Client Alert | **Newsflash** US Capital Markets team

The SEC's registered offering reform proposal: Expanding access to public capital markets for a broader universe of issuers

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Over the coming months, the SEC's proposal to overhaul the registered offering framework could be another important piece of the SEC's agenda to simplify its public offering requirements and to encourage more companies to access the capital markets. The proposal, which was voted for unanimously by the SEC on May 19, 2026 (the "Proposal," Release No. 33-11418, File No. S7-2026-17), could be the most significant overhaul of the registered offering framework in more than two decades and seeks to provide many public companies with a more efficient and cost-effective path to raise capital in the public markets than is currently available, and rests on the theory that an issuer's timely and current SEC reporting is more important to ensuring that adequate disclosure is made than the issuer's public float or length of reporting history.

Now approximately halfway through the SEC comment period, if adopted, the Proposal (available here) would eliminate the 12-month seasoning requirement and the $75 million public float threshold for Form S-3, replace the domestic well-known seasoned issuer ("WKSI") framework with two new listing-based issuer categories, preempt state blue sky registration requirements for all registered offerings, and modernize incorporation by reference on Form S-1. The Proposal was published in the Federal Register on May 26, 2026, beginning a 60-day comment period that closes on July 27, 2026. The Proposal was issued alongside a companion filer status rulemaking (Release No. 33-11419), and together the two proposals represent SEC Chairman Paul Atkins's "Make IPOs Great Again" agenda to reduce the costs of being a public company and incentivize companies to go and stay public. Final rules, if adopted, are unlikely before 2027 and may differ materially from the Proposal in response to comments.

The Proposal contains more than 130 specific requests for comment. Based on those requests and the nature of the reforms, we anticipate the comment record to be shaped by the following themes:

- **Smaller Issuers and Emerging Growth Companies:** Likely to submit supportive comments applauding the removal of seasoning and public float barriers, and may urge the SEC to go further by shortening or eliminating the remaining 12-month requirement for automatic shelf registration.

- **State Securities Regulators:** Widely expected to oppose or seek modification of the blanket blue sky preemption, which would extend federal coverage to unlisted securities for the first time.
- **Underwriters and Institutional Investors:** May raise nuanced concerns around disclosure adequacy for very newly public companies, particularly those that have not yet filed an annual report on Form 10-K.
- **SPAC and De-SPAC Practitioners:** Likely to comment extensively on the shell-company carve-out, exploring its boundaries and potential gaps relative to traditional reverse mergers.
- **Foreign Private Issuers:** Likely to advocate for inclusion in the expanded S-3 framework; the SEC has expressly deferred broader FPI reforms pending completion of its work related to the June 2025 FPI concept release.
- **Debt-Only WKSIs:** Companies that currently qualify as WKSIs solely on the basis of registered debt issuances (without a listed equity class) stand to lose existing benefits and are likely to seek transition relief or clarification.

The SEC has signaled openness on certain of these issues, specifically requesting comment on whether to provide a transition period for unlisted WKSIs, whether blanket preemption should be narrowed to particular offering types, and how the three-year lookback should be calibrated for de-SPAC transactions.

Background

Access to registration statements on Form S-3 (the "short form" shelf registration statement that lies at the heart of efficient public capital raising) has long been gated by two sets of requirements: (1) registrant requirements (focused on an issuer's reporting history, public float and quality) and (2) transaction requirements (focused on the size and nature of the offering). Under the current rules, the most significant gatekeepers are a 12-month Exchange Act reporting history (the "Seasoning Requirement") and a $75 million minimum public float for unlimited primary offerings (the "Float Requirement"). Companies that cannot clear those hurdles must use Form S-1, a more burdensome process subject to more frequent SEC staff review and ill-suited to shelf offerings and unavailable for at-the-market programs.

Layered on top of Form S-3 is the WKSI framework, introduced in 2005, which reserves a further tier of benefits (automatic effectiveness, pay-as-you-go fees, pre-filing communications flexibility and more) for issuers with at least $700 million in public float or $1 billion in registered debt issuances. By design, WKSI status has always been the domain of large-cap companies.

The SEC now proposes to dismantle that architecture almost entirely for domestic issuers, replacing it with a more accessible, listing-based framework. The SEC's stated rationale is that the foundational premise of the current system, that public float and seasoning are meaningful proxies for information availability and investor protection, has been eroded by the maturation of EDGAR and mandatory electronic disclosure. In the SEC's view, the availability of continuous Exchange Act disclosures, not market capitalization, should be the operative touchstone. The Proposal thus seeks to decouple Form S-3 eligibility from market capitalization and public float and instead link it to reporting compliance.

Key Proposed Changes

Expanded Form S-3 Eligibility: Eliminating the Seasoning and Float Requirements

The centerpiece of the Proposal is a dramatic expansion of Form S-3 eligibility through the elimination of both the Seasoning Requirement and the Float Requirement, as well as all other Form S-3 transaction requirements.

- **Seasoning Requirement eliminated:** Currently, an issuer must have been subject to Exchange Act reporting requirements for at least 12 full calendar months before it may file and seek effectiveness of a Form S-3. The Proposal would eliminate this requirement entirely. A company that completes its IPO would, in principle, be

eligible to file a Form S-3 immediately thereafter, provided it is current and timely in its reporting obligations and otherwise meets the form's requirements.

- **Float Requirement and all transaction requirements eliminated:** The Proposal would remove all of Form S-3's transaction eligibility requirements, most significantly General Instruction I.B.1's $75 million public float threshold for unlimited primary offerings. Under the Proposal, any Exchange Act reporting issuer that is current and timely in its filings (regardless of size, float, or length of reporting history) could use Form S-3 to register an unlimited amount of any class of securities for any primary or secondary offering.[1]

- **Current and timely reporting requirements retained:** Under the Proposal, Form S-3 eligibility is conditioned on an issuer being subject to the periodic reporting requirements of the Exchange Act and having timely made all required filings under Sections 13(a), 14(a) and 15(d) of the Exchange Act (other than certain Form 8-K filings) during the prior 12 months or such shorter period during which the issuer was subject to such requirements.

- **Grace period for isolated late filings:** The Proposal would introduce a limited exception to the current and timely filing requirements. An issuer with a single untimely filing during the prior 12 months would remain Form S-3 eligible if the filing was made within seven calendar days of the original (not Rule 12b-25 extended) due date. This reflects certain informal SEC staff practice in the past and makes it more uniformly applicable.

- **Ineligible issuers:** The Proposal retains Form S-3 ineligibility for certain categories of issuers, introducing the concept of a "BSP issuer" (defined to include issuers that are, or during the prior three years were, blank check companies, shell companies (other than business-combination-related shell companies including de-SPACs), or penny stock issuers).[2] The Proposal also bars issuers subject to specified SEC proceedings, stop orders, antifraud-related cease-and-desist orders (with a materiality-based qualifier), and certain bad-actor criminal convictions. Foreign private issuers, asset-backed issuers and investment companies would also be prohibited from using Form S-3.

The SEC estimates that these changes would expand the number of issuers eligible to register an unlimited amount of securities on Form S-3 by more than 60%.

A New Tiered Framework: ELIs and SELIs Replace Domestic WKSIs

The Proposal would eliminate the public float based WKSI definition for domestic issuers and replace it with two new, more accessible categories built around exchange listing rather than market capitalization:

- **Eligible Listed Issuers ("ELIs"):** An issuer that meets the proposed Form S-3 registrant requirements and has at least one class of common equity securities listed on a national securities exchange. Importantly, there is no public float or reporting history requirement beyond what Form S-3 itself requires, meaning a company listed on NYSE or Nasdaq immediately following its IPO would qualify as an ELI.

- **Seasoned Eligible Listed Issuers ("SELIs"):** An ELI that has been subject to Exchange Act reporting requirements for at least 12 calendar months. The 12-month seasoning requirement is retained at the SELI level specifically because the SEC believes a year of reporting compliance should be observed before a company is permitted to use an automatically effective registration statement.[3]

[1] The elimination of transaction requirements includes General Instructions I.B.2 through I.B.6, which currently govern primary offerings by issuers with less than $75 million in public float. Because those instructions were only operative when an issuer could not satisfy the $75 million float requirement in I.B.1, and the Proposal eliminates I.B.1, they are eliminated as well.

[2] The BSP issuer definition would be codified in Securities Act Rule 405. BSP issuers would be ineligible for both Form S-3 and the enhanced communication and registration benefits available to ELIs and SELIs.

[3] The determination date for ELI/SELI status is the latest of: (i) the date of filing the Form S-3; (ii) the date of the most recent Section 10(a)(3) amendment; or (iii) if no annual update has been made within 16 months, the date of the most recent annual report on Form 10-K or 20-F (or its due date, if not yet filed).

The result is a three-tier architecture: (i) Form S-3 eligible issuers (all current and timely filers, listed or not), (ii) ELIs (common equity exchange-listed Form S-3 eligible issuers), and (iii) SELIs (ELIs with 12+ months of Exchange Act reporting). This replaces the prior structure of unseasoned issuers, seasoned issuers and WKSIs.

All Form S-3 eligible issuers (including those that are not ELIs) would gain access to Rules 139 (safe harbor for publishing research reports), 430B(b) (ability to omit selling security holder information), and 433 (ability to use free writing prospectuses without a prospectus). Rule 462 automatic shelf registration (Form S-3ASR) would be available only to SELIs. See the table in **Annex 1** for a full comparison of current and proposed benefit availability. ELIs would gain access to many of the rules currently limited to WKSIs, including Rules 163 and 163A (pre-filing communication flexibility), Rule 164 (post-filing free writing prospectuses for Form S-8 offerings), Rule 413 (registration of additional securities or classes of securities, including majority-owned subsidiary securities, via post-effective amendment), Rule 430B(a) (ability to omit offering-specific information from base prospectuses), and Rules 456(b) and 457(r) (pay-as-you-go filing fee mechanics).

A majority-owned subsidiary that is not itself an ELI or SELI may rely on its parent's status in certain qualifying offering structures, including parent-guaranteed offerings and non-convertible security offerings where the subsidiary is independently Form S-3 eligible. If the parent is a SELI, the subsidiary may use an automatic shelf registration statement with the parent as co-registrant.

The SEC estimates that these changes would expand the universe of issuers eligible for enhanced registration and communication benefits by more than 200%.

Federal Preemption of State Blue Sky Requirements for All Registered Offerings

Under current law, Section 18(b)(1) of the Securities Act preempts state registration and qualification requirements for registered offerings of securities listed (or approved for listing) on a national securities exchange. Registered offerings of *unlisted* securities, including registered debt offerings and equity offerings by over-the-counter issuers, remain subject to a state-by-state patchwork of blue sky registration requirements, which can be costly and administratively burdensome.

The Proposal would address this by defining "qualified purchaser" under Section 18(b)(3) of the Securities Act to include *any person to whom securities are offered or sold in a registered offering*. The effect would be to make all registered offerings "covered securities" and thereby preempt state registration and qualification requirements across the board for both listed and unlisted securities.[4] State antifraud authority and notice and fee rights would be preserved. This is a significant development for issuers of unlisted securities, particularly debt issuers and issuers with equity securities traded over the counter, who currently bear the cost of multi-state compliance. The SEC has specifically asked whether full preemption is appropriate, or whether a narrower approach would better balance the interests at stake.

Modernization of Form S-1: Expanded Incorporation by Reference

Backward incorporation expanded: Currently, an issuer may incorporate historical Exchange Act filings into a Form S-1 filed before effectiveness only if it has already filed an annual report on Form 10-K for its most recently completed fiscal year. The Proposal would eliminate this condition, allowing an issuer that has not yet filed its first Form 10-K to incorporate earlier filings by reference. This means a newly public company that is not Form S-3 eligible under the Proposal could, for example, incorporate its IPO registration statement information into a subsequent follow-on Form S-1, significantly reducing the disclosure burden of that filing.[5]

Forward incorporation extended to all issuers: Currently, only smaller reporting companies ("SRCs") may forward incorporate future Exchange Act filings into a Form S-1 registration statement after effectiveness. The Proposal would extend this right to all Form S-1 issuers. The SEC estimates this change alone would increase the

[4] The Proposal would define "qualified purchaser" in new Securities Act Rule 146 to include any person to whom securities are offered or sold in a registered offering, thereby rendering all registered offerings "covered securities" under Section 18(b)(3) of the Securities Act.

[5] An issuer that has not yet filed a Form 10-K may incorporate by reference "Form 10 information" from an initial registration statement on Form S-1 or Form 10 (or a "Super 8-K" filed in connection with a de-SPAC transaction).

number of issuers eligible to forward incorporate on Form S-1 by up to 106%. BSP issuers would remain ineligible to forward incorporate by reference.

Parity for Business Development Companies and Closed-End Funds

The Proposal would make parallel amendments to the Form N-2 framework governing BDCs and registered closed-end funds, extending to those vehicles the same expanded eligibility and enhanced benefits proposed for operating companies. Specifically, the Proposal would create analogous ELI Affected Fund and SELI Affected Fund categories, remove seasoning and public float requirements, and extend applicable communication exemptions and registration benefits to qualifying funds. Unlisted funds (which include many non-traded BDCs) would continue to register offerings using Rule 486 rather than the short-form shelf process.

Expanded Advertising Framework for Certain Insurance Products

The Proposal would amend Rule 482 (the advertising rule currently available for variable annuities) to permit insurance companies to use that framework for registered index-linked annuities (RILAs) and registered market value adjustment annuities. Previously, these products were required to register on Form N-4 but could not rely on Rule 482, leaving issuers to depend on Rule 433 free writing prospectus provisions. The proposed extension would align the advertising treatment of these growing product categories with the existing variable annuity framework.

Implications for Specific Issuer Types

Newly Public Companies

The elimination of the Seasoning Requirement is perhaps the single most consequential element of the Proposal for newly public companies. Under current rules, a company that completes its IPO cannot use Form S-3 until 12 months have passed, forcing it to rely on Form S-1 for any follow-on offering during that period, with all of the associated cost, delay and SEC staff review. Under the Proposal, a company would become Form S-3 eligible immediately upon the effectiveness of its IPO registration statement, assuming it is then current and timely in its reporting. As a practical matter, many newly public companies are likely to file a shelf registration statement on Form S-3 concurrently with or shortly after their IPO, providing an immediately available vehicle for future capital raising. Additionally, because a newly listed company would qualify as an ELI from day one, it would have immediate access to pay-as-you-go fee mechanics, post-effective amendment flexibility and pre-filing communication rights, tools previously available only to WKSIs. The principal remaining constraint for most newly public companies will be their IPO lockup agreement, not SEC rules.

Form S-1 would also be meaningfully improved for newly public companies. Today, a company that just completed its IPO and wishes to conduct a follow-on offering on Form S-1 must include all disclosure in the registration statement itself. Under the Proposal, it could incorporate by reference its prior filings, including its IPO registration statement, significantly reducing the cost and preparation time for subsequent offerings. Use of Form S-3 would continue to be required for at-the-market offerings and delayed shelf offerings.

Smaller Companies Previously Subject to Baby Shelf Limitations

Companies with less than $75 million in public float that are exchange-listed have historically been subject to the “baby shelf” limitation under General Instruction I.B.6. They may use Form S-3 for primary offerings, but only for up to one-third of their public float in any rolling 12-month period. For many smaller companies that often need capital the most, this cap has been a material constraint on the size and timing of capital raises. The Proposal would eliminate the baby shelf limitation entirely, along with all other Form S-3 transaction requirements. A company with a $20 million public float would have the same uncapped access to Form S-3 primary offerings as a $20 billion company, provided it meets the form’s registrant requirements. Paired with the companion Filer Status Simplification proposal, which would extend scaled disclosure accommodations to approximately 81% of public companies, smaller issuers stand to benefit from both expanded offering capacity and reduced disclosure burdens simultaneously.

At-the-Market (ATM) Offering Programs

ATM programs (which allow companies to sell shares at prevailing market prices over time through a broker-dealer acting as agent) depend on Form S-3 eligibility. Today, ATM access is largely limited to companies that either qualify as WKSIs or have sufficient public float to use Form S-3 (including companies subject to "baby-shelf" rules, which creates more challenges than traditional Form S-3 use), which excludes many smaller and newly public companies. Under the Proposal, any Form S-3 eligible issuer could establish and draw on an ATM program, dramatically expanding the universe of potential ATM participants.

For ELIs specifically, the pay-as-you-go fee mechanics under Rules 456(b) and 457(r) (which allow registration fees to be paid at the time of each takedown rather than upfront) would make ATM programs substantially more efficient. Currently available only to WKSIs, these mechanics are particularly well-suited to ATM programs, where the total amount to be raised is uncertain at the outset. Companies that gain ELI status under the Proposal should evaluate whether an ATM program makes sense as a complement to their broader capital-raising strategy.

New trading market requirement for ATMs: The Proposal would also amend Rule 415(a)(4) to codify a new "trading market" requirement for ATM offerings. Under the proposed amendments, ATM offerings would be limited to securities that are either (i) listed on a national securities exchange or (ii) traded on a market designated by the SEC as a qualifying trading market based on factors including reporting standards, minimum bid-price requirements, public float, trading volume and market-maker participation. The SEC has indicated that OTCQX and OTCQB would likely qualify under this standard. Companies that become Form S-3 eligible under the Proposal but whose securities trade on lower-tier OTC markets should confirm whether their trading venue qualifies as a qualifying trading market. Those companies should make this determination before establishing an ATM program.

De-SPAC Companies

Under current rules, a post-de-SPAC company often cannot use Form S-3 for three years following its de-SPAC transaction, because the SPAC itself was a "shell company," and Form S-3 bars issuers that were shell companies (or had shell company predecessors) within the prior three years. This has placed de-SPAC companies at a significant disadvantage relative to traditional IPO companies, which can currently access Form S-3 after one year.

The Proposal would cure this asymmetry through a targeted carve-out. An issuer would *not* be deemed a shell company solely because it or a predecessor was a SPAC during the prior three years. This reflects the SEC's view, previously expressed in the 2024 SPAC rules, that a de-SPAC transaction is more analogous to an IPO than a reverse merger and should be treated accordingly. As a result, a post-de-SPAC company that otherwise meets the Form S-3 requirements would be eligible to use Form S-3 immediately upon the closing of its de-SPAC transaction, the same position as a traditional IPO company. Note, however, that this carve-out is explicitly limited to SPACs (and also does not apply to foreign private issuers). A company that went public through a traditional reverse merger with a non-SPAC shell company would remain subject to the three-year lookback.

Foreign Private Issuers ("FPIs")

The Proposal's benefits do not extend to FPIs. FPIs would be prohibited from using Forms S-1 and S-3, although Forms F-1 and F-3 would remain available, and Form F-3 could continue to be used for shelf and short form registration. In addition, FPIs would continue to be eligible to qualify as WKSIs, with the same benefits available to them with that status as under the current rules.

Practical Considerations

- **Review offering strategy now:** Companies currently using Form S-1 for follow-on offerings or that have been constrained by baby shelf limitations should assess how the Proposal, if adopted, would change their capital-raising options and timeline. Companies planning IPOs should consider how immediate Form S-3 eligibility would affect post-IPO strategy, including shelf filing timing and lockup negotiations.
- **Assess ELI/SELI status under the new framework:** Listed companies should determine whether they would qualify as ELIs upon adoption of final rules and what specific benefits would become available.

Companies qualifying as SELIs should evaluate whether to convert existing non-automatic shelf registration statements to automatic shelf (Form S-3ASR) filings.

- **Monitor for unlisted WKSI impact:** Companies that currently qualify as WKSIs solely on the basis of registered debt issuances, without a listed equity class, would not qualify as ELIs or SELIs and would lose certain existing benefits (see also the anticipated comment themes discussed above). Those companies should consider the impact carefully and may wish to submit comment letters advocating for transition relief.
- **Consider submitting comments:** The comment period closes July 27, 2026. Given the breadth of the Proposal and the SEC's explicit requests for input on multiple contested issues, this is an important opportunity for issuers, underwriters and other market participants to shape the final rules. Issues most likely to be refined through the comment process include the scope of blue sky preemption, transition treatment for unlisted WKSIs, and the mechanics of the de-SPAC shell company carve-out.
- **Prepare for transition:** Final rules, if adopted, will include a transition period. Companies should begin updating their internal capital markets playbooks, coordinating with underwriters on revised shelf and ATM program templates, and communicating with boards about how the new framework will affect their capital-raising flexibility.

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Annex 1

Enhanced Registration and Communication Benefits: Current vs. Proposed

Rule / Benefit	Current Availability	Proposed Availability
Rule 139 – Research report safe harbor	WKSIs and certain non-WKSI S-3 issuers	All Form S-3 eligible issuers
Rule 163 – Pre-filing offers	WKSIs only	ELIs
Rule 163A – Pre-filing offers	WKSIs only	ELIs
Rule 164 – Post-filing free writing prospectuses	WKSIs only	ELIs
Rule 413 – Registration of additional securities or classes	WKSIs only	ELIs
Rule 430B(a) – Omission of offering information	WKSIs only	ELIs
Rule 430B(b) – Omission of selling securityholder identities	WKSIs and certain non-WKSI S-3 issuers	All Form S-3 eligible issuers
Rule 433 – Free writing prospectuses	WKSIs and certain non-WKSI S-3 issuers	All Form S-3 eligible issuers
Rule 456(b)/457(r) – Pay-as-you-go filing fees	WKSIs only	ELIs
Rule 462 – Automatic shelf registration (Form S-3ASR)	WKSIs only	SELIs only

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