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SEC Clarifies Baby Shelf Rules

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The Securities and Exchange Commission ("SEC") recently issued a new compliance and disclosure interpretation (the "New C&DI") in Question 116.25 regarding the availability of Form S-3 for the registration and sale of shares by companies with public float less than $75 million. Instruction I.B.6(a) to Form S-3 states that if a registrant has a public float of less than $75 million, the registrant may only register and sell securities via Form S-3 if the aggregate market value of the securities sold by or on behalf of the registrant during the 12-month period immediately prior to and including the date of the sale is no more than one-third of all common voting and nonvoting equity held by non-affiliates of the registrant. This instruction and accompanying rules and interpretive guidance are often referred to as the "Baby Shelf Rules." The new C&DI puts a stop to certain practices that were being used by registrants to work around the Baby Shelf Rules. Read more: https://www.dorsey.com/newsresources/publications/client-alerts/2016/11/sec-clarifies-baby-shelf-rules

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