AMERICAN INVESTMENT COUNCIL

July 27, 2026

VIA Electronic Submission

Vanessa A. Countryman, Secretary
U.S. 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

Dear Ms. Countryman:

The American Investment Council ("AIC") appreciates the opportunity to comment on the Registered Offering Reform proposed rules (the "Proposed Rules") published by the U.S. Securities and Exchange Commission (the "SEC")[1]. The AIC submits this letter on behalf of our members, which are leading private equity and private credit firms united by their commitment to growing and strengthening the businesses in which they invest. AIC's members represent a broad cross-section of the private fund industry, ranging from the largest global platforms to mid-market and emerging managers.[2]

I. Executive Summary

The AIC commends the SEC for its efforts to modernize the registered offering framework and generally supports the Proposed Rules. In particular, the AIC supports the SEC's proposal to preempt State securities law registration and qualification requirements with respect to any offering under Section 18(b)(3) of the Securities Act of 1933, as amended (the "Securities Act"). As explained below, the AIC believes the proposed preemption (i) represents a measured extension of the federal registration framework, (ii) would reduce the cost differential that

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[1] Registered Offering Reform, Release Nos. 33-11418; 34-105513; IC-36160; File No. S7-2026-17 (May 26, 2026) (the "Proposing Release").

[2] We acknowledge that the Proposed Rules address a number of matters beyond State preemption that will also impact AIC's members, and that other commenters have addressed those aspects of the Proposed Rules in their submissions. This letter focuses solely on the proposed preemption of State securities law registration and qualification requirements. We note, however, that certain of AIC's members are particularly concerned about a separate aspect of the Proposed Rules that may have unintended consequences, in particular for non-traded BDCs. Under current SEC rules, a non-traded BDC that has issued a sufficient amount of registered debt securities may qualify for streamlined registration benefits, including the ability to file a short-form shelf registration statement and, in the case of the largest issuers, the benefits currently associated with "well-known seasoned issuer" status (such as automatic shelf registration and the ability to defer registration fees until the time of an offering). Under the Proposed Rules, both of these pathways would be eliminated and replaced with a requirement that the issuer have a class of common equity listed on a national securities exchange. Because non-traded BDCs, by definition, are not exchange-listed, the Proposed Rules would effectively remove these benefits from certain large, seasoned non-traded BDCs that currently rely on these registered debt thresholds, or intend to rely on such thresholds in the future, without a corresponding rationale. This is an outcome that appears to be inconsistent with the Proposed Rules' stated objective of facilitating capital formation.

currently favors exempt offerings over registered offerings, and (iii) would preserve the investor protections applicable to registered offerings.

II. Background

Section 18(a) of the Securities Act provides that no State may require registration or qualification of a "covered security." Section 18(b)(3) of the Securities Act separately authorizes the SEC to define the term "qualified purchaser" such that securities offered or sold to qualified purchasers are treated as covered securities and are therefore exempt from State registration and qualification requirements. Many securities sold in a registered offering are already classified as covered securities because they are listed, or approved for listing, on a national securities exchange or because they are issued by a registered investment company. However, unlisted securities offered pursuant to a registered public offering are generally not considered covered securities. Therefore, many of the investment vehicles sponsored by the AIC's members, such as non-traded business development companies ("BDCs") and non-traded real estate investment trusts ("REITs"), remain subject to State registration and qualification requirements. Such registration and qualification requirements are applicable even though non-traded BDCs and non-traded REITs file the same registration statements with the SEC and the Financial Industry Regulatory Authority ("FINRA") and are subject to the same Federal disclosure and liability regime as the issuers of listed securities.

To address this gap, the SEC has proposed to add the term "qualified purchaser" to Rule 146 and to define the term, 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. Under the Proposed Rules, securities sold in any registered offering would be deemed covered securities and would be exempt from State registration and qualification requirements. States would retain meaningful oversight through the existing anti-fraud, notice-filing and fee authority under Section 18(c) of the Securities Act.[3]

III. The SEC Should Adopt the Proposed Preemption of State Securities Law Requirements as Proposed

We support the SEC's proposed definition of "qualified purchaser" and urge its adoption without modification. Below, we address the SEC's specific Requests for Comment Nos. 108 through 111.

The SEC has ample authority to adopt the definition of "qualified purchaser" as proposed. Section 18(b)(3) of the Securities Act itself contemplates that the SEC "is not prohibited from concluding that all offerees and purchasers in an offering are qualified purchasers," as the D.C. Circuit Court confirmed in upholding the SEC's use of this same authority in the Regulation A context.[4] Adopting the definition to reach every participant in an offering registered under the Securities Act is therefore squarely within the SEC's rulemaking authority and is consistent with the manner in which the SEC has exercised such authority in the past. The Proposed Rule regarding state preemption is also consistent with the legislative intent of the National Securities Markets Improvement Act of 1996 ("NSMIA"), which Congress

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[3] *See* Proposing Release at 182.
[4] *See* Lindeen v. SEC, 825 F.3d 646, 654, 656 (D.C. Cir. 2016).

enacted to "eliminate the costs and burdens of duplicative and unnecessary regulation by, as a general rule, designating the Federal Government as the exclusive regulator of national offerings of securities."[5] The policy underlying NSMIA is that States "generally retain their authority to regulate small, regional, or intrastate securities offerings," while federally registered offerings are well suited to exclusive federal oversight because they are, by definition, national in scope. The non-traded BDCs and REITs sponsored by certain of AIC's members conduct their federally registered offerings on a national scale, notwithstanding that their securities are not exchange-listed.

As the SEC rightly explains, registered offerings already are subject to robust federal investor protections. The SEC indicates that these protections "address potential concerns regarding the preemption of State securities law registration and qualification requirements."[6] These protections include registration statement disclosure requirements, such as risk factor disclosure under Item 105 of Regulation S-K, audited financial statements under Regulation S-X and management's discussion and analysis under Item 303 of Regulation S-K, liability for material misstatements and omissions under Sections 11, 12(a)(2) and 17(a) of the Securities Act and Section 10(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), potential and recurring SEC staff review of registration statements and periodic reports, including under Section 408 of the Sarbanes-Oxley Act of 2002 and ongoing periodic and interim reporting obligations, including under Section 18 of the Exchange Act for false or misleading statements in periodic reports. As the SEC recognizes, preemption already applies to registered offerings of securities listed on a national securities exchange and to offerings by registered investment companies; the Proposed Rules would simply extend the same treatment to unlisted securities offered through a registered offering, including registered offerings by non-traded BDCs and non-traded REITs.

Non-traded BDCs and REITs provide additional investor protections that are not applicable to their exchange-listed counterparts. For example, a non-traded BDC or REIT that conducts an offering registered under the Securities Act generally will sell its shares on a continuous basis. This means that the registration statement pursuant to which such offering occurs remains subject to SEC staff review authority and to the liability protections under Section 11 of the Securities Act throughout the offering period. In addition, investors in such offerings cannot purchase directly from the issuer; they must purchase through a broker-dealer or a registered investment adviser. Broker-dealers recommending these securities to retail customers are subject to Regulation Best Interest under Exchange Act Rule 15l-1, which requires the broker-dealer to act in the retail customer's best interest, as well as the supervisory obligations imposed by FINRA Rules, including FINRA Rule 3110 (Supervision) and FINRA Rule 2111 (Suitability), to the extent applicable. Registered investment advisers are separately subject to a fiduciary duty under the Investment Advisers Act of 1940, which requires them to act in their clients' best interests and to provide full and fair disclosure of all material facts. These intermediary gatekeeping requirements provide an additional layer of protection that is not present in exchange-listed offerings, where investors may purchase directly on the open market without broker-dealer or adviser interaction. We agree with the SEC that if the Proposed Rule

[5] *Id.* at 186.
[6] *Id.* at 187-188.

regarding State preemption is adopted as proposed, investors will continue to have adequate protection.

We separately urge the SEC to apply preemption to all securities offered and sold in a registered offering, rather than limiting preemption to registered offerings of equity securities.[7] We recognize that Section 18(b)(3) permits the SEC to "define the term 'qualified purchaser' differently with respect to different categories of securities," and we do not dispute that the SEC has discretion to draw such distinctions where warranted. Here, however, no such distinction is warranted. An equity-only approach would leave registered debt offerings that do not otherwise qualify for existing preemption subject to the same costly, duplicative State registration and qualification regime the Proposed Rules are designed to eliminate and that burden would significantly impact issuers, including many of AIC's members, that rely on registered debt to fund their investment activities. Because debt and equity issuers alike are subject to the same Federal disclosure and liability framework once their securities are registered under the Securities Act, we believe that there is not an investor protection-based rationale for treating them differently for purposes of State preemption.

Preemption would also benefit investors directly, not merely issuers. The SEC has recognized that, because registered offerings are national in nature, preemption would let issuers "broaden their search for investors across multiple states without the costs associated with registration and qualification, thereby accessing a larger investor pool at a lower cost than available without preemption,"[8] and that "for investors, this can also mean a reduction in regulatory frictions that might otherwise limit or delay their participation."[9]

IV. Without State Preemption Issuers May Choose Private Offerings

State registration and qualification requirements are a significant impediment for certain issuers when deciding whether to conduct a private offering or a registered offering. The SEC recognizes this barrier, explaining that "some public companies may choose exempt offerings because they are less costly when factoring in regulatory burdens or lack of flexibility associated with registered offerings." [10] Consistent with the SEC's stated purpose of facilitating capital formation in the public securities markets, if the SEC adopts the Proposed Rule relating to State preemption as proposed, certain issuers that would otherwise rely on offerings that are exempt from registration under the Securities Act may opt for registered offerings instead.

Currently, and without State preemption, a non-traded BDC or REIT must comply with the registration and qualification requirements of each State in which its securities are offered and sold, which typically requires interacting with State regulators, retaining separate "blue sky" counsel and addressing varying, and at times conflicting, complex and substantive requirements. These compounding State-by-State requirements, which are often duplicative and at times in conflict with SEC or FINRA objectives, frequently lead to transactional delays. In response to

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[7] *Id.* at 189 (Request for Comment No. 111 asks if the SEC "should limit the definition to registered offerings of equity securities").
[8] *Id.* at 262.
[9] *Id.*
[10] *Id.* at 288.

the SEC's request for comment[11], the AIC and its members confirm based on our experience that these State-by-State requirements are precisely the type of transactional delay that can meaningfully postpone the launch of an offering or drive issuers to the private markets. These delays typically include the need to prepare and file separate applications in each State in which the offering will be conducted, respond to State-specific comments on a rolling and often unpredictable timeline, obtain qualification in a required sequence before offers or sales may commence in a given jurisdiction and reconcile the resulting patchwork of State effective dates with the timing of the federal registration statement's effectiveness. Issuers must also satisfy differing substantive standards in merit-review States, respond separately to comments from State regulators and review and update marketing and offering materials to address State comments, all while conducting the same exercise at the federal level in response to SEC and FINRA staff comments. Taken together, these State-by-State requirements can extend the overall timeline for a registered offering to a year or more, a process that is markedly longer and more cumbersome than the SEC's own registration review, which by comparison can typically proceed to effectiveness within a matter of weeks once the SEC's comments have been resolved.

The SEC has also asked whether empirical evidence confirms the significant costs and burdens of State compliance.[12] In prior rulemaking, the SEC received an estimate that an issuer seeking State securities law registration in all 50 States would incur $50,000 to $70,000 in filing fees and $80,000 to $100,000 in legal fees.[13] The SEC separately found that issuers seeking to raise up to $1 million and up to $5 million in exempt offerings overwhelmingly relied on Rule 506(b) of Regulation D—under which State registration is preempted—even though such amounts could have been raised, without preemption, under other exemptions.[14] In addition, the experience of the AIC's members has been consistent with the SEC's findings. When our members decide whether to conduct a registered offering or a private placement, the cost and burden of State registration is a significant factor. In fact, our members experience considerably greater additional costs as a result of the State registration process, which, in some cases can approach nearly $1 million per year for issuers of scale. The State registration process will also delay the time before a non-traded BDC or REIT is able to go to market—in our estimate usually between 6-9 months. This data is consistent with the experience of other commenters and in line with the results of surveys conducted by Robert A. Stanger & Co. Inc. in July 2026.[15] If the

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[11] *Id*. at 188-189 (Request for Comment No. 110 asks if there are "potentially significant transactional delays associated with State qualification and registration requirements").
[12] *Id.* at 188-189 (Request for Comment No. 109 asks what are "the specific costs and burdens of complying with State securities law registration and qualification requirements for issuers conducting registered offerings of unlisted securities" and to "describe and quantify any such costs and burdens and their significance").
[13] *Id*. at 261 (quoting the Regulation A adopting release).
[14] *Id.* at 262 (citing SEC Div. of Econ. & Risk Analysis, Capital Raising in the U.S.: An analysis of the Market for Unregistered Securities Offerings, 2009-2017 (Aug. 2018)).
[15] *See* Comment Letter of Kevin T. Gannon, Chairman & CEO of Robert A. Stanger & Co., Inc., Re: Registered Offering Reform (July 23, 2026) (available at: https://www.rastanger.com/news/stanger-submits-comment-letter-to-sec-regarding-preemption-of-state-securities-law-registration-and-qualification-requirements-for-all-registeredofferings) (Presenting the results of a survey of twelve sponsors representing non-traded BDCs and REITs and a survey of law firms representing non-traded REITs and BDCs. The results of the surveys are consistent with our experience, finding that the costs associated with the State registration process across the twelve funds surveyed was more than $28.2 million during the three-year period ending December 31, 2025, and the average time required for State registration was 7.3 months).

Proposed Rule regarding State preemption is adopted as proposed, there would be a meaningful difference in the cost-benefit analysis conducted by issuers when deciding between a registered offering and a private offering. Capital formation in the registered markets would increase if the Proposed Rule is adopted, as issuers would be encouraged to shift towards registered offerings with greater disclosure and liability protections for investors.[16]

V. State Investor Protection is Preserved

We acknowledge that the Proposed Rule would no longer require State registration or qualification; however, Section 18(c) of the Securities Act preserves State authority in a significant manner. The Proposed Rules would not eliminate State authority to protect investors and would continue to provide enforcement against fraud. Specifically, States would continue to: (1) investigate and bring enforcement actions with respect to fraud or deceit or unlawful conduct by brokers or dealers; (2) require the filing of documents filed with the SEC, solely for notice purposes and the assessment of fees, together with a consent to service of process; and (3) suspend the offer or sale of securities within the State as a result of a failure to submit any required filing or fee. These retained powers, particularly State anti-fraud enforcement authority, are the tools that are most directly responsive to investor harm and they remain fully intact under the Proposed Rules.

Today, exchange-listed BDCs and registered investment companies benefit from State preemption status, while non-traded BDCs and non-traded REITs conducting registered public offerings remain subject to State registration and merit review—notwithstanding that they register the same offerings with the SEC and are subject to the same Federal disclosure, liability and reporting requirements as their exchange-listed counterparts. Investors in non-traded BDCs and non-traded REITs are, and would remain, protected by the same Federal securities law regime that protects investors in exchange-listed offerings, together with the State anti-fraud authority described above. The current fragmented, State-by-State process increases the time and cost of launching and maintaining a registered offering, reduces the net proceeds available for investment and makes registered offerings less competitive with private offerings, without a commensurate investor-protection benefit, as each of the State protections described above would remain fully preserved under a federal preemption framework.

We recognize that preemption would remove an additional layer of review that some States currently provide, including merit review in certain jurisdictions. We do not believe this is a significant cost, however, in light of the comprehensive investor protections that the Federal securities laws provide for registered offerings and the States' retained authority under Section 18(c) to investigate and bring enforcement actions for fraud. We believe the Federal disclosure-based review model, paired with the private and public enforcement mechanisms described above, is the more appropriate and efficient means of protecting investors in a registered offering that is, by its nature, national rather than local in scope.

As the SEC has explained, registered offerings are "inherently national in nature" and are frequently conducted through the internet and EDGAR, such that State-by-State qualification is "a difficult and inefficient task to conduct on a state-by-state basis."[17] These considerations apply

[16] *See* Proposing Release at 288.
[17] *Id.* at 186.

with particular force to AIC's members, especially those sponsoring non-traded BDCs and non-traded REITs that are offered on a continuous basis to a nationally dispersed investor base.

VI. Conclusion

The proposed preemption of State securities laws rests on sound statutory authority, is consistent with the national character of registered offerings and the deregulatory purpose of NSMIA and would benefit issuers and investors alike without sacrificing meaningful investor protection. For these reasons, and for the reasons discussed above in response to Requests for Comment Nos. 108 through 111, we respectfully recommend that the SEC adopt the proposed preemption of State securities law registration and qualification requirements, applicable to all securities offered and sold in an offering registered under the Securities Act.

We thank the SEC for the opportunity to submit these comments and for its consideration of our views on the Proposed Rules.

Sincerely,

/s/ Shelby Telle

Shelby Telle
Deputy General Counsel
American Investment Council