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July 27, 2026

Via Electronic Submission

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

Re: Registered Offering Reform (Release Nos. 33-11418; 34-105513; IC-36160; File No. S7-2026-17; RIN 3235-AN41) (the "Release")

Dear Ms. Countryman:

The Alternative and Direct Investment Securities Association ("ADISA")[1] appreciates the opportunity to comment on the Securities and Exchange Commission's (the "Commission") proposals for preemption of state securities law registration and qualification and amendments to Form S-3.

Preemption of State Securities Law Registration and Qualification

ADISA supports the proposed amendments to Rule 146 under the Securities Act of 1933, as amended (the "Securities Act"), to define "qualified purchaser" for purposes of Section 18(b)(3) of the Securities Act to include any person to whom securities are offered or sold pursuant to an offering registered under the Securities Act.

ADISA encourages the Commission to adopt the definition substantially as proposed. The proposal is consistent with the language and intent of Section 18 of the Securities Act and Congress's allocation of responsibility for the substantive review of securities offerings as articulated in the National Securities Markets Improvement Act of 1996, Pub. L. No. 104-290 ("NSMIA"). It would also reduce the costly and time-consuming state-by-state registration and qualification review for nationally distributed registered offerings while preserving state antifraud authority, notice filing authority, fee authority where permitted, and enforcement remedies expressly retained by Section 18(c) of the Securities Act.

[1] ADISA (Alternative & Direct Investment Securities Association) is the nation's largest trade association for the non-traded alternative investment space (i.e., retail vs. institutional). Through its 5,000 financial industry members (over 1,000 firms), ADISA reaches over 220,000 finance professionals, with sponsor members raising in excess of $200 billion annually, serving more than 1 million investors. ADISA is a non-profit organization (501(c)(6)), registered to lobby, and also has a related 501(c)(3) charitable non-profit (ADISA Foundation) assisting with scholarships and educational efforts.

The Proposal Fits the Structure of Securities Act Section 18

Section 18(a) of the Securities Act provides that, subject to the statute's preserved state authorities, no state law, rule, regulation, order, or administrative action requiring registration or qualification of securities or securities transactions may directly or indirectly apply to a covered security. This prevents states from conditioning use of offering documents for covered securities and from imposing merit-based conditions on offerings of covered securities. See 15 U.S.C. § 77r(a). Importantly, Section 18(b)(3) expressly authorizes the Commission to define "qualified purchaser" differently for different categories of securities, so long as the definition is consistent with the public interest and investor protection. See 15 U.S.C. § 77r(b)(3).

The proposed amendment to Rule 146 is a proper use of that authority. The Commission is defining "qualified purchaser" for the limited purpose of Section 18(b)(3) and only in the specific context of offerings registered under the Securities Act. That approach is consistent with the statutory design. Congress did not define "qualified purchaser" directly in Section 18(b)(3); instead, it delegated definitional authority to the Commission and authorized category-specific definitions. The Commission may reasonably conclude that, for registered offerings, the relevant "qualification" is not that each investor meets a private-offering sophistication test, but that each purchaser receives the protections provided by the Securities Act registration framework.

The Commission's proposal also respects Section 18(c). Section 18(c) preserves state jurisdiction to investigate and bring enforcement actions for fraud or deceit and unlawful broker-dealer conduct, permits states to require certain notice filings and fees, and allows states to suspend offers or sales for failure to submit permitted filings or fees. See 15 U.S.C. § 77r(c). Therefore, the proposed amendment would not displace states as antifraud enforcers; it would remove duplicative state registration, qualification, and merit-review requirements for offerings already subject to federal registration. To that end, ADISA respectfully requests that the adopting release for any amendments to Rule 146 should expressly confirm that the revised Rule 146 does not impair state antifraud authority preserved by Section 18(c). State regulators should continue to be able to investigate and bring enforcement actions for fraud or deceit, enforce broker-dealer conduct standards where preserved, require permitted notice filings and fees, and suspend offers or sales for failure to submit permitted filings or fees. See 15 U.S.C. § 77r(c).

The Proposal Advances the Policy Choices Congress Made in NSMIA

Congress enacted NSMIA to modernize securities regulation by reducing overlapping federal and state regulation where national markets and federal disclosure-based regulation made duplicative state review unnecessary. NSMIA did not reflect a judgment that state regulators have no investor-protection role. Instead, it reflected a division of labor. State registration and merit-review authority was curtailed for covered securities, while state antifraud enforcement and specified filing and fee authorities were preserved.

ADISA believes that this balance should guide the Commission's final rule. A registered offering of unlisted securities should not be forced through fifty separate qualification regimes merely because the issuer's securities are not listed on a national exchange, especially when the federal regime supplies robust disclosure, liability, review, and reporting mechanisms. Without the proposed alignment, unlisted securities sold in a registered offering may receive different state-law treatment based principally on listing status or issuer type.

Registered Offerings Provide Investor Protections That Justify Preemption

The proposed "qualified purchaser" definition is consistent with the public interest and the protection of investors because registered offerings are subject to a robust federal investor-protection framework. Securities Act registration is not merely a filing formality. It brings with it a disclosure regime, potential Section 11 and Section 12(a)(2) liability, antifraud exposure, the possibility of Commission review, and, for many issuers, continuing reporting obligations. Those mechanisms directly address the investor-protection concerns that state qualification review is often designed to address.

State merit review runs counter to those mechanisms as a merit-review state may apply substantive standards that differ from those applied in other states. Those differences can fragment a nationwide offering, delay effectiveness, complicate communications, or cause an issuer to prohibit sales of securities to investors in specific states. Those effects can undermine rather than enhance investor protection by reducing access to registered offerings and increasing incentives to rely on exempt securities offerings.

The proposal also may increase investor protection by making registered offerings more attractive. If issuers choose exempt offerings because state qualification review makes a registered offering of unlisted securities too costly or slow, investors may lose the benefits of Securities Act registration. Since registered non-listed REITs and BDCs are offered nationally, those firms distributing these offerings require uniformity, forcing the issuers to impose the most restrictive state standard, effectively imposing that single state standard on all investors regardless of whether they reside in the most restrictive state.

State merit review is driving registered non-listed REITs and BDCs to transition from registered offerings to private offerings. According to data from Robert A. Stanger & Company, Inc. ("Stanger"), offerings of registered non-listed REITs have declined over the past ten years from 44 issuers in 2015 ($10.0 billion in fundraising) to 20 issuers in the first quarter of 2026 ($1.8 billion in fundraising in the quarter) while private offerings of REITs have increased from 1 in 2015 ($26.0 million in fundraising) to 25 in the first quarter of 2026 ($2.2 billion in fundraising in the quarter) with the largest growth beginning in 2022. This shift is largely due to the state merit review costs, delays and burdens and the timing coincides with the North American Securities Administrators Association (NASAA) seeking comments on proposed amendments to its Statement of Policy Regarding Real Estate Investment Trusts (the "REIT Guidelines") in July 2022, which amendments were approved in September 2025 and became effective on January 1, 2026. We note that many states impose the same requirements set forth in the REIT Guidelines to registered non-traded BDCs, so Stanger data also reflects a similar shift with BDCs over the last 10 years reflecting 2 privately offered BDCs in 2015 ($1.2 billion in fundraising) rising to 111 issuers in the first quarter of 2026 ($4.1 billion in fundraising in the quarter). Additionally, Stanger data shows a decline in new registered issuers with an increase in new private issuers over the last two years:

	New Issuers		
Product Type	2024	2025	YTD 2026
Publicly Registered REITs	0	1	0
Private Placement REITs	8	5	3
Publicly Registered BDCs	4	2	0
Private Placement BDCs	14	20	8

Removing duplicative state qualification review may reverse this trend and move more capital raising back into the registered market, where investors receive more standardized disclosure and stronger statutory liability protections.

<u>State Qualification Review Imposes Costs and Delays That Are Particularly Burdensome for Unlisted Registered Offerings</u>

As noted, the current framework can require issuers conducting registered offerings of unlisted securities to comply with multiple state registration and qualification regimes. The Commission correctly observes that issuers may need to interact with multiple states, retain blue sky counsel, address varying and complex provisions, and satisfy potentially duplicative requirements, all of which can cause transactional delays and significantly increase the costs which will ultimately be borne by the investors.

Those obstacles are disproportionately borne in the very offerings that can least afford to lose the broader access to capital: offerings by smaller issuers, issuers without exchange-listed securities, non-traded BDCs, non-traded REITs, and other issuers for whom time and compliance cost may materially affect execution. State qualification requirements can produce several practical consequences:

- *Increased transaction costs*, including blue sky counsel fees, state filing fees, amendment fees, renewal fees, sales-reporting costs, internal compliance time, and underwriter or dealer-manager coordination costs.
- *Timing uncertainty*, particularly where states apply different review standards, comment timelines, or merit-review requirements.
- *Offering fragmentation*, where securities may be offered in some states but not others because approval is delayed, costly, or subject to conditions inconsistent with the national offering structure.
- *Reduced capital formation*, where an issuer delays, downsizes, reprices, restructures, or abandons a registered offering because state qualification review creates material uncertainty.
- *Investor-access concerns*, where investors in particular states may be excluded from federally registered offerings available to similarly situated investors in other states.

The Commission specifically asks commenters to quantify the costs and burdens of state registration and qualification requirements and to identify transactional delays associated with compliance. ADISA, based on data provided to it by Stanger from the top 12 sponsors by sales of registered non-listed REITs and BDCs in July 2026, provides the information below regarding the costs associated with the state Blue Sky filing process:

	Year 1	Year 2	Year 3	Total
Aggregate Costs Reported	$13,241,915	$7,352,780	$7,561,744	$28,156,439
Aggregate Funds Raised	$12,434,024,420	$5,673,649,346	$7,725,860,846	$25,833,534,612
Percent of Amounts Raised	0.11%	0.13%	0.10%	0.11%

Stanger noted that it requested information regarding: (1) new offering registration: state filing fees, printing and mailing fees, legal fees, and other fees; (2) annual offering renewal: state filing fees, printing and mailing fees, legal fees, and other fees; (3) ongoing offering maintenance:

distribution filings, suitability and distribution reinvestment plant, state sales reports, vendor and legal fees, and other fees; (4) sales literature: printing and mailing fees, legal fees, and other fees; (5) annual shareholder meeting: printing and mailing fees, legal fees, other fees; and (6) personnel time costs in hours: new offering registration and annual renewal. We note that registered non-traded REIT and BDC issuers are also required to make changes to suitability standards which can occur on a more frequent basis, or to submit matters to shareholder vote when a state requires a change to the charter at any time during the offering.

We note that for issuers with a lower rate of fundraising, the cost and burdens associated with the Blue Sky filing and clearing process would not only be a higher percentage of the funds raised, but in all practicality work to stifle smaller participants from bringing ANY registered investment products to market in this space. The process and cost burden of multi-state registration for smaller product sponsors reduces competition, opportunities for business expansion, and diversification of investment products in the marketplace for investors to choose. Smaller product sponsors and issuers are practically forced to bring private offerings to avoid the Blue Sky burden, limiting their offerings to accredited investors and not the broader investing public, further stifling their capital raise, and not being able to capitalize on the benefits of a full registered offering for investors and issuers.

The Commission Should Adopt a Broad Definition Rather Than Limiting Preemption to Particular Security Types

The Commission asks whether it should preempt only certain types of registered offerings rather than all registered offerings, and whether it should limit the definition to registered offerings of equity securities. ADISA believes that a limitation by security-type would reintroduce complexity and undercut the administrability of the rule. The investor-protection rationale for preemption does not turn solely on whether the registered security is common stock, preferred stock, debt, a BDC share, a REIT security, or any other registered security. Rather, it turns on whether the offer and sale occur through an offering registered under Securities Act.

This has several advantages:

- *It is easier to administer*. Market participants can determine preemption by asking whether the securities are offered or sold pursuant to an offering registered under the Securities Act.
- *It avoids arbitrary distinctions*. Investors in different registered securities receive the benefit of federal registration protections even if the securities differ in economic terms.
- *It reduces structuring distortions*. Issuers should not be pushed toward one security type over another merely to obtain covered-security treatment.
- *It fits a national-market offering practice*. Many registered offerings involve multiple security classes, units, warrants, preferred securities, debt securities, guarantees, or continuous offering structures. A more narrowly constructed rule could create uncertainty for multi-security offerings.

If the Commission determines that additional tailoring is needed for a discrete product category, it should do so through targeted conditions rather than by abandoning the general principle that Securities Act registration supports covered-security treatment.

The Final Rule Should Include Practical Transition and Compliance Guidance

ADISA respectfully requests that the Commission adopt the proposed definition and issue practical guidance that allows issuers, underwriters, dealer managers, state regulators, and counsel to implement the rule efficiently, including:

- *Pending offerings*. Confirm whether the rule applies to registered offerings not yet effective on the effective date of the rule amendments, including offerings that have already filed state qualification applications.
- *Existing continuous offerings*. Confirm how the rule applies to continuous offerings already effective before the effective date of the rule amendments and to post-effective amendments filed after the effective date.
- *Notice filings and fees*. Clarify that preemption does not by itself eliminate any notice filings or fees permitted by Section 18(c) of the Securities Act, but that states may not use notice filings or fees to impose substantive qualification conditions.
- *Offering documents*. Confirm that states may not indirectly condition the use of federally filed offering documents for covered securities based on state-level disclosure or merit-review standards.
- *Multi-security offerings*. Confirm that all securities offered and sold pursuant to a Securities Act registered offering are covered by the Rule 146 definition, including units, warrants, preferred securities, debt securities, guarantees, and other securities registered in the same offering, unless expressly excluded.
- *Issuer communications*. Confirm that ordinary internet availability of SEC-filed materials, federally compliant offering communications and offering marketing materials should not trigger state registration or qualification requirements for registered offerings.
- *No Investment Company Act spillover*. Confirm, as the proposal states, that the Rule 146 definition is limited to Section 18(b)(3) of the Securities Act and does not affect the separate Investment Company Act definition of “qualified purchaser.”

These clarifications would reduce interpretive disputes and help ensure that the rule achieves its intended cost-reduction and capital-formation benefits.

<u>Amendments to Form S-3</u>

ADISA supports the proposed amendments to Form S-3 to revise its eligibility requirements and to simplify and modernize the form.

ADISA supports the proposed amendment to eliminate the One-Year Seasoning requirement. An issuer should not be precluded from utilizing a Form S-3 registration statement merely because it has not been a reporting company for a full year. Form 10 requires disclosure of information regarding the issuer’s business, risk factors, related transactions, director independence, legal proceedings, description of the securities to be registered, and all financial statements required by Regulation S-X, among other information, which would be incorporated by reference into the Form S-3. Additionally, the issuer updates this information through the filing of Forms 10-Q and 10-K thereafter, providing updated information to investors on a periodic basis. ADISA believes that any information covered by quarterly and annual filings should be solely relied upon through incorporation by reference under Form S-3 and other relevant information could still be properly included in the Form S-3, so as to give investors the same adequate disclosures as previously required. Further, ADISA believes that allowing incorporation by reference through a Form S-3 allows for a “slimmed down” base prospectus, which provides investors with a base prospectus that is more likely to be reviewed and understood than a prospectus under lengthy Form S-11 or Form S-1 requirements.

The Commission has asked if it should require reassessing Form S-3 eligibility each time an issuer conducts a shelf takedown to ensure issuers remain current and timely and investors have available all required information at the time they make an investment decision, stating that "adding a reassessment requirement at the time of each takedown would impose an unnecessary burden on issuers and introduce unwarranted regulatory uncertainty." ADISA agrees with the Commission's assessment. Registered non-traded REITs and BDCs sell securities on a daily basis and requiring a reassessment on a daily basis would increase the cost of capital for the issuers and potentially cause a suspension in capital raise forcing the issuers to essentially turn the capital raise on and off on a daily basis – clearly an unnecessary burden on these types of issuers.

ADISA appreciates the opportunity to provide our support and comments regarding these proposals.

Sincerely,

Catherine Bowman /HB

Catherine Bowman
Chair of the ADISA Legislative and Regulatory Committee

ADISA Drafting Committee:
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cc: Jade Miller, ADISA Chief Executive Officer