

**SUPPORTING STATEMENT FOR PROPOSED AMENDMENTS TO CERTAIN RULES
UNDER THE SECURITIES ACT OF 1933 AND CERTAIN FORMS UNDER THE
SECURITIES EXCHANGE ACT OF 1934**

A. JUSTIFICATION

**1. CIRCUMSTANCES MAKING THE COLLECTION OF INFORMATION
NECESSARY**

On March 20, 2019, the Securities and Exchange Commission (the “Commission”) proposed rule and form amendments that would modify the registration, communications, and offering processes for registered closed-end investment companies (“registered CEFs”) and business development companies (“BDCs,” and together with registered CEFs, “affected funds”).¹

The proposed amendments include additional reporting requirements on Form 10-K² for BDCs. These proposed amendments are expected to increase disclosure burdens for BDCs, including: (1) a requirement that all BDCs disclose financial highlights information on Form 10-K; and (2) new Form 10-K requirements for BDCs that file short-form registration statements on Form N-2³ to disclose certain key prospectus information and material unresolved staff comments.

Proposed amendments to Form 8-K⁴ are expected to increase disclosure burdens for affected funds by newly requiring registered CEFs to report on Form 8-K and adding two new reporting events for all affected funds.

The proposed amendments to Rules 163 and 433 are expected to increase the filing burdens for affected funds electing to issue a free-writing prospectus under either rule, if they meet either rule’s requirements.

The proposed amendments to Rule 173 are expected to increase burdens for affected funds that elect to rely on Rule 172, which allows issuers, brokers, and dealers to satisfy final prospectus delivery obligations if a final prospectus is or will be on file with the Commission within the time required by the rules, and other conditions are satisfied. Rule 173 requires an

¹ Securities Offering Reform for Closed-End Investment Companies, Investment Company Act Release No. 33427 (Mar. 20, 2019) (“Offering Reform Proposing Release”).

² 17 CFR 249.310.

³ 17 CFR 239.14 and 274.11a-1. The Commission’s Division of Investment Management will separately submit, pursuant to the Paperwork Reduction Act of 1995, a supporting statement and related attachments for Form N-2.

⁴ 17 CFR 249.308.

issuer to, if applicable, provide a notice to purchasers stating that a sale of securities was made based on a registration statement or in a transaction in which a final prospectus would have been required to have been delivered in the absence of rule 172. Affected funds may incur additional costs due to the requirement to provide the notice that Rule 173 requires to investors.

The Paperwork Reduction Act burdens associated with the following collections of information under Securities Act rules and Exchange Act forms would be affected by the proposed amendments:

“Rule 163” (OMB Control No. 3235-0619);

“Rule 173” (OMB Control No. 3235-0618);

“Rule 433” (OMB Control No. 3235-0617);

“Form 10-K” (OMB Control No. 3235-0063); and

“Form 8-K” (OMB Control No. 3235-0060).

A copy of Commission Release No. IC-33427, which contains the proposed amendments, is attached.

2. PURPOSE OF THE INFORMATION COLLECTION

The purpose of the proposed amendments is to modify the registration, communications, and offering processes for affected funds. The proposal would extend to these funds offering reforms that are currently available to operating company issuers.

The proposed collections of information related to Form 10-K and Form 8-K would tailor the disclosure framework for affected funds in light of the proposed amendments to the offering rules applicable to them. For example, we expect that the proposed offering rule reforms would elevate the importance of BDCs’ annual reports, relative to prospectus disclosure, with investors looking to the annual reports for key information. The proposed amendments also would further harmonize the disclosure and regulatory framework for affected funds with the framework for operating companies and provide investors with important information related to a fund investment.

The primary purpose of Rule 433 is to relax restrictions on communications that issuers can make to investors during a registered offering of securities. Rule 163 permits eligible well-known seasoned issuers freedom to communicate with investors at any time, including by means of a written offer other than a statutory prospectus. Rule 173 provides that a purchaser who does not receive a final prospectus (because the issuer relied on Rule 172 to satisfy its prospectus delivery obligations by filing its prospectus with the Commission instead of delivering it to the purchaser) must receive a notification stating that the sale of securities was made pursuant to a registration statement or in a transaction in which a final prospectus would have been required to

have been delivered in the absence of Rule 172, and may request a copy of the final prospectus. This notification enables investors to “trace” their purchases of securities for purposes of asserting their rights under the liability provisions of the federal securities laws.

3. CONSIDERATION GIVEN TO INFORMATION TECHNOLOGY

The collection of information requirements of the proposed amendments are set forth in the affected rules and forms. All of the affected forms are filed electronically with the Commission using the Commission’s Electronic Data Gathering, Analysis and Retrieval (“EDGAR”) system. Rule 433 communications are filed with the Commission electronically on EDGAR, except under limited conditions set forth in Rule 433(d). Rule 163 communications are also filed with Commission electronically on EDGAR. Rule 173 relies on the internet as a means of disseminating information to investors.

4. DUPLICATION OF INFORMATION

The Commission periodically evaluates rule- and form-based reporting and recordkeeping requirements for duplication and reevaluates them whenever it proposes a rule or form, or a change in either. The proposed amendments to BDCs’ annual reporting requirements on Form 10-K do not require duplicative reporting or recordkeeping. While information about fees and expenses, premiums and discounts, and outstanding senior securities that certain BDCs would be required to disclose on Form 10-K under the proposal is also required in these funds’ prospectuses, because the annual report on Form 10-K will be incorporated by reference into the fund’s prospectus under the proposal, requiring disclosure in both the prospectus and annual report should not require duplicative disclosure.

With respect to the proposed amendments to Form 8-K, certain items in Form 8-K are substantively the same as or similar to existing disclosure requirements in the annual and semi-annual reports for registered CEFs. We do not believe that requiring similar disclosure on Form 8-K and in a registered CEF’s annual or semi-annual reports should result in significant burdens for registered CEFs since, absent significant changes, they should be able to use their Form 8-K disclosure to more efficiently prepare the corresponding disclosure in any shareholder reports that follow funds’ issuance of reports on Form 8-K. This approach also may reduce potential disruptions to shareholders who are accustomed to finding certain information in the shareholder reports, and who may not regularly monitor for reports on Form 8-K. It should also limit discrepancies between different types of funds’ shareholder reports.

There are no other filing requirements for Rules 163 and 433 that are duplicated elsewhere (although there are requirements to file other types of fund communications under the federal securities laws). There are no other requirements that duplicate the notice required by Rule 173.

5. REDUCING THE BURDEN ON SMALL ENTITIES

With respect to Form 10-K, both large and small BDCs would be required to provide financial highlights in their annual reports and registration statements under the proposal because we believe this information would benefit investors in both large and small BDCs. We believe the costs associated with this proposed requirement should be minimal for both large and small BDCs, since we understand it is currently general market practice for BDCs to include this information in their registration statements. Under the proposal, smaller BDCs generally would not be able to file short-form registration statements, so these funds would not be required to disclose in their annual reports on Form 10-K: (1) information regarding fees and expenses, premiums and discounts, and outstanding senior securities; and (2) material unresolved staff comments.

The proposed reporting requirements under Form 8-K would apply equally to large and small affected funds. Form 8-K reporting is designed to provide important current information to investors. We believe current disclosure on Form 8-K by affected funds would be beneficial to investors and the market, regardless of the size of the affected fund.

All affected funds, including smaller affected funds, have discretion as to whether or not to disseminate written communications in the form of a free-writing prospectus. Therefore, any burdens incurred by funds complying with either Rule 163 or Rule 433 would arise from a fund's discretion to utilize those rules for communications purposes.

Similarly, all affected funds, including small funds, have discretion regarding whether to rely on Rule 172, and thus subject themselves to the requirements of Rule 173. We believe that the burdens associated with the proposed amendments to Rule 173 would not be significant, and because Rule 172 is discretionary, affected funds would not rely on this rule if the associated burdens in Rule 173 would outweigh the benefits of not delivering a final prospectus to securities purchasers.

6. CONSEQUENCES OF NOT CONDUCTING COLLECTION

Form 10-K and Form 8-K set forth the disclosure requirements for periodic and current reports filed by companies to help investors make informed investment decisions. Less frequent collection would deprive investors of access to information that is important to their voting and investment decisions.

Rules 163 and 433 include filing requirements only for those issuers that choose to issue written communications in the form of a free-writing prospectus. Less frequent collection could compromise investor protection. Likewise, because Rule 173 allows a purchaser of a security that chooses to rely on Rule 172 to request a copy of the final prospectus, if one has not been sent, less frequent collection of Rule 173 information could compromise investor protection.

7. SPECIAL CIRCUMSTANCE

There are no special circumstances in connection with these proposed amendments.

8. CONSULTATIONS WITH PERSONS OUTSIDE THE AGENCY

The Commission has issued a proposing release soliciting comment on the new “collection of information” requirements and the associated paperwork burdens.⁵ Comments on Commission releases are generally received from registrants, investors, and other market participants. In addition, the Commission and staff participate in ongoing dialogue with representatives of various market participants through public conferences, roundtables and meetings. All comments received on the proposal are available at <https://www.sec.gov/comments/s7-03-19/s70319.htm>. The Commission will consider all comments received prior to publishing the final rules as required by 5 CFR 1320.11(f).

9. PAYMENT OR GIFT TO RESPONDENTS

No payment or gift has been provided to any respondents.

10. CONFIDENTIALITY

No assurance of confidentiality was provided.

11. SENSITIVE QUESTIONS

No information of a sensitive nature, including social security numbers, would be required under the Rule 173 and Rule 433 information collection. The information collection does not collect Personally Identifiable Information (PII). The agency has determined that a system of records notice (SORN) and privacy impact assessment (PIA) are not required in connection with the collection of information.

No information of a sensitive nature will be required under the following collections of information in connection with these rulemaking amendments: Rule 163, Form 8-K, and Form 10-K. These information collections collect basic Personally Identifiable Information (PII) that may include a name and job title. However, the agency has determined that these information collections do not constitute a system of record for purposes of the Privacy Act. Information is not retrieved by a personal identifier. In accordance with Section 208 of the E-Government Act of 2002, the agency has conducted a Privacy Impact Assessment (PIA) of the EDGAR system, in connection with this collection of information. The EDGAR PIA, published

⁵ See Offering Reform Proposing Release, *supra* note 1.

on February 5, 2019, is provided as a supplemental document and is also available at <https://www.sec.gov/privacy>.

12. AND 13. ESTIMATES OF HOUR AND COST BURDENS

The following estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act of 1995⁶ and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms. We estimated the average number of hours an affected fund would spend completing the information collections and the average hourly rate for outside professionals. In deriving our estimates, we recognize that the burdens will likely vary among individual funds based on a number of factors, including the nature of their business. We believe that some affected funds may experience hour and cost burdens in excess of our estimated averages and some affected funds may experience burdens less than our estimated averages. Our estimates have been adjusted to reflect the fact that some of the proposed amendments would not apply to all affected funds.

For the Exchange Act reports on Form 10-K and Form 8-K, we estimate that 75% of the burden of preparation is carried by the company internally and that 25% of the burden of preparation is carried by outside professionals retained by the company at an average cost of \$400 per hour.⁷

For Rules 163 and 433, we estimate that 25% of the burden of preparing and filing a free writing prospectus under these rules is undertaken by the issuer internally and that 75% of the burden is undertaken by outside professionals retained by the issuer at an average cost of \$400 per hour. For Rule 173, we estimate that 100% of the annual reporting burden would be borne by the issuer.

Form 10-K

We estimate there are 103 BDCs that file Form 10-K annually.⁸ We estimate the proposed amendments requiring financial highlights disclosure in Form 10-K would increase the burdens associated with the form for these BDCs by 1.5 hours per filing. With respect to an estimated 44 BDCs that would file a short-form registration statement on Form N-2,⁹ the

⁶ 44 U.S.C. 3501 *et seq.*

⁷ We recognize that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis we estimate that such costs would be an average of \$400 per hour. This estimate is based on consultations with operating companies, law firms, fund representatives and other persons who regularly assist funds in preparing and filing reports with the Commission.

⁸ This estimate is based on data from Form 10-K and Form 10-Q filings as of September 30, 2018.

⁹ This estimate is based on trading data as of June 30, 2018.

proposed amendments requiring additional disclosure in Form 10-K are expected to increase the burdens associated with the form by 3 hours per filing. For purposes of the PRA, we estimate the total incremental burden would be 213 hours for internal time and \$28,400 for the services of outside professionals.

Form 8-K

We estimate there are 704 registered CEFs.¹⁰ We estimate the proposed amendments to Form 8-K would result in each registered CEF making, on average, 11 Form 8-K filings per year with an estimated burden of 6.3125 hours per filing. With respect to the estimated 103 BDCs, the proposed amendments to Form 8-K are expected to result in 1 additional Form 8-K filing per year per BDC with an estimated burden of 5 hours per filing. For purposes of the PRA, we estimate an additional 7,847 responses per year with a total incremental burden of approximately 37,049.25 burden hours of internal time and \$4,939,900 for the services of outside professionals.

Rule 163

For Rule 163 free-writing prospectuses, we estimate that the proposed amendments would increase the number of responses by 2 each year, with an estimated burden of 0.25 hours per response. We estimate that for purposes of the PRA the total incremental burden for the proposed amendments to Rule 163 would be approximately 0.125 internal burden hours and \$150 for the services of outside professionals.

Rule 173

We estimate that 807 affected funds would become subject to Rule 173 as a result of the proposed amendments, and each of these affected funds would provide, on average, 43,546 responses per year, resulting in an increase of 35,141,622 responses annually. We estimate that each of the 807 affected funds would incur 0.0167 average burden hours per response, resulting in an annual incremental paperwork burden of approximately 586,865 hours of internal personnel time, with no change to estimated external costs.

Rule 433

For Rule 433 free-writing prospectuses, we estimate that the proposed amendments would increase the number of responses by 4,360 each year, with an estimated burden of 1.28 hours per response. For purposes of the PRA, we estimate that the incremental annual paperwork burden for affected funds under the proposed amendments to Rule 433 would be approximately 1,395 hours of internal personnel time and a cost of approximately \$1,674,240 for the services of outside professionals.

¹⁰ This estimate is based on Morningstar data and SEC filings as of September 30, 2018.

Summary of Estimated Paperwork Burdens

Table 1 below shows the estimated total annual paperwork compliance burden, in hours and in costs, of the proposed amendments.¹¹ The burden estimates were calculated by multiplying the estimated number of responses by the estimated average amount of time it would take a registrant to prepare and review disclosure required under the proposed amendments. The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the registrant internally is reflected in hours.

Table 1. Incremental Paperwork Burden increases under the Proposed Amendments for Securities Act Rules and Exchange Act Forms.

	Current Annual Responses	Proposed Number of Responses	Current Burden Hours	Change in Burden Hours	Change in Company Hours	Change in Professional Hours	Change in Professional Costs
Form 10-K	8,137	8,137	14,198,780	284	213	71	\$28,400
Form 8-K	118,387	126,234	818,158	49,399	37,049	12,350	\$4,939,900
Rule 163	10	12	1	0.5	0.125	0.375	\$150
Rule 173	232,448,548	267,590,170	3,881,891	586,865	586,865	0	0
Rule 433	15,700	20,060	5,024	5,581	1,395	4,186	\$1,674,240

14. COST TO FEDERAL GOVERNMENT

The annual cost of reviewing and processing disclosure documents, including registration statements, post-effective amendments, proxy statements, annual reports and other filings of operating companies amounted to approximately \$103,479,690 in fiscal year 2019, based on the Commission's computation of the value of staff time devoted to this activity and related overhead

15. REASON FOR CHANGES IN BURDEN

The proposed amendments in Release No. IC-33427 would modify the registration, communications, and offering processes for registered closed-end funds and business development companies. The proposed amendments related to Form 10-K and Form 8-K would tailor the disclosure framework for these funds in light of the proposed amendments to the offering rules applicable to them and would provide investors with important information to inform their investment decisions. The proposed amendments to Rules 163 and 433 would permit registered closed-end funds and business development companies to utilize the free-writing prospectus rules currently available to operating companies. The proposed amendments to Rule 173 would similarly provide parity and would allow investors who do not receive a copy of a final prospectus to "trace" their purchases of securities for purposes of asserting their rights

¹¹ For convenience, the estimated hour and cost burdens in the tables have been rounded to the nearest whole number.

under the liability provisions of the federal securities laws. For purposes of the PRA, we estimate that the proposed amendments to Securities Act rules and Exchange Act forms would result in a net increase of 625,522.125 burden hours and a net increase in the cost burden of \$6,642,690 for the services of outside professionals.¹²

Table 2. Current and Revised Burdens increases under the Proposed Amendments for Securities Act Rules and Exchange Act Forms.

	Current Burden		Revised Burden		Program Change	
	Burden Hours (A)	Cost (B)	Burden Hours (C)	Costs (D)	Burden Hours (E)	Costs (F)
Form 10-K	14,198,780	\$1,895,224,719	14,198,993	\$1,895,253,119	213	\$28,400
Form 8-K	818,158	108,674,430	855,207	\$113,614,330	37,049	\$4,939,900
Rule 163	1	\$720	1.125	\$870	0.125	\$150
Rule 173	3,881,891	\$0	4,468,756	\$0	586,865	\$0
Rule 433	5,024	\$6,028,800	6,419	\$7,703,040	1,395	\$1,674,240

16. INFORMATION COLLECTION PLANNED FOR STATISTICAL PURPOSES

The information collections do not employ statistical methods.

17. APPROVAL TO OMIT OMB EXPIRATION DATE

We request authorization to omit the expiration date on the electronic version of Form 10-K and Form 8-K. Including the expiration date on the electronic version of the forms will result in increased costs because the need to make changes to the form may not follow the application’s scheduled version release dates. The OMB control number will be displayed.

With respect to Rule 163, we request authorization to omit the expiration date on the electronic version of the form. Including the expiration date on the electronic version of the form will result in increased costs, because the need to make changes to the form may not follow the application’s scheduled version release dates. The OMB control number will be displayed. With respect to Rules 173 and 433, the Commission is not seeking OMB approval to omit the expiration date.

¹² For the net change in burdens and costs expected to result for each of the individual collections of information, see the attached Short Statements.

18. EXCEPTIONS TO CERTIFICATION STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION

There are no exceptions to certification for Paperwork Reduction Act submissions.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

The information collections do not employ statistical methods.

FORM 10-K SHORT STATEMENT

The proposed amendments in Release No. IC-33427 would modify the registration, communications, and offering processes for registered closed-end funds and business development companies. The proposed collections of information related to Form 10-K would tailor the disclosure framework for business development companies in light of the proposed amendments to the offering rules applicable to them. For purposes of the PRA, we estimate that the proposed amendments related to Form 10-K would result in a net increase of 213 burden hours and a net increase in the cost burden of \$28,400 for the services of outside professionals. These changes are due to proposed amendments that would require business development companies to provide additional disclosure on Form 10-K.

FORM 8-K SHORT STATEMENT

The proposed amendments in Release No. IC-33427 would modify the registration, communications, and offering processes for registered closed-end funds and business development companies. The proposed collections of information related to Form 8-K would improve parity among registered closed-end funds, business development companies, and operating companies and provide investors with important information to inform their investment decisions. For purposes of the PRA, we estimate that the proposed amendments to Form 8-K would result in a net increase of 37,049 burden hours and a net increase in the cost burden of \$4,939,900 for the services of outside professionals. These changes are due to proposed amendments that would increase the scope of Form 8-K reporting by registered closed-end funds and business development companies.

RULE 163 SHORT STATEMENT

The proposed amendments in Release No. IC-33427 would modify the registration, communications, and offering processes for registered closed-end funds and business development companies. The proposed amendment to Rule 163 would permit registered closed-end funds and business development companies that qualify as a WKSI to issue a free-writing prospectus as is currently available to operating companies that qualify as a WKSI. For purposes of the PRA, we estimate that the proposed amendments to Rule 163 would result in a net increase of 0.125 burden hours and a net increase in the cost burden of \$150 for the services of outside professionals. These changes are due to proposed amendments that would expand the scope of Rule 163 to registered closed-end funds and business development companies.

RULE 173 SHORT STATEMENT

The proposed amendments in Release No. IC-33427 would modify the registration, communications, and offering processes for registered closed-end funds and business development companies. The proposed amendments to Rule 173 entail burdens for affected funds that elect to rely on Rule 172 to satisfy final prospectus delivery obligations, subject to certain conditions. Such funds may incur additional costs due to the requirement to provide the notice that Rule 173 requires to investors (stating that a sale of securities was made based on a registration statement or in a transaction in which a final prospectus would have been required to have been delivered in the absence of rule 172). For purposes of the PRA, we estimate that the proposed amendments to Rule 173 would result in a net increase of 586,865 internal burden hours due to the increase in the number of issuers expected to provide the information required under Rule 173. We estimate no change to the external cost burden.

RULE 433 SHORT STATEMENT

The proposed amendments in Release No. IC-33427 would modify the registration, communications, and offering processes for registered closed-end funds and business development companies. The proposed amendments to Rule 433 would permit registered closed-end funds and business development companies to issue a free-writing prospectus as is currently available to operating companies. For purposes of the PRA, we estimate that the proposed amendments to Rule 433 would result in a net increase of 1,395 burden hours and a net increase in the cost burden of \$1,674,240 for the services of outside professionals. These changes are due to proposed amendments that would expand the scope of Rule 433 to registered closed-end funds and business development companies.