

# Memorandum

## SEC Proposes Significant Reforms to Registered Offering Framework

May 26, 2026

On May 19, 2026, the Securities and Exchange Commission proposed the most significant amendments to the registered offering framework in over 20 years, intended to facilitate capital formation in the public securities markets.<sup>1 2</sup> The proposed amendments would make Form S-3 and the ability to conduct shelf offerings available to significantly more issuers, extend certain benefits currently reserved for well-known seasoned issuers (“WKSIs”) to a broader set of issuers, modernize Form S-1 and preempt state securities law registration and qualification requirements for all registered offerings, in addition to other reforms.

**Broadened Form S-3 Eligibility.** The proposed amendments would eliminate several of the existing eligibility requirements of Form S-3, most notably the requirement that an issuer have been subject to reporting under the Securities Exchange Act of 1934 for at least 12 months, the requirement that an issuer have at least \$75 million in public float to register an unlimited amount of securities, the absence of certain failures to make payments and defaults and all of the form’s transaction requirements.

As a result, any issuer that meets the proposed registrant requirements—principally, the retained requirements that it is current and timely in its Exchange Act reporting—would be eligible to use Form S-3 for any primary or secondary offering, including shelf offerings and at-the-market offerings. Under the proposed amendments, an issuer would immediately become eligible to use Form S-3 upon having a class of securities registered under Section 12(b) or (g), or becoming subject to Section 15(d), of the Exchange Act. An issuer that has not yet been required to file a Form 10-K would need to incorporate by reference a Securities Act or Exchange Act filing that contains Form 10 information (*i.e.*, information that is required by Form 10 to register under the Exchange Act each class of securities that the Form S-3 is registering). The proposed amendments would, however, prohibit certain categories of higher-risk issuers from using Form S-3, including blank check companies, shell companies, penny stock issuers and other “ineligible issuers” as defined in Rule 405.

<sup>1</sup> Sec. & Exch. Comm’n, Proposed Rule, Registered Offering Reform, Securities Act Release No. 33-11418, Exchange Act Release No. 34-105513, Investment Company Act Release No. IC-36160, available [here](#). See Paul S. Atkins, Chairman, Sec. & Exch. Comm’n, Statement on Proposing Releases for Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies, and Registered Offering Reform (May 19, 2026), available [here](#).

<sup>2</sup> Concurrently, the SEC proposed to simplify the filer status framework for Exchange Act reporting companies by consolidating the existing filer categories. For further details on the proposed filer status framework, please see our memorandum [SEC Proposes Significant Amendments to Filer Status and Disclosure Requirements](#).

The SEC has also proposed to add a dispensation to the instructions of Form S-3 to allow an issuer to remain Form S-3 eligible if they have no more than one untimely filing during a 12-month lookback period and the late filing was made within seven calendar days of the original due date.

**New Issuer Categories and Enhanced Registration and Communication Benefits.** Under the proposed framework, the WKSI definition for domestic issuers will be eliminated and replaced by two new categories of issuers: Eligible Listed Issuer (“ELI”) and Seasoned Eligible Listed Issuer (“SELI”). The amendments will extend certain benefits currently available only to WKSIIs and certain other seasoned issuers to a significantly broader pool of issuers consisting of:

- (1) Form S-3 eligible issuers,
- (2) ELIs—issuers that meet Form S-3’s proposed registrant requirements and have at least one class of common equity securities that are listed on a national securities exchange, and
- (3) SELIs—ELIs that have been subject to the Exchange Act’s reporting requirements for at least 12 calendar months preceding the relevant measurement date.

All Form S-3 eligible issuers would gain access to certain baseline benefits, including:

- the ability of broker-dealers to publish issuer-specific research reports under Rule 139 without such reports constituting an “offer,”
- the ability to omit the identities of selling security holders and amounts of securities to be registered on their behalf from a resale registration statement in reliance on Rule 430B(b), and
- the ability to use a free writing prospectus without it being accompanied or preceded by a prospectus under Rule 433.

An ELI would, among other things, be:

- eligible to rely on Rules 163 and 163A to make pre-filing offers,
- permitted to omit certain information from the base prospectus at the time of effectiveness under Rule 430B(a),
- permitted to register additional securities or classes of securities through a post-effective amendment under Rule 413, and
- permitted to pay registration fees on a “pay-as-you-go” basis under Rules 456(b) and 457(r).

A SELI would also be able to file an automatic shelf registration statement under Rule 462.

The SEC's proposed amendments would permit majority-owned subsidiaries of ELIs and SELIs to avail themselves of these enhanced registration and communications benefits under the same general circumstances in which majority-owned subsidiaries of WKSIs may currently do so.

**Incorporation by Reference in Form S-1.** The proposed amendments would expand the ability to incorporate information by reference into Form S-1 to all issuers that are current in their Exchange Act reporting. In addition, the amendments would eliminate the current requirement that an issuer must file a Form 10-K for its most recently completed fiscal year to be permitted to “backwards incorporate” by reference and instead would require the issuer to incorporate by reference a Securities Act or Exchange Act filing that contains Form 10 information. More importantly, the proposed amendments would extend “forward incorporation” by reference into Form S-1 to all eligible issuers, whereas this benefit is currently available only to smaller reporting companies.

**Preemption of State Securities Law Requirements.** The proposed amendments would preempt state securities law registration and qualification requirements for all registered offerings 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. Currently, federal preemption applies to, among other categories, (1) registered offerings of securities listed or approved for listing on a national securities exchange and (2) securities of the same issuer that are equal in seniority or senior to such listed securities. With this change, the costs and delays associated with complying with numerous states' registration and qualification requirements for registered offerings of securities of issuers without a class of listed securities would be virtually eliminated.

**Other Modernizing Amendments.** Additional proposed amendments include permitting broad-based advertising for registered non-variable annuity insurance products, eliminating the need for issuers to include a “delaying amendment” on the facing page of a registration statement and removing certain income-based conditions in Regulation S-X relating to grace periods for certain financial statements of smaller reporting companies.

The amendments also make conforming changes to the registration, communication and offering process for business development companies and registered closed-end investment companies on Form N-2, effectively broadening access to shelf offerings and the enhanced registration and communication benefits.

The public comment period will remain open for 60 days following publication of the proposing release in the Federal Register.

*Please [click here](#) to read our memorandum addressing the implications of the proposed reforms for registered funds and other private wealth products, including related structuring, regulatory and offering considerations.*

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