

SEC Proposals Would Modernize Offering and Reporting Rules

May 27, 2026

On May 19, 2026, the U.S. Securities & Exchange Commission (the “SEC” or the “Commission”) proposed two rulemaking packages (each a “Proposal” and collectively, the “Proposals”) that would affect BDCs and registered closed-end funds in different ways. The first proposal, Registered Offering Reform (the “Registered Offering Reform Proposal”),¹ would expand registered offering and shelf registration flexibility for certain business development companies (“BDCs”) and registered closed-end funds (“CEFs”). The second proposal, Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies (the “Filer Status Proposal”),² would simplify filer status under the Securities Exchange Act of 1934, as amended (the “1934 Act”), and provide scaled disclosure accommodations for many reporting companies, including BDCs.

While this Debevoise In Depth focuses on the application of the Proposals to BDCs and CEFs, certain aspects of the Proposals—particularly the proposed 1934 Act filer-status reforms—may also be relevant to other private wealth vehicles that are not listed or registered under the Investment Company Act of 1940, as amended (the “1940 Act”), but are registered under the 1934 Act, including private fund structures and conglomerates.³

Executive Summary

Vehicle Type	Registered Offering Reform Proposal	Filer Status Proposal
Listed BDCs	Expanded Short-Form N-2 eligibility; broader access to	Many listed BDCs below the proposed \$2 billion

¹ Registered Offering Reform, Release No. 33-11418 (May 19, 2026), available [here](#).

² Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies, Release No. 33-11419 (May 19, 2026), available [here](#).

³ Additional Debevoise commentary on the Proposals is available [here](#) and [here](#).

Vehicle Type	Registered Offering Reform Proposal	Filer Status Proposal
	many WKSI-style offering and communication benefits; automatic shelf eligibility if seasoned.	public float threshold may be non-accelerated filers and receive scaled disclosure and internal control over financial reporting (“ICFR”) relief.
Non-Traded BDCs	Preemption of state “Blue Sky” laws, which would reduce state registrations and qualification burdens; expanded Short-Form N-2 eligibility would be less directly relevant to non-traded BDCs, as most BDCs would continue to rely on existing Form N-2 updating and effectiveness framework, including Rule 486 where available.	Non-traded BDCs generally should be non-accelerated filers and may benefit from scaled disclosure and BDC-specific Regulation S-X accommodations.
Listed CEFs	Expanded Short-Form N-2 eligibility and broader access to certain offering and communication benefits.	CEFs would not be affected by 1934 Act filer-status changes in the same way as BDCs.
Interval and Tender Offer Funds	Rule 486 framework retained; Rule 139b research safe harbor expansion may help; Blue Sky benefit is less important because registered investment company securities already have covered-security status. With respect to tender offer funds, the SEC specifically asks whether	Generally not affected by 1934 Act filer-status changes.

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	tender offer funds should receive additional flexibility, including Rule 24f-2 under the 1940 Act (or “pay-as-you-go”) fee treatment and forward incorporation by reference.	

Registered Offering Reform Proposal

This Proposal would make conforming changes to the registration, communication and offering process for BDCs and CEFs that register securities on Form N-2. The SEC refers to BDCs and CEFs collectively as “affected funds.” The Proposal would provide greater parity between affected funds and operating companies where the SEC views parity as appropriate.

New ELI and SELI Framework

The Proposal would create two new categories relevant to affected funds:

Proposed Category	Definition / Concept	Practical Significance
Eligible Listed Issuer (“ELI”)	An issuer with at least one class of common equity listed on a national securities exchange that satisfies the proposed S-3 registrant requirements. For BDCs and listed CEFs, those requirements are applied through the Form N-2 framework, including General Instruction A.2; for listed CEFs, the relevant reporting history also includes applicable 1940 Act reporting.	Listed BDCs and listed CEFs that qualify as ELIs could use expanded Short-Form N-2 eligibility and certain offering related benefits, including certain communication, prospectus omission and pay-as-you-go filing fee benefits.

Proposed Category	Definition / Concept	Practical Significance
Seasoned Eligible Listed Issuer (“SELI”)	An ELI that has been subject to 1934 Act reporting and, for listed CEFs, applicable 1940 Act reporting requirements for at least 12 calendar months and any portion of a month immediately preceding the relevant determination date.	SELI status is the higher tier and is what would unlock automatic shelf registration on Form N-2ASR, a benefit currently reserved for WKSI-affected funds.

Expanded Short-Form N-2 Eligibility for Listed BDCs and Listed CEFs

The Proposal would expand Short-Form N-2 eligibility for listed affected funds by eliminating Form S-3 transaction eligibility requirements that currently function as a gating requirement, including the \$75 million public float test. Short-Form N-2 functions like a Form S-3 registration statement as applied to operating companies.

For CEFs, the Proposal also would eliminate the current one-year 1940 Act registration history requirement for baseline Short-Form N-2 eligibility. However, seasoning would not disappear entirely. A 12-month 1934 Act reporting history and, for CEFs, applicable 1940 Act reporting history would remain necessary for SELI status and therefore for automatic shelf-registration on Form N-2ASR. The SEC noted that this condition would allow the staff to monitor a fund’s reporting compliance before it may use automatic shelf registration on Form N-2ASR and would allow the SEC to evaluate whether the condition should later be revised or eliminated.

The practical result is that listed affected funds could access baseline Short-Form N-2 as ELIs without satisfying the current public-float and one year seasoning requirements, while only SELIs could use automatic shelf registration.

Current Framework	Proposed Framework
Short-Form N-2 eligibility is tied to Form S-3 transaction eligibility requirements, including the \$75 million public float test.	Listed affected funds could qualify for baseline Short-Form N-2 as ELIs without satisfying the \$75 million public float test.

<p>CEFs currently must satisfy a one-year 1940 Act registration history requirement for Short-Form N-2 eligibility.</p>	<p>One-year 1940 Act registration history requirement would be eliminated for baseline Short-Form N-2 eligibility, though a 12-month reporting history would remain relevant for SELI/automatic shelf status.</p>
<p>WKSI status is central to certain offering benefits.</p>	<p>ELI/SELI status would replace or supplement WKSI concepts for affected funds.</p>
<p>Automatic shelf registration on Form N-2ASR is currently effectively limited to WKSI affected funds, generally requiring at least \$700 million of public float.</p>	<p>Automatic shelf registration would be available to any SELI affected fund, making N-2ASR potentially available to listed BDCs and CEFs below the current WKSI float threshold.</p>

The Proposal would not extend Short-Form N-2 eligibility to unlisted affected funds. The SEC noted that Rule 486 already provides comparable framework for many unlisted funds. The SEC, however, is seeking comment on whether unlisted affected funds should be permitted to forward incorporate 1934 Act and 1940 Act reports or otherwise access additional offering-process flexibility. With respect to tender offer funds, the SEC specifically is seeking comment on whether tender offer funds should receive additional flexibility, including certain communication, prospectus omission and pay-as-you-go filing fee benefits.

Extension of WKSI-Style Benefits to ELI / SELI Affected Funds

The Proposal would expand many WKSI-style benefits to ELI or SELI affected funds, but it would not provide complete operating-company parity. In particular, affected funds would be removed from Rules 164 and 433 and would continue to rely on Rule 482 for advertising and sales materials. In addition, certain benefits, such as Rule 430B(b), would be limited to ELI affected funds because unlisted affected funds would remain outside the Short-Form N-2 framework. In addition, the Proposal would amend Rule 139b to remove the minimum public float requirement. As a result, Rule 139b could be available to all covered investment funds, including unlisted affected funds with no public float and funds with less than 12 months of 1934 Act or 1940 Act reporting history.

Blue Sky Preemption for Registered Offerings

The Proposal would add a new definition of “qualified purchaser” under Rule 146 under Securities Act of 1933, as amended (“1933 Act”) for purposes of Section 18(b)(3) of the 1933 Act.⁴ Under the proposed definition, any person to whom securities are offered or sold in an offering registered under the 1933 Act would be treated as a qualified purchaser for purposes of the federal covered securities framework. As a result, securities offered and sold in registered offerings would be covered securities and therefore exempt from state registration and qualification requirements.

The proposed change would be particularly significant for non-traded BDCs and non-traded real estate investment trusts. By treating securities offered and sold in registered offerings as covered securities, the Proposal would materially reduce the cost, timing and friction associated with national distribution of non-traded BDCs.

The proposed preemption would not eliminate state authority entirely. States would retain antifraud enforcement authority and, where permitted, the ability to require notice filings and fees and to suspend offers or sales within the state for failure to submit required notice filings and fees.

The SEC is seeking comment on whether it would be more appropriate to preempt only certain types of registered offerings, such as registered equity offerings, rather than to preempt all registered offerings.

Filer Status Proposal

The Proposal would simplify the current filer-status framework by eliminating the accelerated filer and smaller reporting company categories. Reporting companies would instead be classified as either large accelerated filers or non-accelerated filers, with a separate “small non-accelerated filer” category for the smallest issuers. This Proposal would be most relevant to BDCs and other private wealth-oriented vehicles that file periodic reports under the 1934 Act, including certain 3(c)(7) private funds and conglomerate structures, because of how the proposed filer status changes impact reporting obligations under the 1934 Act. By contrast, CEFs generally report under the 1940 Act reporting framework and, therefore, would not be affected by the proposed 1934 Act filer-status changes in the same manner.

⁴ The proposed “qualified purchaser” definition would be added as new Rule 146 under the 1933 Act and is solely a Section 18(b)(3) preemption concept. It is unrelated to, and does not affect, the separate “qualified purchaser” definition under Section 2(a)(51) of the 1940 Act.

For BDCs, the key takeaway is that the Proposal would raise the large accelerated filer public float threshold from \$700 million to \$2 billion and would require an issuer to have been subject to the 1934 Act reporting for 60 consecutive calendar months before it could become a large accelerated filer. This would create a meaningful five-year on-ramp for new reporting companies, including newly public BDCs. Even a newly listed BDC with public float above \$2 billion would be treated as a non-accelerated filer during that seasoning period and therefore would be eligible for the proposed non-accelerated filer accommodations. These accommodations would include, among other things, reduced MD&A and executive compensation disclosure, no requirement to provide Item 305 quantitative and qualitative market risk disclosure, and no requirement to include risk factor disclosure in Forms 10-K or Q.

The most significant practical change for many BDCs would be relief from Internal Control over Financial Reporting (“ICFR”) requirements. A BDC that qualifies as a non-accelerated filer would not be required to obtain an independent auditor attestation report on ICFR, although a BDC would still be required to maintain internal controls and provide management’s assessment of ICFR and provide audited financial statements.

The Proposal also includes BDC-specific financial statement accommodations. Proposed Regulation S-X Rule 3-19 would allow non-accelerated filer BDCs to provide audited statements of operations and cash flows for two fiscal years rather than three. The Proposal would also allow certain BDCs to defer compliance with new or revised accounting standards for the first five years after initial registration, subject to specified conditions.

The impact of this Proposal would vary by vehicle type. Listed BDCs that do not meet the proposed large accelerated filer threshold could benefit from scaled disclosure and ICFR auditor-attestation relief, while large listed BDCs that qualify as large accelerated filers would continue to be subject to the full requirements. Non-traded BDCs also could benefit significantly under the Proposal, as they generally would be expected to qualify as non-accelerated filers and therefore be eligible for the proposed accommodations. By contrast, listed and non-listed registered CEFs generally would not be affected in the same way because they report under the 1940 Act.

Conclusion

Taken together, the Proposals would represent a meaningful modernization package for BDCs, CEFs and other 1934 Act reporting private wealth vehicles.

Comments on each Proposal are due 60 days after publication in the Federal Register. If adopted, the amendments would become effective only after the SEC issues final rules and specifies effective and transition dates in the adopting releases. Given the scope of the proposed changes—and the SEC’s specific requests for comment on Short-Form N-2 parity, tender offer fund fee and incorporation mechanics, BDC filer status thresholds and BDC financial statement scaling, affected sponsors should consider whether to submit comments during the 60-day comment period.

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Please do not hesitate to contact us with any questions.



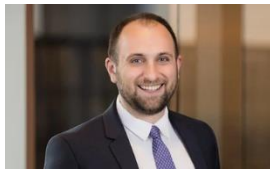
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