



## SEC Guidance Clarifies ATM Offering Flexibility for “Baby Shelf” Issuers

On March 19, 2026, the Division of Corporation Finance (the “Staff”) of the U.S. Securities and Exchange Commission (the “SEC”) issued a new Corporation Finance Interpretation (“CFI”), clarifying the application of General Instruction I.B.6 of Form S-3 (commonly referred to as the “Baby Shelf” rule) and its interplay with ongoing at-the-market (“ATM”) offerings.

The Baby Shelf rule limits the amount of securities that an issuer with a public float of less than \$75 million may sell pursuant to Form S-3 to no more than one-third of its public float during any rolling 12-month period. By contrast, an issuer with a public float of at least \$75 million may conduct an offering pursuant to General Instruction I.B.1 of Form S-3 without such limitation.

Since an issuer’s public float can fluctuate, its eligibility to rely on General Instruction I.B.1 or I.B.6 is measured at the time of filing a Form S-3 registration statement and later reassessed with each subsequent Section 10(a)(3) update (generally when filing its Annual Report on Form 10-K).

The SEC’s latest guidance addresses what happens when an issuer, that was eligible to conduct an ATM offering pursuant to General Instruction I.B.1, later falls below the \$75 million public float threshold. By way of background, ATM programs provide issuers with the flexibility to raise capital on a continuous basis by selling securities directly into the market through a designated sales agent, pursuant to a prospectus supplement covering a specified offering amount.

In CFI Question 116.26, the Staff clarified that where an issuer’s public float drops below \$75 million following its latest Section 10(a)(3) update, but the issuer had previously: (i) entered into an agreement with a selling agent for an ATM offering of an amount of securities that it reasonably expects to sell, and (ii) was eligible to offer and sell securities in reliance on General Instruction I.B.1 when it filed its prospectus supplement to launch the ATM program, the Staff will not object if the issuer sells the full amount of securities covered by the prospectus supplement filed prior to its latest Section 10(a)(3) update, even if such sales would exceed the limitation imposed by General Instruction I.B.6.

Although issuers can avail themselves of the recent clarity provided by CFI Question 116.26 and maximize their use of an existing ATM program, they should be mindful that any new or increased offering amount following the update would be subject to the limitation of the Baby Shelf rule.

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