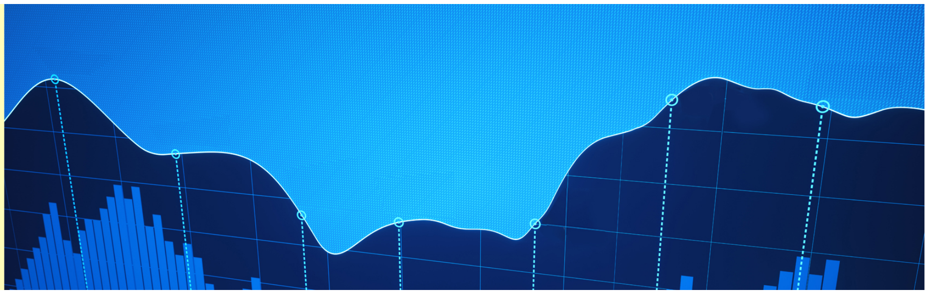


Securities Law Update

May 2026

SEC Continues Its Efforts to Encourage Companies to Become and Remain Public with Potentially Transformative Proposed Rules Relating to Simplified Reporting Requirements and Registered Offerings

On May 19, 2026, the SEC released two sets of proposed rule amendments intended to simplify the public company reporting framework and to assist companies in conducting registered offerings.

These proposed rules are part of the SEC's ongoing efforts to encourage companies to become and remain public. The first step in those efforts began on May 5, 2026, when the SEC released proposed amendments that would allow (but not require) reporting companies to file semi-annual reports on a new Form 10-S, rather than quarterly reports on Form 10-Q, as described in our update. Per SEC Chairman Paul Atkins, these new proposed rules "serve as the foundation for [the SEC's] agenda to Make IPOs Great Again."

Comments on the proposals are due within 60 days following publication of the applicable release in the Federal Register. The fact sheets are available here and here.

Public Company Reporting Framework

The first set of proposed amendments is aimed at simplifying the public company reporting framework by revising the filer status definitions. Among other things, the proposed rules would:

- *Increase the public float threshold for large accelerated filer status from $700 million to $2 billion*;
- *Eliminate the "accelerated filer" and "small reporting company" filer classifications*, such that any company that is not a large accelerated filer would be a non-accelerated filer;
- *Allow all non-accelerated filers to use certain disclosure scaling and other accommodations currently available only for smaller reporting companies and emerging growth companies*, including but not limited to the following and as further summarized in Appendix A to this update:
  - Not being required to obtain an auditor attestation of management's assessment of the effectiveness of the company's internal control over financial reporting;
  - Providing only two years of audited financial statements in annual reports and registration statements, as well as only covering two years in management's discussion and analysis;
  - Complying with scaled executive compensation disclosure requirements, including three named executive officers, two years of summary compensation table requirements and no compensation discussion and analysis or pay ratio disclosure;

  - Not being required to provide the pay versus performance disclosure or shareholder advisory votes on executive compensation or the frequency of such votes; and

  - Allowing newly public non-accelerated filers to elect to defer compliance with new or revised financial accounting standards (but only for the first five years after initial SEC registration);

- *Provide companies with total assets of $35 million or less* as of the end of each of the company's two most recent second fiscal quarters (i.e., small non-accelerated filers) *that do not otherwise qualify as large accelerated filers with 30 additional days to file their Annual Reports on Form 10-K and five additional days to file their Quarterly Reports on Form 10-Q* (i.e., 120 days for Form 10-K and 50 days for Form 10-Q);

- *Change the calculation of public float when determining filer status* to use the average stock price over the last 10 trading days of the company's second fiscal quarter (rather than the closing price or average of the bid and ask prices on the last business day of the company's second fiscal quarter);

- *Provide that a company's filer status will not change unless the company has been above or below the public float threshold for* <u>*two*</u> *consecutive years* and eliminating the lower threshold for exiting large accelerated filer status, with a similar two-year assessment period for small non-accelerated filer status;

- *Extend the period after which a newly public company could potentially qualify as a large accelerated filer to at least 60 consecutive calendar months of reporting* (from the current 12 calendar months requirement), with the assessment made as of the last day of the applicable fiscal year; and

- *Require all companies to disclose the substance of any material unresolved SEC staff comments* regarding their periodic or current reports received at least 180 days before their fiscal year end (i.e., Item 1B in Form 10-K).

Companies would continue to assess their filer status annually, as of the last day of their fiscal year.

For large accelerated filer / non-accelerated filer status, once a company qualifies for a change in filer status (i.e., the company either meets/exceeds or falls below the $2 billion threshold for two years in a row), the new filer status would apply beginning with the filing of the company's Annual Report on Form 10-K for the fiscal year in which the filer status was determined. (For instance, if a non-accelerated filer had a public float, as calculated under the proposed rules, of at least $2 billion for fiscal years 2026 and 2027, it would need to comply with the large accelerated filer requirements beginning with the Form 10-K for fiscal year 2027.)

Small non-accelerated filer status would be determined similarly. In addition, a new reporting company with total assets at or below $35 million in each of its two most recent fiscal years would qualify as a small non-accelerated filer upon registration.

These amendments would generally not apply to asset-backed issuers or certain foreign private issuers.

See <u>Appendix B</u> at the end of this update for the SEC's graphic illustrating the proposed new filer categories.

Transition Period

If the proposed rules are adopted, current public companies would be required to assess their filer status as of the end of their fiscal year prior to effectiveness of the rules, based on their public float and, if applicable, total assets for such fiscal year and the immediately prior fiscal year. (For instance, if the rules became effective on January 15, 2027, then existing calendar year end companies would be required to assess their filer status as of December 31, 2026 on any date on or prior to December 30, 2027.) Companies should <u>not</u> consider their filer status prior to adoption of the rules in completing the assessment.

A company that qualifies as a non-accelerated filer after completing the assessment could take advantage of the scaling and other accommodations for such filers in its next filing under the Securities Act of 1933, as amended (the "Securities Act") or the Securities Exchange Act of 1934, as amended (the "Exchange Act"), made after the assessment is completed. Similarly, a company that qualifies as a small non-accelerated filer could comply with the extended filing deadlines in its next Form 10-Q or Form 10-K filing made after the initial filer status assessment is completed.

Registered Offering Amendments Would Eliminate Baby Shelf Restrictions and Permit Most Companies to Use Short-Form S-3 Registration Statements Without Offering Amount Limitations

The second set of proposed amendments is intended to make it easier for public companies to conduct registered securities offerings. Among other things, the amendments would revise the Form S-3 eligibility criteria; allow non-WKSIs to take advantage of certain registration and offering communication benefits; preempt state securities law registration and qualification requirements for all registered offerings; and modernize Form S-1 by expanding companies' ability to incorporate by reference.

Amendments to Form S-3 Eligibility Criteria

The proposed amendments would revise certain Form S-3 eligibility requirements in order to enable more companies to engage in shelf offerings using Form S-3 and to raise more capital when using Form S-3. Among other things, the proposed amendments would:

- Remove certain company-related eligibility requirements, including (i) that companies be subject to the reporting requirements under the Exchange Act for at least 12 months before filing a Form S-3, (ii) that companies not have failed to pay certain dividends or defaulted on certain debt or leases, and (iii) that companies have filed all electronic filings and submitted all interactive data files during prescribed periods to the SEC;

- Retain the company-related eligibility requirements that companies be subject to Exchange Act Reporting requirements and current and timely in their filings;

- Add a new limited exception to the timely filing requirement, such that a company would remain Form S-3 eligible so long as the untimely filing was made within seven calendar days of the filing's original due date and only one filing was untimely during the relevant period;

- Add two new company-related eligibility requirements prohibiting certain "ineligible issuers" and certain other issuers from using Form S-3, including but not limited to certain blank check and shell companies (excluding former special purpose acquisition companies ("SPACs")), companies offering penny stock, companies that have committed certain prior violations, foreign governments, foreign private issuers, asset-backed issuers, investment companies, and business development companies; and

- Eliminate all Form S-3 transaction requirements, including the requirement that companies have at least \$75 million in public float in order to engage in unlimited offerings, thus eliminating so-called "baby shelf" restrictions.

Accordingly, if the rules are adopted, newly public companies, including former SPACs, could potentially be able to file a Form S-3 shelf or resale registration statement immediately upon becoming subject to Exchange Act reporting requirements. In addition, the baby shelf rules would no longer exist, and most companies would be able to file Form S-3 registration statements for unlimited offerings without regard to the size of their public float.

ATM Offerings

The proposed amendments would clarify that only securities listed or traded on a national securities exchange or on a market designated by the SEC may be sold in an at-the-market ("ATM") offering. The release indicates that securities on the OTCQX or OTCQB would likely continue to qualify under the amended rules.

Expanded Registration and Offering Communication Benefits for Non-WKSIs

As proposed, most public companies would be able to file an automatically effective shelf registration statement on Form S-3, increasing speed to market, and to take advantage of relaxed offering communication rules.

Under the current rules, well-known seasoned issuers ("WKSIs") (i.e., companies with at least $700 million in public float or which have issued at least $1 billion of non-convertible securities in registered offerings, among other things) may take advantage of certain registration and communication benefits, such as automatic shelf registration statements, unlimited offering size, and "pay as you go" filing fees.

Under the proposed rules, the WKSI definition would no longer apply to companies other than foreign private issuers. Instead, all companies that are **both** Form S-3 eligible **and** have at least one class of common equity securities listed on a national securities exchange (i.e., an Eligible Listed Issuer) would be able to use most of the registration and communication benefits currently only available for WKSIs, **other than** automatic shelf registration statements. In order to file an automatic shelf registration statement, the company would **also** need to have been subject to the Exchange Act's reporting requirements for at least 12 calendar months and any portion of a month immediately preceding the applicable measurement date (i.e., a Seasoned Eligible Listed Issuer). These filer categories would be added as checkboxes on the Form 10-K cover page.

Furthermore, the WKSI definition would be updated so that it would only apply to foreign private issuers.

See Appendix B at the end of this update for a table providing additional information regarding the registration and offering communication benefits and their application under the current rules and under the proposed rules, including the ability to pay fees on a "pay as you go" basis at the time of takedown.

Preempted State Securities Laws for All Registered Offerings

The proposed amendments would expand the definition of "qualified purchaser" under the Securities Act to include any person to whom securities are offered or sold pursuant to an offering registered under the Securities Act. This change is intended to preempt state securities law registration and qualification requirements with respect to any registered offering (rather than just for offerings in which the securities being offered are listed or approved for listing on a national securities exchange, as under the current rules). While these amendments would benefit OTC-listed companies in particular, other non-listed companies required to file under the Exchange Act and register offerings, such as on Form S-8, would also likely benefit.

Expanded Incorporation by Reference in Long-Form Registration Statements on Form S-1

Under the current rules, only certain companies may forward incorporate information by reference (i.e., incorporate future filings) and/or backward incorporate information by reference (i.e., incorporate previous filings). Under the proposed rules, most companies would be eligible to use both types of incorporation by reference. Certain companies, including certain blank check and shell companies (excluding former SPACs) and companies offering penny stock, would not be able to incorporate by reference.

This change would be a welcome relief to companies that may be ineligible to file short-form registration statements on Form S-3.

Appendix A

The following table summarizes the availability of scaling and accommodations to non-accelerated filers under the proposed amendments to Regulation S-K:

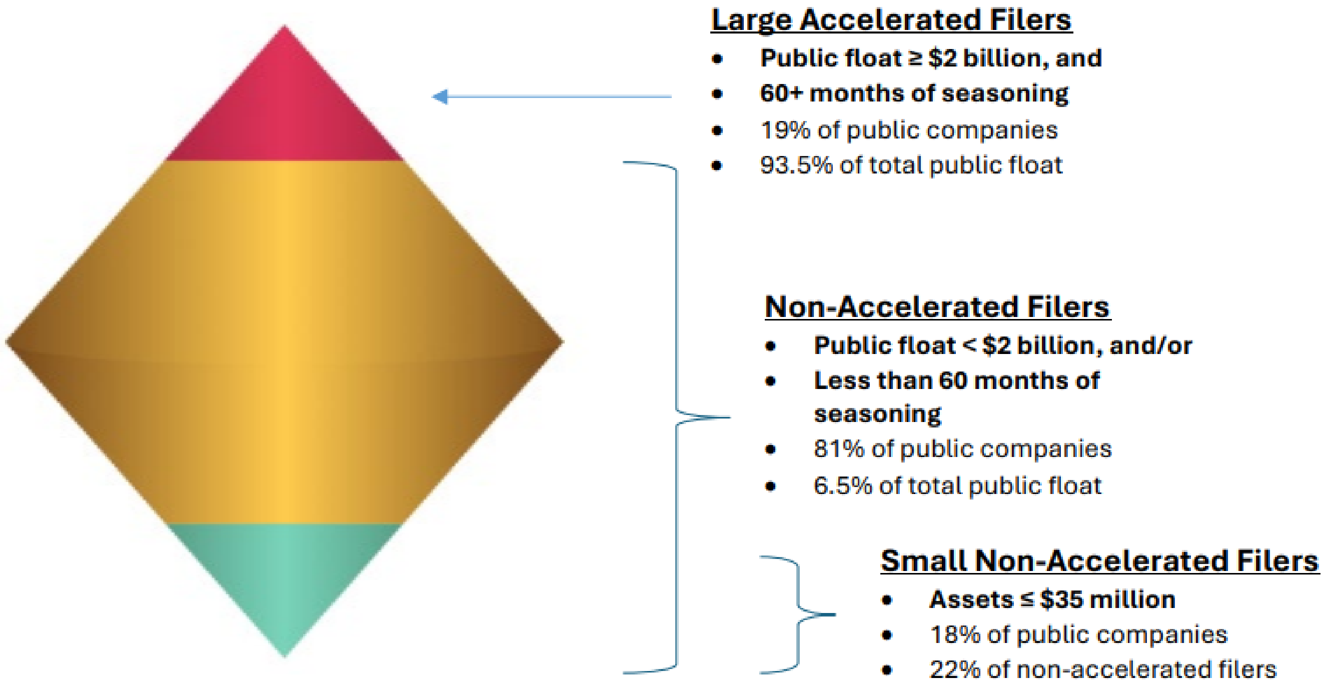
Item		Non-Accelerated Filer Scaling/Accommodation
Item 101	Description of business	Less detailed business development description than is required for large accelerated filers.
Item 102	Description of property	Same as large accelerated filer.
Item 103	Legal proceedings	Same as large accelerated filer.
Item 104	Mine safety disclosure	Same as large accelerated filer.
Item 105	Risk factors	Disclosure not required in Form 10-K and Form 10-Q.
Item 106	Cybersecurity	Same as large accelerated filer.
Item 201	Market price of and dividends on the registrant's common equity and related stockholder matters	Performance graph disclosure not required (except for NAFs that are investment companies).
Item 202	Description of registrant's securities	Same as large accelerated filer.
Item 302	Supplementary financial information	Disclosure not required.
Item 303	Management's discussion and analysis of financial condition and results of operations	Two-year MD&A disclosure instead of three.
Item 304	Changes in and disagreements with accountants on accounting and financial disclosure	Same as large accelerated filer.
Item 305	Quantitative and qualitative disclosures about market risk	Disclosure not required.
Item 307	Disclosure controls and procedures	Same as large accelerated filer.
Item 308	Internal control over financial reporting	Auditor attestation report not required.
Item 401	Directors, executive officers, promoters and control persons	Same as large accelerated filer.
Item 402	Executive compensation	• Three named executive officers instead of five. • Two years of summary compensation table information instead of three. • Compensation discussion and analysis not required. • Grants of plan-based awards table not required. • Option exercises and stock vested table not required. • Pension benefits table not required. • Nonqualified deferred compensation table not required. • Compensation policies and practices related to risk management not required. • Golden parachute disclosure not required. • Pay ratio disclosure not required. • Pay versus performance disclosure not required.
Item 403	Security ownership of certain beneficial owners and management	Same as large accelerated filer.
Item 404	Transactions with related persons, promoters and certain control persons	• Same thresholds for disclosure as for large accelerated filers. • Description of policies and procedures for review, approval, or ratification of related party transactions not required.
Item 405	Compliance with section 16(a) of the Exchange Act	Same as large accelerated filer.
Item 406	Code of ethics	Same as large accelerated filer.

Item		Non-Accelerated Filer Scaling/Accommodation
Item 407	Corporate governance	• Audit committee financial expert disclosure not required in first year. • Compensation committee interlocks and insider participation disclosure not required. • Compensation committee report not required.
Item 408	Insider trading arrangements and policies	Same as large accelerated filer.
Item 501	Forepart of registration statement and outside front cover page of prospectus	Same as large accelerated filer.
Item 502	Inside front and outside back cover pages of prospectus	Same as large accelerated filer.
Item 503	Prospectus summary	Same as large accelerated filer.
Item 504	Use of proceeds	Same as large accelerated filer.
Item 505	Determination of offering price	Same as large accelerated filer.
Item 506	Dilution	Same as large accelerated filer.
Item 507	Selling security holders	Same as large accelerated filer.
Item 508	Plan of distribution	Same as large accelerated filer.
Item 509	Interests of named experts and counsel	Same as large accelerated filer.
Item 510	Disclosure of commission position on indemnification for Securities Act liabilities	Same as large accelerated filer.
Item 511	Other expenses of issuance and distribution	Same as large accelerated filer.
Item 512	Undertakings	Same as large accelerated filer.
Item 601	Exhibits	Statements regarding computation of pay ratios not required.
Item 701	Recent sales of unregistered securities; use of proceeds from registered securities	Same as large accelerated filer.
Item 702	Indemnification of directors and officers	Same as large accelerated filer.
Item 703	Purchase of securities by the issuer and affiliated purchasers	Same as large accelerated filer.

In addition, the proposed scaling down of Regulation S-X requirements for non-accelerated filers is similar to what is currently available for smaller reporting companies.

Appendix B

The SEC provided the following graphic to illustrate the proposed new filer categories:



The percentages in the figure are based on the 5,976 companies that filed on domestic forms in calendar year 2024. The underlying dataset includes two years of public float data, two years of asset data, and data on how long each company has been a public reporting company. A total of 91 companies (1.5% of all companies) that would be non-accelerated filers under the proposed amendments are currently co-filing with companies that would continue to be large accelerated filers and may therefore remain implicitly subject to the requirements and deadlines that apply to large accelerated filer status.

Appendix C

The following table sets forth (1) the Enhanced Registration and Communication Benefits currently available to WKSI; (2) whether such benefits are available to non-WKSIs under the current rules; and (3) the types of companies that could take advantage of such benefits under the proposed rules.

Rule	Description of Enhanced Registration and Communication Benefit for WKSIs	Currently Available to Non-WKSI?	Availability under Proposed Rules*
Rule 139	Broker-dealers participating in a distribution of a WKSI's securities may rely on Rule 139 to publish or distribute issuer-specific research reports about the WKSI during the offering process if certain conditions are satisfied.	Broker-dealers participating in a distribution of a non-WKSI's securities may rely on Rule 139 if the non-WKSI is eligible to use Form S-3 or Form F-3 pursuant to General Instruction I.B.1 or I.B.2 of those forms.	All Form S-3 eligible issuers
Rule 163	WKSIs may rely on Rule 163 to make certain offers prior to filing a registration statement without running afoul of Section 5(c) of the Securities Act.	Non-WKSIs may not rely on Rule 163.	ELIs
Rule 163A	WKSIs may rely on Rule 163A for pre-filing communications made more than 30 days before a registration statement is filed in connection with offerings registered on Form S-8.	Non-WKSIs may not rely on Rule 163A with respect to offerings registered on Form S-8.	ELIs
Rule 164	WKSIs may rely on the free writing prospectus ("FWP") rules in Rule 164 for offerings made on Form S-8.	Non-WKSIs may not rely on the FWP rules in Rule 164 for offerings made on Form S-8.	ELIs
Rule 413(b)	WKSIs may rely on Rule 413(b) to register additional classes of securities, or securities of a majority-owned subsidiary, via automatically effective post-effective amendments to automatic shelf registration statements	Non-WKSIs may not rely on Rule 413(b).	ELIs
Rule 430B(a)	WKSIs may rely on Rule 430B(a) to omit from a base prospectus that is part of an automatic shelf registration statement (a) information as to whether an offering is a primary offering or an offering on behalf of persons other than the issuer, or a combination thereof; (b) the plan of distribution for the securities; (c) a description of the securities registered other than an identification of the name or class of such securities; and (d) the identification of other issuers.	Non-WKSIs may not rely on Rule 430B(a) to omit this information.	ELIs
Rule 430B(b)	WKSIs may rely on Rule 430B(b) to omit from a form of prospectus for resale the identities of selling security holders and amounts of securities to be registered on their behalf to comply with Section 5(b)(1) of the Securities Act.	Non-WKSIs that are eligible to use Form S-3 for primary offerings pursuant to General Instruction I.B.1 or are eligible to register a primary offering under General Instruction A.2 of Form N-2 also may rely on Rule 430B(b) to omit this information if certain conditions are met.	All Form S-3 eligible issuers

Rule	Description of Enhanced Registration and Communication Benefit for WKSIs	Currently Available to Non-WKSI?	Availability under Proposed Rules*
Rule 433	WKSIs may rely on Rule 433 to use FWPs without such FWP being accompanied or preceded by a Section 10 prospectus.	Certain non-WKSIs that are eligible to use Form S-3, Form F-3, Form SF-3, or Form N-2 also may rely on Rule 433 to use FWPs without such FWP being accompanied or preceded by a section 10 prospectus. In other cases, an FWP must generally be accompanied or preceded by a section 10 prospectus.	All Form S-3 eligible issuers
Rule 456(b) / Rule 457(r)	WKSIs may rely on Rule 456(b) and Rule 457(r) with respect to an automatic shelf registration statement to defer payment of registration filing fees and, instead, pay fees on a "pay as you go" basis at the time of takedown.	Non-WKSIs may not rely on Rule 456(b) or Rule 457(r).	ELIs
Rule 462	WKSIs may rely on Rule 462 to file an automatic shelf registration statement or any post-effective amendment thereto that is immediately effective upon filing with the SEC.	Non-WKSIs may not rely on Rule 462 to file an automatic shelf registration statement or any post-effective amendment thereto.	SELIs

* An "Eligible Listed Issuer" ("ELI") is proposed to be defined as an issuer that meets Form S-3's proposed company-related eligibility requirements and is exchange-listed (i.e., has at least one class of common equity securities listed on a national securities exchange).

A "Seasoned Eligible Listed Issuer" ("SELI") is proposed to be defined as an ELI that has been subject to the report requirements under the Exchange Act for a period of at least 12 calendar months and any portion of a month immediately preceding the relevant measurement date.

A company's status as an ELI or SELI would be determined using the latest of: (1) the date the company files a registration statement on Form S-3; (2) the date of the most recent amendment to a Form S-3 made to comply with Section 10(a)(3) of the Securities Act (or if such amendment has not been made within the time period required by Section 10(a)(3), the date on which such amendment is required); or (3) if the company has not filed or amended a registration statement to comply with Section 10(a)(3) of the Securities Act for 16 months, the date of filing its most recent annual report on Form 10-K or Form 20-F (or if such report has not been filed by its due date, such due date). Because eligibility would be determined only on these dates, a company would remain eligible to use the enhanced registration and communication benefits even if an intervening event would otherwise cause it to lose ELI or SELI status between determination dates.

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