

SEC Proposes Registered Offering Reform: Blue-Sky Preemption a Key Win for Non-Exchange Traded REITs and BDCs

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On May 19, 2026, the Securities and Exchange Commission (SEC) proposed amendments in a “Registered Offering Reform” package (the Proposal) that would make it significantly easier for public companies to raise capital through registered offerings of securities. Notably, among other changes, the Proposal would exempt all registered public offerings, including those for non-exchange traded products sold through private wealth channels such as real estate investment trusts (REITs) and business development companies (BDCs), from state blue-sky registration and qualification requirements. This preemption of state blue-sky registration requirements, if adopted as proposed, would likely alleviate the regulatory burden imposed on non-traded REITs and BDCs that elect to conduct registered public offerings of their shares significantly and expand the scope of retail investors who participate in such offerings due to the lack of separate state blue-sky suitability requirements with respect to such investors. The Proposal also seeks to modify a number of other registered offering-related items, including with respect to the eligibility of certain issuers, like registered closed-end funds and BDCs, to rely on shelf registration statements, as described more in [another recent Cleary Gottlieb publication](#).

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Under current law, state blue-sky registration and qualification requirements are generally preempted for registered offerings of securities that are listed (or approved for listing) on a national securities exchange but not for registered public offerings of unlisted securities unless they are senior to a separate listed security, such as a registered note.¹ As a result, non-exchange traded REITs and BDCs historically have been required to undergo fairly lengthy and often time-consuming blue-sky registration processes across 50 states, in addition to completing their registration statement filed with the SEC under the Securities Act. Notably, unlike REITs and BDCs, non-exchange listed registered investment companies, including mutual funds, tender offer funds and interval funds, are exempt from the state blue-sky registration and qualification requirements as “covered securities” under Section 18 of the Securities Act.

The Proposal, as drafted, would re-define the term “qualified purchaser” under Section 18(b)(3) of the Securities Act to include any person to whom securities are offered or sold in a registered public offering, such that both listed and unlisted securities would be classified as “covered securities” exempt from state registration and qualification requirements.² However, states would retain antifraud enforcement authority and the ability to require notice filings and fees under Section 18(c) of the Securities Act, in a manner similar to current state requirements for registered investment companies. As a result, the Proposal, if adopted as proposed, would effectively end the state blue-sky registration and qualification requirements for non-exchange traded REITs and BDCs that have proliferated in recent years through private wealth distribution channels.

Key Takeaways

- **The Proposal, if adopted as proposed, will greatly simplify the initial public offering**

registration process for newly formed non-exchange listed REITs and BDCs, and it may encourage new publicly offered entrants into the space. Newly launched non-traded REITs and BDCs currently face long, costly and sometimes cumbersome blue-sky registration processes across 50 states in order to reach the broadest retail investor base possible. The Proposal’s preemption of state blue-sky registration would, if adopted, remove a significant portion of the time and cost associated with launching a new non-traded REIT or BDC and thus may encourage more registrants to elect registered public offerings. Notably, a number of recent, non-traded BDCs have opted for the private perpetual structure, which relies on a private placement offering to avoid state blue-sky registration and qualification requirements.

- **Existing publicly offered non-exchange listed REITs and BDCs should face a material reduction in ongoing costs associated with maintaining and refreshing their current state blue-sky registrations.** Existing publicly offered, non-traded REITs and BDCs must go through follow-on state blue-sky registration reviews from time to time, typically in connection with refreshing their original Securities Act registration statement. As a result, the state blue-sky registration process often reflects an ongoing discussion with state securities administrators, rather than a one-time process, even if a new publicly offered, non-traded REIT or BDC has previously cleared comments with a particular state. If the Proposal is adopted as drafted, existing, publicly offered, non-traded REITs and BDCs would be able to forego the significant costs and burdens of continually complying with ongoing state blue-sky registration requirements, including the periodic reviews in connection with refreshed Securities Act registration statements.

¹ Securities that are equal in seniority or that are senior to a listed security of the same issuer are also classified as “covered securities” under Section 18(a) of the Securities Act and therefore exempt from state blue-sky registration and

qualification requirements. The Proposal would not affect this exemption.

² Proposal at 184-85.

- **The removal of state-imposed investor suitability requirements will likely expand the scope of retail investors who can invest in publicly offered, non-traded REITs and BDCs.** Individual states frequently impose separate suitability requirements on prospective investors who may be located within their state, which effectively limit the scope of investors that a publicly offered, non-traded REIT or BDC may target within that state. As a result, investor qualification requirements often vary by state and, in some cases, resemble the qualification requirements for accredited investors under Regulation D of the Securities Act. By preempting those state blue-sky qualification requirements, the Proposal would align publicly offered, non-traded REITs and BDCs with non-exchange listed registered closed-end funds and unlock the ability of all retail investors to participate in such products.

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