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SEC Proposes Sweeping Reforms to Public Company Securities Offerings and Reporting Requirements

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Executive Overview

On May 19, 2026, the U.S. Securities and Exchange Commission (SEC) proposed two significant packages of rule amendments: (i) amendments to rules and forms governing registered offerings intended to increase efficiency, flexibility, and cost savings for public companies, and (ii) amendments intended to simplify the public company reporting framework and better calibrate disclosure obligations to a company's size and maturity. The SEC has characterized these proposals and other recent initiatives, including the recent proposal on optional semiannual interim reporting, as steps to incentivize companies to go and stay public. In a statement on the proposing releases, SEC Chairman Paul S. Atkins described the proposals as foundational to his "Make IPOs Great Again" agenda and among the first steps toward transforming the SEC's regulatory framework for public companies.

The two proposals are:

Registered Offering Reform

A broad package of amendments to:

Expand access to Form S-3 shelf offerings;

Extend "WKSI-like" offering and communications flexibilities to many more issuers;

Modernize Form S-1 to allow both "backward" and "forward" incorporation of information by reference to other SEC filings;

Preempt state blue sky requirements for all registered offerings; and

Make related modernization changes.

Public Company Reporting Framework

Proposals to:

Streamline filer categories;

Raise the threshold for "large accelerated filer" status;

Extend scaled disclosure accommodations to most Securities; Exchange Act of 1934 (the Exchange Act) reporting companies; and

Create a longer post-IPO on-ramp before a company is subject to the highest tier of disclosure obligations.

Comments on both proposals are due 60 days after publication in the Federal Register.

Registered Offering Reform

Expanded Form S-3 Eligibility

Under current rules, Form S-3 is available only to issuers that have (i) been subject to Exchange Act reporting for at least 12 months (the "one-year seasoning requirement") and (ii) a public float of at least $75 million to conduct unlimited primary offerings (the "public float requirement"). The SEC proposes to eliminate both requirements, significantly broadening the universe of issuers eligible to use Form S-3, including for primary shelf and at-the-market (ATM) offerings.

The proposed amendments would revise Form S-3's eligibility requirements by, among other changes, removing the requirement that issuers be subject to Exchange Act reporting requirements for 12 months before using the form and eliminating all of the form's transaction requirements. This includes the instruction to Form S-3 which requires issuers to have at least $75 million in public float to register an unlimited amount of securities on the form. In support of these changes, the SEC noted its conclusion that the evolution and maturity of the EDGAR reporting system, coupled with widespread, low-cost investor access to EDGAR filings, allows investors to obtain issuer-specific information needed to support investment decisions without continuing to rely on the amount of an issuer's public float, or the length of its reporting history, as indirect indicators to measure such access.

In support of that paradigm, Form S-3 eligibility under the proposal would continue to require that the issuer be "current" in its Exchange Act reporting obligations and "timely" in its filings during the

preceding 12 calendar months (or shorter period if the issuer has been subject to Exchange Act reporting for a shorter period), subject to continuing the current specified carve-outs for certain Form 8-K items with filing triggers that require issuers to make significant materiality judgments. The proposal also includes a limited grace period: an issuer would remain Form S-3 eligible despite one late filing in the prior 12 months, provided the filing was made within seven calendar days of the original due date. Certain "ineligible issuers" would be prohibited from using the form, including, among others, blank check companies, shell companies (subject to a proposed Special Purpose Acquisition Company (SPAC) carveout), penny stock issuers, and certain issuers with specified criminal convictions or subject to specified antifraud-related judicial or administrative orders (which the SEC would define, collectively, as "BSP issuers" in an amendment to Securities Act Rule 405). The SEC is also proposing to exclude foreign private issuers (FPIs) from using Form S-3, in light of its separate ongoing review of the broader FPI disclosure framework and the continuing eligibility of FPIs to utilize the similar Form F-3 for their registered shelf offerings.

The SEC estimates that under the proposed amendments, there could be an increase of over 60% in the number of issuers eligible to offer an unlimited amount of securities on Form S-3, with newly eligible issuers benefiting from the cost savings and capital raising efficiencies and flexibilities associated with the ability to use Form S-3 and conduct shelf offerings.

Extended WKSI-Type Benefits to Broader Issuers with New ELI/SELI Framework

Currently, certain registration and communication benefits are reserved for "well-known seasoned issuers" (WKSIs). To qualify as a WKSI, an issuer must have at least $700 million in public float or have issued at least $1 billion of debt securities in registered offerings.

The SEC proposes replacing the WKSI framework for domestic issuers with two new categories:

An Eligible Listed Issuer (ELI) would be an issuer that meets Form S-3's proposed registrant requirements and is "exchange listed" (at least one class of common equity listed on a national securities exchange).

A Seasoned Eligible Listed Issuer (SELI) would be an ELI that has been subject to Exchange Act reporting for at least 12 calendar months.

Critically, issuer eligibility for these benefits would no longer depend on public float or registered debt issuance history.

For now, FPIs would continue to rely on the existing WKSI framework with respect to registered shelf offerings made on Form F-3.

Under the proposal, ELIs could use a suite of benefits currently reserved only for WKSIs, including expanded communications flexibility under Securities Act of 1933 (the Securities Act) Rules 163, 163A, and 164, more flexibility to register additional securities or classes via post-effective amendment (Rule 413), the ability to omit certain base prospectus information (Rule 430B(a)), and "pay-as-you-go" fee payment at takedown (Rules 456(b)/457(r)).

SELIs (ELIs with at least 12 calendar months of Exchange Act reporting) would, in addition to the ELI benefits, be eligible for automatic shelf registration under Rule 462 (a benefit currently limited to WKSIs).

All Form S-3 eligible issuers, whether exchange listed or not, would be able to use Rule 139 (issuer research report safe harbor that allows broker-dealers participating in a distribution to publish or distribute issuer-specific research without the research constituting an "offer"), Rule 430B(b) (omit selling holder identities and amounts in certain resale contexts), and Rule 433 (free writing prospectus use without a statutory prospectus accompanying or preceding).

The SEC estimates there could be an increase of over 200% in the number of issuers eligible for all of the enhanced registration and communication benefits under the proposed framework.

Form S-1 Modernization

The SEC proposes to expand the ability of issuers registering offers and sales of securities on Form S-1 to incorporate information by reference to their Exchange Act reports, such that issuers meeting Form S-1 incorporation conditions could incorporate by reference ("backward incorporate") regardless of whether they have filed an annual report for their most recently completed fiscal year, and the ability to "forward incorporate" updating disclosure from subsequently filed Exchange Act reports would extend to all eligible issuers, not just smaller reporting companies (SRC).

This would allow incorporation by reference during a company's first year as an Exchange Act reporting company even before it is required to file its first Form 10-K.

Even with these incorporation-by-reference changes, Form S-1 would still not allow delayed shelf and ATM offerings under Rule 415, which would remain limited to offerings registered or qualified to be registered on Form S-3. These new forward and backward incorporation-by-reference accommodations also would be unavailable to the same "BSP issuers" that the SEC would prohibit from using Form S-3 and, as with Form S-3, the SEC is proposing to exclude all FPIs from using Form S-1 until it completes its ongoing, broader review of the FPI disclosure framework.

The SEC estimates that these proposed amendments will produce an increase of up to 106% in the number of issuers eligible to forward incorporate information from Exchange Act filings to update their disclosures for offerings registered on Form S-1.

Blue Sky Preemption for All Securities Act-Registered Offerings

One of the most practically significant elements of the proposal is a significant expansion of federal preemption of state securities law registration and qualification requirements for Securities Act-registered offerings.

Currently, state securities law preemption applies only to registered offerings of securities that are listed or approved for listing on a national securities exchange. Registered offerings of unlisted securities remain subject to state registration and qualification requirements—a significant source of complexity and cost—particularly in multi-state offerings.

The SEC proposes to define "qualified purchaser" under Rule 146 to include any person to whom securities are offered or sold in a Securities Act-registered offering, which would make those securities "covered securities" and therefore exempt from state registration and qualification.

The SEC emphasizes that states would still retain antifraud enforcement authority and related "notice filing", fee, and enforcement powers preserved by Section 18(c) of the Securities Act.

The SEC's stated rationale is that state-by-state registration and qualification for registered offerings of unlisted securities can impose significant cost, complexity, and delays, while registered offerings are inherently national in nature and already subject to robust federal disclosure, liability, and staff review mechanisms. The proposed amendments are intended to lower the cost of a registered offering of unlisted securities and, as a result, facilitate capital formation in a manner that is consistent with investor protection.

ATM Offerings: Broader Access With New "Trading Market" Guardrails

Because a primary ATM offering requires eligibility to register a primary offering on Form S-3, expanding Form S-3 eligibility would directly expand the number of issuers eligible to conduct primary ATM offerings.

To address investor protection concerns that could arise from expanded ATM access, the SEC proposes to amend Rule 415(a)(4) to define "trading market". This amendment would limit ATM offerings to securities listed and traded on a national securities exchange or traded in an SEC-designated market, with a non-exclusive list of attributes the SEC would consider when designating markets (including reporting requirements and audited financials, bid price, shareholder and public float minimums, liquidity-related metrics, and market maker presence).

Based on current criteria, the SEC believes that each of the OTCQX Best Market or OTCQB Venture Market tiers would continue to qualify as an eligible "trading market", but the designation mechanism would allow future additions or removals if tier criteria or operations change.

Other Modernization Proposals

The SEC proposes to extend similar offering-process modifications to business development companies and registered closed-end funds that register offerings on Form N-2. This includes expanding access to Short-Form N-2 shelf registration and extending certain enhanced registration and communication benefits to a broader set of these funds. Short-Form N-2 eligibility would be tied to the proposed ELI/SELI framework, reflecting the proposed elimination of public float and one-year seasoning concepts for shelf eligibility, while retaining timeliness and currentness requirements and ineligible-issuer disqualifiers. Only SELI-qualifying affected funds would be eligible for automatic shelf registration, while ELI-qualifying funds would receive certain WKSI-like offering mechanics and communication benefits even if they have not met the one-year seasoning condition. Affected funds that do not list their securities on an exchange are not covered by the proposed amendments and would continue to utilize the SEC's tailored registration process for such issuers under Securities Act Rule 486.

The SEC proposes to revise Rule 473 to replace the current requirement for issuers to include a "delaying amendment" to avoid having their registration statement become effective automatically, pursuant to Section 8(a) of the Securities Act, on the 20th day after filing. Instead, the proposal would provide that the effectiveness of most registration statements would be deemed delayed by default, unless the issuer affirmatively includes a legend stating it will become effective under Securities Act Section 8(a), reducing the risk of accidental effectiveness and associated administrative burden.

The SEC proposes to eliminate profitability and income-related conditions in Regulation S-X Rules 3-01(c)(2)-(3) and 8-08(b)(2)-(3) for eligibility to use Rule 3-12(b) extended grace periods relating to the age of financial statements, which would expand the number of issuers able to use extended grace periods and reduce offering and proxy timing frictions.

Public Company Reporting Framework

Streamlined Filer Categories

Currently, Exchange Act reporting companies are categorized into five partially overlapping filer statuses (large accelerated filers, accelerated filers, non-accelerated filers, smaller reporting companies, and emerging growth companies) with varying requirements and disclosure accommodations.

The SEC proposes amendments to:

Streamline Exchange Act reporting company filer status into two primary categories: large accelerated filers (LAF) and non-accelerated filers (NAF).

Raise the threshold and seasoning requirements for LAF status.

Extend certain existing "scaled" disclosure accommodations (including those associated with SRCs and emerging growth companies (EGC)) to all NAFs.

Extend periodic report deadlines for the smallest NAFs based on total assets.

Update "small entity" definitions for Regulatory Flexibility Act purposes.

Consistent with that approach, the SEC proposes to eliminate the "accelerated filer" and "smaller reporting company" categories as regulatory categories, while keeping EGC as a statutory status (but making EGC accommodations largely available to NAFs).

Large Accelerated Filer

Higher Public Float Threshold

The SEC proposes raising the LAF public float threshold from $700 million to $2 billion. The SEC estimates this would reduce the share of reporting companies that are LAFs to approximately 19.2% (from 35.4% today), while still covering issuers representing approximately 93.5% of total market public float.

Multi-Year Averaging and Two-Year Transition Requirement

Instead of a single measurement date, the proposal would use an average stock price over the last 10 trading days of the second fiscal quarter and require that a registrant be above or below the $2 billion threshold for two consecutive years before transitioning into or out of LAF status.

This two-year approach is intended to increase predictability, provide at least one year of visibility before a status transition, and eliminate the current need for separate exit thresholds, which the SEC believes is a source of complexity and uncertainty for issuers, with no corresponding benefit to investors.

Five-Year IPO On-Ramp

The SEC proposes increasing the LAF seasoning requirement from 12 months to 60 consecutive months of Exchange Act reporting before a company can become an LAF.

A company would not become a large accelerated filer for at least 60 months following its IPO regardless of its public float, effectively providing it an "IPO on-ramp" to stabilize and grow while benefiting from scaled disclosure requirements and other accommodations, giving companies time to adjust to public reporting and prepare for the higher burdens associated with LAF status.

Non-Accelerated Filer

New NAF Definition

The SEC proposes to define "non-accelerated filer" as any issuer that is not an LAF, meaning the default status for most reporting companies would be NAF unless and until they qualify as a LAF. The SEC estimates that, if in effect today, 19.2% of public companies would be LAFs and 80.8% would be NAFs, with NAFs representing approximately 6.5% of total market public float.

Scaled Disclosure and EGC-Style Accommodations for NAFs

Under the SEC's proposal, NAFs could use scaled SRC-style disclosure, including a more limited business description, two years (instead of three) of Management Discussion and Analysis, two years of summary compensation table information, and executive compensation disclosure for three named executive officers instead of five.

The SEC's proposal would extend to all NAFs the same disclosure scaling and other accommodations currently available to SRCs and EGCs, including no say-on-pay or say-when-on-pay shareholder advisory votes and scaled executive compensation disclosure. This would include no requirement to provide separate tables related to grants of plan-based awards, option exercises and stock vesting, pension benefits and non-qualified deferred compensation, as well as no golden parachute disclosure and no CEO pay ratio or pay versus performance disclosure, as well as fewer years of financial statements with reduced presentation requirements.

NAFs would also receive incremental EGC-style accommodations, including no internal control over financial reporting (ICFR) auditor attestation and exemption from golden parachute votes.

For their first five years after initial registration, NAFs would also have the option to defer adoption of new or revised accounting standards to the private-company effective dates where the standard applies to private companies. NAFs electing not to use this accommodation would be required to forgo this accommodation for all financial accounting standards and would not be permitted to rely on this accommodation in any future filings. This accommodation would cease on the last day of the fiscal year of the NAF during which the fifth anniversary of the NAF's initial registration effective date occurs.

Regulation S-X: Article 8 Financial Statements for Most NAFs

Most NAFs would generally be permitted to prepare financial statements under Article 8 of Regulation S-X, including providing two (instead of three) years of audited statements of comprehensive income, cash flows, and changes in equity, and other scaled financial statement disclosure accommodations.

ICFR Auditor Attestation

A significant effect of the proposal is that fewer registrants would be required to obtain Sarbanes-Oxley Act (SOX) 404(b) ICFR auditor attestation because only LAFs would be subject to that requirement under the new framework.

The SEC estimates that increasing the NAF upper bound to below $2 billion public float would expand the number of current registrants that would qualify as NAFs and therefore not be subject to ICFR auditor attestation by 26.7%.

NAFs would still be subject to SOX 404(a) management ICFR reporting requirements and would continue to receive financial statement audits in which auditors must obtain an understanding of ICFR as part of the auditor's risk assessment.

The SEC acknowledges the investor-protection benefits of ICFR auditor attestation, including enhancing reliability of management's ICFR assessment and helping identify material weaknesses, but believes that expanding the exemption is appropriate given the significant cost burdens, particularly for smaller companies. The SEC also notes that companies could voluntarily obtain ICFR auditor attestation if they view it as beneficial to investors or their capital markets profile.

Staff Comment Disclosure: Expanded Requirement for All Issuers

The SEC proposes requiring all issuers, including NAFs, to disclose in their Annual Reports on Form 10-K the substance of any material unresolved SEC staff comments on periodic or current reports that were received at least 180 days before fiscal year end and remain unresolved. This requirement applies only to "accelerated filers" and "large accelerated filers" under the current rules. While the SEC has concluded that investors should have access to this information for all issuers, including to newly classified NAFs, the proposal also cited empirical data indicating that both the benefits and any incremental cost to issuers are "likely to be modest given the very low incidence of unresolved staff comment disclosures in periodic report filings today."

Small Non-Accelerated Filers

The SEC proposes a new subcategory, "small non-accelerated filers" (SNF), defined as NAFs with total assets of $35 million or less as of the end of each of the issuer's two most recent second fiscal quarters.

SNFs would benefit from extended periodic report deadlines: Annual Reports on Form 10-K would be due 120 days after fiscal year-end (instead of 90) and Quarterly Reports on Form 10-Q would be due 50 days after quarter end (instead of 45). The SEC believes the extended deadlines may ease service-provider "busy season" constraints and could reduce audit and legal costs for the smallest filers.

SNF status would persist unless the issuer becomes an LAF or exceeds the asset threshold for two consecutive years, mirroring the proposal's emphasis on filer status stability.

The SEC estimates that approximately 17.9% of all public companies, representing 22.2% of NAFs, would qualify as SNFs under this proposal.

What This Means for Public Companies and Companies Considering Going Public

The two proposals, if adopted as proposed, could transform the landscape for public company access to the capital markets and ongoing reporting obligations in ways that are particularly meaningful for small- and mid-cap issuers and companies evaluating the timing and economics of an IPO.

Exchange-Listed Issuers Gain Most WKSI Flexibilities Without Meeting Onerous Size Tests

For issuers that are exchange listed but have historically fallen short of the $700 million WKSI float threshold, access to pay-at-takedown fee mechanics and expanded communications flexibility could materially improve deal execution. SELIs (those that have been subject to Exchange Act reporting for at least 12 calendar months) would also gain access to automatic shelf registration.

Nationwide Blue-Sky Relief Could Eliminate a Significant Hidden Cost of Registered Offerings

The proposed blue-sky preemption for all registered offerings, including offerings of unlisted securities, addresses a friction point that is easy to overlook but can add meaningful cost, delay, and complexity to registered offerings, particularly for smaller issuers whose securities are not listed on a national exchange.

Reduced Ongoing Reporting Burden: More Flexibility in What Must Be Disclosed

For many current accelerated filers and some current LAFs below $2 billion in public float, the proposal could mean substantially scaled periodic reporting, including scaled Regulation S-K and S-X compliance, along with relief from the SOX 404(b) ICFR auditor attestation obligation.

However, some companies may elect to keep certain practices voluntarily (e.g., voluntary ICFR attestation) depending on investor expectations and capital markets considerations. If these rules are adopted as proposed, companies should consider the investor relations and governance implications before deciding to rely on all newly available accommodations.

What This Means to You

Current Public Companies

Companies currently below the $75 million float threshold are constrained today to "baby shelf" primary offerings capped at one-third of their public float. If these proposals are adopted, that restriction goes away entirely. Companies should begin assessing how shelf registration could fit into their capital planning and investor relations strategy.

Accelerated filers and SRCs will benefit from consolidation into a single NAF category, carrying with it a broader suite of scaled disclosures and, critically, exemption from the costly SOX 404(b) ICFR auditor attestation requirement.

Mid-cap companies approaching the current $700 million LAF threshold should model their likely filer status under the new $2 billion threshold and the two-year averaging mechanics. Transitions into or out of LAF status would become slower and more predictable under the two-year, 10-trading-day-average measurement approach.

Companies should assess their current filer status and model what it would be under the proposed framework, including whether they would qualify as a small non-accelerated filer and thereby benefit from extended filing deadlines.

Companies should evaluate their Form S-3 eligibility under the proposed amended criteria and consider whether a shelf registration would fit their near-term capital raising or secondary offering strategy.

Companies should review their offering communication practices in light of the proposed ELI/SELI framework. Many communications currently reserved for large-cap WKSIs would be available to a much broader set of listed issuers.

Companies should monitor the broader reform effort. Given Chairman Atkins' statements about further Regulation S-K reform and additional public company regulatory proposals in the coming

months, companies should stay engaged with ongoing SEC rulemaking activity, which could significantly affect their ongoing reporting obligations and capital-raising flexibility.

IPO Candidates

Newly public companies will benefit from guaranteed NAF status, and all associated accommodations, for at least their first five years as public companies, regardless of how quickly their float grows. This may substantially lower the regulatory cost of going public for small and mid-sized companies.

The removal of Form S-3 "seasoning" requirements would mean companies could establish a shelf registration statement as soon as they satisfy the proposed current-and-timely reporting conditions applicable to newly reporting issuers, a meaningful change for issuers anticipating multiple capital-raising events in their first year as a public reporting company.

IPO candidates should factor the proposed five-year on-ramp into readiness planning for accelerated deadlines, non-scaled disclosure, and SOX 404(b) ICFR auditor attestation.

Issuers planning follow-on registered offerings during their first year as public reporting company (before their first Annual Report on Form 10-K is due) should be aware that the proposal would allow incorporation by reference into Form S-1, which may simplify and reduce the cost of those offerings.

Contact Us

If you have any questions, please do not hesitate to contact Steve Barrett, Robert Joseph, Andrew Spector, Jonathan Wittman, or your Husch Blackwell attorney.