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SEC Proposes Transformative Offering Reform: Significant Implications for Operating Companies, Registered Closed-End Funds, BDCs, and Other Products

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On May 19, 2026, the Securities and Exchange Commission (SEC) proposed a sweeping set of rule and form amendments intended to modernize and simplify the registered securities offering process for public companies, registered closed-end funds (RCEFs), business development companies (BDCs), and other products. The proposal, if adopted, would be the most significant update to the registered offering process since the SEC adopted Securities Offering Reform in 2005. The proposed amendments would revise numerous SEC rules to expand issuer flexibility in registered offerings, streamline shelf registration and communications rules, and reduce friction in accessing the public markets. If adopted, the rules would:

- Expand company eligibility for the use of Form S-3 and Form N-2 short-form shelf registration by removing seasoning (i.e., duration of reporting history) and public float requirements, enabling more issuers to utilize the shelf registration process and allow them to access shelf registration sooner after going public.
- Replace the well-known seasoned issuer (WKSI) framework (which currently provides the most flexibility to the largest issuers with a history of reporting) with two new categories of reporting issuers and expand the existing WKSI accommodations to significantly more issuers.
- Modernize and streamline the long-form Form S-1 requirements.
- Preempt state blue sky laws for all registered offerings, eliminating a substantial compliance burden for non-listed BDCs and real estate investment trusts (REITs).

The proposed offering reform changes were accompanied by a proposal that would redesign the public company reporting framework by replacing the current system with two principal categories of filers, eliminating the accelerated filer and smaller reporting company categories, and expanding certain disclosure accommodations to more issuers, as part of the SEC's ongoing agenda to "Make IPOs Great Again" and incentivize small and mid-sized companies to go and stay public. The SEC's press release announcing the two sets of proposed amendments to the forms and rules under and accompanying releases and Fact Sheets are available here.

Expanded Form S-3 and Form N-2 Eligibility

The proposed amendments would expand the pool of issuers eligible to use the short form registration process on Form S-3 by making two core changes:

- Eliminating the requirement that an issuer be subject to Exchange Act reporting requirements for at least 12 months before using Form S-3. Under the proposed rules, an issuer would only need to be current on Exchange Act reporting during the preceding 12 months or since they went public, whichever is longest, in order to conduct an offering on Form S-3, including a shelf registration that permits easy "take down" offerings by filing a prospectus supplement.
- Eliminating the $75 million public float requirement and other transaction requirements of Form S-3, including the one-third public float limitation on primary offerings by issuers with a public float of less than $75 million, or "baby shelf" registration.

As a result of these changes, issuers would be able to utilize the short-form and shelf registration process much sooner after going public, regardless of their market capitalization. Rather than tying the ability to use Form S-3 to the length of a company's reporting history or size, the proposed changes would provide the benefit of short form registration to issuers that are able to provide current, timely, issuer-specific information to investors. These changes would benefit newly public companies in particular, which currently have to wait 12 months from their IPO before using short form registration, as well as former special purpose acquisition companies (SPACs), which are currently limited in their ability to use Form S-3 because of shell company rules.

Because Form N-2 incorporates Form S-3's eligibility requirements, the same proposed amendments would also benefit BDCs and RCEFs that utilize Form N-2, expanding eligibility to use short-form shelf registration statements on Form N-2 to a broader group of BDCs and other public funds by removing the public float and "seasoning" requirements currently in effect. The amendments would also loosen communications restrictions and provide offering accommodations currently reserved for WKSIs to a broader set of BDCs and RCEFs.

Replacement of WKSI framework

The proposed amendments would eliminate the category of issuer known as "well-known seasoned issuers" (WKSIs) which since 2005 have enjoyed enhanced registration and communication benefits including the ability to file automatically-effective shelf registration statements. Currently, to qualify as a WKSI an issuer must have a public float of at least $700 million or have issued at least $1 billion in non-convertible securities in primary registered offerings in the past three years. The SEC's proposed amendments would replace the WKSI category for domestic issuers with two new categories of issuer:

- Eligible Listed Issuer (ELI): An issuer that (i) meets the amended requirements to use Form S-3, and (ii) has at least one class of common equity security listed on a national securities exchange.
- Seasoned Eligible Listed Issuer (SELI): An ELI that has been subject to Exchange Act reporting requirements for at least 12 months.

Under the proposed revised rules, ELIs would have access to the majority of the benefits available currently to WKSIs, including:

- Pay-as-you-go filing fees for registration statements;
- The ability to omit additional information from the base prospectus in shelf registration statement, including whether the offering will be primary or secondary, the plan of distribution, a description of the securities and the identification of other issuers, allowing for shelf registrations to cover an expanded scope of future "take down" offerings; and
- The ability to make prefiling offers and engage in certain communications before the filing of a registration statement.

SELIs would be able to utilize the automatic shelf registration process, which is currently only available to WKSIs. The SEC notes that under the proposed amended rules, approximately 74 percent of reporting issuers would qualify as SELIs, versus approximately 36 percent that currently qualify as WKSIs, meaning significantly more issuers would be able to utilize all of the benefits currently reserved for WKSIs. As a practical matter, this will reduce the number of registration statements that can be reviewed by SEC staff prior to the launch of the offering.

The proposed WKSI changes would also include changes to rules for BDCs and RCEFs. In contrast to the proposed framework for operating companies, however, short Form N-2 and shelf registration eligibility would be reserved for affected funds with equity securities listed on a national securities exchange. Similar to operating companies, only affected SELI funds would be eligible to use automatic shelf registration. Although the proposed rules would extend the ability to forward incorporate by reference to listed affected funds, similar relief for non-listed affected funds conducting continuous registered offerings has not been proposed. When a non-listed BDC files a Form 10-Q reporting new quarterly financial information, it also typically files a supplement to its prospectus roughly concurrently with that Form 10-Q filing. As currently drafted, the proposed rules would not impact these reporting practices.

The proposal also would expand the availability of safe harbors permitting broker-dealers to publish research reports in connection with registered offerings.

Modernizing Form S-1

The proposed amendments would also modernize certain aspects of Form S-1, the registration statement available to any domestic issuer, including by significantly broadening the availability of forward incorporation by reference and backward incorporation by reference. Under the proposal, reporting issuers eligible to use Form S-3 would generally be permitted to forward incorporate Exchange Act reports into Form S-1 registration statements, which would allow those registration statements to remain continuously current without repeated post-effective amendments. Delayed shelf offerings and “at-the-market” offerings each will continue to require the issuer to be eligible to register a primary offering on Form S-3, so Form S-1 will not be a full substitute for shelf registration on Form S-3 despite the relaxed requirements.

Federal Preemption of State Blue Sky Requirements

Currently, Section 18(b) of the Securities Act preempts state securities law registration and qualification requirements for registered offerings of securities that are listed or approved for listing on a national securities exchange. Unlisted securities are not “covered securities” however, and therefore offerings of those securities are required to be registered and qualified in each state in which they are sold, even when the offerings are registered with the SEC.

The SEC has proposed defining “qualified purchaser” for purposes of Section 18(b)(3) in a manner that would make any person to whom securities are sold in a registered offering a “qualified purchaser” within the meaning of Section 18(b)(3), which would make such securities “covered securities.” As a result, state securities law registration and qualification requirements for all registered offerings would be fully preempted regardless of whether the securities are listed. The proposed change is intended to reduce the costs and administrative burdens associated with complying with multiple state securities law regimes in registered offerings of unlisted securities and thereby facilitate capital formation.

For example, the proposed preemptive amendment would allow non-traded BDCs that register non-listed shares on Form N-2 and non-traded REITs registering non-listed shares on Form S-11 to forgo substantive review in every state of sale, which will significantly reduce costs and provide parity with respect to Blue Sky review between non-traded BDCs and REITs and those relying on Rule 506 under Regulation D and RCEFs.

In a statement accompanying the proposal, Chairman Atkins framed the amendments as part of a broader effort to promote capital formation and improve the competitiveness of the U.S. public markets. He characterized the proposal as a modernization initiative designed to reduce unnecessary costs and procedural burdens associated with registered offerings, particularly for smaller and mid-sized issuers.

The SEC Chairman is hoping to slow or reverse the steady decline of companies that become and remain public reporting companies, although the success of that effort also depends on general economic conditions as well as the availability and attractiveness of private markets.

The public comment period will remain open until 60 days after publication of the proposing release in the Federal Register. If adopted substantially as proposed, the amendments would represent one of the most significant overhauls of the SEC's registered offering framework since the 2005 securities offering reforms.

The full text of the proposed rule is available here. Chairman Atkins' statement is available here.

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