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Alert | Corporate/Capital Markets

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SEC Proposes Overhaul of Capital Raising Rules, Public Company Reporting Obligations

On May 19, 2026, the Securities and Exchange Commission (the Commission) issued two proposed rulemakings intended to enhance flexibility for public companies conducting registered offerings and modernize reporting requirements. The proposed amendments would enable a broader range of public companies to access public capital through the more streamlined shelf Registration Statement on Form S-3 (Form S-3), qualify for current well-known seasoned issuer (WKSI) benefits, incorporate information by reference into all Registration Statements on Form S-1, and preempt state "blue sky" securities laws for registered offerings. In addition, the proposed amendments would extend the availability of disclosure scaling and other accommodations, which are currently available only to emerging growth companies (EGCs) and smaller reporting companies (SRCs), to certain mid-sized and seasoned public companies. If adopted, the Commission's proposed amendments, designed to facilitate increased capital formation in the public securities market, would represent a significant modernization of the rules for capital raising and ongoing public disclosure. Public comments on the proposed rules are due 60 days after their publication in the Federal Register.

These latest proposed reforms come just weeks after the Commission issued a proposed rule that would allow domestic public companies to elect semiannual interim reporting in lieu of the current quarterly reporting requirements. For further details on the proposed rule issued on May 5, 2026, see GT Alert, "SEC Proposes Optional Semiannual Reporting for Public Companies."

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Proposed Registered Offering Reforms

Form S-3 is a short-form registration statement that eligible issuers can use to register securities offerings under the Securities Act of 1933, as amended (Securities Act). Most notably, Form S-3 permits forward incorporation by reference of filings under the Securities Exchange Act of 1934, as amended (the Exchange Act), eliminating duplicative disclosure, and allows shelf registration (enabling an issuer to register securities in advance and opportunistically "take them off the shelf" to raise capital as market conditions warrant). In addition, issuers eligible to use Form S-3 may enter into at-the-market (ATM) offerings, which allow issuers to sell securities at prevailing market prices over time. Issuers not eligible to utilize Form S-3 must rely on Form S-1 for registered offerings, which is a longer-form registration statement that typically requires more comprehensive disclosure subject to SEC staff review and does not permit shelf or delayed primary offerings, all of which increases costs, extends offering timelines, creates execution risk and limits capital raising structures relative to Form S-3.

The proposed new reforms to registered offerings include the following:

Form S-3 Eligibility

- *No Seasoning Requirement*. The new proposals would expand Form S-3 eligibility criteria by no longer requiring issuers to first be an Exchange Act reporting company for at least 12 months. Instead, an eligible issuer need only have a class of securities registered under Section 12(b) or 12(g) of the Exchange Act and be current and timely in filing its required Exchange Act reports.
- *No Public Float Requirement and Elimination of All Other Transaction Requirements*. The Commission has proposed eliminating all the existing transaction requirements from Form S-3. Notably, this would eliminate the $75 million public float threshold for conducting unlimited primary shelf offerings, as well as what is commonly referred to as the "baby shelf" limitation that restricts issuers with a public float of less than $75 million from conducting primary shelf offerings in excess of one-third of their public float in any rolling 12-month period. As proposed, any Exchange Act reporting issuer that is current and timely in its filing obligations would be able to conduct primary or secondary shelf offerings of an unlimited amount using Form S-3, regardless of its public float. Notwithstanding the elimination of the transaction requirements, in an effort to balance the expanded access to ATM offerings, the proposal would limit ATM offerings to only those securities listed on a national securities exchange or traded on a market designated by the SEC based on certain criteria.
- *Excluded Issuers; Use of Form S-3 by de-SPAC Companies*. While the proposed reforms aim to increase capital raising flexibility for a broader population of issuers, the benefits would not extend to a new class of issuers referred to as "BSP issuers," which would encompass blank check companies, shell companies (excluding domestic business combination related shell companies), and penny stock issuers. However, the proposal significantly provides that an issuer would not be considered a shell company solely because it or a predecessor was a special purpose acquisition company (SPAC) during the past three years, allowing post-de-SPAC companies to use Form S-3 if they are not shell companies at the time of filing. The Commission's proposal would specifically prohibit foreign private issuers (FPIs) from using Form S-3 at any time (notwithstanding an FPI's election to report on domestic forms), noting that FPIs would be able to continue using Form F-3 for their capital raising needs. The proposed treatment is subject to the Commission's ongoing review of the existing FPI framework. The prohibition on the use of Form S-3 is also contemplated to extend to asset-backed issuers, investment companies, and business development companies (BDCs).

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WKSI Enhanced Registration and Communication Benefits

Under the Commission's existing framework, a company can qualify as a "well-known seasoned issuer" (WKSI) if it has a public float of at least $700 million or has issued at least $1 billion aggregate principal amount of debt securities in registered offerings within the past three years. Companies qualifying for WKSI status gain access to various benefits not available to other issuers, including automatic effectiveness of Form S-3s (removing the Commission's indeterminate review process), registration fees on a "pay-as-you-go" basis, the ability to add additional securities and selling security holders to already effective shelf registration statements, the ability to file free writing prospectuses (FWPs) without an accompanying prospectus, and greater flexibility with respect to pre-filing and post-filing communications.

The proposal would expand access to certain enhanced registration and communication benefits currently reserved for WKSIs by replacing the WKSI definition with two new categories of issuers described below:

- *Eligible Listed Issuer (ELI)*: would be defined as an issuer that satisfies Form S-3's proposed registration requirements (e.g., current and timely compliance with Exchange Act reporting requirements) and has at least one class of common equity listed on a national securities exchange.
- *Seasoned Eligible Listed Issuer (SELI)*: would be defined as an ELI that has been subject to Exchange Act reporting requirements for at least 12 calendar months.

ELIs would be eligible for all the benefits of WKSI status, except for automatically effective shelf registration statements. SELIs would have access to all the benefits of WKSI status, including the use of an automatic shelf registration statement. For FPIs, the existing WKSI definition would continue to apply as opposed to the new proposed categories.

The following table provided by the Commission in the proposal compares the key benefits under the Commission's proposed rules against the current rules.

Enhanced Registration and Communication Benefit	Current Rule	Proposed Rule
Rule 139 – research report exemption	WKSIs and certain non-WKSIs eligible for primary offerings	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
Rule 430B(a) – omitting information from base prospectus	WKSIs	ELIs
Rule 430B(b) – omitting selling securityholder information from resale registration statements	WKSIs and certain non-WKSIs eligible for primary offerings	All Form S-3 eligible issuers

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Enhanced Registration and Communication Benefit	Current Rule	Proposed Rule
Rule 433 – FWP not accompanied by prospectus	WKSIs and certain non-WKSIs	All Form S-3 eligible issuers
Rule 456(b)/457(r) – "pay-as-you-go"	WKSIs	ELIs
Rule 462 – automatic shelf registration	WKSIs	SELIs

The Commission estimates that approximately 74% of Exchange Act reporting issuers would be classified as SELIs. This represents a notable increase from the approximately 36% of issuers that are categorized as WKSIs under the current framework.[1]

Incorporation by Reference into Form S-1

As discussed above, Form S-1 is the default registration statement for issuers that are not eligible to use Form S-3. Under current rules, only issuers that have filed an Annual Report on Form 10-K for the most recently completed fiscal year are permitted to incorporate by reference into Form S-1 Exchange Act reports filed before the effective date. Furthermore, the ability to forward incorporate information by reference into Form S-1 that is filed after the effective date is limited to SRCs. The proposed amendments would enable domestic issuers (and not FPIs) to backward and forward incorporate information by reference into Form S-1 irrespective of these requirements, which would significantly decrease the amount of disclosure required to be included directly in Form S-1.

Federal Preemption of State Securities Law Registration and Qualification Requirements

In an effort to reduce the burdensome cost and complexity of complying with registration and qualification requirements under multiple U.S. state securities laws, the Commission has proposed preempting such state "blue sky" laws with respect to all registered offerings, which would expand the scope of issuers exempt from compliance with blue sky law. The proposed reforms would expand the definitions of "covered securities" and "qualified purchasers" under Section 18(b) of the Securities Act to encompass securities issued in all offerings registered under the Securities Act, including offerings by non-traded REITs, non-traded BDCs and companies with securities traded only OTC. Currently, these issuers must undertake the costly process of listing on a national securities exchange to be eligible for exemption from blue sky laws.

Other Proposed Modernizing Amendments

The Commission's proposals include several other targeted amendments including:

- *BDCs and Closed-End Funds*: The Commission has proposed providing a broader group of BDCs and registered closed-end funds the ability to use the short-form registration statement on Form N-2 and expanding their access to many existing WKSI benefits.
- *Insurance Companies*: The Commission has proposed permitting insurance companies to engage in broad-based advertising for registered non-variable annuities.

[1] See Registered Offering Reform, Release No. 33-11418 (May 19, 2026), page 120.

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- *Delaying Amendments*: The Commission has proposed amending Rule 473 so that issuers would no longer need to include a "delaying amendment" legend on the cover page to delay the effectiveness of a registration statement.

Proposed Filer Status Reforms and Simplified Reporting Requirements

Under the Commission's existing framework, there are five filer status categories that come with different obligations: (i) large accelerated filers; (ii) accelerated filers; (iii) non-accelerated filers; (iv) SRCs; and (v) EGCs. Currently, SRCs and EGCs benefit from a number of reduced disclosure obligations that lower public company compliance costs, including with respect to executive compensation and financial statements. Additionally, the deadlines for filing periodic reports (e.g., Form 10-K annual reports and Form 10-Q quarterly reports) and the requirement to include an auditor's attestation on a company's internal control over financial reporting vary depending on whether a company is classified as a large accelerated filer, an accelerated filer, or a non-accelerated filer.

The proposed reforms to filer status and related disclosure requirements include the following:

Filer Status Categories

The proposed amendments aim to streamline the filer status categories into two main categories: large accelerated filers and non-accelerated filers, eliminating the SRC and accelerated filer categories.

The public float threshold for becoming a large accelerated filer would be increased from $700 million to $2 billion, which would need to be satisfied for two consecutive years. The public float calculation would be based on the company's average stock price over the last 10 trading days of its second fiscal quarter, rather than measuring public float as of the last business day of the most recently completed second fiscal quarter. The changes to the measurement periods are intended to provide issuers with greater stability and predictability, reducing the likelihood of volatile stock price swings causing a change in filer status. In addition, the amount of time that a company must have been subject to Exchange Act reporting requirements before qualifying for classification as a large accelerated filer would be increased from 12 calendar months to at least 60 consecutive calendar months, extending the runway for companies to prepare for the more extensive disclosure obligations and compliance requirements applicable to large accelerated filers.

A new sub-category would be created for the smallest non-accelerated filers, defined as having total assets of $35 million or less as of the end of each of their two most recent second fiscal quarters, providing such filers with extended deadlines for filing annual and quarterly periodic reports, which would ease the compliance burden on companies with the most limited administrative and financial resources.

Disclosure Scaling and Other Accommodations, Including Auditor Attestation

The Commission has proposed providing all non-accelerated filers with access to certain accommodations and disclosure scaling currently available only to SRCs and EGCs. Under the proposed rules, non-accelerated filers would qualify for accommodations including, but not limited to, reduced financial statement requirements (e.g., only requiring two years (instead of three) of audited financial statements and MD&A disclosure), the ability to omit risk factors from periodic reports, scaled executive compensation disclosures (e.g., the ability to omit CD&A narrative disclosure, requiring only three (instead of five) named executive officers and only two years (instead of three) of summary compensation table data, and eliminating pay ratio and pay-versus-performance disclosure), and not holding "say-on-

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pay" or "say-on-frequency" shareholder advisory votes. Notably, non-accelerated filers would also not be required to obtain an auditor's attestation on their internal control over financial reporting.

Issuers classified as larger accelerated filers would continue to be required to comply with non-scaled disclosure requirements and would be required to obtain an auditor's attestation on their internal control over financial reporting.

The new large accelerated filer and non-accelerated filer definitions would not apply to FPIs. As a result, FPIs would generally not be eligible to take advantage of these scaled disclosures and would continue to be required to include an auditor's attestation on its internal control over financial reporting in annual reports on Form 20-F and Form 40-F.

Conclusion and Key Takeaways

The Commission's proposals together comprise one of the most significant proposed overhauls by the Commission in recent history, and, if adopted, would have major implications for access to the U.S. capital markets and periodic reporting compliance. If implemented, the amendments would drastically expand access to Form S-3 and shelf registrations to smaller and newer issuers, and in turn, their access to the public markets, increase access to the existing WKSI enhanced registration and communication benefits to all exchange-listed issuers, providing significant offering-process flexibility, and simplify Form S-1 for all other issuers not eligible to use Form S-3 by expanding the use of incorporation by reference and, as a result, reducing the amount of required duplicative disclosure. In addition, if adopted, nearly 81% of public companies today would be classified as non-accelerated filers under the new filer category framework,[2] which would allow many companies that currently are not afforded the accommodations provided to EGCs and SRCs to scale their existing disclosures and potentially incur significant public company cost savings. Public companies and their advisors should begin to evaluate the potential impacts and understand what new benefits may be available under the proposed framework.

Authors

This GT Alert was prepared by:

- Drew M. Altman | +1 305.579.0589 | altmand@gtlaw.com
- Raffael Fiumara | +1 305.579.0532 | Raffael.Fiumara@gtlaw.com
- Sami B. Ghneim | +1 305.579.0501 | Sami.Ghneim@gtlaw.com
- Thomas R. Martin | +1 305.579.0739 | Thomas.Martin@gtlaw.com
- Michael J. Minahan | +1 617.310.5254 | Michael.Minahan@gtlaw.com
- Win Rutherfurd ‡ | +1 305.579.0769 | rutherfurdw@gtlaw.com

‡ Admitted in Florida and New York. Not admitted in Massachusetts.

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[2] See Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies, Release No. 33-11419 (May 19, 2026), page 54.

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