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SEC PROPOSES REGISTERED OFFERING REFORMS TO ENCOURAGE CAPITAL RAISING

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WHAT HAPPENED

On May 19, 2026, the SEC proposed a broad array of amendments to registration statement forms and Securities Act rules intended to facilitate registered public offerings for a greater number of issuers.

Key proposed amendments include:

- Elimination of the one-year Exchange Act reporting requirement for eligibility to use Form S-3 and the \$75 million public float requirement.
- Extending the registration and communication benefits that are currently limited to well-known seasoned issuers (WKSIs) to any Form S-3 eligible company that has common equity securities listed on a national securities exchange, thereby allowing unlimited capital raising ability, among other benefits.
- Revision of Form S-1 to allow incorporation by reference, including future filings.
- Modification of the definition of “qualified purchaser” for purposes of preempting State “blue sky” requirements for registered offerings of unlisted securities.

On May 19, 2026, the SEC also proposed rules modifying the public company reporting framework that, among other things, would simplify the classes of reporting companies and provide the scaled reporting benefits available to smaller reporting companies to companies with a market capitalization under \$2 billion. For additional information on these proposed rule amendments, see our June 2026 blog post, [SEC Proposes to Simplify the Reporting Company Filer Status Framework](#).

The deadline for submitting comments on the SEC offering reform proposal is July 27, 2026.

TAKEAWAYS

The SEC's proposed amendments are intended to facilitate capital formation in the public securities markets by providing greater flexibility for companies to determine the timing and structure of registered offerings and by reducing associated costs. The SEC primarily seeks to do this by increasing the number of public companies that are eligible to take advantage of the benefits that were previously only available to well-known seasoned issuers and companies with greater reporting history, while ensuring that investors remain appropriately protected. The SEC estimates:

- The proposed amendments to Form S-3 may increase the number of companies eligible to offer an unlimited amount of securities on Form S-3 by over 60%.
- The extension of the registration and communication benefits to S-3 eligible companies may reach over 200% more companies than currently eligible.
- The extension of the ability to incorporate by reference into Form S-1 to additional companies may increase the number of eligible companies by up to 106%.

The SEC believes greater offering flexibility, reduced expenses of being a public company, along with the benefits of the reduced disclosure obligations for a significantly larger group of companies proposed in the separate public company reporting framework rule proposal may make becoming and staying a public company substantially more attractive to companies.

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The offering reform proposal includes the following:

EXPANDED FORM S-3 ELIGIBILITY

The SEC proposes to modify the eligibility and transaction requirements of Form S-3 to expand the number of companies eligible to use such form for primary offerings. The benefits of Form S-3 as compared to Form S-1 presently include, among other things:

- The ability to conduct shelf offerings pursuant to Securities Act Rule 415, including at the market (ATM) programs, which may expedite offerings to allow companies to more easily take advantage of favorable market conditions.
- The ability to omit certain information from the prospectus included in the registration statement at the time of effectiveness.
- The ability to forward incorporate information into the Form S-3 instead of updating a Form S-1 through prospectus supplements and post-effective amendments.

Modified eligibility requirements for use of the Form S-3 registration statement include:

Elimination of One-Year Seasoning Period

The SEC proposes to eliminate the requirement that the company has been subject to the reporting requirements of Exchange Act Section 12 or 15(d) for 12 calendar months immediately prior to the filing of the registration statement (the “Seasoning Requirement”). As a result of technological developments allowing access to a company’s filings, the SEC believes the relevant factors for S-3 eligibility are now whether the company is current in its reporting history and is a timely filer.

Modification of Timely Filing Requirement; Limited Cure Period

The SEC proposes to modify the current and timely reporting requirement to cover the filing of reports during the 12-calendar month period and any partial month immediately preceding the offering (or the shorter period that the issuer was subject to the Exchange Act reporting requirements). Additionally, a company could remain S-3 eligible, even if it was late on a filing during the relevant period if:

- The company made the delinquent filing within seven calendar days of the original due date.
- The company only had one late filing during the period.

Elimination of Absence of Certain Defaults Prohibition

The SEC proposes to eliminate the eligibility requirement that certain types of material defaults on preferred stock, indebtedness for borrowed funds or rentals on long term leases since the end of the last fiscal year for which audited financial statements have been filed. The SEC believes such criteria is inconsistent with the principle of short form registration and unnecessary in light of disclosure and filing requirements.

Elimination of Electronic Filing and Interactive Data Requirement

The SEC proposes to eliminate the requirement that all electronic filings and interactive data files have been made as unnecessary. The SEC believes companies are now accustomed to these requirements, such that threatened loss of S-3 eligibility is no longer necessary.

Elimination of \$75 million Public Float and other Transaction Requirements

The SEC proposed to eliminate the requirement that an issuer have a market capitalization of at least \$75 million in market value of voting and non-voting common equity held by non-affiliates, as well as eliminate the other transaction requirements for other specified types of offerings, which would only have become applicable if the \$75 million public float test was not satisfied. The SEC reasoned that the minimum public float requirement was used as a proxy for whether an issuer was sufficiently followed, and its Exchange Act reports information sufficiently disseminated in the marketplace, to allow use of Form S-3. The SEC believes the current and timely filing obligation are more important for assessing whether sufficient information is available to investors.

The SEC proposed to eliminate the other transaction requirements, which apply when a company does not have the \$75 million public float. Since the public float test is proposed to be eliminated, the other transaction criteria would cease to be necessary.

Exclusion of Certain Ineligible Issuers From Form S-3 Registration

The SEC proposed to prohibit certain ineligible issuers (as defined under Rule 405) and other issuers (referred to as “BSP Issuers”) from utilizing Form S-3. BSP Issuers include, among others, issuers that within past three years were:

- A blank check company.
- A shell company (excluding a business combination related shell company).
- Convicted of certain felonies and misdemeanors or judicial or administrative decrees or subject to certain proceedings and orders of the SEC.

Importantly, domestic issuers (or predecessors) that were themselves formerly SPACs would specifically not be excluded as former shell companies, and therefore could utilize Form S-3 to raise capital after de-SPAC transactions. Foreign private issuers (or predecessors) that were SPACs within the past three years would not be excluded from the definition of former shell company, and therefore, would be ineligible to use Form S-3.

The proposal reflects the SEC’s belief that ineligibility should focus on violations posing a greater risk of non-compliance with Exchange Act reporting requirements.

However, amended Form S-3 would prohibit foreign governments and foreign private issuers (“FPIs”) from using Form S-3, in light of the SEC’s ongoing evaluation of FPIs and whether their treatment “appropriately balances the protection of investors with the promotion of capital formation,” as discussed in our [June 9, 2025 post](#).

Expanded Availability of Form S-3 for At the Market Offerings

The SEC proposed to amend Rule 415(a)(4) to provide the SEC with discretion to allow more companies to conduct primary at the market (ATM) offerings through the registration of equity securities on Form S-3. An ATM offering is an offer of the sale of equity securities into an existing trading market for outstanding shares of the same class, at variable prices (typically based on the public bid price of the securities in the market).

The SEC proposed to amend Rule 415(a)(4) to define “trading markets” to include a national securities exchange – if the subject securities are listed there, as well as other markets designated by the SEC where the subject securities may be traded. Amended Rule 415(a)(4) would include a non-exclusive list of attributes for the SEC to consider in determining whether to designate a market, including information reporting requirements (such as auditing of financial statements),

and certain other trading eligibility requirements to ensure adequacy of information about the company and sufficient market liquidity.

REGISTRATION AND COMMUNICATION BENEFITS

Well-known seasoned issuers (WKSIs) enjoy certain benefits that facilitate offerings. These include:

- Automatic effectiveness of Form S-3 registration statements.
- Registration of unspecified amounts of securities.
- Payment of registration fees at the time of offerings.
- Omission of certain information from a base prospectus that is not part of an automatic shelf registration statement.
- The ability to make certain communications both in advance of and after the filing of a registration statement.

The SEC proposes to expand the types of companies that may take advantage of benefits currently limited to WKSIs.

A WKSI is generally defined as an issuer that within 60 days of the date of determination:

- Satisfies the general requirements to use Form S-3 or F-3 (a short form registration statement available to eligible foreign private issuers).
- Has a worldwide public float of \$700 million or more, or has issued at least \$1 billion aggregate principal amount of non-convertible securities other than common equity, in primary offering for cash.
- Is not an ineligible issuer.

The SEC proposes to create two new classes of issuers in place of the WKSI definition for domestic reporting companies (FPIs may still qualify as WKSIs) to expand benefits to a greater number of companies. The proposed new classes are:

Eligible listed Issuer (ELI). An ELI would be defined as a company that meets the proposed Form S-3 eligibility requirements and has at least one class of common equity listed on a national securities exchange.

Seasoned Eligible Listed Issuer (SELI). An SELI would be defined as an ELI that has been subject to the Exchange Act reporting requirements for at least 12 calendar months and any portion of a month preceding the applicable measurement date.

The SEC provided the following table to summarize the benefits available to ELIs and SELIs under the proposed amendments:

Enhanced Registration and Communication Benefit	Current Rule	Proposed Rule
Rule 139 – research report exemption	<ul style="list-style-type: none"> ▪ WKSIs ▪ Any non-WKSI eligible for primary offerings under I.B.1 or I.B.2 of Form S-3 	All Form S-3 eligible issuers
Rule 163 – pre-filing offers	WKSIs	ELIs
Rule 163A – pre-filing offers for Form S-8 offerings	WKSIs	ELIs
Rule 164 – post-filing FWP for Form S-8 offerings	WKSIs	ELIs
Rule 413 – ability to register additional classes of securities, or securities of a majority-owned subsidiary	WKSIs	ELIs
<p>Rule 430B(a) – ability to omit:</p> <ul style="list-style-type: none"> i. information as to whether the offering is a primary offering or an offering on behalf of persons other than the issuer, or a combination thereof, ii. the plan of distribution for the securities, iii. a description of the securities registered other than an identification of the name or class of such securities, and iv. the identification of other issuers 	WKSIs	ELIs
Rule 430B(b) – for resale registration statements, may omit the identities of selling security holders and amounts	<ul style="list-style-type: none"> ▪ WKSIs 	All Form S-3 eligible issuers

of securities to be registered on their behalf	<ul style="list-style-type: none"> Any non-WKSI eligible for primary offerings under I.B.1 of Form S-3, subject to certain conditions 	
Rule 433 – prospectus not required to accompany or precede FWP	<ul style="list-style-type: none"> WKSI Any non-WKSI that is Form S-3 eligible for primary offerings under I.B.1 or conducting an offering pursuant to I.B.1, I.B.2 or I.C of Form S-3 	All Form S-3 eligible issuers
Rule 456(b)/457(r) – “pay-as-you-go”	WKSI	ELI
Rule 462 – automatic shelf registration	WKSI	SELI

INCORPORATION BY REFERENCE INTO FORM S-1

The SEC proposed to allow companies to backward and forward incorporate information from other SEC filings into Form S-1. The SEC believes that reducing duplicative disclosure and additional compliance costs will facilitate capital formation in a manner consistent with investor protection.

Form S-1 is used by domestic companies for offerings when no other registration form is available or prescribed. Form S-1 currently allows backward incorporation to issuers that satisfy certain criteria. Form S-1 further allows forward incorporation on Form S-1 for smaller reporting companies (as defined in Securities Act Rule 405).

The SEC proposes to modify the requirements to allow backward incorporation by eliminating the requirement that the company have filed its annual report for the past fiscal year (in which case, the company will be permitted to use backward incorporation if it is able to incorporate Form 10 information from other SEC filings). The SEC additionally proposes to allow forward incorporation for any company eligible to utilize backward incorporation of information.

This would allow many post-IPO companies and other issuers that may not be eligible to use Form S-3 to incorporate information by reference. The SEC intends to retain the current reporting requirement, that companies be current in their Exchange Act filings, but would forbid use of incorporation by reference by BSP issuers except, as with proposed Form S-3, in the cases of former SPACs.

As with Form S-3, the SEC proposes to no longer allow FPIs to use Form S-1 in light of its ongoing evaluation of FPIs.

PREEMPTION OF STATE SECURITIES LAW REGISTRATION AND QUALIFICATION

The SEC is proposing to expand the exemption from state securities registration and qualification requirements under Securities Act Section 18 for offerings of “covered securities.” Covered securities include, among others, securities qualified for trading on a national market system or authorized for listing on a national securities exchange (which includes the NYSE and Nasdaq) and securities sales to “qualified purchasers”. The definition of covered securities does not cover registered offerings of unlisted securities.

The SEC proposes to expand the definition of “qualified purchaser” for purposes of Section 18 to include any person to whom securities are offered or sold pursuant to a registered offering under the Securities Act, thereby preempting state qualification and registration requirements for all registered offerings. The SEC believes that this would eliminate the administrative burden and costs for companies conducting registered offerings of unlisted securities by avoiding the need to comply with the requirements of merit-review states with potentially differing substantive standards for each state.

OTHER OFFERING RELATED AMENDMENTS

The SEC proposed two amendments affecting offerings, in addition to numerous proposed conforming changes:

- Eliminating the need for a delaying amendment on the cover page of non-automatic registration statements under Rule 473 of the Securities Act to delay effectiveness of the registration statement beyond the 20th day after filing pursuant to Securities Act Section 8(a). Instead, the delay would be automatic unless a registration statement specifically states it will become effective in accordance with Section 8(a).
- Eliminating the income tests set forth in Regulation S-X Rules 3-01(c) and 8-08(b) that are required to extend the date that financial statements go stale for smaller reporting companies (“SRCs”) in registration statements and proxy statements to 90 days, by which time the issuer must have filed its audited financial statements to remain current. Eligibility for the extension will be contingent upon a reporting SRC having filed all of its reports due.

FINAL THOUGHTS

The above amendments to SEC rules and forms are only proposed, and may change in minor or significant ways prior to final adoption by the SEC. While the timing of adoption is also uncertain, the direction of the proposed amendments is clear, and companies may wish to consider how adoption may affect their capital raising plans.

The SEC believes the proposals, in conjunction with the proposed expansion of the scaled disclosure requirements for a greater number of companies, and other future modifications of Regulation S-K to eliminate burdensome non-material disclosures (as currently under review by the SEC), may make becoming a public company and having access to public capital raising more attractive and result in a greater number of US public companies in the long run.

RELATED CAPABILITIES

- Securities & Corporate Governance

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