

SEC PROPOSES REGISTERED OFFERING REFORM

MAY 2026

SUMMARY

The SEC proposed amendments to certain rules and forms under the Securities Act of 1933 that are intended to reduce costs, provide greater flexibility in determining the structure and timing of registered offerings, and facilitate capital formation. The amendments would expand registrants' access to registered offerings by relaxing Form S-3 eligibility, extending certain communication and offering flexibilities beyond companies classified as well-known seasoned issuers ("WKSIs"), and modernizing Form S-1 to allow greater incorporation by reference, among other changes.

Business development companies (BDCs) and registered closed-end funds (CEFs) would benefit from similar changes in the proposed amendments.

KEY FEATURES OF THE PROPOSAL

Form S-3 Eligibility Criteria

The proposed amendments to the Form S-3 eligibility requirements would:

- ▶ Allow registrants to use Form S-3 immediately upon becoming subject to Sections 12 or 15(d) of the Securities Exchange Act of 1934 ("Exchange Act"), rather than waiting twelve calendar months (including registrants that complete a de-SPAC transaction).
- ▶ Eliminate the \$75 million public float requirement and "baby shelf" rule, allowing registrants with less than \$75 million in public float to conduct primary offerings on Form S-3 without limiting the securities sold based on their public float.

Registrants would still be required to have timely filed all Exchange Act reports during the last twelve calendar months (the "lookback period"). However, the amendments would allow registrants to remain eligible to use Form S-3 despite an untimely filing so long as the registrant only made one untimely filing during the lookback period, and the untimely filing was made within seven calendar days of the original due date.

The proposed amendments would also limit securities sold under an at-the-market (ATM) offering to those listed and traded on a national securities exchange, or other market designated by the SEC.

Under the proposal, foreign private issuers (FPIs) would not be eligible to use Form S-3.

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Extending Certain Benefits of WKSIs to Larger Set of Issuers

The proposed amendments would expand the benefits currently available to WKSIs to a larger set of issuers and create two new issuer categories:

- ▶ Eligible listed issuers (ELIs) - registrants that are eligible to use Form S-3 and have one or more common equity securities listed on a national exchange
- ▶ Seasoned eligible listed issuers (SELIs) - ELIs that have been subject to Exchange Act reporting requirements for at least twelve calendar months

The available benefits would vary based on whether a registrant is Form S-3 eligible and qualifies as an ELI or SELI. Only SELIs would be eligible to use automatic shelf registration statements (ASRs).

These amendments would not apply to FPIs. FPIs would continue to assess WSKI status under existing rules.

Revisions to Form S-1

The proposed amendments to Form S-1 would:

- ▶ Expand the ability of registrants that do not qualify as smaller reporting companies (SRCs) to incorporate information by reference after the registration statement becomes effective (i.e., forward incorporate by reference). Currently, only SRCs may forward incorporate information by reference.
- ▶ Allow registrants to incorporate information by reference in a registration statement filed after year-end, even when the financial statements for that year-end have not yet been filed. Currently, registrants must have filed their Form 10-K for their most recently completed fiscal year-end to be eligible to incorporate information by reference.

Under the proposal, FPIs would not be eligible to use Form S-1.

Other Considerations

The proposed amendments would also:

- ▶ Allow SRCs up to 90 days after year-end, and non-SRC registrants up to the Form 10-K due date, to file registration statements without including updated audited annual financial statements. Currently, this practice is limited to registrants that satisfy the income-based eligibility criteria in Rules 3-01(c) and 8-08(b) of Regulation S-X.
- ▶ Eliminate the delaying amendment language on the cover page of registration statements and instead require registrants that do not intend to delay effectiveness to affirmatively state their reliance on Section 8(a) on the cover page.

REQUEST FOR COMMENT

Comments on the proposal are due July 27, 2026.

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Link to the [SEC's proposal](#) and related [fact sheet](#)

Link to [submit public comment](#)

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