U.S. Chamber of Commerce

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July 20, 2026

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: Registered Offering Reform (File No. S7-2026-17); and Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies (File No. S7-2026-18)

Dear Ms. Countryman:

The U.S. Chamber of Commerce ("Chamber") submits these comments in response to the proposed rules from the Securities and Exchange Commission ("SEC") related to registered offering reform ("Registered Offering Proposal") and simplification of filer status for public companies ("Filer Status Proposal") (together, "the Proposals").

The Chamber commends the SEC for these two proposals and its ongoing work to encourage more U.S. companies to go public and remain public. We echo Chairman Atkins' statement during the May 19 SEC open meeting that the public company regulatory framework is in "dire need of a comprehensive overhaul."[1]

The steady decline of U.S.-listed public companies over the last thirty years directly impacts job creation, economic growth, and the ability of millions of American households to participate in the financial success of high-growth American businesses. This decline is not simply a function of market consolidation but a symptom of a regulatory architecture that no longer matches how capital is raised, how information is disseminated, or how investors access markets in 2026. When companies are discouraged from going public, or from staying public, ordinary investors lose access to that growth. The Chamber therefore views these proposals as a necessary rebalancing of costs and benefits so that the U.S. public markets remain the preferred destination for capital formation.

The Chamber has been a leading voice in calling for reforms to improve the public company model. Last year, the Chamber and Nasdaq issued a report that contained several recommendations for

[1] Statement on Proposing Releases for Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies, and Registered Offering Reform. Chairman Paul Atkins (May 19, 2026) https://www.sec.gov/newsroom/speeches-statements/atkins-statement-on-proposing-releases-for-enhancement-of-emerging-growth-company-accommodations-and-simplification-of-filer-status-for-reporting-companies-and-registered-offering-reform-051926

the SEC and Congress to implement ("2025 Report") .[2] We are pleased that some of the recommendations from this report are included in the Proposals now under consideration by the SEC.

Registered Offering Proposal

Expanding Form S-3 Eligibility and Shelf Registration

Form S-3, commonly referred to as a "short-form" or "shelf" registration, is the most efficient registration form and typically brings significant cost savings for those companies that are eligible to use it. Form S-3 provides eligible issuers with significant flexibility to access the public markets based upon market conditions and the specific funding and capital needs of an issuer.

The proposing release describes the benefits of Form S-3 this way: *"By having more control over the timing of their offerings, eligible issuers can take advantage of desirable market conditions, thus allowing them to raise capital on more favorable terms (such as a higher equity price or lower debt interest rate)."*[3] Form S-3 also allows for forward incorporation by reference to a company's Exchange Act filings.

Currently, issuers that are ineligible to use Form S-3 must use Form S-1 for each of their registered offerings, making it more difficult to offer securities on a cost-effective, efficient, and timely basis. Current Form S-3 requirements include, among other stipulations, a one-year "seasoning" timeframe and a minimum of $75 million in public float (certain transactions excluded). These criteria were adopted as indicia of a company's "market following."

The Registered Offering Proposal would eliminate both the one-year seasoning requirement and the public float threshold, both of which were designed for an information and market environment that no longer exists. Today, real-time electronic filing, broad analyst coverage, and instantaneous market dissemination of corporate news have made the "market following" rationale underlying the current thresholds largely obsolete. Importantly, under the Registered Offering Proposal, issuers would still have to be current and timely in their Exchange Act reporting requirements to be S-3 eligible. The Chamber supports these reforms.

Companies that have recently completed an initial public offering (IPO) oftentimes have not met the 12-month seasoning requirement by the time they need to raise follow-on capital. Requiring companies in this situation to effectively conduct another "long-form" registration can impose delays and can prevent a company from taking advantage of favorable market conditions. Eliminating the seasoning requirement and the public float threshold (while maintaining the "current and timely" requirement) will help more companies and their shareholders experience the benefits of "short form" registration.

However, we are concerned that the Form S-3 restrictions on ineligible issuers contained in the Registered Offering Proposal are unnecessarily punitive and depart significantly from current rules. The

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[2] Unlocking America's Capital Markets: Fueling Economic Growth and Innovation. U.S. Chamber & Nasdaq. (June 2025) https://www.uschamber.com/assets/documents/20250587_CCMC-CPSummit-PublicCompanyReport_FINAL.pdf
[3] Registered Offering Proposal at 23

proposing release explains that the proposal is intended to address investor protection concerns that may arise from expanding Form S-3 eligibility to a broader population of issuers. Yet, it would impose significant new restrictions on issuers that already satisfy the existing Form S-3 eligibility framework and have long relied upon shelf registration to efficiently access the public markets.

More specifically, issuers and their affiliates subject to certain enforcement actions would lose the ability to use Form S-3 altogether, depriving them of the timing, flexibility, and efficiency benefits of shelf registration. As a result, the proposal has significant negative and unnecessarily punitive consequences for existing Form S-3 issuers in order to address concerns associated with newly eligible issuers. Notably, the proposing release does not identify any specific concerns regarding issuers currently eligible to use Form S-3 that would justify imposing such restrictions on these issuers.

Under current rules, an ineligible issuer loses *automatic* shelf registration and certain enhanced communication and registration benefits but still maintains the ability to use a shelf registration, subject to staff review and approval. Excluding issuers, including large, seasoned issuers that are currently eligible to use Form S-3, from continuing to use a shelf would be contrary to the SEC's stated goal to facilitate capital formation.

To address the SEC's investor protection concerns, it would be appropriate for an issuer that has been subject to an anti-fraud violation to have its future registration statements be subject to SEC staff review (rather than automatic effectiveness) as well as for that issuer to potentially lose certain other registration and communications benefits, but it should not follow that the issuer be precluded from using a shelf registration statement altogether.

The existing framework appropriately balances investor protection and capital formation by allowing the SEC to review future offerings without eliminating access to the shelf registration process altogether.

Furthermore, the S-3 disqualification would take effect regardless of the severity of the underlying violation, such that a relatively minor infraction would result in the same loss of eligibility as serious fraud. For example, a small settlement involving an affiliate business line could trigger a loss of Form S-3 eligibility for the entire company notwithstanding that the infraction is not indicative of a broader problem with the general quality of information available to investors.

The proposal also ignores whether an issuer has already overhauled its compliance processes, effectively penalizing past behavior at the expense of future benefits that would be derived by the company and its shareholders by being Form S-3 eligible. We urge the SEC to avoid adopting such a punitive approach in a final rule.

Finally, the possibility of seeking a waiver is not an adequate substitute for maintaining Form S-3 eligibility for frequent issuers that rely on the capital markets for their funding and capital requirements. Many issuers rely on frequent and timely access to the capital markets through established shelf registration programs, and a discretionary waiver process cannot provide the certainty necessary to support their ongoing funding activities. Losing the ability to use shelf registration altogether (with no opportunity for staff review) would be particularly problematic in industries that require frequent capital raises, such as banking, energy, real estate, and biotech, which rely on the ability to promptly and efficiently issue securities and raise capital.

The proposal would materially impair the ability of these institutions and other seasoned issuers to respond to investor demand, manage their funding plans and maintain established funding programs, which would significantly and adversely affect capital formation in the U.S. capital markets. Such consequences could have broader implications for market stability while providing little additional investor protection for issuers that are already eligible to use Form S-3 under the current framework.

We urge the SEC to preserve Form S-3 eligibility for ineligible issuers under the current rules but address bad actors through limitations on automatic shelf registration or limitations on certain enhanced communication and registration benefits.

Issuers Relying on the WKSI Debt Test

The Registered Offering Proposal would abolish WKSI status for domestic issuers entirely and replace it with a new listing-based framework consisting of eligible listed issuers ("ELIs") and seasoned eligible listed issuers ("SELIs"). Unlike the current WKSI definition, the proposed ELI and SELI definitions contain no debt-issuance-based qualifying criterion and no other quantitative threshold.

Under the current rules, issuers that have issued at least $1 billion aggregate principal amount of non-convertible securities (other than common equity) in registered primary cash offerings during the prior three years (the "WKSI Debt Test") qualify as WKSIs without regard to their equity float. Because the proposed ELI/SELI framework has no counterpart to this pathway, issuers with no listed common equity that currently rely on the WKSI Debt Test to qualify as WKSIs ("Debt-Only Issuers") would fall outside the ELI and SELI categories altogether.

The long-established WKSI Debt Test recognizes that Debt-Only Issuers have a meaningful market following that is independent from market float. The elimination of this alternative qualification pathway, and the accompanying loss of automatic shelf registration, would have a significant and direct impact on Debt-Only Issuers.

These Debt-Only Issuers, often in capital-intensive industries, specifically require the flexibility, speed, certainty, and pay-as-you-go adaptability afforded by automatic shelf registration to respond to short market windows that are deeply sensitive to interest-rate movements, spread conditions, and investor demand.[4] Debt-Only Issuers that are currently WKSIs often rely on the WKSI Debt Test to coordinate multi-year shelf programs and financing calendars.

Further, the SEC has historically explicitly and consistently focused the determination of Form S-3 eligibility on whether an investor can readily obtain issuer-specific information through Exchange Act

[4] The SEC recognizes that "an issuer benefits from an automatic shelf registration statement, as compared to a non-automatically effective Form S-3, with respect to the speed with which the automatic shelf registration statement becomes effective," and further notes that "research shows that automatic shelf registration grants issuers maximum flexibility and speed for raising capital, with many offerings completed overnight." Registered Offering Proposal, at 252.

reports.[5] Debt-Only Issuers that are current and timely in their Exchange Act reporting requirements satisfy the information-availability rationale regardless of whether they have listed common equity.[6]

Replacing the WKSI framework with a listing-based structure that provides no alternative pathway for Debt-Only Issuers (even those that are current and timely in their Exchange Act reporting) would reduce the set of beneficiaries of automatic shelf registration and related accommodations to only a subset of seasoned debt issuers.[7]

The absence of alternative relief for Debt-Only Issuers that presently qualify as WKSIs would further disrupt established capital planning processes, frustrate their ability to access the debt markets efficiently, and impose material costs on Debt-Only Issuers that have structured their financing arrangements in reliance on the WKSI Debt Test. Such an outcome runs contrary to the SEC's stated goals of expanding the population of issuers eligible to use Form S-3 and facilitating capital formation in the public securities markets, while failing to advance the information-availability rationale that underlies Form S-3 and WKSI eligibility determinations.

Accordingly, the Chamber recommends that the final rules should update the ELI definition in proposed Rule 405 to include issuers meeting Form S-3 requirements that have issued at least $1 billion in qualifying non-convertible securities over three years, as is the case under the existing WKSI Debt Test. The Chamber also recommends that the final rules broaden the SELI definition to preserve automatic shelf access for Debt-Only Issuers that currently qualify as WKSIs.

<u>Extension of WKSI Accommodations</u>

The Chamber supports extending current WKSI communication flexibilities to more public companies. In 2005, the SEC established WKSIs as a class of issuers that have a demonstrated reporting history with the SEC, meet certain market capitalization thresholds, and are generally widely followed in the marketplace. The Registered Offering Proposal would replace the current WKSI definition with two new classes of issuers: eligible listed issuers (ELIs) and seasoned eligible listed issuers (SELIs). Many benefits that are currently available to WKSIs, such as the ability to communicate freely with the market, would be available to both ELIs and SELIs.

The 2005 offering reforms demonstrated that giving certain issuers the ability to communicate more freely with the market and access shelf capital on an automatic basis did not compromise investor protection; it simply recognized that these issuers were already subject to rigorous disclosure obligations. Extending comparable flexibility to a wider set of companies, regardless of size or maturity, is a logical next step.

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[5] For example, the SEC suggests that information-availability is a more important consideration for Form S-3 eligibility than public float. See "We now believe, however, that Form S-3 eligibility should be based on the ability to readily obtain issuer-specific information in Exchange Act reports and not, in part, on the amount of an issuer's public float." Registered Offering Proposal, at 83.

[6] Debt-Only Issuers that are current and timely in their Exchange Act reporting requirements satisfy the information-availability rationale regardless of whether they have listed common equity.

[7] The SEC's analysis "suggests that up to 184 WKSIs could potentially lose some of the Enhanced Registration and Communication Benefits because they would not be ELIs under the proposed amendments." Registered Offering Proposal, at 215

Preemption of State Securities Law Registration

The Chamber also supports the proposed preemption from state "blue sky" registration for registered offerings. Securities that are registered with the SEC under the Securities Act of 1933 are already subject to substantial reporting and disclosure requirements. Requiring issuers to navigate state registration imposes unnecessary costs and delays that do little to enhance investor protection. The National Securities Markets Improvement Act (NSMIA) already provides such preemption for securities listed on a national exchange. Extending the same preemption for all registered offerings would facilitate capital formation and reduce unnecessary compliance burdens, particularly for smaller issuers.

Filer Status Proposal

Consolidation of Filer System

The Chamber generally supports simplifying the current filer status system, which consists of large accelerated filers, accelerated filers, non-accelerated filers, smaller reporting companies (SRCs), and emerging growth companies (EGCs). Under the current framework, issuers can qualify as more than one type of filer, which is a major source of compliance cost and confusion. Consolidating the current system into two tiers (large accelerated filer and non-accelerated filer) will make regulatory obligations more predictable and reduce uncertainty, particularly for newer or smaller issuers that do not have the same level of compliance resources as larger public companies.

In particular, the Chamber supports the extension of certain tailored disclosure requirements to the non-accelerated filer category, including many exemptions currently available to EGCs and SRCs. These include exemptions from certain executive compensation mandates (e.g., certain tabular disclosure for executives, pay versus performance, pay ratio, say on pay), as well as other Reg S-K exemptions (e.g., business description, stock performance graph, disclosures about market risk).

The SEC has had years of experience in applying these exemptions available to SRCs, EGCs, or both without giving rise to concerns that the exemptions deprive investors of material information they need to make informed decisions. Even if these exemptions took effect, companies would maintain the flexibility to tailor disclosure in a way that meets the needs of their investors but avoids the type of lengthy and boilerplate disclosure that exists under current requirements.

In addition, because these disclosures may not deprive investors in smaller companies of material information, the SEC may also want to consider extending certain of these exemptions to other issuers, particularly given the extensive public information, analyst coverage, and market scrutiny applicable to many LAFs. Consistent with recent Chamber comment letters, reducing unnecessary disclosure burdens for all reporting companies would further the SEC's goals of capital formation, promoting public company participation, and appropriately tailoring regulatory requirements to today's markets, regardless of issuer size.[8][9]

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[8] https://www.uschamber.com/finance/u-s-chamber-comments-on-sec-request-for-information-on-executive-compensation
[9] https://www.uschamber.com/finance/letter-to-sec-on-reforming-regulation-s-k-cll-15

As the SEC goes about considering the proposed categories of large accelerated filer and non-accelerated filer (and subsequent exemptions from auditor attestation requirements under Section 404(b) of the Sarbanes-Oxley Act), it should be noted that the business community believes that strong and effective internal controls and audits are an important component of the ability of businesses to communicate with investors in order to raise the capital needed to operate, grow, and compete. However, we have also observed that related costs can be disproportionately expensive and regressive, which is why the CCMC has advocated for the requirement to be scalable.

It is important that the SEC finds the right threshold for which companies are exempted from auditor attestation requirements based on a cost-benefit analysis or consider other means to scale the requirements. As the Chamber noted in our 2025 Report, we believe the PCAOB inspection process has contributed to rising costs as it relates to internal controls. We encourage the SEC to consider roundtables or other stakeholder engagement to explore areas where SEC guidance or PCAOB standards could be adjusted to address friction in the current environment, including PCAOB inspections.

Conclusion

The Chamber commends the SEC for introducing these two Proposals with the objective of encouraging more U.S. companies to go and stay public. We look forward to working with commissioners and staff as these initiatives move forward.

Sincerely,

Mike Flood
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U.S. Chamber of Commerce