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MAY 26, 2026

SEC PROPOSES RULES SIMPLIFYING FILER STATUS DETERMINATIONS AND INCREASING DISCLOSURE ACCOMMODATIONS

On May 19, 2026, the U.S. Securities and Exchange Commission (the "SEC") published two rulemaking proposals, each of which would substantially revise the requirements of the U.S. federal securities laws applicable to public companies. These proposals mark the next step in SEC Chair Paul Atkins' mission to grow the U.S. capital markets and "make IPOs great again," and clearly reflect the SEC's commitment to this mission. This Legal Update covers one proposal, titled "Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies" (the "Proposing Release"). The Proposing Release lays out a new simplified structure for the filer status of many domestic U.S. companies that report under Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), along with numerous ideas for comprehensive disclosure simplification and comment requests.

PROPOSED FILER STATUS REVISIONS

Today, Exchange Act reporting companies fit within any of the following non-exclusive filer status categories: large accelerated filers ("LAFs"), accelerated filers, non-accelerated filers ("NAFs"), smaller reporting companies ("SRCs") and emerging growth companies ("EGCs"). These categories, delineated by criteria such as public float, annual revenue, and reporting history, determine, among other things, the deadlines by which companies must file annual and quarterly reports, the specific disclosure required to be included in certain Exchange Act filings, and the need to comply with auditor attestation requirements for internal control over financial reporting ("ICFR"). In some situations, a company can belong in more than one category, and determining the applicable category (or categories) for that company can be a challenge for both the company itself and other market participants, including shareholders.

Given these challenges, the Proposing Release seeks to simplify this structure into two main categories: LAFs and NAFs, with a subcategory within NAFs for small non-accelerated filers ("SNFs").[1] EGCs[2] were created by statute, rather than SEC rule, and will remain unchanged, although as discussed below, many of the accommodations available to EGCs will be available to all NAFs, thereby possibly diminishing the significance of EGC status in many respects. Just as is currently required, companies will be required to assess filer status annually, as of the last day of their fiscal year, to determine compliance with the following:

CATEGORY	PROPOSED REPORTING THRESHOLD	PROPOSED SEASONING REQUIREMENT
LAF	Public float of at least $2 billion,[3] calculated annually based on average stock price over the last 10 trading days of the second fiscal quarter. Must meet threshold for two consecutive years to become an LAF if currently an NAF.	Must be a reporting company for at least 60 consecutive calendar months prior to being eligible to be an LAF.
NAF	Public float of less than $2 billion, calculated annually based on average stock price over the last 10 trading days of the second fiscal quarter. Must fall below threshold for two consecutive years to become an NAF if currently an LAF.	None. A company will automatically be an NAF upon becoming an Exchange Act reporting company.
SNF	NAF with total assets of $35 million or less as of the last day of a company's two most recent second fiscal quarters. Company would remain an SNF until it (i) becomes an LAF or (ii) reports more than $35 million in total assets as of the end of each of its two most recent second fiscal quarters.	None. A company can qualify as an SNF immediately upon becoming Exchange Act reporting, if, in its initial registration statement, the company reported total assets of $35 million or less in its financial statements in each of its two most recent fiscal year balance sheets.

PUBLIC FLOAT

"Public float" is defined as the aggregate worldwide market value of a company's voting and non-voting common equity held by non-affiliates. As discussed in the Proposing Release, the SEC believes the market follows companies with large public floats more closely. These companies are likely to be well-resourced, and better able to support more intensive disclosure requirements than small companies. As a result, the SEC has long held the view that holding larger companies to a higher disclosure standard will better protect investors without unfairly burdening smaller issuers, and has looked to public float in determining filer status. Other than the proposed asset-based test of the new SNF category, discussed in more detail below, the SEC's proposal looks solely to public float for its simplified filer status definitions.[4] The SEC proposes that the $2 billion public float be calculated based on average share price over a 10-trading-day period, reducing the risk that a company may pass the threshold due to share price volatility on a single day.[5]

The Proposing Release suggests a new timing requirement, such that the $2 billion public float threshold for LAFs must be met (or not met) for two consecutive years before a company switches from NAF to LAF status or vice versa. In practical terms, this means that a company's public float must be consistently above this threshold prior to becoming an LAF, and consistently below it to move from LAF status to NAF status. This reduces the risk of frequent filer status fluctuations due to market volatility. The Staff outlined several benefits to companies of this proposed approach, including that market participants would always have at

least one year of visibility regarding the possibility of a status transition before any transition occurs. This allows issuers time to plan for the disclosure requirements and the increased costs. This approach also allows the SEC to propose a single public float test, eliminating the current transition thresholds for exiting and re-entering filer status, which are intended to minimize frequent status changes, but add significant complexity to the current rules. One potential negative, however, is that the two-consecutive-year requirement means a company's filer status will not change following a single year of crossing the $2 billion threshold. As a result, LAFs would need to continue to bear the costs of providing non-scaled disclosure even if their public float falls below the threshold for a single year, while investors would not benefit from increased disclosure following a one-year increase in an NAF's public float. This could also impact comparability, as companies with similar public floats may be subject to different disclosure requirements depending on whether their public floats have fluctuated around the $2 billion threshold.

"SEASONING" REQUIREMENT

Currently, companies must be Exchange Act reporting for 12 calendar months prior to becoming a LAF. The Proposing Release proposes to extend this requirement to 60 consecutive months, creating a minimum five-year on-ramp for every new registrant (all registrants will automatically be NAFs following effectiveness of their initial registration statement). This means that some companies that would otherwise meet the LAF requirements will be able to delay compliance; however, the SEC noted that the five-year on-ramp would affect only a small subset of registrants, citing data showing that absent the proposed on-ramp, the percentage of current registrants continuing on as LAFs would only increase from 19.2% to 20.7%, and balanced the reduction in information that would otherwise have been publicly available against the benefits of allowing all new reporting companies time to adjust to reporting requirements.

This proposal may encourage more companies to go public and stay public, similar to the perceived effect of the Jumpstart Our Business Startups ("JOBS") Act's "IPO on-ramp." The SEC compared this proposed filer status on-ramp to that provided to EGCs under the JOBS Act, noting that it "has been a meaningful accommodation to newer public companies and generally has not resulted in investor protection concerns." Further, "providing a sixty calendar month on-ramp complements Congress' intent with its establishment of EGC status and would help to simplify filer status determinations by ensuring that all registrants that meet the statutory definition of EGCs will necessarily qualify as NAFs when making their filer status determinations." In other words, this period will further align and simplify filer status determinations. It should be noted that the approach would have the effect of extending the EGC accommodations for companies that would otherwise lose EGC status in less than five years.

NON-ACCELERATED FILERS, AUDITOR ATTESTATIONS AND DISCLOSURE AMENDMENTS

As outlined in the Proposing Release, and subject to the exceptions noted above, every filer other than an LAF will be an NAF, and be eligible for certain scaled disclosure requirements. The impacts of this are similar to those the SEC cited to support its proposed rules on semiannual reporting (see our Legal Update). Namely, in the SEC's view, these accommodations will decrease the costs and distractions to management

of being a reporting company without meaningfully decreasing the information available to investors, therefore maintaining investor protections. In fact, to the extent that these revisions encourage more companies to go public and stay public, the Proposing Release argues that investors will benefit from the increased transparency that comes from being a public (as opposed to private) company, as well as increased capital market depth with more investment opportunities.

INTERNAL CONTROL OVER FINANCIAL REPORTING AND THE AUDITOR ATTESTATION REQUIREMENT

Section 404(b) of the Sarbanes-Oxley Act requires that the auditor that prepares or issues a company's audit report attest to and report on management's assessment of the effectiveness of the company's ICFR. NAFs, SRCs and EGCs are currently exempt from this requirement, such that expanding the universe of companies that qualify as NAFs would increase the number of companies that are exempt from the audit attestation requirement. In the Proposing Release, the Staff points out that these issuers would still be required to include management's assessment of ICFR, as well as to comply with other financial statement audit requirements, both of which provide investor protection. In addition, this change could substantially reduce auditor costs for reporting companies, benefiting both new reporting companies and smaller long-time reporting companies, for which these costs may be substantial. That said, the Proposing Release acknowledges that auditor attestations over ICFR improve both the quality of financial statements and the reliability of management's assessment of ICFR. The SEC raises the possibility, and requests comment on whether, if the change is adopted, investors may favor companies that voluntarily provide such an auditor attestation.

DISCLOSURE AND FINANCIAL REPORTING ACCOMMODATIONS

Today's SRCs and EGCs benefit from a myriad of disclosure accommodations; pursuant to the Proposing Release, these SRC accommodations would become the standard disclosure requirements for NAFs. In addition, with a few limited exceptions, NAFs would be able to prepare financial statements in accordance with Article 8 of Regulation S-X, which currently provides the form and content of financial statements for SRCs.[6] NAFs would be able to omit certain other disclosure, and would be entitled to certain EGC accommodations.

EGC DISCLOSURE ACCOMMODATIONS	APPLICABLE REGULATION
Less detailed business development description requirements	Item 101(h) of Regulation S-K
Risk factor disclosure in Form 10-K and 10-Q not required	Item 105 of Regulation S-K
Proposed expansion of requirement to disclose recent material unresolved Staff comments	Item 1.B of Form 10-K
Stock performance graph not required[7]	Item 201(e) of Regulation S-K
Supplementary financial information not required	Item 302(a) of Regulation S-K

EGC DISCLOSURE ACCOMMODATIONS	APPLICABLE REGULATION
Two (instead of three) years of MD&A comparison	Item 303 of Regulation S-K
Certain disclosures about market risk not required	Item 305 of Regulation S-K
Auditor attestation report not required	Item 308 of Regulation S-K
Two (instead of three) years in summary compensation table	Item 402 of Regulation S-K
Executive compensation disclosure regarding three (instead of five) named executive officers	Item 402 of Regulation S-K
Certain other compensation disclosure not required: • compensation discussion and analysis; • grants of plan-based awards table; • option exercises and stock vested table; • pension benefits table; • nonqualified deferred compensation table; • compensation policies and practices related to risk management; • golden parachute disclosure, • pay ratio disclosure; and • pay versus performance disclosure	Item 402 of Regulation S-K
Proposal to eliminate more rigorous SRC requirements under Item 404(d) and applying standard $120,000 threshold for related party transaction disclosure; related party policies disclosure not required	Items 404(b) and 404(d) of Regulation S-K
Audit committee financial expert disclosure not required in first year; compensation committee interlocks and insider participation disclosure and compensation committee report not required	Item 407 of Regulation S-K
Statements regarding computation of pay ratios not required	Item 601 of Regulation S-K
Two rather than three years of audited statements of comprehensive income, cash flows, and changes in stockholders' equity	Rule 8-02 of Regulation S-X
More condensed format for interim financial statements, financial statements for businesses and real estate operations acquired or to be acquired, and pro forma financial statements	Rules 8-02 through 8-06 of Regulation S-X
Less stringent age of financial statements requirements	Rule 8-08 of Regulation S-X

EGC DISCLOSURE ACCOMMODATIONS	APPLICABLE REGULATION
Clarification that, with regard to financial statements, companies must disclose "such further material information as is necessary to make the required statements, in light of the circumstances under which they are made, not misleading," even when not explicitly required by Article 8 (proposed disclosure expansion; note that disclosure is already subject to this requirement)	Rule 8-01(b) of Regulation S-X
Disclosure of payments made by resource extraction issuers not required	Exchange Act Rule 13q-1
Exempt from requirement to conduct shareholder advisory votes (say-on-pay, frequency of say-on-pay, and golden parachute compensation)	Exchange Act Rule 14a-21
Can irrevocably elect to defer compliance with new or revised financial accounting standards issued by the Financial Accounting Standards Board until such time as a company that is not an issuer (as defined in the Sarbanes Oxley Act) is required to comply with such standards, if such standard applies to companies that are not issuers, but only for the first five years after the company's initial SEC registration[8]	Rule 8-01(b) of Regulation S-X

The list of proposed accommodations and exemptions is long and sweeping, representing a potentially dramatic change in the way companies draft, and investors use, annual and quarterly disclosure. The proposed rules raise numerous questions about the "right" level of disclosure, and the best way to ensure investors have material information. If adopted, will some NAFs voluntarily provide some or all of this disclosure to satisfy investor demand? Will the costs saved by changes in reporting be used to grow an issuer's business, thereby increasing shareholder value? Will remaining disclosure sections, like MD&A, evolve to meet any unmet disclosure obligations that would previously have been disclosed in one of these omitted sections? Or will companies and investors decide that the remaining sections are sufficient in their current form—and is this the SEC's view? Will these lead to more fraud, and will investors truly be served by these accommodations?

If adopted, the proposed amendments could have a substantial impact on the interactions between public companies and their shareholders. As noted above, under the proposed rules, NAFs would not have to conduct a say-on-pay vote. How will shareholders share their views on compensation at the vast majority of public companies in the absence of shareholder advisory votes—will it increase conversations between large institutional investors and companies outside of the proxy process? Or will this lead to more unsolicited shareholder proposals or "no" votes on compensation committee chairs and members?

Overall, will this "on ramp" encourage more companies to go public by easing filers into compliance with disclosure and shareholder vote requirements? If adopted as proposed, companies, securities law

practitioners and all types of market participants will have to grapple with the implications of these changes and the potential impact on the market price of an issuer's securities.

SMALL NON-ACCELERATED FILERS

Within the NAF category, the SEC is proposing to create a sub-category of the smallest reporting companies—those with assets of $35 million or less as of the last business day of their most recent second fiscal quarter. SNF status would terminate if, regardless of assets, a reporting company becomes an LAF, or if the company reports more than $35 million in total assets as of the end of each of its two most recent second fiscal quarters (therefore remaining an NAF). SNF would have longer filing timelines for certain Exchange Act reports, below:

EXCHANGE ACT REPORT	LAF/NAF FILING DEADLINE	SNF FILING DEADLINE
Form 10-K	90 days after fiscal year end	120 days after fiscal year end
Form 10-Q	45 days after fiscal quarter end	50 days after fiscal quarter end
Form 8-K	4 business days after triggering event	

Like with almost all the proposed changes in the Proposing Release, the Staff hopes that providing extra time for filing quarterly and annual reports will ease compliance burdens and costs, and therefore encourage more of these companies to go and stay public. In proposing this change, the SEC noted in particular that small companies may not have a robust compliance and financial reporting staff with adequate resources and funds for legal and accounting service providers to timely meet reporting deadlines.

PROPOSED TRANSITION PERIOD AND OTHER TECHNICAL UPDATES

TRANSITION PERIOD

The Proposing Release proposes a transition period for existing registrants, requiring these companies to assess LAF or NAF status as of the end of the fiscal year prior to the effectiveness of the final rules, based on public float and, if applicable, total assets, for such fiscal year and the immediately prior fiscal year. A company that does not do so will be either (1) an LAF until the next assessment date, if it was an LAF prior to the final rules' effectiveness, or (2) an NAF until the next assessment date (but not an SNF, even if its total assets would otherwise qualify it to be an SNF). Companies would specifically not consider their filer status before effectiveness of proposed rules in determining their new filer status.

UPDATE TO THE SMALL ENTITY DEFINITION FOR THE REGULATORY FLEXIBILITY ACT AND OTHER TECHNICAL AMENDMENTS

In addition to the dramatic changes outlined above, the SEC is proposing to raise the total asset threshold in the definition of a small entity issuer (other than an investment company) from $5 million to $35 million for purposes of the Regulatory Flexibility Act ("RFA"). By way of background, the RFA requires certain federal agencies to publish the impact of proposed and final rules on small entities, such that raising the asset threshold for small issuers would raise the threshold at which the SEC is required to provide this impact disclosure. The change would harmonize the small issuer definition with other similar definitions and thresholds in the federal securities regulations, including the proposed SNF threshold, and allow the SEC to better target its disclosure to "the specific regulatory challenges faced by small entities."

The SEC is proposing a number of other unrelated technical rule changes for items that are no longer applicable or helpful; for example, phase-in periods for Inline XBRL requirements that completed in 2021.

DATA-BASED MARKET IMPLICATIONS

Throughout the Proposing Release, the Staff provides quantitative support for the proposed rules. Overall, these data points support the proposition that disclosure requirements should be appropriately tailored to balance costs to issuers with benefits to investors. The largest issuers, which are best able to shoulder disclosure burdens and garner the most market attention, should be required to provide the most disclosure on the shortest timeframes. Conversely, smaller companies would be able to take advantage of reduced disclosure burdens and, in some cases, longer filing timelines, lowering compliance costs and time requirements and allowing these companies to focus on growing their business. We have highlighted a few of these data points below.

- Under the proposed rules, approximately 19% of current public companies would be LAFs (compared to 35% today). This would represent around 93.5% of total market public float, compared to the approximately 98.8% of the public float represented by LAFs in 2024.[9] Around half of the registrants that are currently LAFs would remain LAFs under the proposed amendments.
- Around 81% of public companies would be NAFs (an increase from around 44% currently), representing approximately 6.5% of total market public float. This would include around 50% of NAFs that are NAFs today and would remain so, and almost 29% of registrants that are not currently NAFs.
- Around 1,072 registrants, or almost 18% of public companies (or 22% of NAFs), would be SNFs.
    - Almost 27% of all registrants would be newly exempt from the ICFR auditor attestation requirements, representing approximately 60% of those currently subject to this requirement.

- Today, SRCs and EGCs, which are provided with certain disclosure accommodations, compose over 52% of registrants; as proposed, these accommodations would now be available to all NAFs (81% of public companies).

COMMISSIONER REACTIONS AND COMMENT REQUESTS

Chairman Atkins and Commissioners Hester Peirce and Mark Uyeda all published statements in support of the Proposing Release and the need to support the growth of the U.S. capital markets. Chair Atkins addressed his belief that "the current public company regulatory framework is in dire need of a comprehensive overhaul" and foreshadowed more change to come, stating that the SEC's May 19 proposals "are just the beginning and will work in tandem to lay the groundwork for the remainder of my Make IPOs Great Again agenda. Future proposals to transform the public company regulatory framework, including reforming the Regulation S-K disclosure requirements with materiality as its north star, will build on the foundation laid by today's proposals." Commissioner Peirce shared her belief that "consequential changes in the filer status reform proposal would ameliorate certain woes associated with being a public company," while Commissioner Uyeda stressed that the proposed regulatory simplifications reflect "an important point: management and boards of public companies exist to focus on operating and managing their businesses—and not to spend outsized amounts of time and resources on regulatory compliance obligations."

The Proposing Release includes 40 requests for public comment on all aspects of the proposed rules, ranging from questions about the appropriate thresholds for distinguishing filer classes to the potential positive and negative impacts of the changes to auditor attestation requirements and disclosure accommodations.

Read the Proposing Release. Comments are due July 20, 2026 (60 days after publication of the Proposing Release in the Federal Register) and can be submitted (i) via the comment form on the SEC's website, (ii) via e-mail to rule-comments@sec.gov, including File Number S7-2026-18 on the subject line, or (iii) on paper to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

Read Chair Atkins' statement, Commissioner Uyeda's statement, and Commissioner Peirce's statement.

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ENDNOTES

[1] Asset-backed issuers and some foreign private issuers ("FPIs") would not be included in these definitions; qualifying FPIs could choose to take advantage of the disclosure accommodations provided to NAFs by filing on forms used by U.S. domestic companies. The Proposing Release proposes to amend Form 20-F to continue to require an auditor's attestation report on ICFR for filers with a public float of $75 million or more as of the last business day of the issuer's most recently completed second fiscal quarter unless they are EGCs. The Staff noted, however, that, in accordance with its summer 2025 concept release, it is still considering changes to the FPI regime.

[2] To be an EGC, a company must have total annual gross revenues of less than $1.235 billion during its most recently completed fiscal year and have not sold common equity securities under a registration statement. A company continues to be an EGC for the first five fiscal years after its IPO, unless (i) its total annual gross revenues are at least $1.235 billion, (ii) it issued more than $1 billion in non-convertible debt in the past three years, or (iii) it becomes an LAF.

[3] The current public float threshold for LAFs is $700 million.

[4] Currently, SRC eligibility includes a revenue test.

[5] For reporting companies, public float is currently computed as of the last business day of its most recently completed second fiscal quarter by multiplying the aggregate worldwide number of shares of voting and non-voting common equity held by non-affiliates by the price at which the common equity was last sold, or the average of the bid and asked prices of the common equity in the principal market for the common equity.

[6] NAFs that are business development companies or face-amount certificate companies would receive certain of the same accommodations under proposed Rule 3-19 of Regulation S-X. NAFs that are investment companies would not be permitted to rely on Article 8.

[7] Except for NAFs that are investment companies.

[8] This accommodation would cease on the last day of the NAF's fiscal year in which the fifth anniversary of the NAF's IPO occurred; the annual report for that fiscal year would be required to reflect the adoption of all new or revised financial accounting standards that are effective for issuers as of that date.

[9] When the $700 million public float requirement for LAFs was adopted in 2005, it was estimated that "companies with a public float of over $700 million represent approximately 18 percent of the total number of companies on these markets and nearly 95 percent of the total public float on these markets." The SEC stated that "it is proposing to raise the threshold to continue to cover the largest registrants and reestablish the relationship to the number of companies covered and total market public float that existed when the filer status was adopted."