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SEC proposes reforms to registered offerings and public company reporting framework

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In what Chairman Atkins has described as the foundation of his “Make IPOs Great Again” agenda, the SEC proposed two significant rulemakings to reshape the regulatory landscape governing public capital formation and streamline the filer status framework and related reporting obligations.

On the heels of its recent semiannual reporting rule proposal, the SEC released twin rule proposals to encourage registered public offerings and to simplify the reporting company filer status framework and extend existing scaled disclosure accommodations to a broader universe of public companies.

The first proposal is focused on registered offering reforms that could substantially expand the pool of public companies able to access capital markets quickly and cost-effectively by broadening eligibility for shelf registration on Form S-3 and extending communication and registration benefits currently reserved for well-known seasoned issuers (WKSIs) to a wider universe of listed companies. The second proposal would simplify the public company reporting framework, reducing the current five overlapping filer categories to two and extending scaled disclosure benefits to the vast majority of public companies.

The reforms and accommodations generally do not impact or extend to foreign private issuers (FPIs), subject to limited exceptions. The SEC reasoned that it is in the process of evaluating the FPI eligibility framework separately as part of its concept release on the topic it published in June 2025, so changes impacting FPIs will be deferred until its work is completed.

These proposals, which are intended to work together with the recent semiannual reporting proposal and do not undercut anything in that proposal, represent significant and welcome steps to advance the SEC’s rulemaking agenda and facilitate capital formation while remaining focused on investor protection.

The SEC is seeking comments on both proposals, and the comment period is open for 60 days following publication of the rule proposals in the Federal Register – final rules could be adopted before the end of the year and impact registered offerings and reporting in 2027.

Registered offerings reform

The first proposal represents the SEC’s effort to build on the successes of the last significant reform to registered offerings in 2005, extending its benefits to a wider range of public companies. Its core objective is to remove barriers that have prevented small and mid-sized public companies from accessing the public capital markets efficiently through registered offerings. Key highlights include the following:

– **Form S-3 shelf registration**. Under current rules, eligibility for unlimited shelf registration on Form S-3 requires both 12 months of Exchange Act reporting history (the “one-year seasoning” requirement) and a minimum $75 million in public float. The proposal would:

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- Eliminate both the one-year seasoning requirement and the public float threshold.
- Retain the requirement that issuers be current and timely in Exchange Act reporting, but introduce a seven-day cure period for an untimely filing, limited to one untimely filing during the relevant lookback period. This is to ensure, for example, that a company that has made one untimely filing during a 12-month period does not lose Form S-3 eligibility as long as it was cured within the cure period.
- Continue to prohibit "ineligible issuers" (those that pose higher risk of non-compliance with securities laws) from using the form, but with welcome changes to which companies fall in that category. For example, a company that went public via completing a business combination with a SPAC (versus becoming a public company through a traditional IPO) would not be within scope of the "ineligible issuer" definition and would be treated like a traditional IPO company under the proposal.
- Eliminate XBRL compliance as a condition to Form S-3 eligibility.

If adopted as proposed, the changes would mean that a company would be eligible to use Form S-3 on day 1 after its IPO, and could incorporate required disclosures by reference from its Form S-1 registration statement.

- **So long, baby shelf rule**. The proposed amendments to the shelf eligibility requirements mean that a company with a public float less than $75 million would no longer be subject to the baby shelf rule limiting the amount of securities the company can sell to no more than one-third of its public float in any rolling 12-month period.
- **Replacing WKSI status for domestic issuers – New ELI and SELI categories**. Currently, WKSI status—which provides significant offering flexibility including automatic shelf registration—requires $700 million in public float or $1 billion in registered debt offerings. The proposal would extend WKSI registration and communication benefits to a much broader set of issuers through two new categories that would replace the WKSI framework for domestic issuers.

  Under the proposed framework, eligibility would no longer depend on an issuer's public float or amount of registered debt issued, but rather on compliance with Exchange Act reporting requirements and having listed common equity securities.

  - *Eligible Listed Issuers* (ELIs) — Any issuer that meets Form S-3's proposed registrant requirements and has at least one class of common equity listed on a national securities exchange would be considered an ELI. ELIs would gain access to pre-filing communications flexibility (Rules 163, 163A), post-filing free writing prospectuses (Rule 164), the ability to register additional securities via post-effective amendments (Rule 413), the ability to omit certain information from base prospectuses at effectiveness (Rule 430B(a)), and pay SEC registration fees on a "pay-as-you-go" basis. These benefits would be available regardless of how long an issuer has been subject to Exchange Act reporting.
  - *Seasoned Eligible Listed Issuers* (SELIs) — ELIs that have been subject to Exchange Act reporting for at least 12 complete calendar months would be considered SELIs. Only SELIs would be eligible for automatic shelf registration—the ability to file registration statements that become effective immediately upon filing without staff review.
  - ELI and SELI status would be determined on an annual basis, consistent with the current WKSI determination framework.

  In addition, all Form S-3 eligible issuers would benefit from the ability for analysts to publish research reports that would not be deemed offers (Rule 139), the ability to omit selling security holders and amounts of securities registered on their behalf from the shelf registration statement (Rule 430B(b)) and the ability to use a free writing prospectus without it being preceded or accompanied by a prospectus (Rule 433).

- **Form S-1 modernization**. The proposal would permit all issuers—regardless of size—to both backward and forward incorporate Exchange Act filings into Form S-1. Currently, only smaller reporting companies (SRC) may forward incorporate on Form S-1, requiring all other issuers to update their registration statements through prospectus supplements and post-effective amendments. In addition, the proposal eliminates the condition that a Form 10-K for the most recent fiscal year have been filed before a company can benefit from incorporation by reference.
- **Extending staleness dates for audited financials**. Under existing rules, a company on the calendar year filing its registration statement after February 14 would need to include or incorporate by reference audited financial statements for the most recent fiscal year, even if its Form 10-K is due well after that date. The rule proposal would instead require audited financials on the same timeline as the company would be required to file its Form 10-K. For example, a NAF would have 90 days after the end of its fiscal year to prepare and be required to include audited

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financials in a registration statement – and an IPO company would similarly have 90 days after its fiscal year end before it would be required to provide audited financials.

- **Farewell, delaying amendment**. As Commissioner Peirce highlights in her statement, the proposal also tackles simpler fixes like getting rid of the need for an issuer to add the "delaying amendment" legend at the bottom of the cover page of the registration statement, minimizing the chances of a foot fault where a registration statement inadvertently goes effective after 20 days or eliminating the need to file an amendment to avoid that result. The proposal instead provides that effectiveness (other than for automatic shelves) would be deemed to be delayed unless a company included alternate language on the cover seeking effectiveness after 20 days, as was done during the government shutdown last year by companies seeking to go public.

Filer status and accommodations reform

The second proposal aims to simplify what the SEC acknowledges has become a "layered and complex" filer status framework that has developed incrementally over time, thereby making public markets more attractive. Key features of the proposed rationalization include:

- **Just two filer categories – large accelerated filer and non-accelerated filer**. Under current rules, public companies are classified into five sometimes overlapping categories—large accelerated filer, accelerated filer, non-accelerated filer, smaller reporting company and emerging growth company (EGC)—with varying reporting obligation deadlines, disclosure requirements and accommodations. The proposal would consolidate Exchange Act filer designations into two primary categories.
  - *Large Accelerated Filers* (LAFs) would be defined as companies meeting the following two requirements:
    - a public float of $2 billion or more (increased from the current $700 million threshold, which has remained unchanged since 2005).
    - at least 60 consecutive months of Exchange Act reporting.
  - *Non-Accelerated Filers* (NAFs) would encompass all other Exchange Act reporting companies. The accelerated filer and SRC categories would be eliminated as standalone filer statuses, and the proposed NAF framework would extend almost all accommodations currently available to EGCs and SRCs to the broader NAF population.
  - The public float calculation would be based on the average stock price over the last 10 trading days of a company's second fiscal quarter—rather than a single-day measurement—and a company would need to meet the $2 billion threshold for two consecutive fiscal years before it would be required to transition to LAF status, reducing the risk of volatility-driven status changes.
- **Minimum (not maximum) five-year IPO on-ramp**. The JOBS Act created an on-ramp providing regulatory accommodations for up to five years following an IPO through EGC status. The proposed amendments would instead provide for a minimum post-IPO time period. No company could qualify as a LAF until at least 60 consecutive calendar months after its IPO, regardless of public float. The SEC noted that, consistent with the original goals of the JOBS Act, this extended on-ramp would reduce compliance burdens during registrants' early years as public companies, potentially making the decision to go public more attractive.
- **Small non-accelerated filers**. A new NAF subcategory would be established for the smallest public companies—those reporting total assets of $35 million or less as of the end of each of their two most recent second fiscal quarters. These companies would receive extended filing deadlines: an additional 30 days for annual reports on Form 10-K (extending the existing deadline from 90 to 120 days) and an additional 5 days for quarterly reports on Form 10-Q (extending the existing deadline from 45 to 50 days). The two-quarter measurement approach is designed to prevent temporary asset fluctuations from triggering status changes.
- **Scaled disclosure accommodations for all NAFs**. NAFs would benefit from nearly all the disclosure accommodations currently fragmented across the SRC and EGC frameworks. The SEC's objective is to consolidate these overlapping relief provisions into a single, coherent set of requirements applicable to all non-LAF registrants. These accommodations include:
  - No requirement for say-on-pay or say-when-on-pay shareholder advisory votes.
  - Scaled executive compensation disclosure, including no pay-versus-performance disclosure and no golden parachute vote and related compensation disclosure for mergers.

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  - Only two (instead of three) years of audited financial statements required in annual reports and registration statements.
  - The ability to defer compliance with new or revised financial accounting standards for up to five years following initial registration with the SEC, provided the registrant discloses the election at the time of its initial registration statement and applies the election irrevocably to all standards.

- **Exemption from 404(b) auditor attestation requirement on internal control over financial reporting (ICFR)**. The proposal extends the exemption from the costly auditor attestation on internal controls requirement to all NAFs, which the SEC expects will afford these companies with significant cost savings and reduce the burdens of becoming a public company. NAFs would continue to be subject to the requirement that management assess and report on the effectiveness of the registrant's ICFR.
- **Disclosure of material unresolved staff comments**. The rule proposal does not pare back every requirement. For example, it would require disclosure of material unresolved staff comments received at least 180 days before fiscal year end in a company's Form 10-K. This is a requirement the proposal would extend to all registrants, including NAFs (and all FPIs would similarly be required to include that disclosure in their Form 20-F).

How and when would filer status and accommodations reforms apply?

- **Filer assessment timing**. Existing registrants would be required to assess their filer status under the new definitions as of the end of their fiscal year prior to the effectiveness of any final rules, but would be permitted to conduct that assessment as early as the effective date and must do so no later than the day prior to the last day of their fiscal year in which the final rules go into effect.

  In the SEC's example, if final rules become effective on January 15, 2027, then an existing public company on the calendar year would be required to assess its filer status as of December 31, 2026 no later than December 30, 2027, but could do so as of any date between January 15 and December 30, 2027.
- **No need to consider filer status prior to final rules' effectiveness**. For purposes of an existing company's initial assessment, its filer status prior to effectiveness of the final rules is irrelevant. This means that a company that is an LAF prior to the amendments would be an NAF after the effectiveness of the final rules if, as of the end of its fiscal year of the year prior to effectiveness, it has not been subject to Exchange Act reporting requirements for the preceding sixty consecutive calendar months or did not have a public float of $2 billion or more for such fiscal year and the immediately preceding fiscal year.
- **NAFs can benefit from scaled disclosures immediately after assessment.** A registrant that qualifies as an NAF after its initial assessment may avail itself of the scaled disclosure accommodations in its next Securities Act or Exchange Act filing made after the assessment is completed.

Key implications

The offerings reform and filer status rationalization proposals have the potential to offer significant benefits to public companies by reducing unnecessary complexity, unlocking cost savings and facilitating the ability for companies to raise capital in the public markets all while addressing investor protection concerns.

Below are just a few examples of how the proposals might make being a public company attractive:

- **IPO companies.** Say you are a biotech that is an EGC and an SRC, and you just went public. Under the proposal you are already eligible to use Form S-3 to raise additional capital. And a year out, you have the ability to file a Form S-3 that is automatically effective. If there is an open market window at the beginning of March and you don't have audited financials yet for the prior fiscal year – you can still go out and do an offering, subject to banks being comfortable with the comfort package, since those would no longer be required that early for a NAF.
- **Non-WKSIs**. An existing public company that's been reporting for 12 months but currently does not qualify as a WKSI because it does not meet the required thresholds under the current definition would be able to file an automatically-effective shelf, immediately raise capital and pay the SEC registration fees at the time of a takedown as opposed to when it files the registration statement. If that same company also shifts from accelerated filer to NAF status under the filer status proposal, it would combine expanded capital-raising flexibility with scaled disclosure obligations, including executive compensation-related disclosures.
- **ICFR auditor attestation cost savings**. For current accelerated filers that would transition to NAF status under the proposed filer status reform, the elimination of the ICFR auditor attestation requirement alone could yield meaningful

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compliance cost savings. A newly public company would not become subject to the section 404(b) ICFR auditor attestation requirement until at least 5 years after its IPO, regardless of the size of its public float.

- **deSPACed companies**. A company that goes public through a deSPAC transaction would no longer be considered an "ineligible issuer" under Securities Act Rule 405, which means it would be eligible to use Form S-3 like a traditional IPO company provided it meets the other eligibility criteria under the form. It would also benefit from other flexibility, including the ability to use free writing prospectuses like traditional IPO companies and be eligible for SELI and ELI status just like traditional IPO companies, unlike the current framework where WKSI status is not available until at least three years after closing of the deSPAC transaction. Notably, the proposals do not seek to amend either Rule 144(i) or Rule 145. Rule 144(i) currently imposes a rolling 12-month current public information requirement for persons seeking to rely on Rule 144's safe harbor in reselling securities issued by a deSPACed company, and that requirement never falls away no matter how long the company has been an SEC registrant. Rule 145 currently deems statutory underwriter status on certain parties involved in a deSPAC transaction. So, deSPACed companies would continue to be treated differently in these two respects.
- **Filer status determination**. While companies would continue to assess their filer status annually, they would not be at risk of falling in or out of a particular category based on where their public float was on June 30 of a given year, given the requirement that the relevant threshold be met for two consecutive years. This would give a company visibility into any changed reporting obligations in advance and more time to prepare for any internal controls or other changes it would need to put in place. And it would effectively just need to determine whether it is a LAF or not, a binary choice which in itself brings welcome simplification.

A separate client update addressing the executive compensation disclosure implications of the proposals is forthcoming.

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