July 27, 2026

Via Electronic Mail: rule-comments@sec.gov

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Registered Offering Reform, Securities Act Release No. 33-11418; Exchange Act Release No. 34-105513; Investment Company Act Release No. 36160, File No. S7-2026-17

Dear Secretary Countryman:

MFA[1] appreciates the opportunity to comment on the Securities and Exchange Commission's ("**Commission**" or "**SEC**") proposal to modernize the registered offering framework (the "**Proposal**").[2] MFA strongly supports the Commission's broader effort to make the U.S. registered offering process more efficient, more competitive, and more usable for issuers, investors, and intermediaries.

MFA and its members strongly support the Administration's and the Commission's efforts to strengthen U.S. equity markets and enhance the attractiveness of public company status. The Proposal, particularly when considered alongside the Commission's anticipated proposal to amend Regulation S-K, would meaningfully reduce friction, complexity, and unnecessary costs associated with being a public company. These benefits would

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1 Managed Funds Association ("**MFA**"), based in Washington, D.C., New York City, Brussels, and London, represents the global alternative asset management industry. MFA's mission is to advance the ability of alternative asset managers to raise capital, invest it, and generate returns for their beneficiaries. MFA advocates on behalf of its membership and convenes stakeholders to address global regulatory, operational, and business issues. MFA has more than 180 fund manager members, including traditional hedge funds, private credit funds, and hybrid funds, that employ a diverse set of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors diversify their investments, manage risk, and generate attractive returns throughout the economic cycle.

2 SEC, *Registered Offering Reform*, 91 Fed. Reg. 31,022 (May 26, 2026), *available at* https://www.govinfo.gov/content/pkg/FR-2026-05-26/pdf/2026-10373.pdf. *See also* SEC, *SEC Proposes Transformative Reforms to Help Public Companies Conduct Registered Offerings, Simplify Disclosure Requirements*, Press Release No. 2026-46 (June 2026) ("**Press Release**"), *available at* https://www.sec.gov/newsroom/press-releases/2026-46-sec-proposes-transformative-reforms-help-public-companies-conduct-registered-offerings-simplify; SEC, *Fact Sheet: Reforms to Registered Offerings and Disclosure Requirements* (Rel. No. 33-11418) (June 2026) ("**Fact Sheet**"), https://www.sec.gov/files/33-11418-fact-sheet.pdf.

extend across public company's regulatory requirements, from securities issuance to ongoing disclosure obligations. Taken together, these initiatives are potentially among the most consequential efforts to improve the competitiveness of U.S. public markets. By reducing unnecessary regulatory burdens while preserving investor protections, the Commission can foster a more dynamic public company ecosystem that benefits issuers, investors, employees, and the broader economy. MFA therefore applauds the Administration's and the Commission's commitment to these reforms and encourages the Commission to continue pursuing policies that enhance the attractiveness of U.S. public markets.

At the same time, MFA urges the Commission to address one important issue that the Proposal would otherwise exacerbate: the interaction between expanded Form S-3 shelf eligibility and Regulation M, particularly Rule 105 under the Securities Exchange Act of 1934 ("**Exchange Act**"). Unless the Commission also modernizes the operation of Rule 105 (or, at minimum, provides targeted relief or interpretive guidance), those same offerings may remain burdened by a rule that can deter legitimate investor participation, impair pricing efficiency, and undermine the Proposal's capital-formation objectives.[3]

Executive Summary

A summary of MFA's comments broadly is as follows:

(i) MFA supports the Commission's core effort to modernize the registered offering framework. The Proposal recognizes that the current framework contains legacy requirements that no longer reflect how information is disseminated, how investors analyze public companies, or how registered offerings occur in practice.[4]

[3] *See* Letter from MFA to Jamie Selway, Director, Division of Trading & Markets, SEC, at 1–10 (Sept. 16, 2025) ("**MFA Sept. 16, 2025 Letter**"), *available at* https://www.mfaalts.org/wp-content/uploads/2025/09/MFA-Letter-re.-Reforming-Rule-105-of-Regulation-M-As-submitted-9.16.25.pdf; Letter from MFA & AIMA to Jamie Selway, Director, Division of Trading & Markets, SEC, Request for Exemptive Relief and Modernization of Rule 105 of Regulation M to Promote Capital Formation, at 1–8 (May 28, 2026) ("**Exemptive Relief Request Letter**"), *available at* https://www.mfaalts.org/wp-content/uploads/2026/05/Letter-to-SEC-With-Request-for-Relief-for-Restricted-Period-in-Rule-105-of-Reg-M-As-submitted-5.28.26.pdf; Letter from MFA to SEC, Empirical Analysis Supporting Modernization of Rule 105 of Regulation M to Promote Capital Formation (May 28, 2026) ("**Empirical Analysis Letter**"), *available at* https://www.mfaalts.org/wp-content/uploads/2026/06/Letter-to-SEC-With-Empirical-Analysis-of-Rule-105-of-Reg-M-As-submitted-5.28.26.pdf; Letter from MFA & AIMA to Jamie Selway, Director, Division of Trading & Markets, SEC, Recommendation for Clarifying the Separate Accounts Exception in Rule 105 of Regulation M to Promote Capital Formation (May 28, 2026) ("**Separate Account Exception Letter**"), *available at* https://www.mfaalts.org/wp-content/uploads/2026/05/Letter-to-SEC-With-Request-to-the-Separate-Accounts-Exception-in-Rule-105-of-Reg-M-As-submitted-5.28.26.pdf.

[4] Proposal, *supra* note 2, at 31,024-5; *see also Statement on Proposing Registered Offering Reform and Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies*, Comm'r, SEC, Mark T. Uyeda (May 19, 2026) ("**Uyeda Statement**"), *available at* https://www.sec.gov/newsroom/speeches-

(ii) **MFA strongly supports preempting state securities law registration and qualification requirements for all registered offerings.** Uniform federal treatment would reduce complexity and cost where comprehensive federal registration, disclosure, and liability standards already apply.

(iii) **MFA supports Form S-3 reform, but recommends that the Commission pair any final S-3 expansion with targeted modernization of Exchange Act Regulation M, especially Rule 105.** MFA has previously recommended relief or guidance to ensure that the Rule 105 restricted period does not begin before an offering is publicly announced, that investors may reasonably rely on underwriter information regarding pricing timing, and that the Separate Accounts Exception is interpreted consistently with the text and purpose of the SEC adopting release on the subject.[5]

(iv) **MFA supports eliminating the public-float threshold and one-year seasoning requirement for broader Form S-3 eligibility.** These criteria are increasingly poor proxies for disclosure quality or market transparency, and their continued use unnecessarily restricts access to the efficiencies associated with shelf registration and other short-form registration benefits.

(v) **MFA supports extending certain registration and communication benefits currently reserved for well-known seasoned issuers ("WKSIs") more broadly.** These proposed reforms should reduce execution risk, improve financing flexibility, and help make registered offerings more attractive,[6] provided the Commission clarify that issuers can satisfy the existing WKSI standards to be eligible for the Proposal's registration and communication benefits.

(vi) **MFA supports expanding the ability to incorporate Exchange Act reports by reference into Form S-1.** This change should reduce duplication, lower offering costs, and improve disclosure quality by relying more effectively on the continuous-reporting system.

I. The Proposal is a significant and welcome step toward modernizing the registered offering framework

MFA agrees with the Commission that the Proposal represents an important opportunity to reduce unnecessary friction in the public offering process and thereby facilitate capital formation in a manner consistent with investor protection.[7] The public markets continue to provide important advantages to issuers and investors,

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statements/uyeda-statement-proposing-registered-offering-reform-and-enhancement-of-emerging-growth-company-accommodations-and-simplification-of-filer-status-for-reporting-companies-051926.

5 *See* MFA Sept. 16, 2025 Letter, *supra* note 3, at 4–10. Short Selling in Connection with a Public Offering, 72 Fed. Reg. 45,094, 45,099–100 (Aug. 10, 2007), ("**2007 Adopting Release**") *available at* https://www.govinfo.gov/content/pkg/FR-2007-08-10/pdf/E7-15608.pdf.

6 *See* Proposal, *supra* note 2, at 31,025-6; Press Release, *supra* note 2.

7 Proposal, *supra* note 2, at 31,027; Press Release, *supra* note 2.

including broader market access, deeper liquidity, robust disclosure obligations, and established liability protections. The Proposal correctly recognizes, however, that certain aspects of the existing registered-offering framework, particularly the eligibility rules for Form S-3, have become outdated. In an era of continuous Exchange Act reporting, widespread electronic access to issuer information, and real-time market data dissemination, rules originally designed around assumptions about market following and the speed of information flow increasingly function as arbitrary barriers rather than investor-protection tools.

Form S-3 eligible issuers benefit because they can access the public markets more quickly and with lower transaction costs, including through delayed shelf takedowns and at-the-market offerings. The Commission further estimates that the proposed reforms could increase by more than 60 percent the number of issuers eligible to offer an unlimited amount of securities on Form S-3.[8] MFA agrees that this broader access should improve the utility of the registered markets and allow more issuers, especially smaller and mid-sized reporting companies, to raise capital on more efficient terms.

MFA also supports the Commission's broader policy judgment that unnecessary friction in the registered markets can incent issuers to pursue other financing alternatives. When registered offerings become too operationally cumbersome, too slow, or too uncertain, the predictable result is that issuers will seek to avoid public markets and rely more heavily on other financing arrangements. Making the public offering process more workable serves not only issuers, but also a broader class of investors.[9]

II. MFA strongly supports federal preemption of state registration and qualification requirements for SEC nationally-registered offerings

MFA strongly supports the Proposal's expansion of federal preemption of state securities law registration and qualification requirements for SEC-registered offerings. We recommend that the Commission adopt the "qualified purchaser" definition under the Securities Act of 1933 ("**Securities Act**") as proposed. SEC-registered offerings are subject to comprehensive SEC disclosure, review, liability, antifraud standards and, on effectiveness, have met all applicable national SEC requirements. We agree with the Commission's assessment that SEC-registered offerings are "inherently national in nature."[10] Layering state registration and qualification requirements *on top* of this extensive federal regime imposes costs and complexities without yielding commensurate benefits. A uniform federal framework for SEC registered offerings would reduce transactional uncertainty, facilitate more efficient capital raising, and improve the underwriter and dealer distribution framework across different issuer and offering types. The additional burdens and delays of state blue sky registration for SEC-registered offerings create

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8 Proposal, *supra* note 2, at 31,025; Fact Sheet, *supra* note 2, at 1.

9 Proposal, *supra* note 2, at 31,103; Press Release, *supra* note 2.

10 Proposal, *supra* note 2, at 31,078.

yet another disincentive for companies to go public and are at odds with broader efforts to "make IPOs great again."

A. National offerings require uniform registration at the federal level

The Proposal is a straightforward application of the policy judgment Congress made in enacting the National Securities Markets Improvement Act of 1996 ("**NSMIA**").[11] Namely, national offerings should be regulated at the national level. NSMIA was enacted to eliminate duplicative and inefficient regulations arising from the dual federal-state system. As Congress explained, NSMIA was intended to "promote efficiency and capital formation in the financial markets" by providing "more effective and less burdensome regulation."[12] NSMIA was designed to reduce regulatory overlap and improve coordination between state and federal authorities, particularly where overlapping jurisdiction impeded the efficient functioning of national securities markets.[13] The Proposal is an important next step to nationalizing the registration requirements for offerings that are registered nationally with the Commission.

SEC-registered offerings that are not currently "covered securities" should nevertheless be treated as national in character, given that investors may reside in any state. These SEC-registered offerings include widely distributed offerings by business development companies ("**BDCs**") that are not exchange listed but that are inherently national in character. SEC-registered BDCs should be entitled to the same state preemption afforded to other SEC-registered pooled investments under the Investment Company Act of 1940 ("**1940 Act**"). The same is true for SEC-registered offerings such as interests in a real estate investment trust ("**REIT**"), an infrastructure project, or the operating company raising capital to expand operations and its workforce. Issuers seeking to access the U.S. capital markets by issuing securities to develop artificial intelligence ("**AI**") data centers are similarly hamstrung by the time consuming, redundant, and often inconsistent patchwork of state blue sky laws that led to the enactment of NSMIA in the first place. This additional delay in funding AI-critical projects risks placing the U.S. at a competitive disadvantage in the global competition in AI infrastructure development. The Proposal would place U.S. issuers on a more equal footing with their non-U.S. competitors at least when it comes to the securities registration requirements to access the public markets to finance development.

The pre-NSMIA regime required issuers to navigate a patchwork of state requirements, each with distinct filing obligations, review standards, and timelines, often producing inconsistent outcomes across jurisdictions. Those same burdens persist today for SEC-registered offerings that fall outside NSMIA preemption. In practice, blue sky compliance continues to impose significant costs that outweigh any incremental investor-protection benefits, including duplicative multi-state filings; adherence to merit-review-based state guidelines that are

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[11] National Securities Markets Improvement Act of 1996, Pub. L. No. 104-290, 110 Stat. 3416, 3416 (1996), *available at* https://www.congress.gov/104/plaws/publ290/PLAW-104publ290.pdf.

[12] *Id.*

[13] *Id.*

misaligned with the Commission's disclosure framework; execution risks and timing constraints, particularly in overnight offerings and shelf takedowns; and operational complexity driven by inconsistent state processes.

State blue sky review is particularly burdensome for collective vehicles such as REITs and commodity pool offerings. Pooled investment offerings typically must comply with SEC requirements *and* state laws, which sometimes (but not always) require adherence to guidelines adopted by the North American Securities Administrators Association ("**NASAA**" and the "**NASAA Guidelines**")[14] that impose a merit-based, prescriptive overlay of SEC rules by imposing requirements on disclosure, fee structures, investor suitability, and operational design.[15] Issuers must navigate a multi-state compliance process with varying interpretations of the NASAA Guidelines, driving increased legal, compliance, and operational costs. Commodity pool and non-traded BDC offerings, for example, are subject to state registration requirements that place them at a competitive disadvantage compared to mutual funds and other vehicles that benefit from NSMIA preemption. At the same time, incremental investor protection is limited, as these offerings are already subject to additional suitability requirements imposed by issuers and broker-dealers. The NASAA Guidelines thus duplicate existing federal requirements and market-based controls, reinforcing the case for eliminating redundant state registration and qualification requirements.

The Proposal's modest preemption expansion, exercised through the rulemaking authority Congress granted the Commission, recognizes that SEC-registered offerings conducted under the Securities Act already are subject to comprehensive federal regulation and additional duplicative state registration requirements are unnecessary. Congress enacted NSMIA precisely because the overlapping responsibilities of federal and state regulators were impeding effective supervision and efficient capital formation. The SEC registration framework includes:

- detailed disclosure obligations;

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14 NASAA is an organization of state securities authorities that adopts and maintains various statements of policy for state authorities to require (or not) issuer adherence as a condition of effectiveness in that state. *See, e.g.*, NASAA, *Omnibus Guidelines* (rev. May 7, 2007), *available at* https://www.nasaa.org/wp-content/uploads/2011/07/Omnibus-Guidelines.pdf (setting forth merit-based offering standards applicable to SEC-registered offerings such as BDCs that impose substantive conditions beyond federal disclosure requirements such as heightened suitability thresholds, concentration limits, caps on fees and expenses, restrictions on leverage and distributions, and other measures for which strict adherence is a condition to offering and selling the securities in that state). Separate NASAA guidelines exist for a myriad of different SEC-registered offering types, including equipment programs, commodity pools, real estate programs, mortgage programs, and real estate investment trusts. *See generally* NASAA, Statements of Policy (visited June 21, 2026), *available at* https://www.nasaa.org/statements-of-policy/.

15 *See, e.g.*, NASAA, Registration of Commodity Pool Programs §§ I–IV (amended May 6, 2012) (setting forth disclosure requirements, fee and expense considerations, suitability standards, and structural provisions applicable to commodity pool offerings), *available at* https://www.nasaa.org/wp-content/uploads/2011/07/Registration_of_Commodity_Pool_Programs-Amended-May-6-2012.pdf.

- Commission oversight and SEC Staff review processes, where applicable;
- robust anti-fraud provisions under Securities Act Sections 11 and 12(a)(2), and Exchange Act Section 10(b);
- detailed annual, periodic (*i.e.*, quarterly),[16] and current reporting requirements for issuers that meet the shareholder thresholds to be subject to the requirements; and
- a well-developed liability framework that disciplines issuers, underwriters, and other market participants.

The Proposal reinforces a central organizing principle embedded in NSMIA: where the capital markets for an issuer are national, registration of that issuer should be national as well. Congress made that determination in 1996 when it enacted NSMIA, based on then-existing market conditions. Those conditions have only become more pronounced as the market for BDCs has grown, as has market and investor interest in larger, multi-state SEC-registered offerings. Modern registered offerings are executed across a national and often global investor base, with pricing and allocation occurring on compressed timelines that cannot accommodate state-by-state regulatory processes and timelines.

At the same time, MFA recognizes and emphasizes that the Proposal's limited reallocation of the federal-state dual system does not displace the important role of state regulators in policing fraud. NSMIA preserves, and the Proposal maintains, state authority to investigate and bring enforcement actions for fraud and deceit,[17] as well as to require notice filings and collect fees.[18] These preserved authorities strike an appropriate balance: while the Proposal would eliminate duplicative and counterproductive registration requirements for nationally-regulated, SEC-registered offerings, it leaves intact the states' core enforcement powers and their ability to combat fraud, monitor securities offerings, and protect investors within their borders.

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16 MFA supports retention of issuer quarterly financial reporting, as noted in our SEC comment letter. *See* Letter from MFA to Vanessa A. Countryman, Sec'y, SEC, re: *Semiannual Reporting, Securities Exch. Act Rel. No. 34-102954* (July 6, 2026), *available at* https://www.mfaalts.org/wp-content/uploads/2026/07/MFA-SEC-Comment-Letter-re-Semiannual-Reporting-070626-FINAL.pdf. *See also* SEC, *Semiannual Reporting*, 91 Fed. Reg. 24,968 (May 7, 2026) (proposing to permit optional semiannual reporting on new Form 10-S in lieu of quarterly Form 10-Q reporting), *available at* https://www.federalregister.gov/documents/2026/05/07/2026-09095/semiannual-reporting.

17 *See* Securities Act §18(c) (preserving state authority to investigate and bring enforcement actions with respect to fraud or deceit, including in connection with covered securities).

18 *See id.* at §18(c)(2)(A) (permitting states to require the filing of copies of documents filed with the Commission, together with the payment of fees, with respect to covered securities). State notice filings for covered securities ensures that states maintain an ongoing knowledge of offerings occurring within their jurisdictions and can take enforcement action against issuers and sellers for fraudulent activity.

For these reasons, expanding NSMIA preemption to cover all SEC-registered offerings is both consistent with NSMIA's original purpose and necessary to ensure that the Commission's broader reforms achieve their intended effect. Eliminating duplicative state-level registration friction would complement the Proposal's broader effort to streamline registered offerings and make them more attractive relative to other financing alternatives.[19]

B. Maintaining state registration requirements for SEC-registered offerings would undermine the Proposal's benefits to issuers

Absent limited modernization of the SEC-state regulatory allocation, the Proposal's aims of modernizing the registered offering process could be undermined by state requirements. The core benefit of Form S-3 and shelf registration for example is the ability to access the markets quickly and efficiently, including through shelf takedowns and overnight offerings. Form S-3 takedowns depend on speed, certainty, and execution efficiency. State registration regimes by contrast are generally structured around separate filings, specified offering amounts, and jurisdiction-specific timing conditions. Many state securities statutes require that, for "coordinated" offerings,[20] the SEC registration statement must accompany a separate form to specify "the amount of securities to be offered in this state," and provides automatic effectiveness only if the filing has been on file for at least ten days and pricing information has been on file for a specified period.[21]

These features of the state registration process, even for SEC-registered offerings, underscore a timing mismatch between the state blue sky patchwork regime and the federal shelf-registration framework. SEC shelf registration, which the Proposal seeks to make available to a broader category of issuers,[22] permits an eligible

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19 Proposal, *supra* note 2, at 31,024-5; Press Release, *supra* note 2.

20 An offering that is registered with both the SEC and one or more states is referred to in state securities statutes as "registration by coordination." *See, e.g.*, Uniform Securities Act §303(a)(2) (1956) (Registration by Coordination) (requiring that a registration statement filed with a state in a coordinated offering include, among other items, "the amount of securities to be offered in this state") (*available at* https://www.nasaa.org/wp-content/uploads/2021/09/1956-Uniform-Securities-Act.pdf).

21 *See id.*; *see also id*. at §303(d) (providing that a registration statement becomes effective upon SEC effectiveness if specified conditions are met, including that the statement has been on file for at least a prescribed period, commonly ten days, and that pricing information has been on file for a specified time); Revised Uniform Securities Act §303(a)(2), (d) (1985) (substantially similar coordinated registration framework requiring disclosure of in-state offering amounts), *available at* https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=4f2f3b7b-0f8c-4d9a-9c95-9f6e6a7e1c0a; Uniform Securities Act § 304(a)(2), (f) (2002) (continuing the coordinated registration approach, including requirements to specify the amount of securities to be offered in the state and permitting effectiveness only after the filing has been on record for a minimum period and requisite pricing information has been provided), *available at* https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=86b7cdd9-0d4a-44a1-9c4c-4d2f6c5e7f52.

22 *See* Proposal, *supra* note 2, at 31,025 (describing expansion of shelf registration and streamlined capital-raising processes). It moreover should be noted that state securities registration regimes impose significant penalties for

issuer to register securities in advance and access the market opportunistically over time. Separate state compliance steps are needed that do not always mirror the Proposal's move towards more continuous, open-ended capital-raising flexibility. Without expanded preemption, the Proposal's expansion of Form S-3 eligibility will provide limited practical benefit for issuers that remain subject to state-level filing and timing requirements.

Similar concerns arise with respect to the Proposal's communications reforms and expansion of WKSI-like accommodations. While the Proposal would permit a broader set of issuers to engage in more flexible communications and respond quickly to market developments,[23] continued state-level filing and qualification requirements could introduce delays and uncertainty that diminish these benefits.

The same dynamic applies to the Proposal's modernization of Form S-1. Although the Commission seeks to reduce duplication through expanded incorporation by reference,[24] states would remain free to develop guidelines, separately or collectively, to require issuers to reincorporate in the Form S-1 the same duplicative disclosures the Proposal would allow issuers to incorporate by reference. Allowing state-level processes to reintroduce duplicative requirements would risk recreating precisely the overlapping responsibilities and regulatory burdens that Congress sought to eliminate through NSMIA and that the Commission is seeking to eliminate with the Proposal.

For these reasons, expanding NSMIA preemption is necessary to ensure that the Proposal's reforms function as intended. Without additional, limited preemption, state-level registration and qualification requirements could materially undermine the Commission's efforts to expand Form S-3 eligibility, modernize Form S-1, and extend WKSI-like benefits to a broader set of issuers. The Proposal's objective is to make the registered offering process more efficient, flexible, and competitive and can only be fully realized through a uniform and exclusively federal framework for SEC-registered offerings.

C. The SEC has clear statutory authority to propose the "qualified purchaser" definition

The Proposal's definition of "qualified purchaser" to include purchasers in SEC–registered offerings is well within the authority Congress conferred in NSMIA. Congress deliberately chose not to define the term and instead directed the Commission to do so "by rule."[25] Unlike other categories of covered securities in Securities Act Section 18, the qualified-purchaser category is not self-executing and operates only through Commission

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even inadvertent registration violations, with state statutes requiring the issuer or seller to offer the purchaser a right of rescission (*i.e.*, the investor is offered his or her money back), plus interest and reasonable attorneys' fees.

[23] *Id*. (describing expansion of communication flexibilities and WKSI-like accommodations for a broader set of issuers).

[24] The Commission's reform is expressly intended to reduce duplication and rely more fully on the continuous disclosure regime through Form 8-K filings and regular, quarterly reports. *Id*. at 31,026 (describing expanded incorporation by reference and reliance on the continuous disclosure regime). *See also supra* note 16 (SEC semiannual reporting proposal and MFA comment letter).

[25] Securities Act §18(b)(3).

rulemaking. Congress thus vested the Commission with flexibility to determine when federal regulation is sufficient and additional state registration and qualification requirements are unnecessary.

1. The legislative history supports the SEC's approach to the Securities Act "qualified purchaser" definition

The legislative history confirms that Congress's objective in enacting NSMIA was structural and functional, not categorical. Both the House and Senate Reports emphasize eliminating duplicative regulation, reducing burdens, and rationalizing authority between federal and state regulators in nationally distributed capital markets.[26] The House Report explains that NSMIA was intended to "promote efficiency and capital formation in the financial markets" through "more effective and less burdensome regulation,"[27] while the Senate Report underscores that overlapping federal and state responsibilities imposed unnecessary costs and impeded effective supervision.[28] Critically, neither report defines "qualified purchaser" or limits the Commission to a wealth-, income-, or sophistication-based definition.

2. The legislative history does not mandate a qualified purchaser definition with net worth or sophistication standards

Nor does the legislative history require a definition grounded in financial thresholds. Had Congress intended such a limitation, it could have said so expressly, as it has in other contexts. Instead, it delegated definitional authority to the Commission in a statute designed to reduce regulatory overlap and align authority with the national character of securities markets. Section 18(b)(3), consistent with its text and history, authorizes the Commission to define "qualified purchaser," and the SEC may reasonably take account of the regulatory context, including the comprehensiveness of the federal disclosure, liability, and enforcement framework applicable to a particular category of offerings.

If it is argued that the term "qualified purchaser" inherently denotes an investor who is financially sophisticated or wealthy, and that the Commission is therefore limited to such a definition, that argument is simply not supported by the statute. Section 18(b)(3) does not refer to "accredited investors" or otherwise incorporate a financial-threshold test. Where Congress has used broader language and delegated interpretive authority to an agency, courts do not ordinarily impose limitations that Congress itself chose not to include.[29] The

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26 H.R. Rep. No. 622, 104th Cong. 2d Sess. at 31 (1996) ("**House Report**"), *available at* https://www.congress.gov/104/crpt/hrpt622/CRPT-104hrpt622.pdf; S. Rep. No. 293, 104th Cong. 2d Sess. at 15 (1996) ("**Senate Report**") *available at* https://www.congress.gov/104/crpt/srpt293/CRPT-104srpt293.pdf. These committee reports relate to bills that were eventually enacted as NSMIA.

27 House Report, *supra* note 26, at 31.

28 Senate Report, *supra* note 26, at 3–4, 15.

29 *See City of Arlington v. FCC*, 569 U.S. 290, 306–07 (2013) (explaining that where Congress has conferred rulemaking authority on an agency, courts must respect that delegation and may not "carve out" limitations on that authority that are not grounded in the statute), *available at* https://supreme.justia.com/cases/federal/us/569/11-1545/case.pdf;

mere use of the word "qualified" does not override the express delegation of authority or cabin the Commission's discretion to consider broader regulatory considerations.

Similarly, concerns that the Proposal would displace traditional state authority over retail-oriented offerings reflect policy disagreement, not statutory constraint. Congress determined in NSMIA that certain securities should be subject to exclusive federal regulation and provided a mechanism in Section 18(b)(3) for the Commission to expand that category.[30] In implementing NSMIA, the Commission itself recognized that Congress expected certain offerings, such as asset-backed and structured finance products,[31] to be sold to qualified purchasers, reflecting an understanding that such offerings operate within a federally regulated and intermediated market structure.[32] In particular, the Commission explained when implementing NSMIA that Congress "expected that certain types of securities, such as asset-backed securities and other structured finance products, would be sold to qualified purchasers."[33] These are precisely the types of offerings that are subject to state merit-review regimes today and that would appropriately be preempted under the Proposal.[34]

In proposing to treat investors in SEC-registered offerings as "qualified purchasers," the Commission is reasonably exercising the authority Congress granted it to define the term. The House Report describes qualified purchasers as "sophisticated investors, capable of protecting themselves in a manner that renders regulation by

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see also Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 2263–64 (2024) (recognizing that courts must independently interpret statutes but must also respect express delegations of authority to agencies and ensure the agency acts within those statutory bounds), *available at* https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf.

30 Securities Act §18(b)(3).

31 *See* House Report, *supra* note 26, at 31.

32 House Report, *supra* note 26, at 31 (discussing covered securities framework and Congress's intent to reduce duplicative regulation and promote efficiency). The House Report expressed clear guidance that any qualified purchaser definition enable the purchase of these types of structured securities since they do not trade on an exchange and may be issued by newly formed trusts or special purpose vehicles and thus would not have the requisite financial statement history required for listing. *Id*.

33 *Id*.

34 *Id*. The House Report further notes that the SEC may establish different qualified purchaser definitions for different types of offerings. An exempt, nonpublic offering, for example, would not be afforded the protections of SEC registration and as such it may be appropriate for the Commission to impose minimum income and net worth requirements, as it does for offerings exempt from SEC registration under Regulation D. In all cases, however, the Committee intends that the Commission's definition be rooted in the belief that ''qualified'' purchasers are sophisticated investors, capable of protecting themselves in a manner that renders regulation by State authorities unnecessary. *See* SEC Regulation D, 17 CFR §§ 230.501–508 (2025).

State authorities unnecessary."[35] SEC-registered offerings satisfy that concern through the federal regulatory framework itself, which supplies multiple, reinforcing layers of investor protection: (i) comprehensive Securities Act disclosure, subject to Sections 11 and 12(a)(2) liability;[36] (ii) ongoing Exchange Act reporting;[37] (iii) issuer-imposed suitability standards for offerings distributed to retail investors; (iv) broker-dealer suitability, care, and Regulation Best Interest obligations,[38] which federally-regulated and state-licensed broker-dealers frequently supplement with their own standards; (v) investment adviser fiduciary obligations when advisers recommend or allocate securities;[39] and (vi) preserved state antifraud authority under Section 18(c). Together, these federal and intermediary-level protections supply the investor safeguards that state registration and qualification review were historically intended to provide.

Nothing in the legislative history supports the premise that Congress intended "qualified purchaser" to be limited to a sophistication- or wealth-based concept. The House and Senate Reports contain no such limitation and do not equate "qualified purchaser" with "accredited investor" or any similar construct. Instead, they emphasize reducing regulatory overlap, improving efficiency, and aligning regulation with national market activity.[40] The Proposal's definition is consistent with that purpose.

3. The SEC's unadopted 2001 proposal does not constrain the current rulemaking

The Commission's 2001 proposal to define "qualified purchaser" (the "**2001 Release**") by reference to financial sophistication does not establish that the statute permanently limits the SEC to such an approach.[41] The

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35 House Report, *supra* note 26, at 31 (the House Report offers guidance that the SEC's qualified purchaser definition should not be more restrictive (*i.e.*, impose *higher* net worth or asset-based criteria) than the qualified purchaser definition in the 1940 Act).

36 *See* Securities Act §§ 11, 12(a)(2); Securities Act § 18(c); Staff Bulletin: Standards of Conduct for Broker-Dealers and Investment Advisers Care Obligations, SEC (Apr. 20, 2023) (describing intermediary obligations when recommending securities to retail investors) *available at* https://www.sec.gov/about/divisions-offices/division-trading-markets/broker-dealers/staff-bulletin-standards-conduct-broker-dealers-investment-advisers-care-obligations.

37 Exchange Act §§ 13(a), 15(d); Exchange Act Rules 13a-1 to 240.13a-11 (annual, periodic, and current report requirements for reporting issuers).

38 *See* Regulation Best Interest, 17 CFR § 240.15*l*-1(a)(1)–(2) (requiring that a broker-dealer making a recommendation to a retail customer act in the customer's "best interest" and exercise reasonable diligence, care, and skill in forming a reasonable basis for the recommendation); SEC, *Regulation Best Interest: The Broker-Dealer Standard of Conduct*, 84 Fed. Reg. 33,318, 33,318–19 (July 12, 2019) (explaining that Reg BI enhances and builds upon existing suitability obligations and requires broker-dealers to address conflicts and consider reasonably available alternatives), *available at* https://www.sec.gov/files/rules/final/2019/34-86031.pdf.

39 Advisers Act §206; SEC, *Commission Interpretation Regarding Standard of Conduct for Investment Advisers*, 84 Fed. Reg. 33,669 (July 12, 2019) *available at* https://www.govinfo.gov/content/pkg/FR-2019-07-12/pdf/2019-12208.pdf.

40 House Report, *supra* note 26, at 31; Senate Report, *supra* note 26, at 15.

41 SEC, *Defining the Term "Qualified Purchaser" Under the Securities Act of 1933*, 66 Fed. Reg. 66,839, 66,839 (Dec. 27, 2001) (interpreting NSMIA legislative history and explaining that Congress anticipated that certain securities,

2001 Release was never adopted; the SEC later noted that the 2001 Release "was not a Commission statement on the scope of all permissible definitions for a qualified purchaser adopted pursuant to Section 18(b)(3)."[42] At most, it reflects one possible SEC exercise of delegated authority a quarter-century ago. It does not demonstrate that a sophistication-based definition is required or preclude the SEC from adopting a different, reasonable approach based on current market conditions and regulatory experience consistent with statutory purpose and Congressional delegation of rulemaking authority.

The Commission's existing rules confirm that "qualified purchaser" definitions adopted under Section 18(b)(3) need not be tied solely to investor characteristics. Rule 256 under Regulation A defines "qualified purchaser" for purposes of Section 18(b)(3) to include any person purchasing securities in a Tier 2 offering.[43] Like the Proposal, this definition turns on the nature of the offering and the regulatory framework governing it, not on the wealth or sophistication of the purchaser. The Proposal is a natural extension of that approach: SEC-registered offerings are subject to a more, not less, comprehensive federal regime than Tier 2 Regulation A offerings, and state antifraud authority is fully preserved under Section 18(c).[44] In that context, the Commission reasonably may conclude that purchasers in SEC-registered offerings are "qualified" for purposes of Section 18(b)(3) because the federal regulatory regime, reinforced by the intermediary and antifraud protections described above, provides a sufficient, nationwide investor-protection baseline that renders duplicative state registration and qualification requirements unnecessary.

4. Recent caselaw applicable to administrative agencies does not undermine the SEC's authority to define "qualified purchaser" as directed by Congress

A recent Supreme Court decision also does not impede the SEC's ability to exercise the clear authority Congress granted. Although one might argue that the curtailment of *Chevron*[45] deference in *Loper Bright*[46] would limit the Commission's ability to define the term, that is not the case. Under *Loper Bright*, courts no longer defer to

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including asset-backed and structured finance products, would be sold to qualified purchasers), *available at* https://www.sec.gov/rules-regulations/2001/12/defining-term-qualified-purchaser-under-the-securities-act-1933.

42 17 CFR § 230.256. *See also* SEC, *Amendments for Small and Additional Issues Exemptions Under the Securities Act (Regulation A)*, 80 Fed. Reg. 21,806, 21,895 (Apr. 20, 2015) (adopting Rule 256 to define "qualified purchaser" for purposes of Section 18(b)(3)) ("**SEC Rule 256 Release**"), *available at* https://www.govinfo.gov/content/pkg/FR-2015-04-20/pdf/2015-07305.pdf.

43 *See* SEC Rule 256 Release, *supra* note 42, at §II.H.3.a.

44 Securities Act §18(c).

45 *Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842–43 (1984) (establishing that courts should defer to a reasonable agency interpretation of an ambiguous statute that the agency administers), *available at* https://supreme.justia.com/cases/federal/us/467/837.

46 *Loper Bright*, *supra* note 29 (holding in relevant part that courts may not defer to an agency interpretation of law "simply because a statute is ambiguous").

agency interpretations of ambiguous statutes but instead exercise independent judgment to determine whether an agency's action falls within its statutory authority.[47]

Loper Bright does not undermine the Commission's Proposal. Section 18(b)(3) expressly directs the Commission to define "qualified purchaser" "by rule" and further permits different definitions for different categories of securities, consistent with the public interest and investor protection.[48] The relevant question post-*Loper Bright* is not whether courts owe *Chevron* deference, but whether the Commission's proposed definition is a permissible reading of a statute that expressly delegates line-drawing authority to it.

Here, the statutory text, structure, and legislative history all support the Commission's authority to adopt a definition that turns on the regulatory character of the offering rather than solely on investor wealth or sophistication. The proposal thus remains intact under *Loper Bright*: courts must independently construe the statute, but they must also respect Congress's decision to vest the Commission with rulemaking authority over the scope of the "qualified purchaser" category and review the Commission's policy judgments under the ordinary Administrative Procedures Act ("**APA**") framework.[49]

III. The Commission should address Regulation M, especially Rule 105, in parallel with any final Form S-3 expansion

In addition to expanding NSMIA preemption, MFA respectfully recommends that the Commission modernize Regulation M in parallel with any final expansion of Form S-3 eligibility. The Proposal would substantially improve the ability of a broader range of issuers to conduct shelf takedowns, overnight offerings, and other rapidly executed registered transactions. That is an important and welcome objective. At the same time, however, the practical value of those reforms will depend in part on whether investors can participate in those offerings without unnecessary Regulation M uncertainty. As currently written and applied, Rule 105 can restrict participation in precisely the types of offerings the Proposal is intended to facilitate, in ways that are increasingly disconnected from the rule's anti-manipulation purpose and that may undermine the Commission's capital-formation objectives.[50]

For that reason, MFA believes the Commission's thoughtful and ambitious effort to expand Form S-3 registration eligibility would be strengthened by targeted, complementary relief under Rule 105. The Commission's

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47 *See id.* ("The [Administrative Procedures Act ("APA")] requires courts to exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the [APA's] terms and our precedent require.").

48 Securities Act §18(b)(3).

49 *See Loper Bright*, *supra* note 29, at 2263–64 (explaining that while *Chevron* is overruled, courts must still implement statutory delegations and review agency action under the Administrative Procedure Act). *See also City of Arlington*, *supra* note 29, at 306–07 (explaining that where Congress has conferred general rulemaking authority, courts should not carve out extra-statutory limits on the agency's exercise of that authority within its substantive field).

50 MFA Sept. 16, 2025 Letter, *supra* note 3, at 1–10.

Form S-3 reforms reflect a clear understanding of how modern public markets operate and should materially improve issuers' ability to access capital efficiently, opportunistically, and at lower cost. Targeted modernization of Rule 105 would help ensure that these benefits are not diluted by a legacy compliance framework that can deter legitimate investor participation in follow-on offerings. The changes discussed below would preserve Rule 105's core anti-manipulation protections while better aligning the rule with the speed, sequencing, and information flow of modern shelf takedowns and overnight offerings.

A. Rule 105 was designed to address manipulative conduct, but its current operation often reaches well beyond that objective

Rule 105 is intended to prevent manipulative short selling that could artificially depress the price of an offering and allow a short seller to profit by covering with allocated offering shares at the discounted offering price. MFA supports that policy objective. But as MFA has explained in prior comment letters and exemptive-relief requests,[51] the current Rule 105 framework is not well matched to modern follow-on offering practices, particularly overnight and one-day marketed offerings, which now dominate the market for covered offerings.[52]

MFA's recent empirical analysis explains that 94.25% of the 1,363 follow-on or secondary offering deals analyzed from 2022 through 2025 were overnight or one-day marketed deals.[53] In such offerings, investors often first learn that an offering exists only after the market closes on the day the transaction is launched and priced. Yet Rule 105's five-business-day restricted period can capture pre-announcement short sales that occurred before the investor had any knowledge of the offering. In those circumstances, the rule does not target intentional offering-related manipulation; rather, it disqualifies investors whose short sales were unrelated to the offering and could not realistically have been motivated by a plan to cover with offering shares.[54]

B. The restricted period should not begin before public announcement of the offering

MFA recommends that the Commission amend Rule 105 or grant exemptive relief to provide that the restricted period begins when the offering is first publicly announced and ends at pricing. MFA continues to believe that this reform is both necessary and appropriate, especially if the Commission expands Form S-3 shelf eligibility. As MFA has explained, short sales that occur before public announcement of the offering fall outside the

51 *See supra* note 3.

52 *See* Short Selling in Connection with a Public Offering, 72 Fed. Reg. 45,094, 45,096–97 (Aug. 10, 2007), *available at* https://www.govinfo.gov/content/pkg/FR-2007-08-10/pdf/E7-15608.pdf; MFA Sept. 16, 2025 Letter, *supra* note 3, at 1–6.

53 *See* Empirical Analysis Letter, *supra* note 3, at 5-6.

54 *Id.*, at 1–6.

Commission's stated policy rationale for Rule 105, because an investor who does not know an offering is coming cannot be seeking to profit from the discount associated with that offering.[55]

This recommendation would not leave the market unprotected. Existing anti-fraud and insider-trading prohibitions already address trading based on material nonpublic information, including situations in which an investor has been wall-crossed or otherwise learns of an offering before public announcement. Narrowing the restricted period to post-announcement trading would therefore better align Rule 105 with its anti-manipulation purpose while reducing the needless exclusion of legitimate capital providers from follow-on offerings.[56]

MFA's recent letters further explain that the market consequences are material. According to MFA's public summary of its empirical analysis, after the 2007 amendment to Rule 105, the average discount on overnight offerings nearly doubled, from 3.62% to 6.24%, while comparable non-overnight offerings showed no meaningful change.[57] MFA further reports that, for a typical $200 million overnight offering, the increased issuance cost associated with the rule's operation is approximately $3.32 million.[58] MFA argues that this pattern is consistent with, and may reflect, Rule 105 excluding potential investors whose short sales were unrelated to the offering, thereby weakening demand and worsening pricing for issuers and selling shareholders. The strict liability application of Rule 105 removed a critical segment of institutional buyers from public offerings as they attempt to mitigate Regulation M risk.

C. The bona fide purchase exception often does not solve the problem in overnight deals

MFA further suggests that the Commission also take account of the practical limitations of the current bona fide purchase exception. For overnight and one-day marketed deals, the exception may be unavailable because the rule currently requires the purchase to occur during regular trading hours and no later than the business day prior to pricing. In a transaction announced after the close and priced the same evening, that exception may offer no meaningful way to cure pre-announcement short sales. As a result, even a de minimis or unrelated short sale can force an investor to decline participation in the offering altogether.[59]

If the Commission is not prepared in this rulemaking to amend Rule 105 directly, it should at least acknowledge in the adopting release that the interaction between expanded shelf eligibility and the current Rule

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[55] *Id.* at 1–2; MFA Sept. 16, 2025 Letter, *supra* note 3, at 4–6.

[56] MFA Sept. 16, 2025 Letter, *supra* note 3, at 5–6; *see also, e.g.*, In re Morgan Stanley & Co. LLC, Exch. Act Rel. No. 99336 (Jan. 12, 2024), *available at* https://www.sec.gov/files/litigation/admin/2024/34-99336.pdf.

[57] *See* Empirical Analysis Letter, *supra* note 3; *see* MFA, *MFA sends a letter to the SEC with empirical analysis of Rule 105 of Reg M*, https://www.mfaalts.org/letter/mfa-sends-a-letter-to-the-sec-with-empirical-analysis-of-rule-105-of-reg-m/ (visited June 21, 2026).

[58] *Id*.

[59] Exemptive Relief Request Letter, *supra* note 3, at 2-3.

105 framework creates avoidable frictions in follow-on offerings and commit to prompt exemptive or interpretive relief.

D. The Commission should provide clarity regarding pricing timing

MFA also has urged the Commission to provide clarity that investment managers may reasonably rely on information from underwriters or broker-dealers regarding the timing of pricing of a covered offering. This clarification is important because Rule 105's restricted period ends at pricing, yet in practice investors often do not control and may not have precise real-time visibility into the exact moment of pricing. This is especially true in overnight deals, where bookbuilding, allocation decisions, and pricing may occur on a compressed timetable outside regular trading hours.[60]

Clarifying that investors may reasonably rely on underwriter-provided pricing information would reduce inadvertent compliance risk without undermining Rule 105's anti-manipulation purpose. To the contrary, it would help ensure that legitimate investors are not chilled from participating in offerings because they cannot identify with certainty a pricing moment controlled by others.

E. The Commission should clarify the separate accounts exception in a manner consistent with the text and purpose of the rule

MFA likewise recommends that the Commission clarify the Separate Accounts Exception. In the 2007 Adopting Release,[61] the Commission described six indicia of separateness, but also indicated that accounts not satisfying every listed condition might nevertheless qualify if decisions for each account are made separately and without coordination. MFA has expressed concern that, in practice, market participants have observed Staff interpretations that treat the indicia, particularly the sixth indicium concerning managerial oversight, as rigid requirements rather than contextual guideposts. This creates avoidable uncertainty for investment managers overseeing multiple independently managed accounts.

MFA's May 28, 2026 letter recommends that the Commission clarify that the separate-accounts indicia, including "Indicia 6," should be narrowly tailored to the actual language of the rule and the guidance in the 2007 Adopting Release and should not be interpreted more broadly to cover senior-management activity unrelated to a particular covered offering.[62] MFA suggests that the relevant question should be whether there is actual

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60 MFA Sept. 16, 2025 Letter, *supra* note 3, at 6–7.

61 2007 Adopting Release, *supra* note 5, at 45,099–100; Recommendation for Clarifying the Separate Account Exception Letter, *supra* note 3.

62 *See* Separate Account Exception Letter, *supra* note 3. "Indicia 6" of refers to the sixth indicium of separateness identified in the 2007 Adopting Release for Rule 105's Separate Accounts Exception: personnel with oversight or managerial responsibility over multiple accounts, and account owners of multiple accounts, do not have or exercise authority to execute trades, or pre-approve trading decisions, in individual securities for those accounts. *See* 2007 Adopting Release, *supra* note 5.

coordination of trading or cooperation between accounts with respect to the securities at issue, not whether senior management exercises ordinary oversight or risk-management functions across the enterprise. Clarifying that point would reduce unnecessary compliance overhang while preserving the core anti-coordination purpose of the rule.[63]

F. The economic analysis for the Proposal should account for Rule 105 frictions

Finally, MFA respectfully submits that the Commission's economic analysis should recognize that the Proposal's capital-formation benefits may be attenuated if Rule 105 remains unchanged. The Proposal is designed to increase the number of issuers able to conduct shelf offerings and other rapidly executed registered transactions. But if a significant class of institutional investors remains chilled from participating in those offerings because of a strict-liability rule that captures unrelated pre-announcement activity, then the Proposal's benefits will not be fully realized. The Commission should therefore expressly recognize in the adopting release that modernizing Rule 105 would complement and help unlock the benefits of the Proposal.[64]

IV. MFA supports expanding Form S-3 eligibility

A. The public-float threshold is an outdated and increasingly arbitrary proxy

The Proposal appropriately would eliminate the current public-float threshold for unlimited primary offerings on Form S-3. As the Commission and Commissioners have recognized, the rationale for earlier restrictions on short-form eligibility was tied to assumptions that investors needed some external proxy (e.g., public float or market following) to determine whether information about the issuer was already widely available. Whatever force that rationale may have had decades ago, it is far less compelling today. Continuous Exchange Act reporting, EDGAR availability, broad sell-side and independent research, and modern information technology have substantially changed how public-company information is generated, disseminated, and evaluated.[65]

In practice, the public-float threshold often functions as a blunt and arbitrary line. An issuer's public float may reflect temporary valuation movements, concentrated ownership, or other factors that bear little relationship to disclosure quality, investor sophistication, or the market's ability to evaluate the issuer. A reporting company that is current in its Exchange Act filings and subject to the full panoply of federal securities law obligations may nevertheless be excluded from S-3 solely because it does not satisfy a legacy float threshold. MFA agrees with the

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63 Separate Account Exception Letter, *supra* note 3, at 2-3.

64 *See* Empirical Analysis Letter, *supra* note 3.

65 Fact Sheet, *supra* note 2, at 1; Hester M. Peirce, Comm'r, SEC, *Headache Medicine: Statement on Proposing Releases for Registered Offering Reform and Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies* (May 19, 2026), https://www.sec.gov/newsroom/speeches-statements/peirce-statement-proposing-releases-ror-051926.

Commission that this restriction no longer meaningfully advances investor protection and instead can deprive issuers of the lower-cost, more flexible financing mechanisms available through Form S-3 and shelf registration.[66]

B. The one-year seasoning requirement similarly is no longer justified

MFA also supports the proposal to eliminate the current requirement that an issuer be subject to Exchange Act reporting for at least twelve months before becoming eligible to use Form S-3. As with public float, the mere passage of time is an increasingly weak proxy for disclosure quality or market familiarity. What matters far more we suggest is whether the issuer is current and timely in its Exchange Act reporting obligations and whether investors have a functioning, continuous stream of public disclosure on which to base investment decisions.[67]

The seasoning requirement can be particularly counterproductive for newly public issuers that are otherwise current in their reporting and may need financing flexibility soon after entering the public markets. If the Commission is seeking to encourage more companies to go public and remain public, the rules should not unnecessarily deny recently public but otherwise compliant issuers access to the most efficient forms of registered capital raising. MFA therefore agrees that the Commission should remove the one-year seasoning requirement and instead continue to focus on whether the issuer is current in its reporting and otherwise subject to the integrated disclosure system.[68]

C. Broader S-3 eligibility should reduce costs and improve public-market access

MFA believes the combined effect of eliminating the public-float and seasoning requirements will be meaningful. Shelf registration is one of the most useful features of the federal securities regime because it allows issuers to access the market when timing is favorable, rather than on a schedule dictated by registration mechanics. That flexibility matters in volatile markets and is often essential for issuers that need to respond quickly to financing opportunities or constraints. By expanding S-3 eligibility, the Proposal should reduce execution risk, lower legal and administrative costs, and make public follow-on financing more feasible for a broader range of issuers.[69]

This is especially important given the growing operational contrast between efficient overnight follow-ons in the registered markets and the increasingly cumbersome procedural requirements that can arise under outdated registration rules. When the public markets become less nimble than they should be, issuers inevitably

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66 Proposal, *supra* note 2, at 31,024; Fact Sheet, *supra* note 2, at 1.

67 Fact Sheet, *supra* note 2, at 1; Uyeda Statement, *supra* note 4.

68 Proposal, *supra* note 2, at 31,024-5; Press Release, *supra* note 2.

69 Fact Sheet, *supra* note 2, at 1; Proposal, *supra* note 2, at 31,024.

weigh alternative financing options more heavily. The Proposal is therefore a welcome step toward keeping the registered markets competitive.[70]

MFA recommends that expanded Form S-3 eligibility be accompanied by a corresponding expansion of Short Form N-2 eligibility. Specifically, any BDC or registered closed-end fund that is a reporting issuer under the Exchange Act or 1940 Act, is current and timely in its required filings, and is not an "ineligible issuer" should be eligible to use Short Form N-2. Restricting eligibility to affected funds that qualify as ELIs or SELIs is inconsistent with the Commission's rationale for eliminating public float thresholds, fails to achieve the Commission's stated objective of providing functional parity with operating companies, and would exclude most affected funds despite their being subject to the same robust disclosure and reporting obligations as their listed counterparts. The proposed exchange-listing requirement functions as a de facto public float threshold for these funds and is the very type of eligibility criterion the Commission has concluded is no longer an appropriate measure for Form S-3 shelf eligibility. Moreover, the Rule 486 framework the Commission identifies as an alternative does not provide equivalent flexibility for issuers that regularly access the debt markets and does not permit forward incorporation by reference.

V. MFA supports extending WKSI-like registration and communication benefits to a broader set of issuers

MFA also supports the Proposal's effort to extend certain registration and communication benefits currently reserved for WKSIs and other seasoned issuers to a broader set of reporting companies. The current limits on these benefits may once have reflected a rough policy judgment about which issuers were sufficiently followed by the market to warrant greater offering flexibility. But, as discussed above, modern market conditions and the SEC's integrated disclosure regime make those distinctions less persuasive than they once were.[71]

Expanding these benefits should meaningfully reduce offering friction. For example, broader access to flexible communication and registration accommodations should reduce transaction complexity, facilitate faster execution, and lessen the risk that an issuer opt for other financing options simply because the registered process is unnecessarily cumbersome. MFA therefore agrees that these benefits should be made available to a broader set of reporting issuers that are current in their disclosures and subject to the Commission's existing liability and anti-fraud framework.[72]

MFA similarly supports the Proposal's effort to maintain parity for BDCs companies and registered closed-end funds using Form N-2, so that those issuers continue to receive offering-process treatment generally comparable to similarly situated operating companies. Consistent treatment across functionally comparable

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[70] Proposal, *supra* note 2, at 31,025-6; Press Release, *supra* note 2.

[71] Proposal, *supra* note 2, at 31,025-6; Fact Sheet, *supra* note 2, at 1–2.

[72] Press Release, *supra* note 2; Uyeda Statement, *supra* note 4.

registered offerings should place pooled investments on a similar footing with operating companies and reduce unnecessary complexity. This harmonization of offering-process approach should be applicable and consistent to all similarly situated BDCs and registered closed-end funds, listed or unlisted.

It is important, however, that the Commission clarify that its efforts to expand access to WKSI-style benefits do not inadvertently narrow the eligibility of issuers that qualify as WKSIs today. As proposed, the Commission would replace the WKSI framework with three categories of issuers eligible for WKSI status comprising (i) Form S-3-eligible issuers, (ii) eligible listed issuers ("**ELIs**"), which are issuers that are S-3-eligible and have common equity listed on a national securities exchange and (iii) seasoned ELIs ("**SELIs**"), which are ELIs that have been subject to Exchange Act reporting for at least twelve months.[73] There is, however, a fourth class of issuers that qualify as WKSIs under Rule 405 today but would fall outside all three proposed categories. This class includes non-exchange-listed BDCs and financing subsidiaries of operating companies, each of which may satisfy the current WKSI thresholds by having issued at least $1 billion in aggregate principal amount of non-convertible securities (other than common equity) in registered primary offerings over the past three years but is not exchange-listed and therefore could be neither an ELI nor a SELI under the Proposal.[74]

MFA recommends that the Commission preserve WKSI status for issuers that meet the existing Exchange Act Rule 405 criteria based on public float or amount of registered debt. In specific response to Question 59 of the Proposal, MFA recommends that the Commission add a fourth category consisting of issuers that meet the current WKSI requirements.[75] The existing WKSI framework has operated successfully for nearly two decades,[76] facilitating efficient capital formation for the largest and most widely followed reporting companies without compromising investor protection. Any final amendments should therefore be additive in nature, extending

73 *See* Proposal, *supra* note 2, at 31,025 (describing proposed replacement of the WKSI framework with a three-tier structure of Form S-3-eligible issuers, ELIs, and SELIs, and describing ELI and SELI eligibility criteria).

74 *See* paragraph (1)(i)(A) of the WKSI definition in Exchange Act Rule 405 (identifying alternative bases for an issuer to qualify as a WKSI, including that an issuer may qualify if it has issued, for cash, within the last three years, at least $1 billion in aggregate principal amount of non-convertible securities, other than common equity, in primary offerings registered under the Securities Act); *see also supra* note 2, at n. 394 and related text.

75 *See* Proposal, *supra* note 2, at 31,062; *see also* Letter from Robert D. Giannattasio, Partner, Gibson, Dunn & Crutcher LLP, to Vanessa A. Countryman, Sec'y, SEC, re: *File No. S7-2026-17, Registered Offering Reform* (July 15, 2026), *available at* https://www.sec.gov/comments/S7-2026-17/s7202617-962799-2982146.pdf.

76 See SEC, *Securities Offering Reform*, 70 Fed. Reg. 44,722, 44,722–24 (Aug. 3, 2005) (adopting reforms to modernize registration, communications, and offering processes, provide investors more timely information, and preserve issuers' timely access to capital), *available at* https://www.govinfo.gov/content/pkg/FR-2005-08-03/pdf/05-14560.pdf; SEC, Div. of Corp. Fin., *Revised Statement on Well-Known Seasoned Issuer Waivers* (Apr. 24, 2014) (explaining that the Securities Offering Reform release created the WKSI category for the most widely followed issuers representing significant U.S. capital raised and traded, and that WKSIs receive the greatest registration and communications flexibilities), *available at* https://www.sec.gov/about/divisions-offices/division-corporation-finance/revised-statement-well-known-seasoned-issuer-waivers-april-24-2014.

appropriate accommodation to additional issuers while preserving the full scope of benefits currently available to existing WKSIs. Moreover, in specific response to Question 89 of the Proposal, preserving WKSI status for issuers that meet the current requirements would ensure further parity between operating companies and affected funds in connection with the registered offering process, which would be consistent with the Congressional mandate to provide parity where possible.

VI. MFA supports modernizing Form S-1 through broader incorporation by reference

MFA also supports the Proposal to expand the ability to incorporate Exchange Act reports by reference into Form S-1. This reform is sensible and overdue. The current limits on incorporation by reference in S-1 can force issuers to restate or duplicate information that is already publicly available in their Exchange Act reports. That duplication increases legal and drafting costs, creates opportunities for inconsistency, and provides limited incremental benefit to investors who already rely on the issuer's continuous-reporting record.[77]

Broadening incorporation by reference should reduce those inefficiencies and strengthen the logic of the integrated disclosure system. Investors in a registered offering are already beneficiaries of the protections of the Securities Act, and those protections function against the backdrop of the issuer's Exchange Act reporting record. It therefore makes sense to allow issuers to rely more fully on that existing disclosure architecture rather than forcing needless repetition in Form S-1. This reform should be particularly helpful for issuers that are not yet S-3 eligible but nevertheless are subject to, and current in, the Exchange Act reporting system.[78]

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Conclusion

MFA supports the Proposal's core reforms and believes they will materially improve the efficiency and competitiveness of the U.S. public markets. To ensure those benefits are fully realized, the Commission should adopt the proposed definition of "qualified purchaser" and address the interaction between expanded Form S-3 eligibility and Regulation M, particularly Rule 105. We respectfully encourage the Commission to proceed with the Proposal and to provide targeted Rule 105 relief in parallel.

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77 Fact Sheet, *supra* note 2, at 1–2; Proposal, *supra* note 2, at 31,025-6.

78 *See* Uyeda Statement, *supra* note 4.

MFA appreciates the opportunity to comment and, should the Staff have questions or require additional information, please contact Jeff Himstreet (jhimstreet@mfaalts.org) or the undersigned (jhan@mfaalts.org).

Respectfully submitted,

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