The Bold and the Creative (Part II): SEC Proposes Significant Registered Offering Reforms Designed to Incentivize Companies to Go and Stay Public and Seeks Public Comment on Further Modernization

On May 19, 2026, the U.S. Securities and Exchange Commission (the "SEC") proposed wide-ranging rule amendments (i) to rationalize its existing filer status framework and extend scaled disclosures and other accommodations to many registrants (the "Filer Status Proposal")[1] and (ii) to reform registered offerings by making certain existing accommodations more broadly available (the "Registered Offering Proposal").[2] Additionally, on May 26, 2026, SEC Chairman Paul Atkins requested public comment on the modernization of the initial public offering ("IPO") process and related rules (the "IPO Rules Request for Comment").[3]

This Client Alert focuses on the Registered Offering Proposal and the IPO Rules Request for Comment. For discussion of the Filer Status Proposal, please refer to our companion memo titled "The Bold and the Creative (Part I): SEC Proposes to Rationalize Filer Status Framework and Extend Accommodations to Significantly More Registrants" (the "Part I Memo").

REGISTERED OFFERING PROPOSAL

The Registered Offering Proposal would (i) expand Form S-3 eligibility, (ii) extend certain benefits currently reserved for "well-known seasoned issuers" ("WKSIs") to a broader set of issuers, (iii) modernize Form S-1 by expanding the ability to incorporate information by reference into that form, (iv) preempt state securities law registration and qualifications requirements for all registered offerings and (v) make other streamlining amendments to simplify and modernize the offering process.[4] At this time, the Registered Offering Proposal does not contemplate making conforming changes to Form F-3 and Form F-1, which are the equivalent forms used by foreign private issuers ("FPIs").

Overview of Proposed Amendments

EXPANDING FORM S-3 ELIGIBILITY

Form S-3 is a short-form registration statement that provides several advantages to eligible issuers. Notably, Form S-3 permits eligible issuers to (i) backward and forward incorporate by reference the disclosure in their Securities Exchange Act of 1934 (the "Exchange Act") filings; (ii) omit from the base prospectus that is filed at the time of effectiveness certain information about the proposed

offering; and (iii) take advantage of desirable market conditions by being able to conduct offerings on a delayed basis ("shelf takedowns") without additional SEC approvals.

Eligibility to use Form S-3 in respect of various types of offerings is currently determined on the basis of a complex set of (i) registrant requirements and (ii) transaction requirements.

The Registered Offering Proposal would revise Form S-3's eligibility requirements to (i) eliminate four of the existing eight registrant requirements and add two new ones; and (ii) eliminate the transaction requirements.[5] As such, any issuer that meets the proposed registrant requirements would be eligible to use Form S-3 for any primary or secondary offering[6] of the issuer's securities.[7]

IPO candidates and newly public companies could benefit significantly from the proposal. As described below, under current rules, newly public companies must wait at least one year before accessing Form S-3's streamlined shelf registration benefits. The elimination of the one-year seasoning requirement, along with other related changes, could allow companies to file a Form S-3 shelf registration statement shortly after their IPO (likely after the expiration of the customary IPO lock-up). The proposal would allow newly public companies to raise follow-on capital more rapidly and opportunistically.

More specifically, the Registered Offering Proposal contemplates: Amending the Form S-3 registrant requirements as follows:

Current Form S-3 Registrant Requirement	Proposed Form S-3 Registrant Requirement
U.S. Issuer. The issuer must be organized under the laws of the United States or any State or territory or the District of Columbia and have its principal business operations in the United States or its territories. Foreign issuers, other than foreign governments, also can use Form S-3 if they satisfy all the registrant requirements, other than the "U.S. Issuer" eligibility requirement, and file the same Exchange Act reports as a domestic issuer.	**Retain**, *except* that a foreign issuer that qualifies as an FPI would be prohibited from using Form S-3
Exchange Act Reporting. The issuer must have a class of securities registered pursuant to section 12(b) or 12(g) of the Exchange Act or be required to file reports pursuant to section 15(d) of the Exchange Act.	**Retain**, *but see* exception for Guarantee-Related Offerings by majority-owned subsidiaries discussed below
Current in Exchange Act Reporting. The issuer must have filed all the material required to be filed pursuant to section 13, 14, or 15(d) of the Exchange Act for a period of at least 12 calendar months immediately preceding the filing of the registration statement.	**Retain**, *except* that the relevant period can be shorter if an issuer has been subject to the Exchange Act requirements for fewer than 12 calendar months*
Timely in Exchange Act Reporting. The issuer must have filed in a timely manner all reports required to be filed during the 12 calendar months and any portion of a month immediately preceding the filing of the registration statement, other than specified reports on Form 8-K.	**Retain**, *except* that the relevant period can be shorter if an issuer has been subject to the Exchange Act requirements for fewer than 12 calendar months* **Codify relief for late filing.** The Registered Offering Proposal would formalize the staff's current practice of not objecting to the use of Form S-3, in limited circumstances, when an untimely filing has been made during the relevant lookback period, provided that (i) the issuer made only one untimely filing during the relevant lookback period and

Current Form S-3 Registrant Requirement	Proposed Form S-3 Registrant Requirement
	(ii) the untimely filing was made within seven calendar days of the original due date.[8] **Codify staff interpretation of relevant filings.** The Registered Offering Proposal would formalize the staff's current practice of considering only a subset of Exchange Act reports for purposes of meeting the timeliness requirement.[9]
One-Year Seasoning. The issuer must have been subject to the requirements of section 12 or 15(d) of the Exchange Act for a period of at least 12 calendar months immediately preceding the filing of the registration statement.	**Eliminate** *Explanation*: The SEC believes that, in light of technological developments, an investor's ability to obtain issuer-specific information in Exchange Act reports depends only on whether an issuer is current and timely with respect to its reporting obligations, not on the length of the issuer's reporting history.
Certain Failures to Make Payments and Defaults. The issuer must have not, 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 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.	**Eliminate** *Explanation*: The SEC believes that this test is unnecessary because disclosure requirements should provide investors with the information necessary to evaluate the issuer's financial health. Additionally, the use of tests measuring the 'quality of a registrant' is inconsistent with the principle of short-form registration.
Electronic Filings. The issuer must have filed with the SEC all required electronic filings.	**Eliminate** *Explanation*: The SEC believes that the requirement is no longer a necessary eligibility criterion, as it was added in 1993 to incentivize compliance with the then-new EDGAR filing requirements.
Interactive Data Files. The issuer must have submitted electronically to the SEC all Interactive Data Files required to be submitted pursuant to 17 CFR 232.405 during the 12 calendar months and any portion of a month immediately preceding the filing of the registration statement on Form S-3 (or for such shorter period of time that the issuer was required to submit such files).	**Eliminate** *Explanation*: The SEC believes that the requirement is no longer a necessary eligibility criterion, as it was added in 2009 to incentivize compliance with the then-new structured data filing requirements.
N/A.	**Add a requirement that the issuer must not be an "ineligible issuer".** An ineligible issuer for purposes of Form S-3 eligibility[10] would be defined as an issuer that:

Current Form S-3 Registrant Requirement	Proposed Form S-3 Registrant Requirement
	- *BSP*: is, or during the past three years was or any of its predecessors was, (i) a blank check company, (ii) a shell company (other than a business related shell company), *provided* that an issuer, other than an FPI, would not be deemed to be a shell company solely because during the past three years either the issuer or any of its predecessors was a special purpose acquisition company ("SPAC"), or (iii) an issuer in an offering of penny stock (collectively, "BSPs"); - *Convictions and orders*: was, or whose subsidiary was, within the past three years, (i) convicted of certain felonies or misdemeanors or (ii) made the subject of certain judicial or administrative decrees or orders, *but only if* such decree or order is based on a material misstatement or omission in violation of the applicable antifraud provisions of the U.S. federal securities laws in certain specified materials; - *Section 8*: has filed a registration statement that, under Section 8 of the Securities Act of 1933 (the "Securities Act"), (i) is the subject of any pending proceeding or examination or (ii) has been the subject of any refusal order or stop order within the past three years; or - *Section 8A proceedings*: is the subject of any pending cease-and-desist proceeding under Section 8A of the Securities Act in connection with an offering. *Explanation*: The SEC believes that these categories of issuers may pose greater potential for non-compliance with U.S. federal securities laws.
N/A.	**Add a requirement that the issuer must not be a prohibited issuer.** The following types of issuers would be prohibited from using Form S-3 at any time, including both at the time of initial filing of Form S-3 and at the time of any offering registered on the form: - A foreign government or an FPI;[11] - An asset-backed issuer; - An investment company; and - A business development company ("BDC"). *Explanation*: These issuers can register securities on Form F-3 (FPIs), Form SF-3 (asset-backed issuers) and Form N-2 (investment companies and BDCs).

* The Registered Offering Proposal would eliminate the instruction stating that successor registrants can rely on their predecessor's Exchange Act reporting history to determine their own Form S-3 eligibility. This instruction would no longer be necessary if issuers no longer need to have been subject to the Exchange Act's reporting requirements for a minimum amount of time.

- **Eliminating the Form S-3 transaction requirements.** Currently, issuers are eligible to register offerings on Form S-3 if they satisfy (i) the registrant requirements, as discussed above, and (ii) at least one of the transaction requirements. The type of transactions that can be registered depends, first, on whether the issuer's public float is $75 million or more, in which case the issuer can register any primary or secondary offerings for cash. If the issuer does not meet the minimum public float requirement, it may nevertheless register certain primary offerings if it meets other specified criteria. The Registered Offering Proposal contemplates:
  - **Eliminating the $75 million public float threshold.** The SEC historically relied on a minimum public float requirement as a proxy for whether an issuer was widely followed and, in turn, whether information about the issuer disclosed in Exchange Act reports rather than in the prospectus had been sufficiently disseminated into the marketplace. The SEC now believes that Form S-3 eligibility should instead be based principally on the ability to readily obtain issuer-specific information in Exchange Act reports.[12]
  - **Eliminating all other transaction requirements for parent offerings.** Issuers currently only need to rely on the other transaction requirements, including the so-called "baby shelf" rule,[13] if they do not satisfy the $75 million public float requirement. As the SEC proposes to eliminate that public float requirement, the Registered Offering Proposal would also eliminate all other transaction requirements.
  - **Creating a separate instruction for Guarantee-Related Offerings by certain majority-owned subsidiaries.** Majority-owned subsidiaries that are not Exchange Act reporting companies, and that would therefore not meet the registrant requirements above on a stand-alone basis, would be permitted, as they currently are, to register offerings involving parent or subsidiary guarantees ("Guarantee-Related Offerings")[14] on a parent's Form S-3, provided the parent meets the registrant requirements and the parent and the subsidiary are identified as co-registrants.
  - **Limiting eligibility to conduct at-the-market ("ATM") offerings to securities listed or traded only in specified markets.** The Registered Offering Proposal would permit the use of Form S-3 for ATM offerings only for securities listed and traded on a national securities exchange, such as the New York Stock Exchange and Nasdaq, or in a market designated by the SEC on the basis of a non-exclusive list of attributes. The SEC expects that such designation would initially be granted to the OTCQX Best Market tier and the OTCQB Venture Market tier of the OTC Link ATS.

EXTENDING WKSI BENEFITS TO A BROADER SET OF ISSUERS

The Registered Offering Proposal would extend to a larger set of issuers certain existing benefits (referred to as the "Enhanced Registration and Communication Benefits"), currently reserved for WKSIs and other seasoned issuers, by replacing the current tiered issuer framework with new issuer categories.

More specifically, the Registered Offering Proposal contemplates:

- **Creating three new issuer categories.** The Registered Offering Proposal would replace the current three categories of issuers: "unseasoned issuer", "seasoned issuer" and "WKSI",[15] with the following three new tiers: "Form S-3 eligible issuer", "Eligible Listed Issuer" ("ELI") and "Seasoned Eligible Listed Issuer" ("SELI").

- **Extending Enhanced Registration and Communication Benefits to more issuers.** Under the Registered Offering Proposal, some Enhanced Registration and Communication Benefits would be available to all Form S-3 eligible issuers, while others would be available only to ELIs and SELIs, with automatic shelf registration reserved exclusively for SELIs.

These proposed changes are summarized below:

	Form S-3 eligible issuer	ELI	SELI
Issuer Tier Criteria			
Registrant requirements: meets Form S-3's proposed registrant requirements	✓	✓	✓
Equity listing: has at least one class of common equity securities listed on a national securities exchange		✓	✓
Seasoning: has been subject to the Exchange Act's reporting requirements for a period of at least 12 calendar months and any portion of a month immediately preceding the relevant measurement date			✓
Enhanced Registration and Communication Benefits			
Rule 139 – Research reports: is permitted to have broker-dealers participating in a distribution of securities issue an issuer-specific research report without such report constituting an "offer"	✓	✓	✓
Rule 430B(b) – Selling shareholders: is permitted to omit the identities of selling security holders and the volume of securities registered on their behalf for resale registration statements	✓	✓	✓
Rule 433 – Free writing prospectuses: is permitted to use a free writing prospectus without a preceding or accompanying prospectus	✓	✓	✓
Rule 163, Rule 163A, Rule 164 – Communications: has greater pre- and post-filing communication flexibility (pre-filing offers and post-filing free writing prospectuses)		✓	✓
Rule 413 – Additional securities: has the ability to register additional securities or additional classes of securities, including securities of a majority-owned subsidiary, by filing a post-effective amendment		✓	✓
Rule 430B(a) – Transaction disclosure: has the ability to omit certain transaction-specific information from its registration statements		✓	✓
Rule 456(b), Rule 457(r) – Filing fees: has the ability to use the pay-as-you-go filing fee payment structure instead of making a payment at the time of filing Form S-3		✓	✓
Rule 462 – Automatic shelf registration: has the ability to file automatically effective registration statements that are not subject to SEC review			✓

MODERNIZING FORM S-1

Currently, Form S-1 allows all issuers that meet certain eligibility criteria[16] to backward incorporate their Exchange Act filings, but only smaller reporting companies ("SRCs") are permitted to automatically update information in their prospectus via forward incorporation. To be eligible to forward incorporate on Form S-1, SRCs must satisfy the form's eligibility requirements to incorporate by reference.

The Registered Offering Proposal would amend the incorporation by reference provisions of Form S-1. More specifically, the Registered Offering Proposal contemplates:

- **Eliminating the requirement that the issuer have filed an annual report before it can use incorporation by reference.** As a result, (i) eligible issuers would be able to use incorporation by reference on Form S-1 prior to filing a Form 10-K for the issuer's most recently completed fiscal year; and (ii) an eligible issuer in its first year as an Exchange Act reporting company would be permitted to incorporate by reference on Form S-1 before it is required to file a Form 10-K.
    - However, the other requirements for incorporation by reference, *i.e.*, that the issuer be an Exchange Act reporting company and be current in its reporting, would be retained. BSPs would not be eligible to use incorporation by reference, with the same exception for SPACs as provided under the Form S-3 instructions.
    - Form S-1 would also be amended to require, if the issuer has not yet filed a Form 10-K, that the issuer incorporate by reference a Securities Act or Exchange Act filing that contains "Form 10 information", which would be defined as information that is required by Form 10 to register under the Exchange Act each class of securities that the relevant form is registering.
- **Allowing any issuer that is permitted to backward incorporate by reference to also forward incorporate.** Item 12(b) of Form S-1 would be amended to expand the ability to forward incorporate beyond SRCs, to apply to all issuers that otherwise meet the incorporation by reference requirements.

The Registered Offering Proposal would also prohibit FPIs, investment companies and BDCs from using Form S-1.

PREEMPTING STATE SECURITIES LAW REGISTRATION AND QUALIFICATION REQUIREMENTS FOR ALL REGISTERED OFFERINGS

Currently, Section 18(a) of the Securities Act preempts state securities law registration and qualification requirements with respect to "covered securities", a term that does not encompass all securities offered and sold pursuant to a registered offering. Notably, many unlisted securities offered or sold in registered offerings are not considered "covered securities" and therefore remain subject to state law.

The Registered Offering Proposal would amend applicable rules to preempt state securities law registration and qualification requirements for any registered offering under the Securities Act, including in respect of securities that are not listed or approved for listing on a national securities exchange.

MAKING OTHER STREAMLINING AMENDMENTS

The Registered Offering Proposal contemplates making the following additional amendments, among others:

- **Eliminating the need for "delaying amendments".** Currently, issuers must include a so-called "delaying amendment" on the facing page of their registration statements to avoid the registration statement automatically becoming effective on the 20th day after filing. The Registered Offering Proposal would instead deem registration statement effectiveness to be delayed unless the issuer affirmatively indicates otherwise.

- **Eliminating income-related conditions when assessing eligibility for extended grace periods for inclusion of audited financial statements in registration or proxy statements.** Under Rule 3-12 and Rule 8-08 of Regulation S-X, issuers that file a registration or proxy statement with a date of effectiveness or mailing date, as applicable, within the first 45 days after their fiscal year end (the "grace period") do not need to provide audited financial statements for the most recently completed fiscal year. This grace period can be extended by additional days, depending on the issuer's filer status, but only if the issuer meets certain income-related conditions. To avoid having loss-generating issuers, which may have a greater need for capital but are ineligible for the extended grace periods, incur greater compliance costs than higher-income issuers, the Registered Offering Proposal would make the extended grace periods available regardless of income status.

Frequently Asked Questions

1. **What key shortcomings of the existing registered offerings regime is the SEC seeking to address with the Registered Offering Proposal?**

In broadening access to Form S-3 and the Enhanced Registration and Communication Benefits and removing seasoning and public float criteria, the SEC aims to address, among others, the following concerns:

- **Inefficient market access.** For many issuers that are currently ineligible to use Form S-3, reliance on Form S-1 is significantly more burdensome because it does not permit issuers to quickly respond to favorable market conditions. Instead, these issuers must prepare and file a new registration statement in connection with each anticipated offering, may need to await SEC staff action before selling securities and in many cases must continually update the registration statement through prospectus supplements or post-effective amendments.
- **Outdated indicia of market following.** The SEC believes that traditional benchmarks such as public float and the length of an issuer's Exchange Act reporting history are no longer appropriate proxies for determining whether an issuer's information has been sufficiently disseminated into the marketplace or whether it is widely followed. Technological developments, including filing through EDGAR and other electronic channels and the availability of artificial intelligence ("AI") tools to summarize and compile information, have fundamentally transformed how issuers disseminate information and how that information is absorbed by the investor and business communities.

2. **Would the Registered Offering Proposal change the capital-raising options available to issuers immediately after their IPO?**

Yes. This is one of the most significant benefits for IPO candidates. Under current rules, an issuer that has just completed its IPO has to wait at least one year before it can access the short-form and shelf offering benefits of Form S-3 because of the "One-Year Seasoning" requirement. The Registered Offering Proposal would eliminate this requirement. As a result, an issuer could complete its IPO and, as a legal matter, immediately file a shelf registration statement on Form S-3. As a practical matter, however, we would expect most issuers to file a Form S-3 shelf registration statement following the expiration of the customary 180-day IPO lock-up period, though preparation could begin earlier. Once the Form S-3 is effective following SEC review, the issuer could access the market opportunistically without having to prepare and file (and be subject to further SEC review in respect of) a new registration statement for each offering. ATM programs would also be available in an issuer's first year as a public company if the issuer meets the applicable listing or trading requirements. Exchange-listed issuers that qualify as ELIs would immediately be eligible for additional benefits, including pay-as-you-go filing fees and greater pre-offering communication flexibility. However, issuers would continue to have to wait at least one year before being eligible to file automatically effective registration statements on Form S-3.

3. **Would the Registered Offering Proposal change the capital-raising options available to issuers that went public through a de-SPAC transaction?**

Yes. Under current rules, an issuer that goes public through a de-SPAC transaction is generally treated as a "shell company" for purposes of Rule 405 under the Securities Act. As a result, it is considered an "ineligible issuer" that cannot qualify as a WKSI for at least three years after the closing of the de-SPAC transaction. This limitation significantly restricts the issuer's access to Form S-3 shelf offerings and to the Enhanced Registration and Communication Benefits during that three-year period. The Registered Offering Proposal would instead provide that, for purposes of Form S-3 eligibility, a former SPAC would not be deemed to be a shell company solely because it or its predecessor was a SPAC in the past three years. As a result, an issuer that successfully completes a de-SPAC transaction would be eligible to use Form S-3 to the same extent as a newly public company that conducts a traditional IPO, provided it meets the other proposed eligibility requirements.

4. **Would the Registered Offering Proposal make conforming changes to Form S-8 eligibility to align with changes to Form S-1 and Form S-3, where applicable?**

No. For example, at this time, the SEC is not proposing to amend Form S-8 to eliminate the "Electronic Filing" or the "Interactive Data Files" registrant requirements in line with the proposed amendments to Form S-3. Additionally, the SEC is not proposing to carve out former SPACs from the 60-calendar day lookback period in respect of the eligibility of shell companies to use Form S-8.

In contrast, the Registered Offering Proposal would make conforming amendments to Form S-4 where its instructions currently refer to components of the eligibility tests under Form S-3.

5. **Would FPIs that meet the applicable criteria be able to avail themselves of the new eligibility criteria and related accommodations for Form S-1 and Form S-3?**

No. The Registered Offering Proposal would not make conforming amendments to Form F-1 and Form F-3 and FPIs would continue to report on those forms on the basis of existing requirements. The Registered Offering Proposal would also eliminate FPI eligibility to use Form S-1 and Form S-3, although this would in practice affect only FPIs that voluntarily file on U.S. domestic forms. Foreign issuers that do not qualify for FPI status (and are therefore treated as domestic filers) would continue to be eligible to report on Form S-1 and Form S-3.

In line with the foregoing, the rescission of the WKSI definition would not extend to FPIs. Accordingly, FPIs will continue to be required to satisfy the WKSI definitional requirements in order to receive the Enhanced Registration and Communication Benefits currently available only to WKSIs. Notably, the Registered Offering Proposal would not amend the three-year lookback on shell company status for FPIs. As a result, an FPI that was a SPAC during the past three years would not be eligible to be a WKSI.

IPO RULES REQUEST FOR COMMENT

Chairman Atkins has asked the SEC staff to prepare recommendations to modernize the IPO process itself and is seeking public comment in support of this effort. In particular, but without limitation, he seeks new ideas to reform:

- **The communication (or so-called "gun-jumping") rules under the Securities Act.** The Chairman seeks to replace the current "spider web" of gun-jumping prohibitions and exceptions with a more harmonized set of rules about written and oral offers to sell securities that align with the ways in which businesses communicate with employees, customers and potential investors and are congruent with today's technology; and

- **The methods by which companies become public.** The Chairman seeks faster, cheaper ways to enable companies to become public beyond the traditional firm commitment underwriting that could be less susceptible to unfavorable market conditions and benefit from greater valuation certainty. For example, he suggests revisiting how direct listings are conducted and the associated legal requirements, including the current obligation to file a Securities Act registration statement.

KEY TAKEAWAYS

1. **The SEC is making genuine efforts to ease the burden of going and remaining public. Growth companies, including venture-backed and private equity-backed companies, and companies contemplating IPOs should take note.**

Chairman Atkins has stated repeatedly that he seeks to make IPOs great again. He has cited a 40% decline in the number of public companies between the time of his first stint at the SEC in 1994 and his return as Chairman in 2025.[17]

To remedy this, the SEC is, in the first instance, looking to tried-and-true methods. The Filer Status Proposal and the Registered Offering Proposal (together, the "Proposals") would extend existing accommodations and scaled disclosures that are already in use in the market to a broader set of issuers. Under the Filer Status Proposal, all newly public companies, regardless of size, would benefit from most accommodations currently available to SRCs and emerging growth companies for a minimum of five years. Under the Registered Offering Proposal, more issuers would become eligible for Form S-3 shelf offering and ATM benefits shortly after their initial SEC registration (in practice, following the expiration of the customary IPO lock-up period), and accommodations currently granted to WKSIs would be extended to a broader set of issuers.

As a second step, the SEC is looking for "bold and creative" innovations, beyond existing accommodations, to further improve the rules governing IPOs.[18] The Proposals and the IPO Rules Request for Comment should encourage all companies, including smaller companies and companies contemplating an IPO, to re-evaluate the costs and benefits of going and staying public.

2. **The Proposals fit into a broader context of transformative rulemaking efforts by the SEC that use materiality as their north star.**

Chairman Atkins would "like to see the SEC's disclosure regime reflect the minimum effective dose of regulation necessary to elicit information that is material to a reasonable investor, without requiring information that is indisputably immaterial."[19] By extending scaled disclosures and other accommodations to significantly more issuers, the Proposals support this goal. In this respect, they are also coherent with several parallel SEC undertakings, such as:

- the SEC's May 29, 2026 proposal to rescind its climate-related disclosure rules (the "Climate Rules Rescission Proposal");[20]
- the SEC's May 5, 2026 proposal to permit optional semiannual reporting (the "Semiannual Reporting Proposal");[21]
- Chairman Atkins's January 13, 2026 request for public comment on ways to reform Regulation S-K ("Regulation S-K Reform");[22] and
- the SEC's June 26, 2025 roundtable on executive compensation disclosure requirements ("Executive Compensation Reform" and, collectively with the foregoing regulatory actions, the "Parallel SEC Rulemaking Activity").[23]

3. **The SEC is taking a holistic rather than piecemeal approach to its rulemaking activity, thereby giving commenters a comprehensive view of proposed and potential changes as they assess the various proposals.**

The Proposals refer to each other and explicitly acknowledge other pending rulemaking activity. Although there are multiple projects underway, the SEC appears to be making an effort to remain coherent and aware of the impact of all projects on

its rules. The fact that the SEC has proposed or published the Proposals, the IPO Rules Request for Comment and the Parallel SEC Rulemaking Activity contemporaneously rather than sequentially means that commenters will benefit from a fuller picture as they form views on whether the proposed changes strike the right balance between capital formation and investor protection goals. Additionally, companies can get a better sense of the total impact of the combined proposals on the costs and benefits of going and remaining public.

4. **By creating his "A-C-T" framework,[24] Chairman Atkins has enabled commenters to understand and categorize the wide-ranging changes proposed by the SEC in an organized way.**

*Changes in the Proposals that fall into the "**Advance**" category include*: the elimination, in light of technological developments such as EDGAR and AI, of traditional benchmarks such as public float and the length of an issuer's Exchange Act reporting as proxies for an issuer's following.

*Changes in the Proposals that fall into the "**Clarify**" category include*: multiple proposals to codify staff positions and interpretations, such as in respect of the "Timely in Exchange Act Reporting" requirement for Form S-3 eligibility, and the removal of requirements that suggest that the SEC should assess the quality of issuers, such as the "Certain Failures to Make Payments and Defaults" requirement for Form S-3 eligibility (as described in the table above).

*Changes in the Proposals that fall into the "**Transform**" category include*: the extension of scaled disclosure and accommodations to more issuers to make going and remaining public less burdensome.

5. **FPIs are largely excluded from the Proposals, as the SEC continues to reflect on how to implement the data gathered in connection with the publication of the FPI Concept Release.**

The SEC explained in the Proposals that it is currently conducting an ongoing evaluation of whether the definition of FPI appropriately balances investor protection with the promotion of capital formation pursuant to the June 4, 2025 publication of its Concept Release on Foreign Private Issuer Eligibility (the "FPI Concept Release").[25] Accordingly, it elected to limit the effects of the Filer Status Proposal on FPIs and did not propose to extend the benefits of the Registered Offering Proposal to FPIs at this time.

Nevertheless, FPIs should remain informed about the SEC's rulemaking activities as they are likely to have an impact on whether and how the FPI regime is ultimately amended.

NEXT STEPS

- **Consider participating in the comment process.** The comment periods for the Registered Offering Proposal and the IPO Rules Request for Comment will end on July 27, 2026. We encourage clients to share their views or relevant data with the SEC. Cravath is available to assist clients that wish to make comment submissions.
- **Assess potential benefits that could accrue if the Registered Offering Proposal is adopted.**
  - **Existing issuers** might consider (i) whether they would be eligible to use Form S-3 and qualify for ELI or SELI status if the Registered Offering Proposal is adopted; and (ii) if so, whether they would opt to conduct more registered rather than unregistered offerings or whether they could update their approach to registered offerings in light of available accommodations.
  - **Companies contemplating going public** should factor into their cost-benefit assessments the possibility of being eligible to register offerings on Form S-3 shortly after completing their initial registration (in practice, following expiration of the customary lock-up period, though preparation could begin earlier) and to benefit from the Enhanced Registration and Communication Benefits.

- **Continue monitoring other SEC regulatory developments.** The SEC has multiple rulemaking projects underway. Registrants should stay informed. We encourage clients to contact us for further guidance.

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1 "Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies" (2026), Release Nos. 33-11419; 34-105515, available at Federal Register: Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies.

2 "Registered Offering Reform" (2026), Release Nos. 33-11418; 34-105513, available at Federal Register: Registered Offering Reform.

3 Remarks at the Stanford Rock Center for Corporate Governance, Chairman Paul S. Atkins (May 26, 2026), available at SEC.gov | Remarks at the Stanford Rock Center for Corporate Governance.

4 The Registered Offering Proposal would also make conforming changes to the registration, communication and offering process for certain business development companies and registered closed-end investment companies that register securities on Form N-2.

5 However, certain transaction-based requirements would continue to apply to subsidiaries that rely on a parent's Form S-3 eligibility to conduct offerings on Form S-3.

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

7 This would significantly broaden the number of issuers that have access to Form S-3. Taken together, the SEC expects that approximately 2,150 additional reporting companies that were previously ineligible would become newly eligible to conduct unlimited primary offerings on Form S-3 under the proposed framework, based on 2024 data.

8 Where Rule 12b-25 under the Exchange Act ("Rule 12b-25") applies, the seven calendar days would still be calculated from the filing's original due date and not from the end of the time period prescribed under Rule 12b-25.

9 The staff's longstanding interpretation has been to consider only reports under sections 13(a) or 15(d) of the Exchange Act and materials under sections 14(a) and 14(c) of the Exchange Act, other than specified reports on Form 8-K, in assessing an issuer's fulfillment of the timeliness requirement. As is the case currently, the timeliness requirement would not apply to reports that are required solely pursuant to Item 1.01, 1.02, 1.04, 1.05, 2.03, 2.04, 2.05, 2.06, 4.02(a), or 5.02(e) of Form 8-K.

10 The scope of issuers that would be ineligible to use Form S-3 under this proposed instruction would be narrower than the full scope of the term "ineligible issuer" as defined in Rule 405 under the Securities Act. For example, Form S-3 eligibility would not be affected by the issuer's bankruptcy status, which the SEC views as going to the "quality" of the issuer.

11 The number of FPIs that voluntarily file on U.S. domestic forms is low. The FPI Concept Release identified only nine. Nevertheless, the SEC has asked for comment on whether FPIs that are currently eligible to use Form S-3 should continue to be eligible to use the form for at least some period of time. Note that under the Registered Offering Proposal, FPIs would remain eligible to use Form F-3 if they satisfy the form's eligibility requirements. *See* Form F-3, General Instruction I (limiting Form F-3 eligibility to FPIs).

12 However, the SEC continues to believe that public float is relevant for determining an issuer's filer status and deadlines for filing Exchange Act reports, as reflected in the Filer Status Proposal. *See* our Part I Memo for more information.

13 In the "Revisions to the Eligibility Requirements for Primary Securities Offerings on Forms S-3 and F-3" (2007), Release No. 33-8878 ("Baby Shelf Adopting Release"), the SEC adopted current General Instruction I.B.6 to Form S-3, which permits an issuer with less than $75 million in public float that is exchange-listed and is not a shell company to register any primary offering if the aggregate market value of securities sold by or on behalf of the issuer under the instruction during the 12 months immediately prior to, and including, the sale is no more than one-third of the issuer's public float.

14 Guarantee-Related Offerings include offerings where the parent provides a full and unconditional guarantee of the securities of the subsidiary issuer, where the subsidiary provides a full and unconditional guarantee of the securities of the parent issuer, or where the subsidiary provides a full and unconditional guarantee of the securities of another subsidiary issuer that are also fully and unconditionally guaranteed by the parent.

15 The Registered Offering Proposal would retain but amend the definition of WKSI in Rule 405 under the Securities Act so that it would no longer apply to U.S. domestic issuers.

16 *See* General Instruction VII (Eligibility to Use Incorporation by Reference) of Form S-1. A registrant must be subject to the reporting requirements of the Exchange Act, must have filed all reports and other materials under the Exchange Act during the preceding 12 months (or for such shorter period that the registrant was required to file such reports and materials), must have filed an annual report for its most recently completed fiscal year and must not have

been during the past three years a blank check company, a shell company other than a business combination related shell company or a registrant for an offering of penny stock. The registrant must also not be registering a business combination transaction and must make its periodic and current reports readily available and accessible on its website.

17 Keynote Remarks at the 2026 Reagan National Economic Forum, Chairman Paul S. Atkins (May 29, 2026), available at SEC.gov | Keynote Remarks at the 2026 Reagan National Economic Forum.

18 *See*, *e.g.*, Remarks at the Stanford Rock Center for Corporate Governance, Chairman Paul S. Atkins (May 26, 2026), available at SEC.gov | Remarks at the Stanford Rock Center for Corporate Governance.

19 Remarks at the Stanford Rock Center for Corporate Governance, Chairman Paul S. Atkins (May 26, 2026), available at SEC.gov | Remarks at the Stanford Rock Center for Corporate Governance.

20 "Rescission of Climate-Related Disclosure Rules" (2026), Release Nos. 33-11421; 34-105572, available at Proposed withdrawal of final rules. Rescission of Climate-Related Disclosure Rules.

21 "Semiannual Reporting" (2026), Release Nos. 33-11414; 34-105368, available at Federal Register: Semiannual Reporting.

22 Statement on Reforming Regulation S-K, Chairman Paul S. Atkins (January 13, 2026), available at SEC.gov | Statement on Reforming Regulation S-K.

23 "SEC Announces Roundtable on Executive Compensation Disclosure Requirements" (May 16, 2025), available at SEC.gov | SEC Announces Roundtable on Executive Compensation Disclosure Requirements.

24 *See* Prepared Remarks Before SEC Speaks, Chairman Paul S. Atkins (March 19, 2026), available at SEC.gov | Prepared Remarks Before SEC Speaks: "So, against that backdrop, every initiative toward which the SEC is working—every rule that we propose, every interpretation that we release, and every institutional reform that we undertake—largely falls into one of three categories: Those that advance our rules to align with how markets operate today. Those that clarify our regulatory regime to streamline oversight and unlock innovation. And those that transform our requirements by eliminating both the burdensome and the impractical. Together, the three pillars of advance – A, clarify – C, transform – T, form one integrated policy agenda that I am calling our 'A-C-T' strategy."

25 "Concept Release on Foreign Private Issuer Eligibility" (2025), Release Nos. 33-11376; 34-103176, available at Federal Register: Concept Release on Foreign Private Issuer Eligibility. For more information, *see*, "SEC Solicits Public Comment on the Eligibility Criteria for Foreign Private Issuer Status", Cravath, Swaine & Moore LLP (June 12, 2025), available at SEC Solicits Public Comment on the Eligibility Criteria for Foreign Private Issuer Status | Cravath, Swaine & Moore LLP.

Please feel free to contact us if we can provide further information.

NEW YORK

John W. White
+1-212-474-1732
jwhite@cravath.com

Andrew J. Pitts
+1-212-474-1620
apitts@cravath.com

Craig F. Arcella
+1-212-474-1024
carcella@cravath.com

Joseph D. Zavaglia
+1-212-474-1724
jzavaglia@cravath.com

Nicholas A. Dorsey
+1-212-474-1764
ndorsey@cravath.com

Michael E. Mariani
+1-212-474-1007
mmariani@cravath.com

C. Daniel Haaren
+1-212-474-1322
dhaaren@cravath.com

Douglas C. Dolan
+1-212-474-1310
ddolan@cravath.com

Kimberley S. Drexler
+1-212-474-1434
kdrexler@cravath.com

Ryan J. Patrone
+1-212-474-1280
rpatrone@cravath.com

Kelly M. Smercina
+1-212-474-1133
ksmercina@cravath.com

Isaac C. Beerman
+1-212-474-1048
ibeerman@cravath.com

Steven Seltzer
+1-212-474-1090
sseltzer@cravath.com

William D. Podurgiel
+1-212-474-1628
wpodurgiel@cravath.com

LONDON

Philip J. Boeckman
+44-20-7453-1020
pboeckman@cravath.com

George A. Stephanakis
+44-20-7453-1040
gstephanakis@cravath.com

Alyssa K. Caples
+44-20-7453-1090
acaples@cravath.com

Margaret R. M. Rallings
+44-20-7453-1010
mrallings@cravath.com

Virginie Marier
+44-20-7453-1056
vmarier@cravath.com

WASHINGTON, D.C.

Elad Roisman
+1-202-869-7720
eroisman@cravath.com

Lisa M. Kohl
+1-202-869-7722
lkohl@cravath.com

Cravath, Swaine & Moore LLP

NEW YORK

Two Manhattan West
375 Ninth Avenue
New York, NY 10001
+1-212-474-1000

LONDON

100 Cheapside
London EC2V 6DT
+44-20-7453-1000

WASHINGTON, D.C.

1601 K Street NW
Washington, D.C. 20006-1682
+1-202-869-7700

cravath.com

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