research Perspective 23, no. 2 (April) at Figure 7.

manner as securities issued by traditional operating companies, yet their offer and sale are subject to additional requirements. The Discussion Draft would cure this unjustified regulatory disparity by applying the same rules to closed-end funds and operating companies. To take advantage of the additional flexibility provided by the rules, a closed-end fund would have to meet the same conditions of the rule that operating companies must meet. Those requirements would apply *in addition to* the extensive investor protection provisions of the Investment Company Act and other federal securities laws.

In 2013, when former SEC Chair Mary Jo White evaluated legislative proposals nearly identical to the Discussion Draft that would put business development companies, one form of closed-end fund, on par with other operating companies for both offerings and communications, she noted that “[i]n my view, these provisions do not raise significant investor protection concerns.”⁴ We wholeheartedly agree that these offering and communications reforms do not raise significant investor protection concerns. We therefore believe that now is the time for Congress to act to modernize the regulatory framework for closed-end fund offerings and communications.

The Discussion Draft addresses the current, unsatisfactory situation: It directs the SEC, within one year of the legislation’s enactment, to amend certain rules and registration forms to permit closed-end funds to operate under the streamlined registration process—and additional flexibility around public communications—that operating companies have been able to take advantage of for more than a decade. The cost savings associated with these changes would be passed on to fund shareholders, making these important investment vehicles more attractive than they are today.

The section of my testimony below begins with a description of the closed-end fund registration process and how the Discussion Draft would simplify it. It then describes how closed-end funds currently communicate with the public about their offerings and how the Discussion Draft would encourage them to provide even more information. Finally, it concludes with a brief discussion responding to potential concerns that the Discussion Draft raises.

A. Current Registration Process for Closed-End Funds

As mentioned above, a closed-end fund generally is created by issuing a fixed number of common shares to investors during an initial public offering. Depending on market conditions, a registered closed-end fund after its initial public offering might determine that it is an opportune time to invest more assets into the market. In these circumstances, certain closed-end funds can utilize a streamlined process known as “shelf registration,” which involves filing a “shelf registration statement” with the SEC to register and publicly offer additional securities to raise additional capital for investment.⁵

⁴ See Letter from Mary Jo White, Chair, Securities and Exchange Commission, to The Honorable Jeb Hensarling, Chairman, Financial Services Committee, US House of Representatives, dated October 21, 2013 (providing the Chair’s views on substantially identical business development company legislation).

⁵ Rule 415 under the 1933 Act permits issuers to utilize shelf registration statements. Although Rule 415 does not expressly extend to closed-end funds because the Rule only applies to Form S-3 and not Form N-2, two SEC staff no-action letters

To use a shelf registration statement, the closed-end fund must meet the criteria of a “seasoned issuer,” which essentially requires that the closed-end fund have at least \$75 million in common equity outstanding and have made timely periodic filings with the SEC for the preceding 12 calendar months. Assuming the fund meets such criteria, the closed-end fund can offer additional shares to the public by filing a new shelf registration statement on Form N-2 to register the shares. Once the SEC staff declares the registration statement effective, the closed-end fund then can sell shares from the shelf registration statement as market conditions dictate for a period of up to three years. During this three-year period, the closed-end fund must make additional post-effective amendment filings to the shelf registration statement to include updated financial statements, to the extent necessary so that the incorporated financial statements are never more than 16 months old.⁶

This offering process has its drawbacks. First, the closed-end fund must wait for the SEC staff to declare the shelf registration statement effective before the fund can sell any additional shares. It can take several months for the SEC staff to provide comments, if any, on the registration statement, for the closed-end fund to respond to them, and for the SEC staff to declare the registration statement effective. The time this entire process takes can affect the timing and success of an offering.

Second, the process of filing a post-effective amendment to the shelf registration statement to incorporate a fund’s updated financial statements into the registration statement could cause issues if the SEC staff review is not completed and the post-effective amendment is not declared effective by the time the financial statements become “stale” (*i.e.*, are more than 16 months old).⁷

Many traditional operating companies do not face these issues. In 2005, the SEC adopted rules that significantly modernized the registration, communications and offering processes for them.⁸ These reforms have been extremely successful as evidenced by the many operating companies that rely on them. The 2005 SEC Rule permits traditional operating companies that qualify as “well-known seasoned issuers,” or “WKSI,” to utilize an automatic shelf registration process. As their name suggests, automatic shelf registrations become effective automatically without SEC staff review and comment.

permit closed-end funds meeting required conditions to rely on the rule using Form N-2. *See* Nuveen Virginia Premium Income Municipal Fund (pub. avail. Oct. 6, 2006); Pilgrim America Prime Rate Trust (pub. avail. May 1, 1998).

⁶ “Incorporation by reference” is the act of including an additional document within another document by referencing the additional document. Issuers utilize incorporation by reference to include the substance of previous and future filings in a registration statement without attaching those filings as part of the registration statement.

⁷ This stands in sharp contrast to the treatment afforded to open-end funds and closed-end interval funds. Open-end funds may rely on Rule 485 under the 1933 Act, which provides that a post-effective amendment filing shall become effective immediately if the amendment is filed solely to update financial statements, among other things. Closed-end interval funds may rely on Rule 486 under the 1933 Act, which provides similar eligibility for immediate effectiveness. A closed-end interval fund is a closed-end fund that, pursuant to Rule 23c-3 under the Investment Company Act, periodically offers to repurchase shares from its shareholders.

⁸ *See Securities Offering Reform*, SEC Release No. 33-8591 (July 19, 2005), 70 Fed. Reg. 44722 (Aug. 3, 2005) (“2005 SEC Rule”), available at <https://www.sec.gov/rules/final/33-8591fr.pdf>.

To qualify as a WKSI, generally an issuer must have at least \$700 million in common equity outstanding and have timely filed required reports for the preceding 12 calendar months. In addition, the issuer within the past three years must not have engaged in conduct, or be subject to a conviction, decree, or order, that would make it ineligible.⁹

The 2005 SEC Rule also permits operating companies that qualify as “seasoned issuers” (generally, issuers that have at least \$75 million in common equity outstanding and have timely filed required reports for the preceding 12 calendar months) to utilize a technique known as “forward incorporation by reference.” This means that such issuers can incorporate information from future filings into a registration statement without having to amend the registration statement to reference the specific filing from which the information will be derived.

The 2005 SEC Rule, however, excluded registered closed-end funds from the reforms. Instead, the SEC indicated that the parallel regulatory framework for registered investment companies also should be updated. A dozen years later, no similar reforms ever have been proposed. Nor is there any prospect that they will be proposed in the future, considering the SEC’s crowded rulemaking agenda.

Although the frameworks governing operating company filings and closed-end fund filings may be separate, as described earlier, in substance they are substantially the same. We strongly support the Discussion Draft, because it would allow closed-end funds and their shareholders to benefit from the same cost saving reforms that operating companies have enjoyed for more than 12 years, and potentially spark additional closed-end fund offerings that would contribute to capital formation.

B. Reforms to the Registration Process

The Discussion Draft would address the drawbacks of the current registration process by reforming closed-end fund offerings in two respects. First, closed-end funds would be able to utilize “automatic shelf registrations” to offer additional shares if they qualify as “well-known seasoned issuers,” or “WKSI.” As of December 2016, we estimate that there were 93 closed-end funds that could qualify as WKSI. This is approximately 18 percent of all closed-end funds (93/530 total closed-end funds). Giving qualifying closed-end funds the ability to use this process would help those funds better evaluate and assess the market for their offerings. It would enable them more readily to access the capital markets without facing the risk of a delay that could suspend or terminate the offering.

Second, closed-end funds that qualify as “seasoned issuers” would be permitted to “forward incorporate by reference” information into their registration statements. As of December 2016, we estimate that there were 473 closed-end funds that could qualify as seasoned issuers. This is approximately 89 percent of all closed-end funds (473/530 total closed-end funds). As a result, closed-end funds would not need to file a post-effective amendment simply to amend their existing registration statement to include

⁹ An issuer would be ineligible, for example, if within the past three years it filed a bankruptcy petition or had an involuntary bankruptcy petition filed against it, was convicted of a felony or certain misdemeanors, entered into a judicial or governmental decree relating to certain violations of law, or was subject to an SEC stop order.

updated financial statements. Permitting closed-end funds to incorporate by reference in this manner would save time and money by eliminating unnecessary filings and associated costs.

By way of illustration, consider the contrast between the registration process for additional shares currently applicable to a hypothetical large, seasoned closed-end fund with an active shelf registration statement, on the one hand, and that of an operating company of similar size and experience, on the other. Assume that both companies have a public equity float of at least \$700 million and have made timely filings with the SEC for the past year. The fiscal year for both companies ends on December 31. Neither company has engaged in conduct within the past three years that would make it ineligible to rely on certain rules.

To use a shelf registration statement for the sale of securities, the audited financial statements therein must not be more than 16 months old. Accordingly, for the closed-end fund, the fund's lawyers must draft a full registration statement as a post-effective amendment to the shelf registration, file the same, await SEC staff comments, and resolve them. This process could entail multiple filings. Then, the SEC staff must declare the post-effective amendment effective, and do so before the 16-month period expires in order for the fund to be able to sell securities registered on the shelf without interruption. This process entails not only substantial delays, but also legal and audit fees. The fund's attorneys, for example, may charge fees for preparing each post-effective amendment and responding to SEC staff comments. Each time the audited financial statements near the end of their 16-month lifespan, the closed-end fund repeats the process.

In contrast, an operating company does not have to file a post-effective amendment to its registration statement because it simply files its annual report with the SEC, as the law requires, and the financial statements therein are automatically incorporated by reference in the shelf registration statement. There are no additional legal or audit fees associated with a filing, and there is no additional time that is spent for the review process.

Set forth in Appendix A is a more detailed, technical explanation of the registration process amendments the Discussion Draft would require the SEC to make to current rules under the 1933 Act, the proxy rules, Regulation FD, and Form N-2 under the Investment Company Act.

C. Current Communications Process for Closed-End Funds

The federal securities laws regulate public securities offerings and impose certain requirements upon the "offer" of a security. The term "offer" is interpreted broadly and covers several types of communications regarding the security. There are very specific requirements as to what information can be communicated prior to the filing of a registration statement, during the period between the filing of the registration statement and its effective date, and after its effective date. Generally, when a security is publicly offered, the issuer of the security must provide required disclosures about the security to investors in the form of a full or "statutory" prospectus. Given the broad interpretation of the term "offer," the federal securities laws provide several exceptions to the statutory prospectus requirements when the issuer or others make public communications about the security. Many of these exceptions

take the form of “safe harbors” under which a company, upon meeting certain conditions, can provide information without having to deliver a statutory prospectus.

A closed-end fund primarily relies on Rule 482 under the 1933 Act to provide a broad range of communications without having to deliver the statutory prospectus. Rule 482 does not impose any limits on the types of information that may be included in the communication but, in certain instances, does require specific legends and, when performance advertising is included, does require certain disclosures. A closed-end fund may rely on Rule 482 only after it files a registration statement and must file all Rule 482 communications with the SEC or FINRA. For purposes of the federal securities laws, a Rule 482 communication is a prospectus, but it is deemed to be an “omitting” prospectus because it does not include all information a statutory prospectus must contain.

Absent a safe harbor or similar exception, Section 5(b)(2) of the 1933 Act requires a closed-end fund that sells its securities during an offering to provide a purchasing investor with its statutory prospectus.

D. Reforms to the Communications Process

The Discussion Draft would provide a closed-end fund with greater flexibility regarding its public communications. By making available to closed-end funds these additional safe harbors that operating companies have relied on for years, the legislation could reduce the number of Rule 482 filings a closed-end fund is required to make (and the attendant costs), reduce liability risk, and facilitate the issuance of communications during the period prior to filing a registration statement. The safe harbors also would provide legal protections to broker-dealers when issuing research reports on the closed-end fund. Finally, the safe harbors would allow a closed-end fund and ultimately, its shareholders, to save on the costs of prospectus delivery under certain conditions.

Together these reforms would facilitate greater availability of information to investors and the market and eliminate barriers to communications that have been made increasingly outmoded by technological advances. Providing investors and the market with more information could make closed-end fund offerings more attractive and spur additional investments. Eliminating these barriers also could reduce expenses for closed-end funds and their shareholders, again spurring additional interest.

A more detailed description of the communications safe harbors under the 1933 Act that would become available to closed-end funds under the Discussion Draft is included in Appendix B.

E. Response to Potential Concerns

As noted above, former SEC Chair White weighed in on earlier legislative proposals nearly identical to the Discussion Draft (but pertaining to business development companies). She concluded that the provisions “do not raise significant investor protection concerns.” Nonetheless, we understand that possible concerns have been raised regarding the Discussion Draft. Closer examination indicates that none is well placed.

The first concern is that closed-end funds that utilize automatic shelf registrations could register new offerings without a full SEC staff review. While this is true, similar treatment for operating companies appears to have worked well for over a decade. Moreover, all closed-end funds that would utilize these provisions already will have filed a registration statement that the SEC staff has reviewed and declared effective. Under the Investment Company Act, any change to an investment policy that a fund has designated as fundamental would require shareholder approval, so the fund could not unilaterally change such policies. In addition, the Sarbanes-Oxley Act of 2002 requires the SEC staff to review each reporting company at least once every three years, though the SEC staff review a significant number of companies more frequently. The SEC staff routinely comments on previously made filings and, at times, requires registrants to amend their filings in response to such reviews. The SEC staff also can issue stop orders to halt any ongoing offering. Finally, closed-end funds—like all other issuers—continue to be subject to the antifraud provisions of the securities laws. The SEC can bring actions against issuers for any false or misleading statements or omissions in the registration statement.

We understand that the question of SEC staff review may relate more specifically to closed-end funds that are not traded on a public exchange and invest in very specialized, less liquid assets (e.g., funds of hedge funds).¹⁰ In this regard, the SEC staff already has implemented its own set of restrictions, requiring that registered closed-end funds that are funds of hedge funds only sell their shares to “accredited investors” and in minimum initial amounts of no less than \$25,000. Accredited investors are investors who earned income that exceeded \$200,000 (or \$300,000 with a spouse) in each of the prior two years and reasonably expect the same for the current year or have a net worth of over \$1 million either with or without a spouse (excluding the value of the person’s primary residence). According to the SEC, the category of “accredited investor” is “intended to encompass those persons whose financial sophistication and ability to sustain the risk of loss of investment or ability to fend for themselves render the protections of the [1933 Act’s] registration process unnecessary.”¹¹ Nothing in the Discussion Draft would change the SEC staff-imposed accredited investor requirement (or minimum initial investment), and we believe that, under these circumstances, those investors do not need the protections of a further SEC staff review. Moreover, as discussed above, to be eligible to utilize an automatic shelf registration, any non-exchange-traded closed-end fund would need to meet the WKSJ qualifications.¹²

The second concern involves whether the one-year period that the Discussion Draft affords the SEC to amend the rules is a sufficient timeframe in which to propose and adopt changes. If new rules are not adopted within that period, then a closed-end fund shall be entitled to treat the changes as having been completed. We understand that one year is a tight rulemaking timeframe, but believe that such a

¹⁰ Closed-end interval funds typically are not exchange traded, but they do not appear to be the subject of concern. These funds operate pursuant to Rule 23c-3 under the Investment Company Act.

¹¹ See *Regulation D Revisions; Exemption for Certain Employee Benefit Plans*, SEC Release No. 33-6683 (Jan. 16, 1987), 52 Fed. Reg. 3015.

¹² With respect to any other type of non-exchange-traded closed-end fund (other than an interval fund or a fund of hedge funds), we have not identified any such fund that would meet the WKSJ qualifications.

requirement is necessary and appropriate in the circumstances. When it adopted the 2005 SEC Rule, the SEC expressed the view that, because closed-end funds and other registered investment companies are subject to a separate framework governing communications with investors, “it would be more appropriate to consider investment company issues in the context of a broader reconsideration of this separate framework.”¹³ Since the 2005 SEC Rule was adopted, the SEC has had more than 12 years to consider a parallel framework for closed-end funds, but has not done so. We appreciate that the SEC constantly must determine how to allocate its limited resources among numerous competing (and changing) priorities. This unavoidable reality may well explain why the SEC has not yet returned to this matter. But it also suggests the odds are that the agency never will do so—absent direction from Congress and a time limit such as that prescribed in the Discussion Draft. It is for this reason that we support Congressional direction in this area.

IV. Proposals on Business Development Companies and Money Market Funds

A. Business Development Companies

Congress created BDCs as a specialized type of closed-end fund whose principal activities consist of investing in, and providing “significant managerial assistance” to, small, growing, or financially troubled domestic businesses. As originally conceived, Congress intended for BDCs to be publicly offered venture capital funds and to stimulate small business growth through their capital investments and “significant managerial assistance.” BDCs have grown in popularity since their creation in 1980 and through their growth have provided needed financing and support to small and mid-sized businesses, which can use this financing to fund job creation and new capital projects that boost economic growth.

Like other closed-end funds, BDCs are subject to substantial regulation under the federal securities laws. The primary regulations, under the Investment Company Act, require BDCs to provide “significant managerial assistance,” which involves providing guidance and counsel about the management, operations, or business objectives and policies of their portfolio companies or exercising a controlling influence over the management of policies of portfolio companies.¹⁴ Congress did not intend BDCs to be passive investment vehicles like mutual funds. The Investment Company Act accordingly requires a BDC to invest at least 70 percent of its portfolio assets in cash (or high quality, short-term debt securities), securities issued by financially troubled businesses, or certain securities issued by “eligible portfolio companies” (generally, small private companies).

Given their specialized investment focus, Congress provided BDCs with greater operating flexibility than other closed-end funds or mutual funds. BDCs are subject to portions of the Investment Company Act and are not required to register as investment companies. The Investment Company Act does, however, impose the same restrictions on their custody of assets as other investment companies

¹³ 2005 SEC Rule, *supra* note 8, 70 Fed. Reg. at 44735.

¹⁴ In addition, BDCs are subject to the reporting requirements under the Exchange Act and therefore must file annual and quarterly reporting requirements.

and imposes different but significant restrictions on a BDC's transactions with affiliates, among other things. The Investment Company Act also requires that a majority of the BDC's directors or general partners be independent of the BDC's manager. Congress did, however, permit BDCs to incur greater leverage than other types of investment companies.¹⁵

Congress already has granted BDCs more flexibility to utilize leverage than other registered investment companies. Consistent with that approach, the BDC legislative proposal would lower the asset coverage requirement for senior securities, *i.e.*, debt and preferred stock, to 150 percent from 200 percent. We do not object to this change.

The BDC legislative proposal also includes provisions that would enable business development companies to rely on the same offering and communications reforms that we support for closed-end funds. Because business development companies are one form of closed-end fund that would be required to meet identical criteria or conditions of the reforms before utilizing them, we support the proposal for the same reasons we support the proposal for closed-end funds generally.

B. Money Market Funds

Since the early 1970s, money market funds have been a steady, predictable mainstay of finance. Today, over 54 million retail investors, as well as corporations, municipalities, and other institutional investors, entrust some \$2.7 trillion to money market funds as low-cost, efficient cash management tools that provide a high degree of liquidity, stability of principal value, and a market-based yield. Money market funds also serve as an important source of direct financing for state and local governments, businesses, and financial institutions, and of indirect financing for households. Without these funds, financing for all of these institutions and individuals would be more expensive and less efficient.

Money market funds owe their success, in large part, to the stringent regulatory requirements to which they are subject under the federal securities laws—including, most notably, Rule 2a-7 under the Investment Company Act. The regulatory regime under Rule 2a-7 has proven to be effective in protecting investors' interests and in sustaining their confidence in money market funds as a valuable tool for managing cash. The SEC has modernized and strengthened the rule from time to time as circumstances have warranted (most recently in 2010 and 2014, as discussed below).

In light of money market funds' experience in the financial crisis, and with the industry's strong support, the SEC in 2010 approved far-reaching rule amendments that enhanced an already-strict regime of money market fund regulation.¹⁶ The amended rules made money market funds more

¹⁵ The Investment Company Act requires that BDCs retain 200 percent asset coverage for senior securities (*i.e.*, debt securities and preferred stock). For other closed-end funds, the asset coverage requirement is 300 percent for debt securities and 200 percent for preferred stock.

¹⁶ Money market funds in fact were the first part of the US financial system to be reformed in the wake of the financial crisis. See *Money Market Fund Reform*, SEC Release No. IC-29132 (February 23, 2010), 75 Fed. Reg. 10060 (March 4, 2010). Taking the initiative to respond quickly and aggressively to the events of fall 2008, ICI formed the Money Market Working

resilient by, among other things, imposing new credit quality, maturity, and liquidity standards and increasing the transparency of these funds.

The SEC amended Rule 2a-7 again in 2014. The 2014 SEC rules, which took effect on October 14, 2016, largely centered around two principal reforms.¹⁷ The first reform requires prime institutional and tax-exempt institutional money market funds to price and transact in their shares using “floating” net asset values (“NAVs”). The new rules also require these funds to calculate their NAVs to four decimal places. (For a fund with a NAV of \$1.00, that means calculating the NAV to one-hundredth of a penny—*i.e.*, \$1.0000.) Government money market funds¹⁸ and retail money market funds¹⁹ may continue to seek to maintain a stable NAV using amortized cost valuation and/or penny rounding.

The second principal reform enables, and in certain cases requires, all non-government money market funds (*i.e.*, all prime and tax-exempt funds, whether institutional or retail) to impose barriers on redemptions (so-called liquidity fees and gates) during extraordinary circumstances, subject to determinations by a money market fund’s board of directors. Specifically, the new rules give a money market fund’s board the flexibility to impose liquidity fees of up to 2 percent, redemption gates (a delay in processing redemptions for up to 10 business days), or both if the fund’s weekly liquid assets have dropped below 30 percent of its total assets. If a fund’s weekly liquid assets fall below 10 percent of its total assets, the SEC rules require the fund to charge redeeming investors a fee of 1 percent of their redemption, unless the fund’s board determines either that no fee, or a lower or higher fee (not to exceed 2 percent), would be in the best interests of the fund.

The 2014 amendments required funds to make a number of significant operational changes on a very aggressive timeframe. Thanks to substantial effort, planning, and execution within the industry, funds were prepared to meet the new requirements on time and, as a result, the transition went smoothly. When coupled with the 2010 SEC reforms, these new rules add layers of transparency and redundant safeguards that more than adequately address any risks that may have existed in 2008. Indeed, so far-reaching were these last two rounds of reforms that today’s money market fund industry, as indicated in the chart below, is dramatically different from that of 2008.

Group to study the money market, money market funds, and other participants in the money market, and the financial crisis of 2007-2008. The March 2009 *Report of the Money Market Working Group* addressed these topics and advanced wide-ranging recommendations for the SEC to strengthen money market fund regulation. See Investment Company Act, *Report of the Money Market Working Group* (March 17, 2009), available at https://www.ici.org/pdf/ppr_09_mmmwg.pdf. The SEC’s 2010 amendments incorporated many of the report’s recommendations.

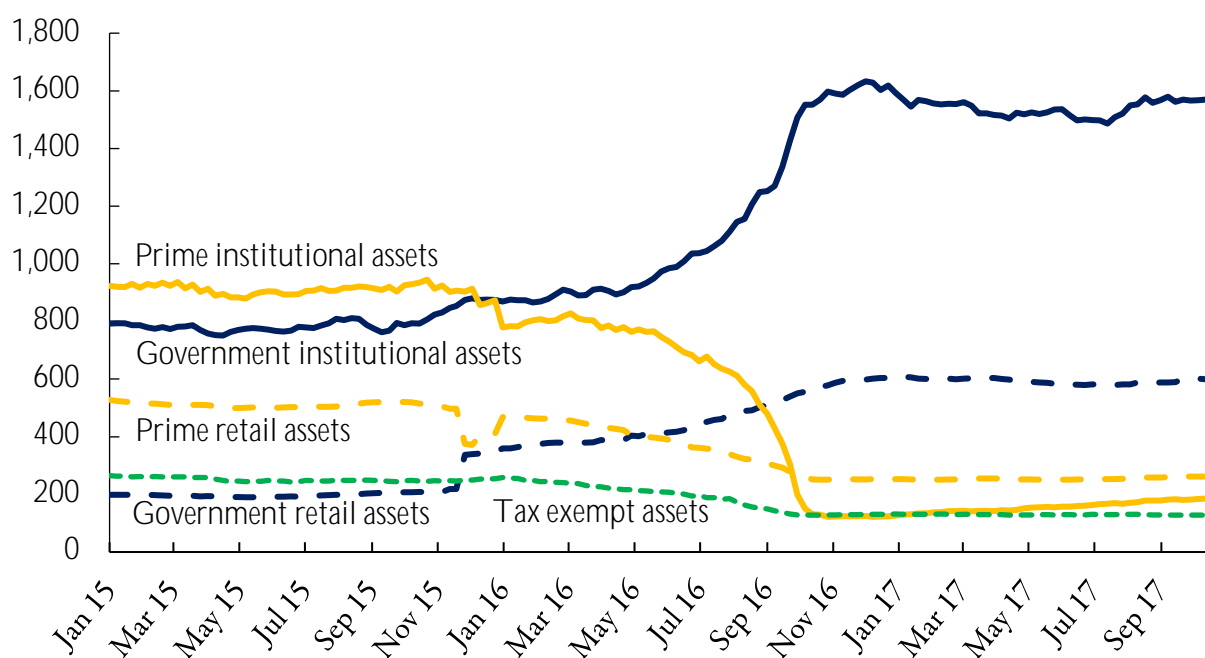
¹⁷ See *Money Market Fund Reform; Amendments to Form PF*, SEC Release No. IC-31166 (July 23, 2014), 79 Fed. Reg. 47736 (August 14, 2014).

¹⁸ Government money market funds invest at least 99.5 percent of their total assets in cash, government securities, and/or repurchase agreements that are collateralized by cash or government securities.

¹⁹ Retail money market funds have policies and procedures reasonably designed to limit all beneficial owners of the fund to natural persons.

Assets Migrated from Prime Money Market Funds and Tax Exempt Money Market Funds into Government Money Market Funds in 2015 and 2016

Total net assets, billions of dollars; week-ended Wednesday, January 7, 2015–October 25, 2017



Source: Investment Company Institute

As the chart shows, in the two years leading up to the October 2016 effective date for the 2014 reforms, large sums shifted from prime money market funds—both institutional and retail—to government money market funds. According to weekly data, from January 7, 2015, to October 25, 2017, assets in prime institutional money market funds dropped \$740 billion. Over the same period, assets in government institutional money market funds rose by a very similar amount, \$785 billion.

A similar, though more muted, shift occurred in retail share classes of money market funds. From January 7, 2015, to October 25, 2017, assets in prime retail money market funds dropped \$266 billion. In addition, over the same period, assets in tax exempt money market funds—the vast majority of which are held by retail investors—fell \$137 billion. Over the same period, assets of government retail money market funds rose by \$398 billion.

H.R. 2319

The Consumer Financial Choice and Capital Markets Protection Act of 2017 (H.R. 2319) would rescind many of the 2014 reforms including the requirement that prime institutional and tax-exempt institutional money market funds float their NAVs. In recognition of the importance of money market funds to the global economy and to investors, ICI and its members have closely monitored H.R. 2319 and other efforts to change money market fund regulatory requirements.

Some ICI members have expressed strong interest and support for the bill, believing that it will restore investor choice and increase low-cost financing in the capital markets for business and municipal issuers without amending Rule 2a-7. These members contend that H.R. 2319 would not require any industry participant to change its current products. Rather, it would permit a sponsor to elect to continue to use a floating NAV under Rule 2a-7 for its non-government institutional money market funds or instead to use amortized cost accounting to maintain a stable value for all its funds.

Other ICI members urge that a third round of regulatory changes to money market funds is neither appropriate nor desirable. They contend that their customers are content with the broad set of money market fund investing options still available, that further changes run the risk of making the product more confusing and less attractive, and that the money markets have adjusted to the reforms.

As a result of these strongly differing member views regarding H.R. 2319, ICI takes no position on the proposed legislation.

* * * * *

I appreciate the opportunity to share these views with the Subcommittee. ICI looks forward to continued engagement with Congress on these important matters.

Appendix A: Registration Process Rule Amendments

Representative Hollingsworth’s discussion draft of the “Expanding Investment Opportunities Act” (“Discussion Draft”) would amend the following rules under the Securities Act of 1933 (“1933 Act”), the proxy rules, Regulation FD, and Form N-2 under the Investment Company Act of 1940 to improve the registration process for closed-end funds.

Rule 405 under the 1933 Act (Well-Known Seasoned Issuer Status)

Under current Rule 405, “well-known seasoned issuers” or “WKSI”s enjoy a streamlined registration process that gives them the flexibility to take advantage of market conditions when offering securities. Specifically, WKSI’s can file “automatic shelf registrations” that become effective immediately upon filing without the SEC staff’s review and comment. This enables WKSI’s to issue additional shares or other securities more quickly, allowing them to take advantage of current market conditions. To qualify as a WKSI, generally an issuer must have at least \$700 million in common equity outstanding and have timely filed required reports for the preceding 12 calendar months. In addition, the issuer within the past three years must not have engaged in conduct, or be subject to a conviction, decree, or order, that would make it ineligible.²⁰ Closed-end funds currently are not eligible for treatment as WKSI’s.

The Discussion Draft would amend Rule 405 to allow closed-end funds to take advantage of it. The amendments would: (1) delete the current exclusion of registered investment companies from the definition of WKSI; and (2) add Form N-2 (the form on which closed-end funds register securities with the SEC) to the definition of “automatic shelf registration statement.” (That definition specifies which SEC registration forms a WKSI is permitted to use.)

Notably, closed-end funds that would qualify for WKSI status already will have filed registration statements that have been through the SEC staff review process. The staff thus would have examined these funds’ investment objectives, assets, risk disclosures, and other matters that might affect shareholder interests.

Rule 415 under the 1933 Act (Shelf Registration)

Rule 415 governs so-called “shelf registrations.” The Discussion Draft would amend Rule 415 in two ways. First, it would require the rule to state explicitly that the shelf registration process is available to any closed-end fund. Closed-end funds already utilize this process in reliance on two SEC staff no-action letters,²¹ but it is entirely appropriate for the SEC to codify this time-tested regulatory treatment. This would be a technical but important change.

²⁰ An issuer would be ineligible, for example, if within the past three years, it filed a bankruptcy petition or had an involuntary bankruptcy petition filed against it, was convicted of a felony or certain misdemeanors, entered into a judicial or governmental decree relating to certain violations of law, or was subject to an SEC stop order.

²¹ See Nuveen Virginia Premium Income Municipal Fund (pub. avail. Oct. 6, 2006); Pilgrim America Prime Rate Trust (pub. avail. May 1, 1998).

Second, it would delete the requirement that a registrant using Form N-2 must furnish the undertakings required by Item 34.4 of Form N-2. Those undertakings obligate a closed-end fund, among other things, to file a post-effective amendment to its registration statement to (a) update the fund's financial statements, (b) reflect material changes occurring subsequent to the registration statement's effective date, or (c) include material information as to the fund's plan of distribution not previously disclosed in the registration statement. Filing a post-effective amendment (which would be subject to SEC staff review and comment) in the context of a shelf registration would eliminate the benefits of forward incorporation by reference, discussed below. Moreover, operating companies that qualify to use forward incorporation by reference do not need to make these undertakings.

Form N-2 (Forward Incorporation by Reference)

Currently, to incorporate information from other filings (such as shareholder reports) into its registration statement, a closed-end fund must amend its existing registration statement after the filings are made to specifically reference those filings. In other words, the fund must file a post-effective amendment to the registration statement, which entails SEC staff review and comment.

The Discussion Draft would amend Form N-2 to allow a closed-end fund that meets the criteria to be considered a "seasoned issuer" to incorporate by reference into its registration statement annual and semi-annual shareholder reports that the fund files subsequent to the time the registration statement is declared effective. To qualify as a "seasoned issuer," an issuer must have at least \$75 million in common equity outstanding and have made timely periodic filings with the SEC for the preceding 12 calendar months.

This amendment would greatly reduce the time and expense involved in preparing and updating closed-end fund registration statements. And it would provide these benefits without diminishing investor protection. Under the legislation, closed-end funds would be required to indicate in their prospectus if they incorporate any material by reference, and to provide a legend indicating where and how such materials can be obtained.

Rule 497 under the 1933 Act (Prospectus Filing Obligations)

Rule 497 governs the filing of investment company prospectuses and requires funds to file final prospectuses. The Discussion Draft would amend Rule 497 to simplify a closed-end fund's prospectus filing obligations. Under the amendments, a fund would be required to file only those prospectuses that contain substantive changes from, or additions to, a prospectus previously filed with the SEC as part of a registration statement—rather than "every form of prospectus" that differs in any way. These changes would conform a closed-end fund's prospectus filing obligations to those for operating companies.

Rule 418 under the 1933 Act (Reports of the Registrant)

Rule 418 requires issuers to provide to the SEC "promptly upon request" reports or memoranda relating to broad aspects of the business, operations or products of the registrant, which have been prepared within the past twelve months, but exempts operating companies that meet certain criteria

from this requirement.²² The Discussion draft would amend the rule to provide closed-end funds that meet the same criteria with an exception from this requirement, treating closed-end funds the same as similar operating companies.

Rule 14a-101 under the Securities Exchange Act of 1934 (Proxies)

Rule 14a-101 allows operating companies that meet certain criteria²³ to incorporate by reference into proxy statements previously filed documents, such as annual reports. The Discussion Draft amends the proxy rules to extend to closed-end funds that qualify the same benefits that operating companies already enjoy.

Rule 103 of Regulation FD (Reporting of Non-Public Information)

Regulation FD requires issuers (including closed-end funds) disclosing any material non-public information to certain persons also to disclose the information to the public. Public disclosure must be made simultaneously, in the case of an intentional disclosure, and promptly, in the case of a non-intentional disclosure. Rule 103 provides that any failure to make such disclosures should not affect whether an issuer has complied with its reporting obligations under the Securities Exchange Act of 1934. The Discussion Draft amends Rule 103 of Regulation FD to extend to closed-end funds this technical relief, which currently is limited to operating companies.

²² The exception extends to a wider range of entities than just WKSIs and seasoned issuers. It applies to any issuer that: (a) has equity securities listed and registered on a national securities exchange; (b) has not sold securities amounting to more than one-third of its outstanding securities in certain offerings over the previous 12 calendar months; and (c) is not a shell company and has not been a shell company for at least 12 calendar months.

²³ These criteria are the same as those described in the preceding footnote.

Appendix B: Communications Process Rule Amendments

Representative Hollingsworth’s discussion draft of the “Expanding Investment Opportunities Act” (“Discussion Draft”) would amend the following rules under the Securities Act of 1933 (“1933 Act”) to improve the communications process for closed-end funds.

Rules 164 and 433 (“Free Writing Prospectuses”)

Rules 164 and 433 permit an operating company to utilize the “free writing prospectus” safe harbors. A “free writing prospectus” is any written communication deemed to be an offer of a security that does not meet the full requirements of a statutory prospectus set forth under the 1933 Act (including any television or radio broadcast).

Rule 164 permits an issuer to use such a prospectus when it meets the conditions of Rule 433. Rule 433, in part, allows a WKSI issuer to use a free writing prospectus at any time during an offering once the registration statement has been filed, with no requirement to deliver a statutory prospectus with or in advance of the free writing prospectus. The safe harbor, among other things, requires that the issuer file any free writing prospectus with the SEC prior to its date of first use. To qualify as a WKSI, generally an issuer must have at least \$700 million in common equity outstanding and have timely filed required reports for the preceding 12 calendar months. In addition, the issuer within the past three years must not have engaged in conduct, or be subject to a conviction, decree, or order, that would make it ineligible.²⁴

The Discussion Draft would permit a closed-end fund that meets the WKSI criteria to utilize free writing prospectuses. Currently, many closed-end funds rely on Rule 482 under the 1933 Act to provide communications to investors and prospective investors, which permits funds to use a broad range of advertisements after a registration statement has been filed. While Rule 482 communications could in theory be a satisfactory substitute for free writing prospectuses, Rule 482 includes filing requirements (*e.g.*, for certain electronic road show materials) that do not apply under Rule 433. The additional filing requirements mean that closed-end funds must shoulder additional expenses as compared to operating companies, with no clear justification.

Rule 134 (“Tombstone Ads”)

Under Rule 134, an operating company may make certain limited written communications regarding an offering after a registration statement has been filed without causing the communications to be considered a prospectus or free writing prospectus. These communications, known as “tombstone ads,” permit issuers to provide specified facts about the legal identity and business of the issuer, and underwriters of an offering.

²⁴ An issuer would be ineligible, for example, if within the past three years, it filed a bankruptcy petition or had an involuntary bankruptcy petition filed against it, was convicted of a felony or certain misdemeanors, entered into a judicial or governmental decree relating to certain violations of law, or was subject to an SEC stop order.

The Discussion Draft would amend Rule 134 to permit any closed-end fund to use tombstone ads. Registered funds currently can provide this same information in Rule 482 communications, but those communications are subject to prospectus liability because the Rule 482 communications are deemed to be prospectuses. Closed-end funds should have the same ability as operating companies to issue these narrowly circumscribed communications that do not entail the added threat of prospectus liability.

Rules 163 and 163A (Pre-Filing Communications)

Under Rule 163, WKSI may make oral or written offers prior to the filing of a registration statement. In addition, Rule 163A provides a safe harbor to operating companies for any communication that is made more than 30 days before the filing of a registration statement, when that communication does not reference the offering that is or will be the subject of that registration statement. Although the securities laws typically prohibit many types of communications before the filing of a registration statement on the theory that they could “condition” the market or draw interest for the offering, the SEC has deemed it appropriate to adopt safe harbors that permit operating company issuers to communicate more freely to the public during these periods.

The Discussion Draft would permit a closed-end fund that is a WKSI to rely on Rule 163, and any closed-end fund to rely on Rule 163A, to make pre-filing communications. Unlike Rule 482, which only provides a safe harbor for qualifying communications that follow the filing of a registration statement, these safe harbors would provide flexibility to a closed-end fund to communicate with the public during the period prior to the filing of a registration statement.

Rules 168 and 169 (Factual Business Information)

An operating company may communicate certain information provided in the ordinary course of business prior to or during an offering. Specifically, Rule 168 establishes a safe harbor for an issuer that already is filing periodic reports with the SEC to continue to disseminate regularly released or factual business information and forward-looking information prior to or during a registered offering. Rule 169 establishes a similar safe harbor for an issuer that does not file periodic reports to disseminate regularly released or factual business information (but not forward-looking information) prior to or during a registered offering. Both safe harbors define “factual business information” to include information about the issuer, its business or financial developments, or other aspects of its business, as well as advertisements, and require that the information must have been previously released in the ordinary course of business.

The Discussion Draft would amend Rules 168 and 169 to permit a closed-end fund to communicate certain factual business information about the closed-end fund, its business or other developments at any time before or during an offering. Permitting a closed-end fund to rely on these safe harbors could encourage the fund to issue more useful and timely reports regarding its business without the fear that doing so could subject it to liability (on the theory that it is making an offering of its securities without first delivering a statutory prospectus).

Rules 138 and 139 (Research Reports)

Broker-dealers that provide research on an operating company may rely on two safe harbors that encourage the publication and distribution of research reports during an offering. Rule 138 permits a broker-dealer participating in a registered offering to publish and distribute research reports about securities of the issuer that are not the subject of the offering. (For example, it permits a broker-dealer that is serving as an underwriter of an issuer's current debt offering to write research reports about the issuer's common stock.) Rule 139 permits a broker-dealer that participates in a registered offering to issue research reports specifically about the issuer and its securities or the issuer's industry or sub-industry under specified conditions. Under Rule 139, the issuer must qualify as a "seasoned issuer" and the broker-dealer must distribute research reports in the regular course of its business.

The Discussion Draft would permit a broker-dealer providing reports on a closed-end fund to rely on the two research report safe harbors. Similar to the factual business information safe harbors discussed above, the research report safe harbors would encourage additional reporting about a closed-end fund and its securities. As a closed-end fund often issues both common and preferred stock, permitting broker-dealers to rely on the first safe harbor (under Rule 138) would allow for more coverage of a closed-end fund's issuances.

Similarly, the second safe harbor (under Rule 139), which would be available only to closed-end funds that meet criteria for "seasoned issuers," might encourage broker-dealers to issue and distribute more research reports about specific closed-end fund issuances or the closed-end fund's industry or sub-industry. To qualify as a "seasoned issuer," an issuer must have at least \$75 million in common equity outstanding and have made timely periodic filings with the SEC for the preceding 12 calendar months.

Earlier this fall, Congress passed, and the President enacted, the Fair Access to Investment Research Act of 2017. That Act requires the SEC to amend Rule 139 to permit broker-dealers providing reports on "covered investment funds," including exchange-traded funds, to rely on that safe harbor. Although closed-end funds technically are within the definition of "covered investment fund," the law seems to have excluded broker-dealer reports about closed-end funds from its scope. The Discussion Draft would correct this flaw.

Rule 172 and 173 (Prospectus Delivery)

Rule 172 permits a traditional operating company to meet its prospectus delivery obligations when it makes a good faith and reasonable effort to timely file a final statutory prospectus with the SEC. The rule also permits operating company issuers to deliver a written confirmation to shareholders without treating the confirmation as a prospectus. Rule 173 permits each underwriter or broker-dealer participating in an offering of an operating company's securities to satisfy its prospectus delivery obligations by furnishing a notice within two business days after a purchase that states that the sale was made pursuant to an effective registration statement or in a transaction pursuant to Rule 172.

Operating companies, underwriters, and broker-dealers may rely on these rules to satisfy their prospectus delivery obligations once the company's registration statement is declared effective.

The Discussion Draft would enable a closed-end fund to meet its obligation to deliver a final prospectus during an initial public offering or follow-on offering without having to deliver the prospectus. Permitting a closed-end fund and underwriters and broker-dealers participating in an offering to utilize these safe harbors will save funds and their shareholders the expense of delivering final prospectuses. Although a closed-end fund only is required to provide prospectuses during the offering period, which typically lasts 40 days after the offering begins, the expenses of meeting these obligations can be quite significant. Moreover, permitting reliance on these safe harbors for closed-end fund offerings would put them on an equal footing with traditional operating company offerings, which have availed themselves of these two safe harbors since 2005.