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Kirkland Alert

SEC Proposes Sweeping Offering Reform — Significant Implications for Registered Closed-End Funds, BDCs and Other Private Wealth Products

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On May 19, 2026, the U.S. Securities and Exchange Commission (SEC) proposed two companion rulemakings that would, if adopted, meaningfully reduce the cost and complexity of conducting registered offerings for all public companies, including closed-end funds that are registered under the Investment Company Act of 1940, as amended (1940 Act), or have elected to be regulated as business development companies (BDCs), as well as other private wealth product offerings, such as those by real estate investment trusts (REITs). The SEC has framed both proposals as measures to facilitate capital formation in the public markets consistent with investor protection.

These rulemakings are lengthy and cover a number of topics related to offerings of securities registered under the Securities Act of 1933, as amended (Securities Act). This *Kirkland Alert* focuses on the most significant implications for registered closed-end funds and BDCs, namely the proposed preemption of state securities law registration and qualification requirements for all registered offerings and the streamlining of registration, offering and communication rules for a subset of registered closed-end funds and BDCs. The SEC also proposed to amend certain advertising rules to permit insurance companies to engage in broad-based advertising for registered non-variable annuities in a manner consistent with the existing framework for variable annuities.

Proposed changes most relevant to operating companies — including the simplification of the public company filer status framework, the expansion of Form S-3 eligibility, and the extension of enhanced registration and communication benefits to a broader issuer population — are addressed in a companion *Kirkland Alert*.

Key Takeaways

- State blue sky registration and qualification requirements would be preempted for all registered offerings — not just offerings by registered funds and companies with equity securities listed on a national securities exchange — eliminating a substantial compliance burden for non-listed BDCs, non-listed REITs and other direct participation programs.
- Form N-2 eligibility for short-form shelf registration would be expanded to certain additional listed registered closed-end funds and listed BDCs by removing seasoning and public float requirements on substantially the same basis as the proposed Form S-3 amendments for operating companies.
- Certain advertising rules would be amended to permit insurance companies to engage in broad-based advertising for registered non-variable annuities in a manner consistent with the existing framework for variable annuities.

Preemption of State Blue Sky Laws for All Registered Offerings

In what may be one of the most impactful proposals for sponsors seeking to access retail or private wealth investors, the SEC proposed to preempt state securities law registration and qualification requirements for all registered offerings under the Securities Act.

Section 18(a) of the Securities Act provides that certain "covered securities" (as defined in Section 18(b) of the Securities Act) are exempt from state securities law registration and qualification requirements. However, registered offerings of non-listed securities by non-1940 Act registered entities — including non-listed BDCs, non-listed REITs and other direct participation programs — currently are not covered securities, requiring those issuers either to (i) comply with initial and ongoing registration and qualification requirements in each state where they offer and sell securities or (ii) conduct private offerings of their securities.[1] The first option is both time and cost intensive and the second option limits the investor universe and marketability of the product.

The SEC has proposed to add a new definition of "qualified purchaser"[2] to provide that any person to whom securities are offered or sold pursuant to a registered offering is a "qualified purchaser" within the meaning of the statute. As such, any securities offered in a registered offering, including by non-1940 Act registered entities, would be "covered securities," thereby fully preempting state registration and qualification requirements. States would retain authority to investigate and bring enforcement actions for fraud, and to require notice filings for fee purposes, as states can do now with respect to registered investment companies.

For non-listed BDCs, non-listed REITs and other direct participation programs that conduct registered offerings, eliminating these registration and qualification requirements would meaningfully reduce administrative burden and cost. It also may have the effect of causing sponsors to curtail or cease private equity offerings of these products — which have increased exponentially in recent years — and commence registered equity offerings in order to broaden their investor base and ability to market such products.

Expanded (and Aligned) Offering Benefits for Registered Closed-End Funds and BDCs

Consistent with the SEC's 2020 rulemaking to create better parity in the registration, offering and communication frameworks between operating companies and registered closed-end funds, and BDCs that register securities on Form N-2 (Affected Funds), the SEC has now proposed to extend:

- availability of the use of a short-form shelf registration statement on Form N-2 (Short-Form N-2), for certain Affected Funds;
- automatic shelf registration for well-known seasoned issuers (WKSIs) to a further subset of Affected Funds; and
- other enhanced registration and communication benefits to a broader universe of Affected Funds.

As with the 2020 rulemaking, the proposed rules treat categories of Affected Funds differently (just as operating companies are treated differently). For example, some of the proposed amendments would apply to all Affected Funds — that is, all BDCs and registered closed-end funds — while others would apply only to Affected Funds with equity securities listed on a national securities exchange.

The SEC's proposed rules would expand eligibility for use of a Short-Form N-2 by removing the seasoning and public float requirements that currently preclude many listed registered closed-end funds and BDCs from filing a universal shelf registration statement. As described in the companion *Kirkland Alert*, the proposed rules would make the same changes to Form S-3 eligibility for operating companies, eliminating the current 12-month reporting seasoning requirement under the Securities Exchange Act of 1934, as amended (the Exchange Act), and the $75 million public float threshold for unlimited shelf registration. An Affected Fund that would qualify as an "Eligible Listed Issuer" or "ELI" would need to meet the proposed Form S-3 requirements and have (i) at least one class of common equity listed on a national securities exchange and (ii) timely filed all required Exchange Act or 1940 Act reports during the preceding 12 calendar months (or such shorter time as otherwise required to do so). To qualify as a "Seasoned Eligible Listed Issuer" or "SELI", and be eligible for automatic shelf registration, an Affected Fund also would need to have been subject to Exchange Act reporting requirements for at least 12 months.

Although the proposed rules would extend the ability to forward incorporate by reference to listed Affected Funds, notably absent from the proposed rules is similar relief for non-listed Affected Funds conducting continuous registered offerings. For instance, a non-listed BDC conducting a continuous registered offering currently cannot forward incorporate by reference information filed in its Exchange Act reports into its prospectus filed as part of its Form N-2. For example, when a non-listed BDC files a Form 10-Q reporting new quarterly financial information, it also typically files a supplement to its prospectus roughly concurrently with that Form 10-Q filing. As currently drafted, the proposed rules would not impact these reporting practices. However, the SEC has solicited comments on this matter.

The proposed rules would maintain the current offering framework for certain non-listed Affected Funds (e.g., most interval funds, tender offer funds and non-listed BDCs). These Affected Funds would not be able to use the Short-Form N-2 and, instead, would continue to rely on the existing Rule 486 registration and offering framework, which, as asserted by the SEC, already provides certain similar efficiencies (including automatically effective post-effective amendments) notwithstanding certain incremental filings.

Registered Index-Linked Annuity Advertising

The proposed amendments would extend the key variable annuity advertising rule to registered index-linked annuities (RILAs), currently the most popular form of annuity providing market-based values. Variable annuities, like registered funds, rely on Rule 482 under the Securities Act to advertise without delivery of a statutory prospectus, but RILAs are not currently covered by the rule. By bringing RILAs within Rule 482's framework, the proposed amendments would permit RILA advertisements to include performance information of the relevant index but not past performance of the RILA itself. Any RILA advertisement that includes fee and expense information would also need to satisfy certain conditions under the rule. The proposed amendments also would cover registered market value adjustment annuities.

Practical Considerations and Next Steps

The proposed rules, if adopted, would provide certain meaningful practical relief to registered closed-end funds and BDCs in connection with their registered offering activities. And more broadly, the proposed preemption of state blue sky review of registered offerings of non-1940 Act registered products could fundamentally shift how current products are offered and how new products are brought to market. As these are currently proposed rules, they remain subject to the public comment process and may change materially before adoption.

Please contact the Kirkland attorneys with whom you regularly work with any questions regarding the proposals.

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1. By contrast, securities issued by any registered investment company, including a registered closed-end fund, securities listed on a national securities exchange and securities senior to a class of the issuer's securities listed on a national securities exchange are covered securities. ↩

2. Section 18(b)(3) of the Securities Act includes sales to "qualified purchasers" in the definition of "covered securities" and authorizes the SEC to define "qualified purchasers" via rulemaking. The proposed new definition of "qualified purchaser" would be added in Rule 146 under the Securities Act and does not relate to or affect the definition of the term "qualified purchaser" under Section 2(a)(51) of the 1940 Act. ↩

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