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SEC Proposes Broad Amendments to Registered Offering Framework

The proposals reflect the most coordinated effort in two decades to address concerns about the shrinking public-company population, the high fixed costs of public-company status for smaller issuers, and the friction that state-level review imposes on unlisted registered offerings.

I. Overview

On May 19, 2026, the Securities and Exchange Commission (the SEC) continued its efforts to revitalize public markets by proposing two rule amendment packages that together would represent the most significant reform to public offerings and the SEC reporting framework in over 20 years.^[1] The proposing release with respect to registered offering reforms (the Offering Release) furthers the SEC's agenda to incentivize more companies to go and stay public by, among other things, significantly expanding the availability of shelf and short-form registration, extending pre-filing communication flexibility to a larger group of issuers, and preempting state "blue sky" review of all registered offerings. The proposing release with respect to filer status (the Filer Status Release) proposes rule amendments that, if adopted, would streamline and recalibrate the SEC's filer status classifications and extend certain current scaled disclosure requirements and accommodations to a significant majority of public company filers. The Offering Release is available [here](#) and a Fact Sheet is available [here](#). We discuss the Filer Status Release [here](#).

The amendments proposed by the Offering Release would give more issuers immediate and more flexible access to capital markets. Specifically, according to the SEC, these proposals would:

- expand the number of issuers eligible to register an unlimited amount of securities on Form S-3 by more than 60%; and
- more than triple the number of issuers eligible to use the enhanced registration and communication benefits presently available only to well-known seasoned issuers (WKSIs).

In the Offering Release, the SEC notes that the current registration framework has become layered, overlapping, and difficult to navigate, and that the policy benefits of the decades old public float thresholds, which were not indexed to inflation, market capitalization growth, or the continued maturation of the EDGAR-based disclosure system, have deteriorated. The proposals are framed as a response to long-standing concerns about declining IPO activity, the contraction of the U.S. public company population, and the cumulative regulatory burden borne by companies.

II. Registered Offering Reforms

A. Expansion of Form S-3 Eligibility

The centerpiece of the Offering Release is a substantial expansion of Form S-3 eligibility. Form S-3 currently has both registrant and transaction eligibility requirements. To use Form S-3, an issuer must have been a reporting company under the Securities Exchange Act of 1934, as amended (the Exchange Act), for 12 full calendar months (the Seasoning Requirement) and have a public float of at least \$75 million (the Float Requirement) in order to register an uncapped amount of securities on a primary basis. The Offering Release would substantially overhaul these criteria by, among other changes, eliminating the Seasoning Requirement and the Float Requirement.^[2] The Offering Release also proposes to eliminate **all** transaction requirements, which means that any issuer eligible to use Form S-3 could use it for any primary or secondary offering, including to offer an unlimited amount of its securities for cash. Importantly, however, Form S-3 would continue to be conditioned on an issuer being current and timely in its Exchange Act reporting and not being an “ineligible issuer” under Securities Act Rule 405 (Rule 405), but the Offering Release proposes that an issuer that has a late filing within the last 12 months would be current and timely for S-3 eligibility purposes if (1) the delinquent filing was ultimately made within seven calendar days of the original due date, and (2) the issuer had only one late filing during the relevant lookback period. Additionally, the Offering Release proposes that an issuer that was formerly a special purpose acquisition company (SPAC) that has successfully completed a de-SPAC transaction will be eligible to use Form S-3 to the same extent as a newly public company that conducted a traditional IPO.

According to the SEC, these amendments would expand the number of issuers eligible to use Form S-3 to register an uncapped amount of securities by more than 60%. As a practical matter, recently public companies and smaller issuers that today must rely on Form S-1, and on the cumbersome process of registering takedowns by post-effective amendment, would gain immediate access to shelf registration.

The Offering Release also proposes to add or retain exclusions for certain categories of issuers that the SEC views as presenting heightened investor protection concerns, including certain blank check, shell, and penny stock issuers (now called BSP issuers), certain bad actors, issuers subject to specified Securities Act proceedings or stop orders, asset-backed issuers, investment companies, and business development companies (BDCs).

B. Extension of Enhanced Registration and Communications Benefits by Adding New ELI and SELI Categories (Replacing Domestic WKSI Status)

Under current Rule 405, to be a WKSI, an issuer must be S-3 eligible and have at least \$700 million in public float or have issued at least \$1 billion in registered debt securities within the last three years. WKSI status allows issuers to, among other things:

- file an automatic shelf registration statement on Form S-3ASR that becomes effective immediately upon filing (ASR);
- register securities by class without specifying a limit on the aggregate amount that may be offered;
- use “pay-as-you-go” registration statement filing fee mechanics;
- omit certain information from base prospectuses; and
- engage in broader pre- and post-filing offering communications under Securities Act Rules 163, 163A, 164 and 433.

The Offering Release proposes creating two new categories of domestic issuers – Eligible Listed Issuers (ELI) and Seasoned Eligible Listed Issuers (SELI) – and eliminating WKSI status for domestic issuers. ELIs are companies eligible to use Form S-3 that have at least one class of common equity listed on a national securities exchange; SELIs are ELIs that have been reporting under the Exchange Act for at least 12 full calendar months. ELIs would receive all of the benefits of WKSI status other than the ability to use an ASR, which would be available only to SELIs. These changes would effectively extend all WKSI benefits other than immediate effectiveness to all domestic equity-issuers that currently are merely S-3 eligible. The SEC estimates that these changes could increase the number of issuers eligible for these enhanced registration and communication benefits by over 200%. However, as proposed, issuers that qualify as a WKSI solely based on registered debt issuances that do not also have exchange-listed equity securities would not qualify as a SELI or an ELI, and would therefore lose their current benefits of WKSI status.

A majority-owned subsidiary that is not itself an ELI or SELI would be permitted to rely on its parent’s ELI or SELI status for certain Form S-3 offerings where the parent and subsidiary are co-registrants, including offerings involving a parent guarantee or other qualifying guarantee structure, and offerings of non-convertible securities, other than common equity, where the subsidiary is independently Form S-3 eligible. If the parent is a SELI, the subsidiary could be treated as a SELI for the offering and use an automatic shelf registration statement with the parent as a co-registrant.

C. Modernization of Form S-1 – Incorporation by Reference

The Offering Release also proposes to increase the utility of Form S-1 by expanding the ability to incorporate by reference. Currently, to incorporate historical information by reference, an issuer must have filed an Annual Report on Form 10-K, and to forward incorporate future Exchange Act filings by reference, an issuer must be a smaller reporting company (SRC). If an issuer does not meet either criterion, including immediately after going public, all disclosures must be included in the registration statement. Under the proposed amendments, all issuers using Form S-1 will be able to incorporate historical filings and SRC status will no longer be a prerequisite to forward incorporate.^[3] The SEC estimates that the latter could increase the number of issuers eligible to forward incorporate on Form S-1 by up to 106%. These changes would reduce duplicative disclosure in Form S-1 registration statements and would make Form S-1 a more effective tool for issuers not eligible to use Form S-3. Increasing the use of incorporation by reference would meaningfully reduce the cost and disclosure update burden for companies using Form S-1, particularly when the registration statement will remain effective for extended periods, including resale registration statements.

D. Preemption of State Securities Law Registration for all Registered Offerings

In the Offering Release, the SEC proposes to create universal federal preemption of state securities law registration and qualification requirements by expanding the existing preemption to all registered offerings. Preemption applies to offerings of “covered securities”, which are currently limited primarily to securities listed or approved for listing on a national securities exchange. A security sold to a “qualified purchaser” as defined by the SEC is also a “covered security”, but the SEC has not previously defined the term. The proposed amendments would provide for this more extensive pre-emption by defining “qualified purchaser” under Section 18(b)(3) of the Securities Act to include any person to whom securities are offered or sold pursuant to an offering registered under the Securities Act. By extending preemption to all registered offerings of unlisted securities, the proposal would eliminate the patchwork of state-level review, and the associated costs, delays, and disclosure for non-listed issuers, such as non-traded REITs and non-traded BDCs. State antifraud authority would still apply, but state-level merit review and registration or qualification requirements would be preempted for all registered offerings. The SEC believes this proposal will result in a substantial reduction in deal cost and timing consistent with investor protection for non-listed companies, which may be most sensitive to these incremental costs.

E. Other Proposals for Specific Issuers

- **Business Development Companies and Closed-End Funds.** Analogous amendments would be extended to short-form shelf eligibility on Form N-2 for a substantially broader group of BDCs and registered closed-end funds by, among other things, removing seasoning and public float requirements. Certain enhanced registration and communication benefits currently reserved for WKSI-like BDCs and closed-end funds would also be extended to a broader set of Form N-2 filers. These changes are intended to maintain parity between these issuers and operating companies where the SEC believes appropriate.

- **Broad-Based Advertising for Certain Insurance Products.** The proposal would amend Securities Act Rule 482 — the rule that permits broad-based advertising for variable annuities and certain other insurance-linked investment products — to permit its use by insurance companies advertising other products, including registered index-linked annuities and registered market value adjustment annuities, subject to specified conditions.

III. Key Considerations and Practical Implications

A. Meaningfully More Access to Capital Raising

The amendments proposed by the Offering Release would dramatically change capital markets planning for many issuers, particularly new public companies and companies with a public float of less than \$75 million, by allowing them to more quickly and efficiently, and therefore effectively, access markets. If adopted, a company could complete an IPO or other Exchange Act registration and immediately file a shelf registration statement on Form S-3 to register securities in advance and, once effective, access the market opportunistically through takedowns without creating the perception of overhang that can arise upon filing a Form S-1 while waiting for additional SEC staff action. This extremely efficient financing alternative is not available today for at least a year after going public and would reduce reliance on private placements, PIPEs, structured convertibles, and other financing alternatives that often carry meaningful pricing discounts or dilution.

Because Form S-3 eligibility is closely tied to the ability to conduct at-the-market (ATM) offerings, expanding the universe of issuers eligible to use Form S-3 would also materially expand access to ATM offerings. Therefore, issuers that today rely on Form S-1 takedowns, post-effective amendments, or “baby shelf” registrations, which are subject to offering caps, would in many cases gain access to a full primary shelf. Note, however, that the proposal would limit ATM offerings to securities listed on a national securities exchange or traded on a market designated by the SEC based on specified criteria in order to address investor protection concerns previously protected through S-3 eligibility requirements.

B. Underwriting and Diligence Impacts

Broader shelf eligibility means more offerings can be completed on compressed timelines and without SEC staff review. However, the SEC emphasizes that Securities Act liability standards will continue to apply, and market participants should not view the proposals as reducing disclosure or diligence obligations. Therefore, issuers should expect underwriter and auditor diligence expectations to remain robust notwithstanding any streamlining of the offering process. As a result, we expect this expanded Form S-3 and WKSI-style eligibility, if implemented as proposed, will heighten underwriter due diligence, comfort letter negotiations, and 10b-5 or negative assurance disclosure letters for these smaller and less seasoned issuers newly eligible to use Form S-3. Underwriters, issuers, auditors, and counsel will need diligence processes that support rapid takedowns, including continuous diligence programs for issuers that expect to access the market frequently and may not have existing infrastructure to support these processes. Pre-offering communication practices, including through the use of free writing prospectus (FWP) and Rule 134 communications, will need to be reconsidered for the substantially expanded universe of issuers able to use those tools.

C. Preemption will Shift the Process for Unlisted Registered Offerings

Full Section 18 preemption for all registered offerings would substantially curtail state-level merit and disclosure review for unlisted registered offerings. However, while this universal preemption would eliminate Blue Sky registration and qualification requirements for registered offerings of unlisted securities, state antifraud and notice/filing obligations may continue. Issuers will need to re-map internal checklists and counsel workflows if the definition of “qualified purchaser” is adopted. State regulators are likely to be among the most vocal commenters on the proposal. Issuers and underwriters in unlisted-securities offerings (including certain BDC, closed-end fund, and high-yield debt offerings) should monitor the rulemaking closely and consider whether transactions in process should be timed in anticipation of preemption. Preempting state securities laws for unlisted SEC-registered offerings will substantially lower the legal and administrative costs of capital formation for non-traded vehicles, which may drive more sponsors toward registered products over private placements.

D. Foreign Private Issuers Would Receive More Limited Relief

The proposals take a cautious approach to foreign private issuers (FPI) in light of the SEC’s separate ongoing review of the FPI framework. Form S-3 would no longer be available to FPIs, although Form F-3 would remain available where its conditions are met. FPIs would also not be eligible to be ELIs or SELIs, but would remain eligible to be a WKSI.

IV. What Companies Should Start Looking at Now

While the proposals may evolve through the comment process, we recommend that clients begin considering the potential impacts now, including taking the following steps:

A. Evaluate shelf strategy and review offering pipeline.

Issuers that do not currently qualify for Form S-3 — or that qualify only for a baby-shelf takedown subject to the one-third cap — should evaluate whether the expanded eligibility would unlock new capital-raising flexibility, and whether existing Form S-1 shelf programs should be migrated or restructured. Issuers currently constrained by the “baby shelf” rules or unable to use Form S-3 due to seasoning requirements should consider how unrestricted shelf access could alter their near-term capital raising strategies.

Companies should assess their current S-3 eligibility under the proposal, including Exchange Act reporting timeliness and any ineligible issuer considerations and potentially refresh their universal shelf and ATM playbooks (underwriting arrangements, auditor comfort, internal disclosure controls, risk factor and forward-looking statement frameworks). It would be helpful for companies to model the transaction timing and cost differences of S-1 vs. S-3 (including pay-as-you-go) and potential Blue Sky preemption for unlisted registered offerings for their current offering pipeline.

B. Boards Should Revisit Capital Markets Delegations and Oversight

Boards and finance teams at companies that may benefit from the expanded S-3 and WKSI-like benefits should consider whether existing financing authorizations, disclosure controls, and blackout procedures are appropriate for taking advantage of these changes and accessing markets more quickly. Companies that would become eligible for ATM programs for the first time

should consider governance protocols addressing size limits, pricing discretion, notice procedures, and use-of-proceeds disclosures. Companies considering pursuing an IPO in the future should revisit deal size and timing and the longer-term cadence of capital raising given the potentially greater opportunity that will be available immediately following and in the first year after completion of the IPO.

C. Reconsider communications practices.

Issuers that would newly qualify for WKSI-style pre-offering communication benefits should begin an internal review of pre-filing communications policies, FWP procedures, and Rule 163/163A practice, working with outside counsel and underwriters, and consider what new types of communications may be available for future offerings.

D. Monitor blue sky practice for offerings in process.

Issuers and underwriters with unlisted registered offerings in the pipeline should consider the potential impact of full Section 18 preemption on offering timing, state-level filings and deal economics.

V. Submitting Comments

The public comment period for the Offering Release will remain open for 60 days following publication in the Federal Register. Comments may be submitted electronically through the SEC's internet comment form or by email to rule-comment@sec.gov, referencing File No. S7-2026-17 (Offering Reform Release) or File No. S7-2026-18 (Filer Status Release), as applicable.

Given the breadth and importance of the proposals, we expect a substantial volume of comments from issuers, investor advocates, proxy advisory firms, state securities regulators, auditors, and other constituencies. The SEC will need to consider those comments before issuing final rules, and the final rules may differ in material respects from the proposals as released. As a result, we do not expect final rules to be adopted before the end of the year.

The Release would meaningfully recalibrate the cost-benefit equation of becoming and remaining a U.S. public company. The proposals reflect the most coordinated effort in two decades to address concerns about the shrinking public-company population, the high fixed costs of public-company status for smaller issuers, and the friction that state-level review imposes on unlisted registered offerings. Whether the proposals are adopted as released, modified through the comment process, or scaled back in part, they signal the direction of SEC priorities and create an inflection point that companies and their advisors should evaluate now.

[1] The two proposing releases are

- Registered Offering Reform, Release Nos. 33-11418; 34-105513; IC-36160 (File No. S7-2026-17); and
- Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies, Release Nos. 33-11419; 34-105515 (File No. S7-2026-18).

[2] The proposed amendments would also eliminate requirements relating to certain failures to make payments and defaults, electronic filing representations and interactive data files representations.

[3] As discussed in our client alert on the Filer Status Release, the SEC is proposing to eliminate the SRC classification.

The following Gibson Dunn lawyers prepared this update: Andrew Fabens, David Korvin, Brian Lane, Peter Wardle, and Bill Wortmann.

Gibson Dunn's lawyers are available to assist with any questions you may have regarding the SEC's proposed rules, or federal securities laws and regulations more generally. Please contact the Gibson Dunn lawyer with whom you usually work, the authors, or any member or leader of the firm's Capital Markets or Securities Regulation & Corporate Governance practice groups:

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