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SEC Proposes Broad Expansion of Shelf Registration Access and Capital Markets Efficiencies

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The Securities and Exchange Commission (SEC) has proposed amendments to the rules and forms governing registered securities offerings, with the stated goal of enabling a significantly broader universe of public companies to access shelf registration and the capital markets efficiencies that accompany it.

The rulemaking, titled "Registered Offering Reform," would expand eligibility to use Form S-3, replace the well-known seasoned issuer (WKSI) framework with a new tiered structure extending similar benefits to a wider set of exchange-listed issuers, preempt state securities law registration requirements for all registered offerings, and introduce related reforms for business development companies (BDCs), registered closed-end funds, certain registered annuity products and issuers using Form S-1.

If the rules are adopted, approximately 74% of existing US Exchange Act reporting issuers would be eligible to raise capital by filing an automatically effective shelf registration statement, without waiting for the SEC to review and declare it effective – compared to 36% currently. Additionally, nearly all US Exchange Act reporting issuers would be able to use Form S-3 for shelf offerings in unlimited amounts – compared to 61% currently. See Appendix A for a plain-language tabular comparison of the current and proposed frameworks – and our predictions for the real-world impact.

Expanded Form S-3 eligibility (and why it matters)

Under the current framework, approximately 3,400 issuers are able to use Form S-3 for unlimited primary offerings – i.e., for registered offers and sales by the issuer.[1] The proposal would extend access to this more flexible capital raising process to nearly all US Exchange Act reporting issuers – more than 2,000 additional issuers – an improvement that would be particularly useful to smaller issuers. The proposal would also relax certain existing limitations that may currently apply when using Form S-3 to register securityholders' resales, otherwise known as "secondary" offerings.

Background: What is Form S-3?

Form S-3 is a short-form registration statement that eligible issuers can use to register offerings of securities on a delayed or continuous basis – often referred to as offerings off the "shelf." Once the Form S-3 registration statement is effective and generally for three years after its initial effective date, the issuer can use it to offer and sell securities in one or more primary offerings without waiting for further SEC staff review or action. This provides eligible issuers with important flexibility in capitalizing on opportunistic market windows.

Form S-3 also allows issuers to omit certain information initially and to automatically incorporate by reference to future filings the issuer makes under the Securities Exchange Act of 1934, as amended (Exchange Act). Issuers use this accommodation to keep the registration statement up to date and to satisfy the post-effective amendment undertakings provided for in Item 512 of Regulation S-K.

Current eligibility requirements and 'baby shelf' limitations

Under current rules, an issuer must meet certain issuer eligibility requirements to use Form S-3, which include being subject to Exchange Act reporting for at least 12 calendar months. Form S-3 is also currently available only for certain types of transactions. The most common transaction-based limitation is colloquially known as the

"baby shelf" limitation, which applies to primary offerings by issuers having a public float of less than $75 million and limits these issuers to selling no more than one-third of their public float during a rolling 12-month calendar period. For all practical purposes, the baby shelf limitation substantially impairs the utility and flexibility of Form S-3 by issuers subject to that limitation, including small-cap issuers for which at-the-market (ATM) offerings may be an important means of raising additional capital. Issuers with a public float of $75 million or more are not subject to this cap.

The proposal would simplify eligibility

The proposed amendments would streamline Form S-3 eligibility by simply requiring the issuer to:

- Be subject to the reporting requirements of the Exchange Act.
- Have filed all reports and other materials required under Sections 13(a), 14(a), 14(c) and 15(d) of the Exchange Act during the preceding 12 calendar months (or for such shorter period that the registrant was required to file such reports and materials), and any portion of a month immediately preceding the filing of the registration statement.
- Be timely in their Exchange Act reporting, other than specified reports on Form 8-K, but the proposal would create a limited exception that preserves Form S-3 eligibility if an issuer has a single untimely filing within the relevant lookback period, i.e., 12 months, so long as that filing is submitted within seven calendar days of its original due date.
    - Where Exchange Act Rule 12b-25 applies, the seven calendar days would still be calculated from the original due date of the report and not the extended due date.
    - For Exchange Act filings, such as Form 8-Ks where Rule 12b-25 does not apply, the proposed seven-day grace period would effectively eliminate the need for an issuer to seek confirmation from the SEC staff about continued Form S-3 eligibility when the issuer has filed a single Form 8-K merely hours or one day late.

The proposal would eliminate:

- The one-year seasoning requirement.
- The $75 million public float threshold for primary offerings of unlimited amounts (i.e., the baby shelf limitation described above).
- All other transaction requirements, including complex restrictions on the types and amounts of securities that can be offered, such as the requirement that issuers register nonconvertible securities (other than common equity) only if they meet certain issuance-volume or WKSI-related thresholds, and the conditions on registering securities issuable upon exercise of outstanding rights, warrants or options.
- The limitation on using Form S-3 for secondary (resale) offerings of securities that are not listed on a national securities exchange or quoted on the automated quotation system of a national securities association, which currently applies if an issuer has less than $75 million public float.
- The eligibility requirement to file all electronic filings and interactive data files.
- The eligibility requirement that issuers must not have failed to pay dividends or sinking fund installments on preferred stock or defaulted on indebtedness.

Any issuer satisfying the proposed registrant eligibility requirements would be able to use Form S-3 for primary or secondary registered offerings in any amount – whether the offering relates to convertible or nonconvertible debt or equity, common or preferred equity, or other types of securities. The proposal would have the effect of simplifying what is currently a complex process of determining whether certain offerings can be registered on Form S-3, especially for companies that are not WKSIs under the current framework.

Background: Understanding the impact on debt and ATM offerings

Because the proposal would significantly expand access to ATM offerings, it would also amend Rule 415 to limit eligibility to conduct ATM offerings to securities listed or traded only in specified markets, in order to facilitate capital formation in a manner that is consistent with investor protection.

The SEC indicates in the proposal that the OTCQX Best Market and OTCQB Venture Market tiers of the OTC Link ATS would likely qualify based on current criteria, though neither has been formally designated. Currently, Rule 415(a)(4) defines "at the market offering" as "an offering of equity securities into an existing trading market for outstanding shares of the same class at other than a fixed price." The proposed amendment would include a nonexclusive list of attributes that the SEC

would consider in determining whether to designate a market as a "trading market" or to withdraw a market's status as a "trading market." For exchange-listed issuers that already conduct ATM offerings, the proposal would not introduce any new requirements – national securities exchanges would be certain to qualify as trading markets.

For debt offerings, although the elimination of the nonconvertible debt issuance requirements broadens Form S-3 eligibility on its face, practitioners should note that registered debt offerings are less common in practice. Investment-grade and high-yield debt deals are overwhelmingly structured as Rule 144A transactions even for companies that already maintain an effective Form S-3. The practical significance of this particular change is therefore limited for most of the issuers described in this alert.

See our observations and commentary below for additional practical takeaways.

Ineligible issuers and offerings

Under the proposal, a new "ineligible issuer" category would expressly bar certain categories of issuers from using Form S-3, including issuers that are, or that have been during the past three years, or that have any predecessor that was a(n):

- Blank check company, shell company (other than a business combination-related shell company), though a domestic issuer would not be considered a shell company solely because it has a special purpose acquisition company (SPAC) predecessor, preserving Form S-3 eligibility for deSPAC companies, or issuer of penny stock.
- Specified bad actor.
- Foreign private issuer (FPI), including an FPI that chooses to report on domestic Exchange Act forms.
- Asset-backed issuer.
- Registered investment company.
- BDC.

As is currently the case, Form S-3 would not be available for exchange offers or business combination transactions.

A note on subsidiary eligibility

The proposal would also permit certain majority-owned subsidiaries that are not Exchange Act reporting companies to continue to register guarantee-related offerings on a parent's Form S-3, provided their parent is eligible to use Form S-3 and the parent and subsidiary are identified on the registration statement as co-registrants.

Additionally, the proposal would permit a majority-owned subsidiary that is independently eligible to use Form S-3 to be treated as an eligible listed issuer (ELI) or seasoned eligible listed issuer (SELI) under the new tiered framework described below. The determination would be based on its parent's status for purposes of registering nonconvertible securities other than common equity. If the parent were a SELI, the majority-owned subsidiary could be treated as a SELI with respect to the offering, meaning that the majority-owned subsidiary could register the offering on an automatic shelf registration statement with the parent as a co-registrant. This provision is most relevant for structured finance and holding company structures.

New tiered framework: ELIs and SELIs

Since 2005, enhanced registration flexibility has been available to the WKSI category of issuers, compounding the traditional benefits of Form S-3. For example, WKSIs' shelf registration statements are automatically effective upon filing, they can use a "pay-as-you-go" filing fee process (so that the shelf registration statement does not need to specify the total dollar amount of securities to be offered), and they have more flexibility to communicate about an offering. Current rules require an issuer to have at least $700 million in public float or $1 billion in registered debt offerings to qualify as a WKSI.

The proposal would replace the existing domestic WKSI concept with two new issuer categories, which issuers

would assess on an annual basis:

- Eligible listed issuer (ELI): A Form S-3 eligible issuer that has at least one class of common equity securities listed on a national securities exchange.
- Seasoned eligible listed issuer (SELI): An ELI that has additionally been subject to Exchange Act reporting requirements for at least 12 months.

Most of the enhanced benefits currently available only to WKSIs would, under the proposal, become available to all ELIs. **The most significant additional benefit of SELI status over ELI status is automatic effectiveness for Form S-3 shelf registration statements** – meaning the SEC staff does not review the registration statement, and there is no need to request acceleration of effectiveness from the SEC staff. The registration statement is effective when filed and can be easily used for subsequent offers and sales.

For the 36% of issuers that currently qualify as WKSIs, automatic shelf registration has streamlined processes and enhanced both planning and flexibility. Under the proposal, approximately 74% of Exchange Act reporting issuers would qualify as SELIs and be eligible to use this streamlined process. For companies already qualifying as WKSIs, the transition to SELI status will largely be seamless in practice. The proposal would retain the WKSI category for FPIs.

Blue-sky preemption extended to all registered offerings

The proposal would substantially expand federal preemption of state securities registration requirements. Securities Act Section 18 currently preempts state "blue sky" registration and qualification requirements for "covered securities," a category that has generally been limited to securities listed on national securities exchanges and certain other specified transactions.

The proposal would amend Rule 146 to add a new definition of "qualified purchaser," and for purposes under Section 18(b)(3) of the Securities Act, to include any person offered or sold securities in any registered offering under the Securities Act. If adopted as proposed, all registered offerings – including offerings of securities not listed on any national exchange –would constitute "covered securities" and would be exempt from state registration and qualification requirements.

This would resolve pain points for federally registered offerings of securities that are not listed on a national securities exchange – such as side-by-side offerings of common stock and unlisted warrants, employee equity plans of over-the-counter-traded issuers, or unlisted registered direct offerings. Currently, these types of transactions may need to comply with a patchwork of state law registration and qualification requirements – and while manageable, navigating the patchwork requires time and attention. States would retain antifraud enforcement authority.

BDCs, closed-end funds and registered annuity products

The proposal would extend parallel reforms to investment funds and insurance products. Exchange Act-listed BDCs and registered closed-end funds would become eligible to use an expanded "Short-Form N-2" and access certain enhanced registration and communication benefits under the same ELI/SELI framework described above. Unlisted affected funds[2] would continue to operate under the existing Rule 486 framework.

For annuity products, the proposal would amend Rule 482 to permit broad-based advertising of registered index-linked annuities (RILAs) and registered market value adjustment (MVA) annuities, without requiring Form S-3 eligibility or reliance on Rule 433 prospectus-delivery mechanics. This expanded advertising flexibility would be subject to tailored conditions, including constraints on the presentation of RILA performance information, fee and expense disclosure requirements, and filing obligations with the SEC or Financial Industry Regulatory Authority (FINRA).

Form S-1 modernization and other proposed amendments

In addition to expanding access to Form S-3, the proposal would make using the traditional "long form" registration statement on Form S-1 less burdensome. Specifically, it would expand the ability of issuers to incorporate filings by reference to Form S-1 in two ways:

- Eliminate the requirement that an issuer must have filed a Form 10-K for the most recently completed fiscal year before having the ability to incorporate certain disclosure by reference in a Form S-1 (an issuer that has not been required to file a Form 10-K since becoming subject to Exchange Act Section 13(a) or 15(d) would incorporate by reference to a Securities Act or Exchange Act filing containing "Form 10 information").
- Expand forward incorporation by reference – the ability to automatically incorporate future Exchange Act filings into a registration statement – to all qualifying Form S-1 issuers, not just smaller reporting companies (SRCs).

The proposal would also modernize the "delaying amendment" procedure for Form S-1. Delayed effectiveness would become the default for most registration statements (other than those that become automatically effective in accordance with SEC rules), rather than the current framework of every registration statement including an archaic legend.

Are Form S-1 and Form S-3 converging?

As noted in the proposal, if Form S-1 were amended as proposed, it effectively would serve as a short-form registration statement for issuers that are eligible for and choose to use backward and forward incorporation by reference. Nonetheless, there would still be key distinctions between Form S-1 and Form S-3. Delayed primary shelf offerings and ATM offerings by or on behalf of an issuer under Rule 415 would remain limited to offerings registered or qualified to be registered on Form S-3.

FPIs, investment companies and BDCs also would be expressly prohibited from using Form S-1. The SEC expects minimal impact from this limitation. FPIs tend to file on Form F-1, rather than using domestic forms, and investment companies and BDCs are required to use other specific forms.

Elimination of income-related conditions for financial statements grace period

The proposals would eliminate the income-related conditions in Regulation S-X Rules 3-01 and 8-08 that currently affect the staleness dates for audited financial statements in registration statements and proxy statements filed close in time to the end of the most recently completed fiscal year. Under existing rules, issuers are not required to provide, in a registration statement or proxy statement, audited financial statements for the most recently completed fiscal year when the date of effectiveness of such registration statement or mailing date of such proxy statement falls within the first 45 days after such fiscal year-end – and this "grace period" may be extended for up to 45 more days depending on filer status and certain other conditions.

The current conditions imposed under Rule 3-01(c) and Rule 8-08(b) may result in a situation in which loss-generating issuers – which may have a greater need for capital but are ineligible for the extended grace periods – incur greater compliance costs in connection with filing a registration statement or conducting certain proxy solicitations than higher-income registrants, as they may be required to expedite the preparation of audited annual financial statements for the most recently completed fiscal year before they would otherwise be required in an annual report on Form 10-K.

Essentially, the proposal would align the financial statement requirements with the applicable issuer's Form 10-K due date. If this proposal and the SEC's recent proposal to simplify its filer status framework are both adopted as proposed, most public companies would be non-accelerated filers and would have 90 days after fiscal year-end

to provide audited financial statements for the most recently completed fiscal year, regardless of timing of a registration statement or proxy statement, unless the financial statements become available earlier. [3]

Open questions and areas for comment

The proposal raises many interpretive and policy questions on which the SEC has invited comment, and that may attract significant attention from practitioners and issuers, including:

- Whether the elimination of a one-year seasoning requirement for Form S-3 eligibility is appropriate.
- The appropriateness of eliminating Form S-3 transaction requirements (including the $75 million public float requirement to conduct unlimited primary offerings) and the minimum public float requirement.
- The appropriateness of the categories of issuers identified as ineligible to use Form S-3 and of the three-year lookback period applicable to certain types of issuers.
- Whether prohibiting FPIs from using Form S-3 at any time is appropriate, and if not, what the transition period should be.
- Whether the replacement of the current categories of domestic issuers with the ELI/SELI framework is appropriate.
- The appropriateness of proposed Form S-1 changes to expand backward and forward incorporation by reference, including whether to align forward incorporation eligibility more closely with Form S-3 eligibility.
- Whether prohibiting FPIs, investment companies and BDCs from using Form S-1 is appropriate.

Observations and commentary

The proposal, if adopted, would restructure the registered offering framework. The significance of the changes will depend on where an issuer sits in the capital markets landscape. For large-cap, exchange-listed issuers that are WKSIs under the current rules, current practices will be largely unaffected by the transition to the ELI/SELI framework. For mid-cap and small-cap exchange-listed issuers that do not currently qualify as WKSIs, the changes could be more significant. See Appendix A for a tabular comparison of the current and proposed frameworks – and our predictions for the real-world impact. Below, we highlight several key takeaways for our client base:

- **Expanded access to shelf registration benefits for exchange-listed issuers.** All domestic issuers would be Form S-3 eligible immediately after completing their IPO. Moreover, the proposed replacement of the WKSI framework with the ELI/SELI structure means that any exchange-listed Form S-3 eligible issuer would, as an ELI, gain access to pay-as-you-go registration fees, pre-filing communication flexibility, the ability register additional securities or additional classes of securities by filing a post-effective amendment to a nonautomatic shelf registration statement before the issuer satisfies the 12-month Exchange Act reporting requirement to be a SELI, and the ability to omit information as to whether an offering is a primary offering or secondary offering and pricing and deal-specific terms from the shelf registration statement at the time of effectiveness. These are capabilities currently reserved for WKSIs.
    - Newly eligible issuers should begin assessing their readiness to take advantage of the proposed framework, including evaluating Exchange Act reporting history, potential ineligible issuer disqualifications, and the cost and timing differences between registered and exempt offering pathways. For many smaller issuers, the combination of Form S-3 eligibility, pay-as-you-go registration fees and full blue-sky preemption could shift the economics of capital raising away from exempt structures such as structured private investments in public equity (PIPEs), toward registered offerings.
    - That said, practitioners should note that many of the communication flexibility benefits – in particular, the ability to conduct pre-filing investor outreach – are already available to non-WKSIs through the testing-the-waters provisions of Section 5(d) of the Securities Act and Rule 163B, which permit communications with qualified institutional buyers (QIBs) and institutional accredited investors regardless of WKSI or ELI status. The incremental benefit on the communications side is therefore most significant for mid-market issuers not currently taking advantage of those exemptions.
- **Significant expansion of automatic shelf registration eligibility.** For issuers that meet the SELI threshold – ELI status plus 12 months of Exchange Act reporting – the principal additional benefit is automatic shelf registration. For most exchange-listed companies that have been public for more than a year, SELI status will be the default, and this benefit should be built into capital formation playbooks accordingly.

- **DeSPAC companies would not be automatically barred from Form S-3.** This change would make the deSPAC pathway more attractive from a capital markets perspective and is consistent with the SEC's previously stated objective of aligning disclosure and regulatory requirements for deSPAC companies with those applicable to companies completing traditional IPOs.
    - However, a deSPAC company would not be permitted to count the Exchange Act reporting history of the former SPAC toward the 12-month seasoning requirement for SELI status and automatic shelf registration eligibility. Additionally, because FPIs are separately prohibited from using Form S-3 under the proposal, the SPAC predecessor carve-out would effectively benefit only domestic issuers.
    - In addition, while the proposal does not address Rule 144(i) or Rule 145 under the Securities Act, meaning that shareholders of deSPAC companies would still be subject to the rolling 12-month current public information requirement if seeking to rely on the Rule 144 safe harbor for resales of securities issued by a deSPAC company, in addition to the statutory underwriter provision under Rule 145, the proposed amendments would mitigate these downsides because of the expanded availability of Form S-3. For private resales, unless and until Rule 144(i) and Rule 145 are addressed through separate rulemakings, deSPAC companies and their shareholders would still have to consider the risks imposed by these rules in connection with resales of securities.
- **A potentially less favorable regime for former FPIs.** The proposal does not extend to FPIs, which would continue to use Form F-3. Form F-3 retains its existing 12-month seasoning and $75 million public float requirements. The SEC has deferred FPI-related changes pending its separate review of the FPI definition and various issues that it identified in its June 2025 Concept Release.
    - Former FPIs that have converted to domestic issuer status, a transition that can occur automatically based on changes in shareholder composition or other factors, may find themselves in a worse position under the proposed framework, at least temporarily. Under the proposal, Form S-3 would be unavailable to any issuer that has been an FPI at any point during the preceding three years, while Form F-3 would remain unavailable to issuers that no longer qualify as FPIs. During that period, the issuer's only registered offering option would be Form S-1. This creates a gap that does not exist under the current framework, where a former FPI that was eligible to use Form F-3 could seamlessly transition to using Form S-3 (assuming it meets the other eligibility criteria).
    - For this reason, the proposal may accelerate a trend toward domestic issuer status at the time of IPO for foreign companies that are on the margin of FPI eligibility. Electing domestic issuer status at IPO could avoid the three-year Form S-3 eligibility lag if it is likely that the issuer will eventually lose FPI status down the road. Moreover, the proposed rule may make the domestic election more favorable, since domestic issuers will gain substantially expanded shelf access. Historically, FPI status has been attractive because it carries meaningful accommodations, including reduced executive compensation disclosure, exemption from complying with the proxy rules, and the ability to report on a semi-annual rather than quarterly basis, with relatively limited downside from a capital markets perspective, given that FPIs have generally had access to Form F-3 on terms largely comparable to those available to domestic issuers under Form S-3. Under the proposed framework, however, domestic issuers would gain substantially expanded access to shelf registration, automatic effectiveness, pay-as-you-go filing fees, and enhanced communication flexibility – benefits that would not be extended to FPIs. Additionally, the SEC previously proposed rules which, if adopted, would permit domestic issuers to elect semi-annual reporting – a benefit that is currently available only to FPIs.[4]
- **Form S-1 modernization.** The proposed changes to Form S-1 would simplify ongoing offering programs and reduce the burden of post-effective amendments and prospectus supplement updates for issuers that rely on the long-form registration statement, by expanding the ability to incorporate by reference. The structural advantages of Form S-3 – including the takedown mechanics, automatic effectiveness and pay-as-you-go fee structure – remain exclusive to Form S-3 eligible issuers.
- **Elimination of income-related conditions for financial statements grace period.** This change to Regulation S-X, to extend to loss-generating issuers the grace period for updated audited financial statements in connection with filing a registration statement or conducting certain proxy solicitations, would facilitate these issuers – who may have a greater need for capital than higher-income registrants – in raising capital or completing strategic transactions without the need to expedite the preparation of audited annual financial statements for the most recently completed fiscal year before they would otherwise be required in an annual report on Form 10-K.
- **ATM offering implications.** Although the proposed "existing trading market" requirement would introduce a new constraint on ATM offerings, its practical significance may be modest given the SEC's indication that the OTCQX Best Market and OTCQB Venture Market tiers would likely qualify for designation. Overall, the proposal intends to expand access to ATM

offerings for issuers while balancing investor protections.

- **Blue-sky preemption extended to warrant coverage in registered offerings.** Under current law, when an issuer conducts a registered offering of listed common stock concurrently with non-prefunded warrants (a structure that is common in certain industries, including life sciences), the common stock is already exempt from state blue-sky requirements by virtue of its exchange listing. The warrants, however, are not exchange-listed and therefore do not benefit from that exemption. As a result, practitioners must currently conduct a jurisdiction-by-jurisdiction blue-sky analysis for the warrants – an additional procedural step that must be tracked and completed for each such transaction. If the proposal is adopted, this friction would be eliminated because all securities offered and sold in a registered offering would constitute "covered securities" under the proposed definition of "qualified purchaser." The warrants would be preempted from state registration and qualification requirements on the same basis as the listed common stock.

Call for additional IPO process modernization

On May 26, 2026, SEC Chairman Paul Atkins recommitted to the SEC's agenda to "Make IPOs Great Again," and discussed the steps currently taken by the SEC to fulfill that agenda. As noted above, in addition to the proposed amendments to reform registered offerings that are the subject of this alert, the SEC has proposed amendments to reform its filer status rules, which would extend meaningful disclosure and filing deadline accommodations to approximately 80% of US public issuers and allow a 60-month ramp-up to full disclosure requirements for all newly public companies, and has proposed amendments to permit domestic issuers to file semiannual reports in lieu of the current quarterly reporting regime.[5]

At the conclusion of his speech, Atkins solicited written comment on broader ideas for modernizing IPOs, including ways to improve the SEC's communication or other IPO-related rules and identifying ways the SEC can remove roadblocks to nontraditional paths to going public.

Next steps

The comment period closes on July 27, 2026, including the larger call for comment on additional ways the SEC can modernize the IPO process. Issuers, underwriters, placement agents, fund sponsors, insurance companies and their counsel who participate in registered offerings should review the proposal carefully and evaluate whether to submit comments. Exchange-listed companies that expect to qualify as ELIs or SELIs under the proposed framework should also begin evaluating their readiness to take advantage of the proposed changes. Cooley's capital markets attorneys are available to discuss these issues. Reach out to your existing Cooley contact or email the Cooley capital markets team.

Appendix A

Plain-language guide to enhanced benefits

The table below explains the key registration and communication benefits available under the current and proposed frameworks:

Benefit	Current framework	Proposed framework	Real-world impact
Registration benefits			
Form S-3 eligibility Eligible issuers can use	One-year seasoning	Domestic issuers would	Enhances capital formation flexibility

Eligible issuers can use Form S-3 to register offerings of securities on a delayed or continuous basis – often referred to as offerings off the "shelf." Once the Form S-3 registration statement is effective and generally for three years after its initial effective date, the issuer can use it to offer and sell securities in one or more primary offerings without waiting for further SEC staff review or action. This provides eligible issuers with important flexibility in capitalizing on opportunistic market windows.	seasoning requirement for all issuers. For deSPAC issuers, the 12-month seasoning requirement does not begin to run until the business combination closes. "Baby shelf" limitations for issuers with less than $75 million public float. Various other complex transaction requirements.	issuers would be Form S-3 eligible immediately after completing the IPO. [6] DeSPAC issuers would no longer be "ineligible issuers" and would be immediately eligible to use Form S-3, though they would not be permitted to count the Exchange Act reporting history of the former SPAC toward the seasoning requirement for SELI status. No public float limitations. Limited exception for late filings. No other transaction requirements. No iXBRL eligibility requirement.	formation flexibility, especially for equity offerings by issuers that are smaller, newly public or previously SPACs (for example, issuers can now establish ATMs within the first year of going public). Newly public companies could also incorporate disclosures by reference from their Form S-1 for the IPO, reducing time and expense.
Registration of additional securities or additional classes of securities (Rule 413) Permits an issuer to register additional securities or additional classes of securities, including securities of a majority-owned subsidiary, via automatically effective post-effective amendments.	☒ WKSIs ☒ WKSI affected funds	☒ ELIs ☒ ELI affected funds	Allows for a greater number of issuers to benefit from expedited execution and certainty in timing public securities offerings.

Omission of certain information from base prospectus (Rule 430B(a)) **The shelf registration statement does not need to include the type of offering (primary and/or secondary), offering price, size or other transaction-specific details; these are filled in at the time of each shelf takedown via a prospectus supplement.**	☒ WKSIs ☒ WKSI affected funds	☒ ELIs ☒ ELI affected funds	Broadens access to the basic shelf takedown structure for non-WKSI ELIs.
Omission of identities of selling securityholders and amount of securities to be registered on their behalf from a base prospectus (Rule 430B(b)).	☒ WKSIs ☒ Non-WKSIs eligible for primary offerings under General Instruction I.B.1 of Form S-3, subject to certain conditions ☒ Seasoned affected funds	☒ All Form S-3 eligible issuers ☒ ELI affected funds	Broadens access to operational flexibility for secondary offerings, requiring only a prospectus supplement rather than a post-effective amendment to name selling securityholders.
Free-writing prospectus flexibility (Rule 433) **Issuers can use supplemental marketing materials (term sheets, pitch decks, etc.) during an offering without first delivering a complete Section 10-compliant prospectus.**	☒ WKSIs ☒ Non-WKSIs eligible for primary offerings under General Instructions I.B.1, I.B.2 or 1.C of Form S-3 ☒ Seasoned affected funds	☒ All Form S-3 eligible issuers ☒ Affected funds will rely on Rule 482 advertisement requirements	This change would simplify compliance and provide flexibility. Similar to the caveat above, much of this flexibility is already accessible to non-WKSIs through Rule 163B for testing-the-waters communications. The incremental benefit is most notable for ELIs that do not currently qualify as WKSIs.
Pay-as-you-go registration fees (Rules 456(b) and 457(r)) **Issuers do not need to**	☒ WKSIs ☒ WKSI affected funds	☒ ELIs ☒ ELI affected funds	Eliminates upfront cash outlay and the need to update fee calculations as shelf amounts

calculate or pay the full registration fee upfront when filing shelf registration statements; instead, fees are paid at each actual takedown, based on the securities sold.			change, and enhances usefulness and flexibility of the shelf registration process. Meaningful for issuers maintaining large, frequently used shelf registration statements.
Automatic shelf registration (Rule 462) The shelf registration statement takes effect the instant it is filed – no waiting for SEC staff review, and no acceleration request needed. Issuers can move directly from filing to launching an offering.	☒ WKSIs ☒ WKSI affected funds	☒ SELIs ☒ SELI affected funds	This is the most operationally significant benefit for frequent issuers. Under the proposal, ~74% of Exchange Act reporting issuers would qualify, up from ~36% today.
Blue-sky preemption	Preemption applies to "covered securities" – generally limited to securities listed on national securities exchanges	All registered offerings – including offerings of securities not listed on any national exchange – would constitute "covered securities" and would be exempt from state registration and qualification requirements. States would retain antifraud enforcement authority.	Resolves administrative complexity for registered offerings not involving an exchange-listed security. Most relevant to side-by-side offerings of common stock and unlisted warrants, employee equity plans of OTC-traded issuers, or unlisted registered direct offerings.
Form S-1 incorporation by reference The ability to incorporate by reference to prior filings frees issuers from the need to repeat lengthy information. The ability to incorporate	Issuers must file a Form 10-K before being eligible to incorporate previously filed information into Form S-1.	Any issuer that has made a Securities Act or Exchange Act filing that contains Form 10 information would be	While S-1 remains unavailable for delayed primary shelf offerings, the modernized approach to incorporation by reference would allow more issuers to

by reference to future filings allows issuers to keep the Form S-1 updated on an ongoing basis without manually filing post-effective amendments and prospectus supplements when making other SEC filings.	Only smaller reporting companies are permitted to incorporate future Exchange Act filings by reference into Form S-1.	eligible to incorporate by reference to previously filed information as well as to future filings.	mitigate duplicative disclosure and compliance costs – e.g., for follow-on offerings on Form S-1 or for ongoing secondary offerings.
Communication benefits			
Research report safe harbor (Rule 139) Broker-dealers can publish issuer-specific research reports and make buy/sell recommendations about a company while participating in its registered offering, without those reports being treated as part of the offering.	☒ WKSIs ☒ Non-WKSIs eligible for primary offerings under General Instructions I.B.1 or I.B.2 of Form S-3 ☒ Covered investment funds that have a public float greater than $75 million	☒ All Form S-3 eligible issuers ☒ All covered investment funds	Brings the benefits of Rule 139 to a broader universe of issuers, although Rule 139 remains unavailable for issuer-specific research if the research analyst has not initiated coverage prior to the commencement of the registered offering at issue.
Pre-filing offers (Rule 163) Issuers and underwriters can engage in oral and written communications about an upcoming offering – including road show materials and investor contacts – before the registration statement is filed, without those communications constituting a prohibited "gun-jumping" offer.	☒ WKSIs ☒ WKSI affected funds	☒ ELIs ☒ ELI affected funds	Provides more flexibility in early-stage deal preparation. Note, however, that many pre-filing communications for non-WKSI issuers are already permissible through testing-the-waters communications, Section 5(d) and Rule 163B, which allow QIB and institutional accredited investor outreach before and after filing, regardless of WKSI status.

Notes

1. Out of 5,555 Exchange Act reporting companies (excluding asset-backed issuers, shell companies and BDCs) that filed a Form 10-K in 2024.
2. Throughout this alert and in the SEC's proposal, the term "affected fund" refers to a registered closed-end fund or BDC whose securities are listed on a national securities exchange, and that has a specified advisory or management relationship with a WKSI (under the current framework) or, under the proposed rule, with an ELI or SELI. These funds are treated analogously to their affiliated operating company parent for purposes of the enhanced registration and communication benefits described in this alert and Appendix A.
3. On May 19, 2026, the SEC proposed amendments to substantially simplify its domestic public company filer status framework and extend existing scaled disclosure and other accommodations, including filing due dates. The proposal would eliminate the current rubric of overlapping filer status categories – large accelerated filer (LAF), accelerated filer, nonaccelerated filer (NAF), SRC and emerging growth company – and replace it with two primary reporting categories: LAF and NAF. For NAFs, the Form 10-K would be due 90 days after fiscal year end. See Cooley's alert, SEC Proposes Simplified Filer Status Rules and Expanded Disclosure Accommodations, published May 22, 2026, for a more fulsome discussion of the proposed amendments.
4. See Cooley's alert, The SEC's Semiannual Reporting Proposal: Fare Thee Well Quarterly Reporting?, published May 11, 2026, for a more fulsome discussion of the proposed amendments.
5. See Cooley's alerts, SEC Proposes Simplified Filer Status Rules and Expanded Disclosure Accommodations, published May 22, 2026, and The SEC's Semiannual Reporting Proposal: Fare Thee Well Quarterly Reporting?, published May 11, 2026.
6. Other than "ineligible issuers" as defined in the proposal and described above.

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