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CLOSED-END FUND OFFERING REFORM: THE SHORT-FORM REGISTRATION PROCESS

The SEC has at last adopted final rules for reforming offering processes for closed-end funds. The authors discuss the new rules in detail, focusing on the short-form registration process and the new shareholder report disclosure. They conclude that the offering reform will make it more cost-efficient for closed-end funds to file and maintain effective shelf registration statements to conduct a variety of equity offerings without delay.

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On April 8, 2020, the Securities and Exchange Commission, by a vote of three to one, adopted final rules intended to modify the registration, communications, and offering processes for business development companies (“BDCs”) and other closed-end investment companies under the Securities Act of 1933.¹

¹ *Securities Offering Reform for Closed-End Investment Companies*, Rel. No. 33-10771 (2020), available at <https://www.sec.gov/rules/final/2020/33-10771.pdf> (the “Adopting Release”). The adoption of Securities Offering Reform for Closed-End Investment Companies (the “Offering Reform”) comes at the direction of the Small Business Credit Availability Act (the “BDC Act”) that instructs the SEC to allow a BDC to use the securities offering rules that are available to other issuers required to file reports under section 13(a) or section 15(d) of the Securities Exchange Act of 1934, and the Economic Growth, Regulatory Relief, and Consumer Protection Act (the “CEF Act”) that instructs the SEC to allow any registered closed-end fund that is listed on a national securities exchange or that makes periodic repurchase offers under rule 23c-3 under the Investment Company Act of 1940 to use the securities offering rules that are available to other issuers that are required to file reports under section 13(a) or section 15(d) of the Exchange Act.

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The timing of the Offering Reform, which largely took effect on August 1, 2020, could not come at a more unique time, as markets continue to reflect deep uncertainty due to the 2019 novel coronavirus (“COVID-19”), and related government and industry reactions. Despite the uncertainty, however, and in some cases because of it, asset managers have actively been considering how the Offering Reform might enable them to more effectively and efficiently raise capital and utilize the closed-end fund wrapper. While some closed-end funds have struggled under recent market pressures, experiencing declining net asset values and market prices, forced de-levering, and even having to suspend offerings, investors and asset managers alike are also eagerly examining opportunities.

In this environment, the Offering Reform provides a welcome set of tools to more effectively pursue those opportunities — including, most importantly, the short-form registration process. Opportunities notwithstanding, however, many of the technical aspects of the short-form registration process are unfamiliar to closed-end fund sponsors, and their legal and compliance departments and will potentially present challenges as the industry wades into areas of the

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