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Kirkland Alert

SEC Proposes Sweeping Reforms to Public Company Reporting and Registered Securities Offerings

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On May 19, 2026, the U.S. Securities and Exchange Commission (SEC) proposed two companion rulemakings that would, if adopted, substantially expand the capital-raising tools available to public companies and reduce the compliance burdens associated with the current public company reporting framework. The SEC has framed both proposals as measures to facilitate capital formation in the public markets consistent with investor protection.

These proposed rulemakings are lengthy and address a wide range of areas. This *Kirkland Alert* focuses on the proposed rules most relevant to operating companies. Proposed changes most relevant to closed-end funds registered under the Investment Company Act of 1940, business development companies (BDCs) and other similar product offerings, such as real estate investment trusts (REITs), are addressed in a companion *Kirkland Alert*.

Key Takeaways

- The existing five-category public company filer status framework, currently consisting of large accelerated filers, accelerated filers, non-accelerated filers, smaller reporting companies and emerging growth companies (EGCs), would be replaced with two categories: large accelerated filers and non-accelerated filers.
- Large accelerated filer status would require $2 billion in public float (up from $700 million currently) for two consecutive years and 60 months of Exchange Act reporting history, eliminating the risk of an unexpected early exit from EGC

status under the current regime. All other issuers would be non-accelerated filers.
- Section 404(b) auditor attestation on internal control over financial reporting would only be required for large accelerated filers.
- Scaled disclosure accommodations currently available to smaller reporting companies and EGCs would be extended to all non-accelerated filers.
- Form S-3 eligibility would be expanded to newly public companies and former SPACs.
- Registration and communication benefits currently afforded to well-known seasoned issuers (WKSIs) would be extended to all Form S-3-eligible issuers with common equity listed on a national securities exchange.

Simplified Filer Status Framework

In place of the current five-category filer status framework, the SEC's proposed rules would categorize all public companies as either (i) **large accelerated filers** or (ii) **non-accelerated filers**.

- **Large accelerated filer status** would require all three of the following: (i) public float of at least $2 billion, measured as the average over the last 10 trading days of the most recently completed second fiscal quarter; (ii) meeting the public float threshold for two consecutive fiscal years; and (iii) at least 60 months as a reporting company under the Securities Exchange Act of 1934, as amended (the Exchange Act).
- **All other public companies would be non-accelerated filers**. Non-accelerated filers with $35 million or less in total assets for each of the two most recently completed fiscal years would be considered "small non-accelerated filers."

The SEC estimates that approximately 81% of public companies would be non-accelerated filers under the proposed framework and would become eligible for the scaled disclosure accommodations described below, a meaningful change compared to approximately 65% that are not large accelerated filers today.

Section 404(b) Independent Auditor Attestation Only for Large Accelerated Filers: Under the proposed rules, Section 404(b) of the Sarbanes-Oxley Act of 2002 (Section 404(b)), which requires a company's independent auditor to attest to and report on

management's assessment of the effectiveness of its internal control over financial reporting, would apply only to large accelerated filers. As a result, no company could become subject to the Section 404(b) auditor attestation requirements within its first five years as a public reporting company, regardless of public float. This would eliminate a structural problem under the current framework where EGC status terminates if a company's public float reaches $700 million as of the last business day of its most recently completed second fiscal quarter. Under the current framework, this $700 million threshold can be triggered by stock price appreciation or significant stock sales by pre-IPO affiliated stockholders without meaningful advance warning, leaving management, the audit committee and external auditors with limited time to prepare for the Section 404(b) attestation and other disclosure requirements applicable to non-EGCs.

Expanded disclosure accommodations for non-accelerated filers. In addition to the relief from Section 404(b), all non-accelerated filers would become eligible for scaled disclosure accommodations currently available only to smaller reporting companies and EGCs, including, among other accommodations:

- reduced executive compensation disclosure, with no pay-versus-performance disclosure required;
- no say-on-pay or say-when-on-pay shareholder advisory votes; and
- fewer years of audited financial statements required in periodic reports and registration statements, with reduced presentation requirements.

In addition, small non-accelerated filers would receive an additional 30 days to file Form 10-K annual reports and five additional days to file Form 10-Q quarterly reports.

Expanded Form S-3 Eligibility

The proposal would allow any issuer that is current and timely in its Exchange Act reporting and is not an "ineligible issuer" to immediately use Form S-3 to register an unlimited amount of securities. This would greatly expand Form S-3 eligibility by eliminating requirements that an issuer must have 12 months of Exchange Act reporting history to use a Form S-3 at all and a public float of at least $75 million to offer an unlimited amount of securities on Form S-3. The proposal advances the idea that an investor's ability to make an informed investment decision is dependent on the availability of current, timely, issuer-specific information, rather than the length of reporting history or the size of public float of an issuer.

Two categories of issuers stand to benefit most: (i) companies in their first year of Exchange Act reporting, which currently cannot avail themselves of the shelf offering framework, and (ii) former special purpose acquisition companies (SPACs), which have historically faced obstacles to Form S-3 eligibility arising from the shell company rules. The SEC's proposed rules would place former SPACs on equal footing with companies that conduct traditional IPOs. The SEC estimates the number of issuers eligible to register an unlimited amount of securities on Form S-3 could increase by more than 60%. The greater availability of Form S-3 is likely to allow these issuers to take advantage of favorable market conditions more nimbly.

The same rulemaking would also expand forward and backward incorporation by reference on Form S-1, previously available only to smaller reporting companies or issuers that had already filed an annual report. That change narrows the practical distinction between Forms S-1 and S-3, though the shelf mechanics and speed advantages of Form S-3 remain.

Expanded Registration and Pre-Offering Communication Flexibility

Under current rules, a set of lighter registration and communication requirements is available to WKSIs, defined as issuers with $700 million or more in public float, or that have sold at least $1 billion in registered offerings of non-convertible securities (other than common equity) over the prior three years. These thresholds exclude the majority of listed public companies. The proposed rules would eliminate the WKSI framework for domestic issuers and create two new categories of issuers: Eligible Listed Issuer (ELI) and Seasoned Eligible Listed Issuer (SELI). An ELI would be a Form S-3 eligible issuer with at least one class of common equity listed on a national securities exchange that is not an "ineligible issuer." A SELI would be an ELI that has been subject to Exchange Act reporting requirements for at least 12 full months.

The stated rationale for replacing the WKSI category is that an investor protection framework based on the size of the issuer is not sufficiently targeted. Instead, the proposing release states that investor protection is more appropriately achieved through ensuring that investors have timely access to current information, relying on the extra layer of protection afforded by the exchanges' continued listing standards and, for eligibility for automatic shelf registration, seasoning from the 12-month reporting requirement.

- **SELIs eligible for automatically effective shelf registration statements**. Currently, a WKSI's shelf registration statement becomes effective immediately upon filing, without SEC staff review or an acceleration request. The proposed rules would permit this automatic effectiveness for SELIs, or the "top tier" of issuers, that have satisfied a 12-month Exchange Act reporting seasoning requirement. The SEC's stated rationale being that the SEC staff should have the opportunity to monitor an issuer's Exchange Act reporting compliance in the first year after listing, but that once a 12-month reporting track record has been established, pre-effectiveness staff review of a Form S-3 filing is no longer necessary to protect investors.
- **Additional Flexibility for ELIs**:
  - **Prefiling offers**. Under the proposed rules, ELIs would be permitted to make offers and engage in certain other communications with investors prior to the filing of a registration statement, which is currently only permitted for WKSIs;
  - **Omissions from base prospectus**. ELIs would be able to omit from shelf registration statement base prospectuses, whether an offering will be primary or secondary, the plan of distribution, a description of the securities and the identification of other issuers (e.g., guarantors), all of which is only currently permitted to be excluded by WKSIs; and
  - **Pay-as-you-go registration fees**. Currently, WKSIs may pay registration fees at the time of each shelf takedown rather than upfront at filing. The proposal would extend that fee deferral to ELIs.

- **Additional Flexibility for all S-3 Eligible Issuers (Including Those Without Exchange-Listed Securities)**:
  - **Omission of selling securityholder information**. Under current rules, WKSIs may file shelf registration statements without identifying selling securityholders or specifying the amounts to be registered on their behalf. This flexibility would be extended to all Form S-3 Eligible Issuers and is particularly useful for secondary shelf registration statements filed on behalf of pre-IPO shareholders whose intended timing and volume of sales may not be known at the time of filing; and
  - **Availability of free writing prospectuses**. Currently, only WKSIs and issuers relying on certain Form S-3 eligibility criteria are permitted to use a free writing prospectus to disseminate additional offering information that is not in the prospectus and is not preceded or accompanied by the updated prospectus. The proposed rules would extend this flexibility to all S-3 Eligible Issuers.

Practical Considerations and Next Steps

The proposed rules described above represent two of the most significant rulemaking actions affecting the registered offering process and public company reporting framework in decades. Taken together, the proposed rules would impact nearly every aspect of how companies access the public capital markets. And, more broadly, as noted by SEC Chairman Paul S. Atkins in a statement, the proposed rules aim to incentivize more companies, particularly small and mid-sized companies, to go and stay public. We have summarized the highlights and scope of the proposals, but the proposals are extremely detailed and far-ranging and will be closely examined by public companies, investors and capital markets practitioners during the SEC's comment period, which will run into late July 2026.

Please contact the Kirkland attorneys with whom you regularly work with any questions or comments regarding the proposals.

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Suggested Reading

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