

Make Registered Offerings Great Again: SEC Proposes Amendments

May 22, 2026

On May 19, 2026, the Securities and Exchange Commission (the “SEC”) proposed amendments to the Securities Act of 1933, as amended (the “Securities Act”), that are intended to facilitate capital formation in the public securities markets by expanding issuer eligibility for key registration forms and offering tools, and by modernizing the rules governing how issuers communicate with investors (the “[Registered Offering Proposal](#)”).

On the same day, the SEC proposed amendments that would extend disclosure scaling and other accommodations currently available to newly public companies and smaller companies, to seasoned companies and mid-sized public companies. In a statement accompanying the proposed amendments, SEC Chairman Paul Atkins described the proposals as part of his “Make IPOs Great Again” agenda, which is intended to incentivize companies to “go and stay public.”¹

The proposed amendments follow the SEC’s recently issued proposed amendments that would permit eligible issuers to elect semiannual reporting in lieu of quarterly reporting, discussed in our recent [Debevoise In Depth](#). On January 13, 2026, SEC Chairman Atkins also announced that the SEC is soliciting comment letters to reform Regulation S-K.² The proposed amendments are part of the SEC’s broader efforts to simplify and modernize the SEC’s disclosure framework.

The key provisions of the Registered Offering Proposal are further discussed below.

¹ See Statement on Proposing Releases for Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies, and Registered Offering Reform, Chairman Paul S. Atkins (May 19, 2026), available at <https://www.sec.gov/newsroom/speeches-statements/atkins-statement-on-proposing-releases-for-enhancement-of-emerging-growth-company-accommodations-and-simplification-of-filer-status-for-reporting-companies-and-registered-offering-reform-051926>

² See Statement on Reforming Regulation S-K, Chairman Paul S. Atkins (January 13, 2026), available at <https://www.sec.gov/newsroom/speeches-statements/atkins-statement-reforming-regulation-s-k-011326>. Debevoise has participated in a number of these comment letter submissions, available at <https://www.sec.gov/rules-regulations/public-comments/cli-15>.

Expanding Form S-3 Eligibility

Form S-3 is a “short form” registration statement which permits issuers to omit certain offering-related information from the registration statement and instead provide that information when an offering is actually conducted, and to incorporate by reference company-related information from Exchange Act filings—including on a prospective basis—thereby keeping the registration statement automatically updated. This flexibility allows Form S-3 Eligible Issuers (as defined below) to more easily conduct shelf offerings under Rule 415, allowing issuers to register securities before any specific offering is planned and sell them “off the shelf” without further SEC action. This gives issuers greater control over offering timing, enabling them to capitalize on favorable market conditions.

Expansion of Eligibility

If adopted, the Registered Offering Proposal would eliminate the following Form S-3 eligibility requirements:

- **One Year Seasoning.** The Registered Offering Proposal would eliminate the requirement that an issuer have been subject to Exchange Act reporting requirements for at least 12 calendar months prior to filing a Form S-3. Instead, issuers would need to be current and timely with respect to all the material required to be filed pursuant to Sections 13(a), 14(a), 14(c) and 15(d) of the Exchange Act during the preceding 12 calendar months or such shorter period during which the issuer was required to file such reports and materials.³

As proposed, an issuer would not be required to reassess Form S-3 eligibility at the time of a takedown offering, and could instead rely upon Form S-3 eligibility determined at the time of the initial filing and subsequent annual updates pursuant to Section 10(a)(3) of the Securities Act. However, the SEC is seeking comment on this issue.

- **Certain Failures to Make Payments and Default.** The Registered Offering Proposal would eliminate the requirement that the issuer must not have, since the end of the last fiscal year for which certified financial statements of the issuer and its consolidated subsidiaries were included in a report filed pursuant to Section 13(a) or

³ The Registered Offering Proposal would also amend the Form S-3 eligibility requirements to provide that an issuer would remain eligible to use Form S-3 notwithstanding an untimely filing during the applicable lookback period, so long as the filing was made within seven calendar days of the original due date. This approach is consistent with the SEC staff's current practice of not objecting to the use of Form S-3 in certain limited circumstances involving untimely filings.

15(d) of the Exchange Act: (a) failed to pay any dividend or sinking fund installment on preferred stock or (b) defaulted (i) on any installment or installments on indebtedness for borrowed money or (ii) on any rental on one or more long-term leases, which defaults in the aggregate are material to the financial position of the issuer and its consolidated and unconsolidated subsidiaries, taken as a whole.

- **Electronic Filing and XBRL.** The Registered Offering Proposal would eliminate the requirement to have filed electronic filings with or submitted Interactive Data Files to the SEC. The SEC noted that it believes that such requirements are no longer necessary to induce compliance with the relevant requirements.

Eligibility of Majority-Owned Subsidiaries

The Registered Offering Proposal would permit certain majority-owned subsidiaries, including wholly owned and totally held subsidiaries that are not Exchange Act reporting companies, to continue to register parent or subsidiary guarantees on a parent company's Form S-3, provided their parent company is eligible to use Form S-3 and the parent company and subsidiary are identified as co-registrants on the registration statement. The practical effect of this revised instruction would be limited, as the current Form S-3 instructions already contemplate registration of a subsidiary's securities on the parent's Form S-3. The Registered Offering Proposal would clarify that such securities *must* be registered on the parent company's Form S-3.

Prohibition on Use of Form S-3 by Ineligible Issuers

The Registered Offering Proposal would prohibit "BSP Issuers"—a newly defined term encompassing blank check companies, shell companies (other than business combination-related shell companies) and penny stock issuers—from using Form S-3. However, an issuer would not be considered a shell company solely because during the past three years it or a predecessor was a special purpose acquisition company ("SPAC"), allowing post-de-SPAC entities to use Form S-3 if they are not shell companies at the time of filing.

In addition to BSP Issuers, certain other categories of issuers would also be ineligible to use Form S-3, including issuers convicted of certain felonies and misdemeanors, issuers subject to a decree or order involving a violation of the antifraud provisions of the Federal securities laws, issuers that have been subject to a refusal order or stop order under Section 8 of the Securities Act within the past three years, and issuers that are subject to pending proceedings or examinations under Sections 8 or 8A of the Securities Act.

Foreign Private Issuers ("FPIs") would be prohibited from using Form S-3. The SEC noted, however, that it expects the practical impact of this change to be limited because

relatively few FPIs currently qualify to use Form S-3, and eligible FPIs would continue to be able to use Form F-3.

The Registered Offering Proposal would also permit issuers that would otherwise be ineligible to use Form S-3 to seek a waiver from the SEC upon a showing of good cause that ineligible issuer treatment is necessary under the circumstances. Issuers that receive a waiver would remain eligible to use Form S-3 so long as they satisfy the form's other requirements. The SEC acknowledged that the proposed amendments could increase the volume of waiver requests and requested comment on the availability of waivers in this context.

Elimination of Transaction Requirements

The Registered Offering Proposal would eliminate Form S-3's transaction requirements in current General Instruction I.B, including the requirement that an issuer have a \$75 million public float to conduct unlimited primary offerings and the one-third of public float limitation on primary offerings by certain smaller issuers (the "baby shelf" rules), such that any issuer that meets the proposed registrant requirements (i.e., is current and timely in Exchange Act reporting and is not an ineligible issuer) would be eligible to use Form S-3.

ATM Offerings

Form S-3 eligibility also facilitates at-the-market ("ATM") offerings, which allow issuers to sell equity securities into an existing trading market at prevailing market prices over time. ATM offerings may be conducted on either a primary or resale basis. Under the Registered Offering Proposal, Rule 415(a)(4) would be amended to limit ATM offering eligibility to securities listed and traded on a national securities exchange or traded in a market specifically designated by the SEC.⁴

Replacing the WKSI Eligibility Criteria

Since 2005, issuers that qualify as "well-known seasoned issuers" ("WKSI") have benefited from a streamlined securities offering framework that affords significant flexibility in not only the registration process but also offering-related communications. These "enhanced registration and communication benefits" include the ability to file automatically effective shelf registration statements, defer payment of registration fees

⁴ In determining whether to designate a market, the SEC would consider a non-exclusive set of attributes, including information reporting requirements, minimum bid price and public float requirements, minimum shareholder thresholds, trading volume, dollar volume, and the number of market makers—factors intended to help ensure adequate issuer disclosure and market liquidity.

on a “pay-as-you-go” basis, engage in a broader range of pre- and post-filing communications than is permitted for other issuers and add securities or classes of securities to an effective registration statement through post-effective amendments.

Under the current framework, a domestic issuer generally qualifies as a WKSI if, among other requirements, it either has a public float of at least \$700 million or has issued at least \$1 billion aggregate principal amount of non-convertible securities in primary registered offerings during the preceding three years. The WKSI definition would be retained only for FPIs, which would continue to qualify under the existing criteria.

The SEC proposes to replace three current categories of domestic issuers—“unseasoned issuers,” “seasoned issuers” and “WKSIs”—with three new categories:

- **Form S-3 Eligible Issuer.** As described above, Form S-3 Eligible Issuers are those Exchange Act reporting companies, other than specified ineligible issuers, that are current and timely in their Exchange Act reporting.
- **Eligible Listed Issuer.** An “Eligible Listed Issuer” (“ELI”) would be 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.** A “Seasoned Eligible Listed Issuer” (“SELI”) would be an ELI that has additionally been subject to Exchange Act reporting requirements for at least 12 calendar months.

The determination date for whether an issuer qualifies as an ELI or SELI would be consistent with those currently applied to WKSIs.

According to the Registered Offering Proposal, approximately 74% of Exchange Act reporting issuers would qualify as SELIs, as compared to the current 36% that qualify as WKSIs.

Expansion of Enhanced Registration and Communications Benefits

Under the Registered Offering Proposal, SELIs would be the only type of issuer that would be eligible for automatically effective shelf registration (a benefit for which only WKSIs are currently eligible). SELIs would also be eligible for all the benefits available to ELIs and Form S-3 Eligible Issuers.

Several benefits currently reserved for WKSIs would be extended to all SELIs and ELIs. Specifically, ELIs would be eligible to rely on Rules 163, 163A, 413, 430B(a), 456(b) and 457(r) under the Securities Act, regardless of how long they have been subject to

Exchange Act reporting requirements. Among the most significant of these benefits are greater flexibility with respect to communications before and after the filing of a registration statement, and the ability to pay filing fees at the time of a takedown offering rather than at the time of filing the Form S-3 registration statement.

ELIs would also be able to register additional securities—or additional classes of securities, including those of majority-owned subsidiaries—by filing a post-effective amendment to a non-automatic shelf registration statement before satisfying the 12-month Exchange Act reporting requirement to qualify as a SELI. In addition, ELIs would be permitted to omit from the base prospectus certain information currently required at the time of effectiveness, including whether an offering is primary or secondary, the plan of distribution, a description of the securities (other than the name or class) and the identification of other issuers. ELIs would also be eligible for all other benefits currently available to Form S-3 Eligible Issuers.

The Registered Offering Proposal would also extend certain benefits—currently available to WKSIs and certain non-WKSIs—to all Form S-3 Eligible Issuers, regardless of whether they are exchange-listed. Specifically, Rules 139, 430B(b) and 433 would permit all Form S-3 Eligible Issuers to: (i) have broker-dealers participating in a distribution publish issuer-specific research reports without those reports constituting an “offer”; (ii) omit the identities of selling security holders and the amounts of securities to be registered on their behalf; and (iii) use a free writing prospectus (“FWP”) without the FWP being preceded or accompanied by a statutory prospectus.

Below is a summary of the enhanced registration and communication benefits.

Registration and Communication Benefit	Current Rule	Proposed Rule
Rule 139 – research report exemption	<ul style="list-style-type: none"> WKSIs Any non-WKSI eligible for primary offerings under I.B.1 or I.B.2 of Form S-3 	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 FWPs 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) – ability to omit: <ul style="list-style-type: none"> (i) information as to whether the offering is a primary offering or an offering on behalf of persons other than the issuer, or a combination thereof, (ii) the plan of distribution for the securities, (iii) a description of the securities registered other than an identification of the name or class of such securities, and (iv) the identification of other issuers 	WKSIs	ELIs
Rule 430B(b) – for resale registration statements, may omit the identities of selling security holders and amounts of securities to be registered on their behalf	<ul style="list-style-type: none"> WKSIs Any non-WKSI eligible for primary offerings under I.B.1 of Form S-3, subject to certain conditions 	All Form S-3 eligible issuers
Rule 433 – prospectus not required to accompany or precede FWP	<ul style="list-style-type: none"> WKSIs Any non-WKSI that is Form S-3 eligible for primary offerings under I.B.1 or conducting an offering pursuant to I.B.1, I.B.2 or I.C of Form S-3 	All Form S-3 eligible issuers
Rule 456(b)/457(r) – “pay-as-you-go”	WKSIs	ELIs
Rule 462 – automatic shelf registration	WKSIs	SELIs

Form S-1: Expanded Incorporation by Reference

Form S-1 is the default registration statement available to any domestic issuer not eligible to use another form. Currently, Form S-1 permits issuers to incorporate by reference previously filed Exchange Act reports into the registration statement

(“backward incorporation”), provided the issuer has filed a Form 10-K for its most recently completed fiscal year. Form S-1 currently permits “forward incorporation” (i.e., automatic updating of the registration statement via future Exchange Act filings) only for smaller reporting companies (“SRCs”).

The Registered Offering Proposal would make two notable changes:

- **Elimination of the Annual Report Requirement for Backward Incorporation.** The Registered Offering Proposal would eliminate the requirement that an issuer must have filed a Form 10-K for its most recently completed fiscal year in order to use incorporation by reference on Form S-1. This would benefit issuers in their first year as Exchange Act reporting companies who have not yet filed an annual report, allowing them to incorporate by reference their initial Securities Act or Exchange Act filing that contains “Form 10 information,” to be defined as information that is required by Form 10 to register under the Exchange Act each class of securities the Form S-1 is registering.
- **Extension of Forward Incorporation by Reference to All Eligible Issuers.** The Registered Offering Proposal would amend Form S-1 to permit any issuer that meets the eligibility requirements for backward incorporation to also forward incorporate.

Other Amendments

In addition to the changes described above, the Registered Offering Proposal addresses several other significant topics, including: (i) extending the federal preemption of state “blue sky” registration and qualification requirements beyond exchange-listed securities to all securities offerings registered under the Securities Act; (ii) making conforming changes to the registration, communication and offering process for business development companies and registered closed-end investment companies that register securities on Form N-2; (iii) amending the communication rules to permit broad-based advertising for certain registered non-variable annuity products; and (iv) making certain other modernizing amendments to the registered offering framework. A separate Debevoise & Plimpton update discussing certain of these aspects of the Registered Offering Proposal in greater detail is forthcoming.

The Registered Offering Proposal also proposes to eliminate the income-related conditions in Rules 3-01(c)(2) and (3) and 8-08(b)(2) and (3) of Regulation S-X, expanding the availability of existing grace periods for audited annual financial statements. The SEC noted that the current rules can disproportionately burden loss-

generating issuers, which may have greater capital needs but are unable to rely on the extended timing accommodations.

Requests for Comment

The Registered Offering Proposal includes requests for comment on 177 questions related to the proposed amendments, including when the proposed amendments should become effective if adopted (as noted above), and whether:

- the amendments meaningfully expand issuer access to ATM offerings while maintaining appropriate investor protections;
- rather than eliminating the WKSJ definition (as it relates to all issuers other than FPIs) as proposed, the SEC should retain it but reduce the public float and registered debt-based thresholds to expand WKSJ eligibility;
- an issuer should be excluded from ELI or SELI status if its exchange-listed securities are the subject of a trading suspension, if it is the subject of a delisting notice, or if delisting proceedings have commenced;
- the SEC should retain a minimum public float requirement for Form S-3 transaction requirements and if so, whether \$75 million is the appropriate threshold for such requirement;
- the enhanced registration and communication benefits should be expanded to a broader set of issuers;
- BSP Issuers should be precluded from backward or forward incorporation by reference into Form S-1; and
- to amend Form S-1 to no longer allow FPIs to use the form.

The public comment period for the proposed amendments will remain open for 60 days following publication of the proposing release in the *Federal Register*. Comments may be submitted via the SEC's form, available [here](#).

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Please do not hesitate to contact us with any questions.



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