

United States: SEC Proposes Public Offering and Reporting Reforms

In brief

In parallel rulemakings, on May 19, 2026, the Securities and Exchange Commission proposed rule and form amendments that would significantly enhance public companies' ability to conduct registered offerings, extend current disclosure scaling and other accommodations to most public companies, grant the smallest public companies extended deadlines to file their periodic reports, and simplify the public reporting company filer status framework.

Together, these two proposals arguably represent the most substantial recalibration of the registered offering process and the public company reporting framework in a generation. Public companies and companies considering a listing or other public offering should take note of the wide-ranging implications for how the proposals will impact their ability to access the capital markets and comply with their ongoing reporting obligations.

The public comment period for these proposals will remain open for 60 days following publication of the proposing release in the Federal Register.

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Key takeaways

Under the proposed amendments:

- There could be an increase of over 60% in the number of issuers eligible to offer an unlimited amount of securities on Form S-3, with newly eligible issuers benefiting from cost savings and capital raising efficiencies associated with the ability to use Form S-3 and conduct shelf offerings.
- There could be an increase of over 200% in the number of issuers eligible for all the registration and communication benefits that currently are only available to well-known seasoned issuers (WKSIs).
- State securities law registration requirements would be preempted for all Securities and Exchange Commission (SEC) registered offerings, which would lower the cost of a registered offering of securities by an issuer with no class of listed securities.
- 19.2% of current public companies could be large accelerated filers (compared to 35.4% currently), and 80.8% could be non-accelerated filers and therefore eligible to take advantage of the proposed disclosure scaling and other accommodations.

Companies should closely assess whether their filer status, listing or offering strategies, and disclosure obligations would be materially affected by the proposed changes, and should consider submitting comments to the SEC during the open comment period.

In more detail

[Part I: Registered offering reform](#)

Background

The public securities markets offer significant benefits to issuers and investors alike. Issuers often can raise capital through the public markets on more favorable pricing and other terms as compared to private markets, and investors in offerings registered

under the Securities Act of 1933 benefit from the required disclosures and protections provided under the federal securities laws. The proposed amendments are intended to promote the benefits associated with increased capital formation in the public markets in a manner that is consistent with investor protection.

This article focuses on the following topics of the proposed amendments: expanded Form S-3 eligibility; enhanced registration and communication benefits for a broader set of issuers; preemption of state securities law requirements for all registered offerings; lack of application to foreign private issuers (FPIs) and modernized Form S-1 incorporation by reference.

Expanded Form S-3 eligibility

Form S-3 is a simplified, short form registration statement. Among other things, Form S-3 permits an eligible issuer to offer securities on a delayed basis, where an issuer registers securities in connection with the filing of registration statement and, after the effectiveness of the registration statement, the issuer may offer and sell those securities from time to time, if and when market conditions are favorable (a process commonly referred to as a “shelf offering”). Form S-3 also allows an issuer to incorporate by reference disclosure from the issuer’s existing and future SEC reports in lieu of preparing a detailed prospectus and, in connection with a shelf offering, to omit certain information from the base prospectus included in the registration statement and provide that information later at the time of the shelf offering through a prospectus supplement.

The proposed amendments would revise Form S-3’s eligibility requirements by, among other changes, removing the requirement that issuers be subject to the reporting requirements of the Securities Exchange Act of 1934 for at least 12 months before using the form and eliminating all of the form’s transaction requirements, including the instruction that requires issuers to have at least USD 75 million in public float to register an unlimited amount of securities in primary offerings for cash on the form. Form S-3 would continue to require that issuers be current and timely in their Exchange Act reporting requirements and would prohibit certain “ineligible issuers” from using the form. Notably however, a domestic issuer would no longer be deemed to be a shell company (which falls within the current definition of an ineligible issuer) solely because during the past three years either the issuer or any of its predecessors was a “special purpose acquisition company (SPAC).” Additionally, although the SEC notes that there are very few FPIs currently eligible to file on S-3, the proposed amendments would prohibit FPIs from using Form S-3.

Taken together, the proposed amendments are intended to allow a greater number of domestic issuers (and FPIs that opt to adhere to domestic reporting rules and file on domestic forms) the flexibility to access the public securities markets quickly by using Form S-3. The release states that, under the proposed amendments, there could be an increase of over 60% in the number of issuers eligible to offer an unlimited amount of securities on a primary basis on Form S-3. These newly eligible issuers would benefit from the cost savings and capital raising efficiencies and flexibilities associated with the ability to use Form S-3 and conduct shelf offerings.

Enhanced registration and communication benefits

Currently, certain registration and communication benefits are reserved for WKSIs. Among other benefits, WKSIs can file registration statements on Form S-3 that automatically become effective on filing, can pay SEC registration fees only when they sell securities off their shelf registration statements and have greater flexibility with respect to communications prior to filing a registration statement.

In order to qualify as a WKSI, an issuer must have at least USD 700 million in public float or have issued at least USD 1 billion of debt securities in registered offerings. Under the proposed amendments, issuers would not be required to satisfy either of these conditions in order to qualify for the enhanced registration and communication benefits. Instead, under the proposed amendments, issuers would qualify for those benefits — other than the ability to file an automatic shelf registration statement — if they are eligible to use Form S-3 and have at least one class of common equity securities listed on a national securities exchange. Issuers would have to be subject to the Exchange Act’s reporting requirements for at least 12 months before being able to file an automatic shelf registration statement.

These proposed amendments are intended to provide a greater number of issuers the flexibility to access the public securities markets on demand using automatic shelf registration statements and to benefit from other offering-related flexibilities. The release states that, under the proposed amendments, there could be an increase of over 200% in the number of issuers eligible for all of the enhanced registration and communication benefits that currently are only available to WKSIs.

Expansion of federal preemption of state securities law registration requirements

Section 18 of the Securities Act provides an exemption from state regulation for “covered securities” meaning that issuers of these securities do not need to comply with state securities registration and qualification requirements with respect to these securities. Currently, this exemption primarily applies to securities that are listed on a national securities exchange and securities that are senior to or equal in ranking to securities that are listed on a national securities exchange.

The proposed amendments would expand the scope of Section 18’s preemption so that it would apply to any securities offered and sold in a registered offering, irrespective of whether those securities were listed or ranked senior or equal to listed securities.

The proposed amendments would therefore eliminate the costs associated with complying with numerous states' registration and qualification requirements for all registered offerings.

This change would be particularly significant for issuers with no class of listed securities — such as non-traded real estate investment trusts and non-traded business development companies — that currently must navigate the registration and qualification requirements of each state in which they offer and sell securities.

Modernization of Form S-1: expanded incorporation by reference

Form S-1 is the SEC's comprehensive, default form of registration statement, which is typically used by private companies for their Initial Public Offerings (IPOs) and by public companies that are not eligible to use Form S-3. Form S-1 currently permits incorporation by reference of disclosure from other SEC filings on a limited basis. In particular, the ability to incorporate by reference information into Form S-1 filed before the effective date of the registration statement ("backward incorporate") currently is limited to issuers that, among other things, have filed an annual report for their most recently completed fiscal year. Further, the ability to incorporate by reference information filed after the effective date of a Form S-1 ("forward incorporate") currently is limited to issuers that qualify as smaller reporting companies.

Under the proposed amendments, issuers would be able to backward incorporate regardless of whether they had filed an annual report for their most recently completed fiscal year and forward incorporate regardless of whether they are a smaller reporting company. The proposed amendments would therefore allow a greater number of issuers to enjoy the cost savings associated with incorporation by reference, with an estimated increase of up to 106% in the number of issuers eligible to forward incorporate on Form S-1.

Part II: a simplified public company reporting framework

Background

Currently, public companies that file periodic reports with the SEC are categorized into five partially overlapping filer statuses with varying requirements and disclosure accommodations: large accelerated filers, accelerated filers, non-accelerated filers, smaller reporting companies, and emerging growth companies.

The existing filer status framework is complex. Companies' periodic report filing deadlines vary based on whether they are large accelerated filers, accelerated filers, or non-accelerated filers. Currently, the requirement to obtain an auditor's attestation on a company's internal control over financial reporting applies to large accelerated filers, accelerated filers, and certain smaller reporting companies (that are also accelerated filers and not also emerging growth companies), but not to non-accelerated filers or emerging growth companies. Certain disclosure scaling and accommodations are available to smaller reporting companies, and others are available to emerging growth companies. These currently include an exemption from the requirement to obtain an auditor attestation as to the effectiveness of the company's internal control over financial reporting, scaled compensation and financial disclosure requirements, and exemptions from certain shareholder advisory votes. The disclosure scaling and accommodations available to a particular company depend on whether it is in one, both, or neither of these categories.

Highlights of the proposed amendments

Through the proposed amendments, the SEC is seeking to incentivize more companies to go and stay public by proposing to extend current disclosure scaling and other accommodations and simplify the filer status framework. The key elements of the proposed amendments are as follows:

Raising the large accelerated filer threshold

The proposed amendments would raise the public float threshold for becoming a large accelerated filer from USD 700 million to USD 2 billion and calculate it based on the average stock price over the last 10 trading days of the second fiscal quarter as opposed to as of the last day of the second fiscal quarter. The proposed amendments would also require that the public float threshold be met for two consecutive years so that a one-year swing alone does not change filer status. Additionally, the proposed amendments would require at least 60 consecutive calendar months of reporting before a company can become a large accelerated filer.

Consolidation of filer categories

The proposed amendments would eliminate the categories of accelerated filer and smaller reporting company so that all companies that are not large accelerated filers simply become non-accelerated filers. However, the proposed amendments would not apply the new large accelerated filers and non-accelerated filers definitions to an FPI unless it uses the forms and rules designated for domestic issuers and provides financial statements prepared in accordance with US GAAP. Further, the proposed amendments do not contemplate changes to Form 20-F such that the USD 75 million public float threshold for the ICFR auditor attestation requirement would remain for FPIs.

Extended disclosure accommodations for non-accelerated filers

The proposed amendments would extend to all non-accelerated filers the same disclosure scaling and other accommodations currently available to smaller reporting companies and emerging growth companies. This includes:

- No requirement to obtain an auditor's attestation on a company's internal control over financial reporting,
- No say-on-pay, say-on-frequency, or say on golden parachute shareholder advisory votes,
- Scaled executive compensation disclosure, including:
 - Disclosure for only three named executive officers (instead of five NEOs),
 - Only two years of summary compensation table disclosure (instead of three years),
 - No compensation discussion and analysis disclosures;
 - No pay ratio disclosure,
 - No pay versus performance disclosure and
 - Fewer compensation tables, and
- Scaled financial disclosure, including only two years of audited financial statements (instead of three years of financials), with reduced presentation requirements.

A new sub-category: small non-accelerated filers

The proposed amendments would establish a new sub-category of small non-accelerated filers for companies with total assets of USD 35 million or less as of the issuer's two most recent second fiscal quarters. Small non-accelerated filers would have an additional 30 days to file Form 10-K annual reports and an additional five days to file Form 10-Q quarterly reports.

Proposed new filer categories at a glance

The table below summarizes the proposed new framework:

| Filer Category | Key Criteria | Estimated Share of Public Companies |
|---|--|--|
| Large Accelerated Filers | Public float \geq USD 2 billion; 60+ months of reporting seasoning | ~19% of public companies; ~93.5% of total public float |
| Non-Accelerated Filers | Public float < USD 2 billion and/or less than 60 months of seasoning | ~81% of public companies; ~6.5% of total public float |
| Small Non-Accelerated Filers (sub-category) | Total assets \leq USD 35 million | ~18% of public companies; ~22% of non-accelerated filers |

If the proposed amendments were in place today, 19.2% of current public companies would be large accelerated filers (compared to 35.4% currently) and 80.8% would be non-accelerated filers. A total of 17.9% of public companies (or 22.2% of non-accelerated filers) would be small non-accelerated filers.

Call to action

Both sets of proposed amendments represent a significant opportunity for companies to reassess their capital markets strategies and compliance frameworks. Companies should consider the following steps in light of these developments:

- **Assess your IPO or listing:** A private company should consider how the public offering reforms and a simplified reporting framework contemplated by the proposed amendments may make the prospect of going public and accessing the public capital markets more attractive.
- **Assess your filer status:** An existing public company should consider whether the company would qualify as a large accelerated filer, non-accelerated filer, or small non-accelerated filer under the proposed new framework, and evaluate the resulting impact on its reporting deadlines, auditor attestation obligations, and available disclosure accommodations.

- **Evaluate follow-on offering strategy:** An existing public company should consider whether the company would become newly eligible to use Form S-3 for shelf offerings or would qualify for expanded registration and communication benefits, and how this could affect its capital-raising plans.
- **Review state compliance obligations:** An issuer of unlisted securities should assess how the proposed preemption of state securities law registration requirements could reduce transactional costs and simplify its offering programs.
- **Submit comments:** Companies with views on the proposed rules are encouraged to submit comments to the SEC within the 60-day public comment period following publication in the Federal Register.

For specific advice on how these proposals may affect your business and to help you navigate the changes, please contact your Baker McKenzie relationship partner or any member of our Capital Markets team.

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Carol B. Stubblefield, Thomas J. Rice, and Steven Sandretto, Partners, have contributed to this legal update.

Contact us



Per Chilstrom
Partner
per.chilstrom
[@bakermckenzie.com](https://www.linkedin.com/company/bakermckenzie)



Mark Mandel
Partner
mark.mandel
[@bakermckenzie.com](https://www.linkedin.com/company/bakermckenzie)



Michael S. Pilo
Partner
michael.pilo
[@bakermckenzie.com](https://www.linkedin.com/company/bakermckenzie)

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