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Memorandum

SEC's Proposed Registered Offering Framework Reforms Open New Pathways for Convertible Bonds and Other Equity-Linked Securities Transactions

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Summary

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.[1] 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. While the proposed amendments may not shift the equity-linked bond market away from Rule 144A private placements, the more flexible access to registered offerings would enable more issuers (particularly, recent public companies and de-SPACs) to consider equity-linked issuances.

Will more convertible bonds be issued in registered offerings?

Most equity-linked issuances today are conducted as private placement offerings pursuant to Rule 144A under the Securities Act, and these proposed amendments are unlikely to significantly shift that market structure.

Certain issuers, however, such as former de-SPAC issuers, as well as certain equity-linked structures (for example, issuances of shares for certain exchangeable bonds) may benefit from structuring transactions as registered offerings (or by offering back-end registration rights) and thus benefit from the flexibility afforded by the proposed amendments. The proposed amendments would make the process easier and more accessible.

[1] 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. Concurrently, the SEC proposed to simplify the filer status framework for Exchange Act reporting companies by consolidating the existing filer categories. For further information, see the separate memoranda, *SEC Proposes Significant Reforms to Registered Offering Framework* and *SEC Proposes Significant Amendments to Filer Status and Disclosure Requirements*.

Will the proposed amendments allow companies to enter the market more easily and quickly after going public?

In order to issue a convertible bond, there are certain technical metrics that need to be satisfied, notably sufficient stock borrow availability.

The proposed amendments would potentially make it easier for prospective issuers of equity-linked securities, such as convertible bonds, to make use of certain offering structures that require a concurrent registered offering of common stock to provide synthetic stock borrow availability.

One such structure is a "registered borrow facility," in which the issuer lends its common stock to an investment bank to be sold into the public market in a registered offering, which allows the investment bank to facilitate hedging by certain investors in the convertible bonds that wish to hedge their exposure to the bonds. These registered borrow facilities are typically utilized by issuers without a liquid secondary borrow market for their stock—the stock loan allows the investment bank to provide short positions for investors who wish to hedge their exposure to the bonds, thereby making the convertible bonds more attractive to those investors.

Are there other supporting structures that are facilitated by these changes?

Another structure involves a registered offering, or "delta placement," to facilitate the initial hedging of the hedged investors in a coordinated manner on the pricing date, but unlike in a registered borrow facility, the common stock sold in the registered offering is borrowed from third-party stock lenders rather than from the issuer. Issuers wishing to use those structures have typically waited until they were Form S-3 eligible. Because the proposed amendments would allow even recently public companies to utilize a Form S-3 for primary or secondary shelf offerings, this flexibility could, accordingly, enable those issuers to access those structures.

Do the changes apply equally to de-SPACs as to companies that went public via an IPO?

Yes, under the proposed amendments, former SPACs (that is, entities that have successfully completed a de-SPAC transaction) would be eligible to use Form S-3 to the same extent as a public company that conducted a traditional IPO.

Will de-SPACs consider registered instead of 144A distribution in order to have better visibility into holders of their equity-linked securities?

Potentially. Most issuers of convertible bonds issued pursuant to 144A are required to de-legend the bonds after one year. Once de-legended, the SEC typically adds the bonds to the list of securities that 13F filers are required to report. As a result, convertible issuers can gain increased insight into their holders after their bonds are de-legended. Rule 144(i), however, currently makes it difficult for de-SPAC companies to de-legend their convertible bonds, and as a result, former de-SPACs don't gain a similar level of insight into their holders. If a de-SPAC issued convertible bonds in a registered offering, however, the bonds would be unrestricted and added to the 13F

securities list, likely giving former de-SPACs greater insight into holders of their convertible bonds. The benefits should be weighed on a case by case basis.

What are the main proposed amendments?

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 and shell companies (but not former SPACs that have completed a de-SPAC transaction), penny stock issuers and other "ineligible issuers" as defined in Rule 405.

New Issuer Categories and Enhanced Registration and Communication Benefits. Under the proposed framework, the WKSI definition for domestic issuers would be eliminated and replaced by two new categories of issuers: Eligible Listed Issuer ("ELI") and Seasoned Eligible Listed Issuer ("SELI"). The amendments would extend certain benefits currently available only to WKSIs 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.

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

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