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SEC's Registered Offering Reform Proposal: A Potential Game-Changer for Public Non-Traded REITs

WRITTEN BY

Mary Katherine Rawls | Heath D. Linsky

KEY POINTS

- On May 19, 2026, the SEC issued Release No. 33-11418 (the Offering Release), proposing sweeping amendments to the registered offering framework.
- Among the most consequential changes for the real estate industry: the proposal would preempt state "Blue Sky" registration and qualification requirements for all SEC-registered offerings, including those of non-traded REITs.
- If adopted, sponsors and issuers of non-traded REIT programs would no longer face the significant costs and administrative burdens of multistate Blue Sky compliance.

BACKGROUND: THE CURRENT BLUE SKY REQUIREMENTS FOR NON-TRADED REITS

Public non-traded real estate investment trusts (non-traded REITs) that register their offerings with the U.S. Securities and Exchange Commission (SEC) under the Securities Act of 1933, as amended (Securities Act), have long been subject to a fragmented patchwork of state securities regulation. Under current law, Section 18(a) of the Securities Act restricts states from imposing registration or qualification requirements only on covered securities. Exchange-listed securities enjoy this protection, while unlisted securities, including shares of non-traded REITs, do not.

As a result, sponsors and issuers of non-traded REIT programs have been required to register or qualify their offerings in each state where securities are offered and sold, navigate state-specific merit review standards, comply with varying investor suitability requirements, and pay state-level registration fees — all in addition to the SEC registration process. States such as Iowa, Kansas, Kentucky, Nebraska, and New Jersey historically have imposed concentration limits and minimum net worth thresholds on non-traded REIT investors, creating compliance complexity that can slow deal timelines and add material cost to capital raises.

These requirements have long been viewed as inconsistent with the level of federal oversight already applicable to registered offerings, and as creating an unlevel playing field relative to other investment vehicles, such as private placements under Rule 506 of Regulation D or registered closed-end funds, to which state-level preemption applies.

THE PROPOSED RULE: HOW PREEMPTION WOULD WORK

The Statutory Mechanism: Qualified Purchaser Definition

The Offering Release uses a targeted statutory mechanism to achieve blanket preemption. Section 18(b)(3) of the

Securities Act provides that a security sold to a qualified purchaser is a covered security exempt from state Blue Sky registration and qualification requirements. While Congress granted the SEC authority to define qualified purchaser by rule, the Commission has not previously exercised that authority with respect to registered offerings.

The Offering Release proposes to change that by defining **"qualified purchaser"** to mean "any person to whom securities are offered or sold pursuant to an offering registered under the Securities Act." By using this expansive definition, every investor in any SEC-registered offering, whether listed or unlisted, would become a "qualified purchaser," thereby rendering all such securities "covered securities" shielded from state registration and qualification requirements.

The proposed definition is intentionally broad and is not limited to any particular issuer type, securities class, or registration form. Non-traded REITs registering on Form S-11 would benefit equally alongside other issuers of unlisted securities.

IMPACT ON NON-TRADED REITS: WHAT CHANGES?

Cost Savings and Operational Efficiencies

If the proposal is adopted, non-traded REIT sponsors and their counsel can expect meaningful operational and financial benefits, including:

- **Elimination of multistate Blue Sky counsel costs**. Sponsors currently engage specialized securities counsel to advise on, prepare, and file registration or qualification documents in each state of offering. This engagement would largely be eliminated for the compliance filing function.
- **Reduction in offering delays**. State merit review timelines — which can vary significantly from state to state — have been a consistent friction point for non-traded REIT capital raises. Preemption would remove this bottleneck.
- **Simplified investor eligibility determinations**. The myriad of state-by-state investor suitability requirements and concentration limits would be replaced by a uniform federal standard, simplifying the subscription process for dealers, advisors, and transfer agents.
- **Reduced ongoing compliance burden**. Annual Blue Sky renewal filings, supplemental state filings triggered by offering updates, and tracking of varying state-level expiration dates would no longer be required.

Offering Prospectus and Subscription Document Changes

Non-traded REIT offering documents currently contain extensive state-specific disclosure, including the investor suitability requirements and concentration limits imposed by individual state regulators, sometimes spanning multiple pages in a front section of the prospectus. If preemption is adopted, these disclosures and related subscription document provisions would no longer be required as a regulatory matter, substantially streamlining offering documents.

NASAA REIT Guidelines and Charter Provisions

Most non-traded REITs are required to adopt charter provisions based on the NASAA REIT Guidelines to satisfy the requirements of state securities regulators in connection with Blue Sky registration. If the SEC's proposed definition of "qualified purchaser" in the Offering Release preempts state registration and qualification requirements for non-traded REIT offerings, sponsors will need to evaluate whether, and to what extent, those

NASAA-based charter provisions remain necessary or appropriate from a regulatory and market perspective.

While the proposal would eliminate the need to conform charters to state merit-review positions as a condition of qualification, it would not, by itself, amend or override existing charter terms that have already been incorporated into organizational documents. Sponsors should consider, in consultation with counsel, whether future charter amendments or new program formations should continue to track the NASAA REIT Guidelines in whole or in part, taking into account investor expectations, exchange-listing considerations, and any residual state law or corporate law requirements.

BROADER CONTEXT: PART OF A SWEEPING OFFERING REFORM PACKAGE

The Blue Sky preemption proposal is one component of the most significant overhaul of the registered offering framework since the SEC's 2005 Securities Offering Reform. The broader Offering Release also proposes to:

- Dramatically expand Form S-3 eligibility by eliminating public float and seasoning requirements, allowing more issuers to access the short-form shelf registration process.
- Streamline shelf registration procedures and extend enhanced communication and registration accommodations to a broader range of issuers.
- Modernize Form S-1 to reduce administrative friction in the IPO and initial registration process.
- Align these changes with a companion rulemaking (Release No. 33-11419, the Filer Status Proposal) that would overhaul the Exchange Act filer status classification system, which is the most significant update to that framework in over two decades.

SEC Chair Paul Atkins has framed this package as part of a broader agenda to revitalize the U.S. public markets, reduce unnecessary regulatory friction, and make registered offerings more accessible to a wider range of companies and investors.

COMMENT PERIOD: AN IMPORTANT OPPORTUNITY FOR INDUSTRY PARTICIPANTS

The public comment period for the Offering Release will remain open for 60 days following publication in the *Federal Register*. Comments may be submitted electronically through the SEC's internet comment form or by email to rule-comment@sec.gov, referencing File No. S7-2026-17.

Notably, the Offering Release specifically requests comments on whether the SEC should "instead preempt only certain types of registered offerings" rather than adopting the broad blanket preemption as proposed. This signals that the Commission is open to feedback that could narrow the scope of preemption in the final rule — a development that would be adverse to non-traded REIT sponsors and industry participants.

Non-traded REIT sponsors, industry associations, broker-dealers, and other market participants should strongly consider submitting comments in support of the breadth of the proposed definition. Comments that document the specific costs of current Blue Sky compliance burdens on non-traded REIT programs, articulate the investor protection role already served by SEC registration, and provide data on how preemption would benefit issuers and retail investors would be particularly valuable to the rulemaking record.

CONCLUSION

The Offering Release represents a potentially transformative development for the non-traded REIT industry. If adopted as proposed, it would deliver long-sought relief from the costs and administrative complexity of multistate Blue Sky compliance, placing non-traded REIT offerings on equal regulatory footing with other registered and private investment vehicles. However, the final rule is not guaranteed to preserve the full scope of preemption as proposed, and the comment period presents a critical window for industry participants to shape the outcome.

Troutman Pepper Locke will continue to monitor developments as the comment period progresses and the SEC moves toward a final rule. Please contact your Troutman Pepper Locke relationship attorney or any of the professionals listed above for further guidance.

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