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FINRA May Not Clear Some Shelfs on an Expedited Basis

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A company that has been subject to SEC reporting obligations for fewer than three years, that has less than $150 million in public float, or that is affiliated with a broker-dealer, generally must file its Form S-3 (or F-3) shelf registration statement with the Financial Industry Regulatory Authority (FINRA), provide the required FINRA certifications and obtain FINRA clearance before an underwriter may sell its securities in a public offering under the shelf. FINRA certifications deal primarily with the existence of transactions between broker-dealers and the company (or their respective affiliates) within the 180-day period prior to the filing of the shelf, and can be particularly time-consuming to prepare in the case of a company that is affiliated with a financial sponsor or broker-dealer.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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