Making IPOs Great Again:

Recalibrating Priorities at the SEC and Their Impact on International Companies

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MAYER|BROWN

Regulatory Change Series

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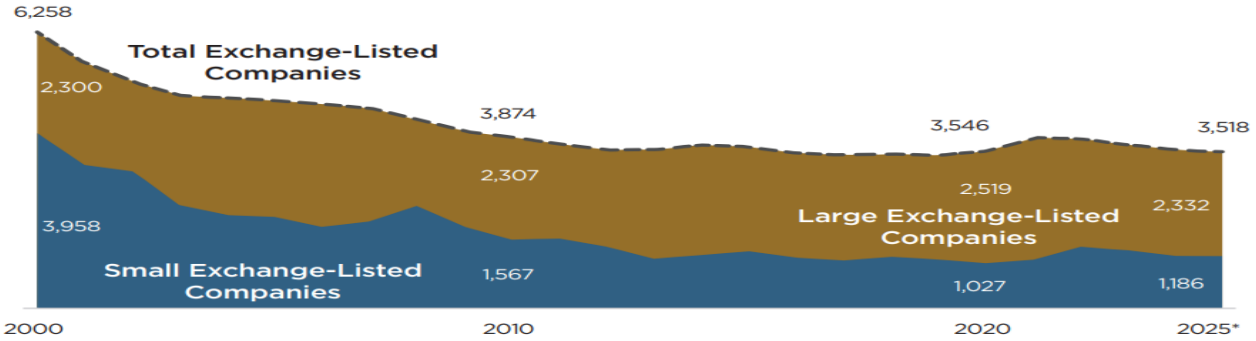
Agenda

- Capital Formation
- Foreign Private Issuers
- Disclosure Related Changes
- Waivers and Settlements
- Corporate Governance Related Changes
- Market Structure Developments

Capital Formation

Revitalizing America's Markets at 250

- On December 2, 2025, SEC Chairman Paul Atkins gave an address outlining his approach to revitalizing the U.S. capital markets. He noted that in the "mid-1990s, there were more than 7,000 companies listed on the U.S. exchanges, from small-cap innovators to giants of industry," a number which had fallen by roughly 40% by the beginning of 2025

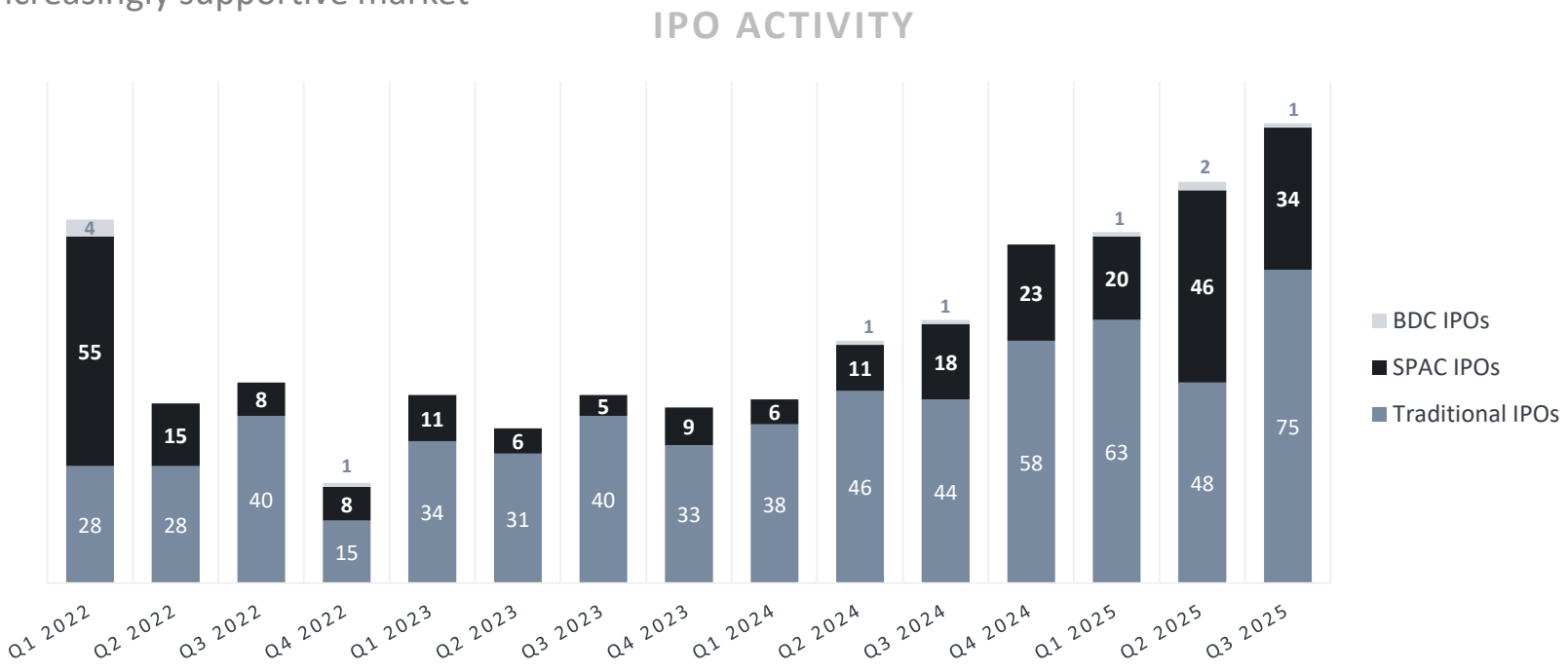


Source: SEC OASB Staff Report

- Chairman Atkins stated that "one of his priorities is to reform the SEC's disclosure rules with two goals in mind":
  1. Root disclosure requirements in the concept of financial materiality
  2. Scale disclosure requirements with a company's size and maturity

Market Developments

- Stabilizing macroeconomic conditions, easing inflation and interest rate cuts have created an increasingly supportive market



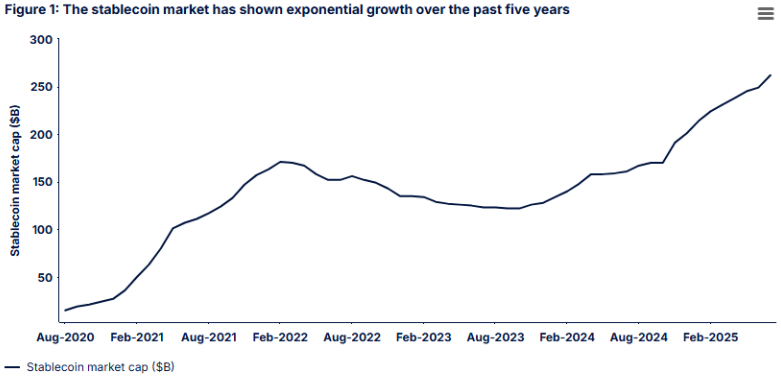
** Data as of December 22, 2025 from sec.gov/data-research*

Market Developments (*cont'd*)

- Substantial IPO backlog
  - With only intermittent issuance windows over the past three years, many late-stage companies are entering 2026 with strong balance sheets and clearer paths to profitability
  - The government shut down in late 2025 created a greater backlog of issuers looking to conduct listings
- AI-driven IPOs
  - Strong market interest in AI infrastructure, software and AI-enabled companies
  - In 2025, high-scale AI and cybersecurity companies consistently priced at top of their pricing ranges, illustrating strong demand for platforms tied to data center build outs, AI computing and security:
    - CoreWeave raised $1.5B in its March 2025 IPO
    - SailPoint raised $1.4B in its February 2025 IPO
    - Netskope raised $900M in its September 2025 IPO
- Rebound of SPAC IPOs
  - However, now face tighter scrutiny, constraints and execution risk

Crypto and Digital Assets

- With improving regulatory clarity and institutional adoption, more crypto infrastructure and services companies are approaching IPO scale
- Index inclusion and institutional frameworks are pulling digital-asset companies into traditional equity research and benchmarks
- GENIUS (Guiding and Establishing National Innovation for U.S. Stablecoins) Act (July 2025)
  - Regulatory framework for dollar-backed payment stablecoin issuers
  - Creates a clearer path for crypto companies to go public



Source: Artemis, as of July 31, 2025.

Making IPOs Easier

- Extending the confidential submission process to additional categories of filings
- Legislative action: The INVEST Act
  - Extends the IPO “on-ramp”
  - EGC status may be available for a longer time period (up to 10 years)
  - Memorializes in legislation the confidential submission process for filings other than those by EGCs
  - Clarifies that EGC accommodations apply in certain instances like spin-offs

Making it More Appealing to be a Public Company

- Recalibrating the definitions of various categories of issuer
- Re-evaluating disclosure requirements and returning to financial materiality as the standard
- Addressing the proxy process
- Addressing litigation

Disclosure Related Changes

Disclosure Philosophy

The SEC, under Chairman Paul Atkins, has signaled a different approach to disclosure

Commissioner Hester Peirce spoke about the need for materiality-based disclosure that relates directly to an issuer's business, and disclosure for the purpose of informing investors, rather than providing information for other purposes

SEC's spring 2025 regulatory agenda matches this "deregulatory" approach, including the "Rationalization of Disclosure Practices"

Climate Disclosure Rules

- SEC rules, adopted during the Biden administration, which directly address climate-related disclosure are subject to litigation that is held in abeyance in the Eighth Circuit Court of Appeals until such time as the SEC reconsiders or renews it defense of the rules, which is extremely unlikely under the current administration

Executive Compensation Request for Comments and Roundtable

- On June 26, 2025, the SEC hosted a roundtable to discuss executive compensation disclosure requirements. Chairman Atkins issued questions for the SEC Staff to consider, which covered:
  - Executive compensation decisions, including setting compensation, making investment and voting decisions
  - The past, present and future of executive compensation disclosure
  - Executive compensation hot topics including requirements imposed by the Dodd-Frank Act and the SEC's Executive Compensation and Related Person Disclosure rule, promulgated in 2006
- There have been over 50 substantive comment letters submitted by a range of market participants including trade groups, compensation consultants, investor protection groups and law firms, as well as:
  - over 1,000 form comment letters that support "keeping, and even expanding, the SEC's strong current disclosure rules for executive compensation," and
  - 20 form letters that "urge the SEC to maintain its executive compensation disclosure rules in their current form"

Executive Compensation Comment Trends

Return to Materiality

- Overall strong call to focus on material, decision-useful information for investors

Simplification and Flexibility

- Support for fewer, clearer, and more flexible disclosure requirements, tailored to specific issuer circumstances

Investor Usability

- Emphasis on making disclosures more understandable and actionable for investors, rather than putting an emphasis on increasing length and detail

Cost-Benefit Balance

- Repeated concern that current rules impose high costs on issuers for limited incremental benefit to investors

Regulation S-K Request for Comments

- On January 13, 2026, Chairman Atkins released a statement relating to a comprehensive review of Regulation S-K
- Atkins noted that he has asked the Staff of the Division of Corporation Finance to "engage in a comprehensive review of Regulation S-K"
- The SEC has previously undertaken reviews of Regulation S-K:
  - The FAST Act required a Report on Modernization and Simplification of Regulation S-K As Required by Section 72003 of the Fixing America's Surface Transportation Act
  - The SEC then published a Concept Release: Business and Financial Disclosure Required by Regulation S-K
  - Following the release and a public comment period, there were various amendments of Regulation S-K that eliminated a number of outdated requirements
- Public comments are requested by April 13, 2026

What to Do Now: Take a Fresh Look at Risk Factors

- Risk factor drafting should avoid boilerplate
- Material factors that make investment in an issuer speculative or risky
- Chairman Atkins recently stressed need to tailor risks to the specific company so that investors know what is important. "Firms have risk-averse lawyers who 'dump the kitchen sink in' […] It's become a repository for too much […] It's not serving investors well"
- Take a fresh look at complete set of risk factors for annual report
  - Any updating needed?
  - Any new risk factors to add?
- Avoid describing risk only in hypothetical terms if a material event of that nature has occurred
- If the risk factor discussion exceeds 15 pages, a risk factor summary of not more than two pages is needed

What to Do Now: Take a Fresh Look at Risk Factors *(cont'd)*

- Geopolitical risks are likely top of mind for many issuers, given rapidly changing global considerations include but are not limited to supply chain disruptions due to conflict in the Middle East, Russia/Ukraine conflict and recent events in Venezuela
- Risks related to economic environment, such as the effects of volatility, inflation, rising interest rates and potential recession
- Risks or impacts of U.S. government shutdown, especially for issuers doing substantial business with the government or otherwise engaging in similar activities
- Risks related to tariffs and/or other changes in or uncertainty with regard to trade policy
  - Risk factors focused on uncertainty/unknown potential impacts of tariffs, potential for increased costs, including for regulatory compliance, supply chain risks and changes in strategy to mitigate risk, including addressing risks that were already happening
- Risks related to artificial intelligence, including risk assessment and risks related to use in business and operations

What to Do Now: Take a Fresh Look at Risk Factors *(cont'd)*

- Risks related to digital assets, including regulatory risks (especially based on evolving landscape), market volatility, and technological risks associated with digital assets (especially with regard to rapidly evolving and changing technology and ability to adapt and compete)
- Cybersecurity and data privacy continue to be a hot-button for the SEC
- Risks related to delisting, especially in light of Nasdaq's 2025 rule amendment to accelerate delistings for companies that fail to meet minimum bid price requirements
- Issuers should assess any HCM related risks or related points that may be important to investors that should be disclosed in risk factors

Artificial Intelligence

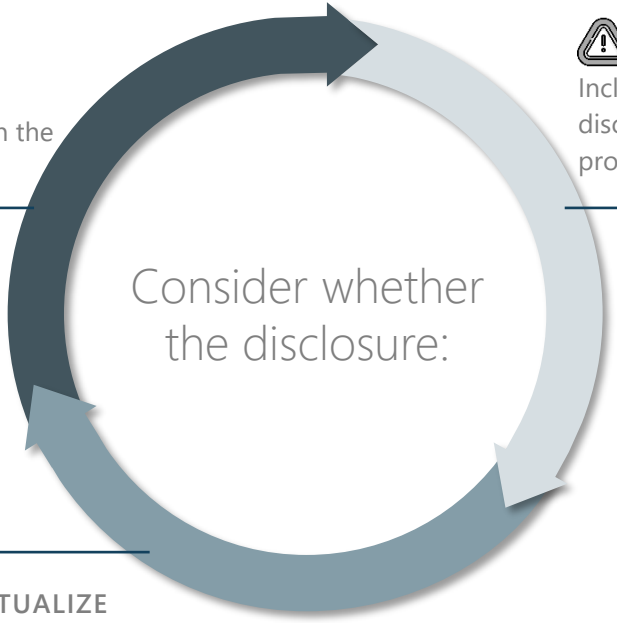
There has been a significant uptick the number of issuers discussing AI in their filings, including risk factors, MD&A, financial statements, description of business, and forward-looking statements. Disclosure should:

CLEARLY DEFINE "ARTIFICIAL INTELLIGENCE"

What does "artificial intelligence" mean in the context of the issuer's business?

AVOID AI-WASHING

Include a reasonable basis for any claims when discussing artificial intelligence capabilities and prospects



CONTEXTUALIZE

Provide tailored (not boilerplate) disclosures about material risks and the impact the technology is reasonably likely to have on the issuer's business and financial results. Instead of just listing AI as a capability or expertise, explain its specific applications and how AI contributes to the issuer's strategies and operations

Cybersecurity

- SEC Staff have issued a limited number of comments on cybersecurity disclosure. Topics include:
  - Whether and how the issuer's processes for assessing, identifying, and managing material risks from cybersecurity threats have been integrated into the overall risk management system or processes
  - Whether the issuer engages assessors, consultants, auditors or other third parties in connection with its processes for assessing, identifying and managing material risks from cybersecurity threats
  - Discussion of the relevant expertise of members of management involved in assessing and managing the issuer's material risks from cybersecurity threats
- SEC Staff commentary warning against boilerplate disclosure

Climate-Related Disclosures

- As mentioned, the SEC rules are indefinitely on hold. Instead, companies should look to the SEC's 2010 climate change guidance for disclosure principles:
  - Principles-based approach for disclosure of material information
  - Impact of climate change legislation, regulation and international accords
  - Indirect consequences or opportunities of climate-related regulation
  - Physical impact of climate change on business and operations
  - Material expenditures for climate for climate-related projects and increases in compliance costs
- Consider:
  - Climate change risk and risk management
  - Plans and costs for climate change mitigation strategies

Climate-Related Disclosure *(cont'd)*

- FPIs may be subject to different home country climate disclosure requirements, and this disclosure is not required in a 20-F unless it is material or necessary to prevent other disclosure from being materially misleading. That said, consider whether or not information is truly "immaterial" before omitting
- International Sustainability Standards Board global sustainability disclosure standards provide "disclosure requirements designed to enable companies to communicate to investors about the sustainability-related risks and opportunities they face over the short, medium and long term and "set out specific climate-related disclosure requirements for a company to disclose information about its climate-related risks and opportunities"
- Companies with EU operations must comply with the Corporate Sustainability Reporting Directive and Corporate Sustainability Due Diligence Directive, which require climate and sustainability reporting from 2025 onward
- Companies with operations in states such as California and New York should consider whether there are any new climate-related disclosure requirements that are applicable to their disclosure

Corporate Governance Related Changes

Mandatory Arbitration Provisions

- What are mandatory arbitration provisions?
  - Mandatory arbitration provisions in an issuer's governing documents, such as its charter or bylaws, the require investors to arbitrate claims against an issuer arising under the U.S. federal securities laws
- Why has the SEC historically objected to them?
  - The SEC has historically said that such provisions are contrary to the anti-waiver provisions of the U.S. federal securities laws, which provide that an investor cannot waiver their right to bring suit under the federal securities laws
- What has changed?
  - In September 2025, the SEC approved a new policy pursuant to which the Commission and its Staff will not object to mandatory arbitration provisions. Instead, the Staff will ensure that the disclosure about such provisions is clear and provides investors with material information prior to accelerating the effectiveness of the registration statement
  - This is a major shift in the SEC's historic approach to mandatory arbitration provisions

Mandatory Arbitration Provisions *(cont'd)*

- What does this mean for issuers?
  - Where the SEC would previously potentially have declined to declare a registration statement effective because of a mandatory arbitration provision; now, issuers must just provide complete and clear material disclosure about the provision to investors
  - However, Delaware recently amended its General Corporation Law, such it that may prohibit a issuer's governance documents from including a mandatory arbitration provision, such that there may be a question as to whether such provisions are permissible for issuers incorporated in Delaware

Proxy Related Changes

- Recent SEC actions are easing pressure from shareholder proposals and reducing proxy uncertainty
- Staff Legal Bulletin 14M, published in February 2025, rescinded Staff Legal Bulletin 14L and clarified the Staff's views on the scope and application of the "**economic relevance exclusion**" pursuant to Rule 14a-8(i)(5) and the "**ordinary business exclusion**" pursuant to Rule 14a-8(i)(7)
  - Issuers now have a stronger basis to omit proposals without submitting a board analysis when seeking relief
- In an October 2025 speech, Chairman Atkins questioned whether Exchange Act Rule 14a-8(i)(1) permits issuers to exclude precatory, or non-binding, shareholder proposals, concluding that this is likely the case, at least for issuers incorporated in Delaware
  - Chairman Atkins suggested that a issuer could, with counsel's opinion that a proposal is not a "proper subject" under state law, rely on Rule 14a-8(i)(1) to exclude such a proposal, with an expectation of Staff deference, at least for that specific issuer
  - However, this would not prohibit proponents from submitting contrary opinions; Chairman Atkins raised an open question as to whether the SEC would take the issue to the Delaware Supreme Court

Proxy Related Changes (*cont'd*)

- On November 17, the SEC's Divisions of Corporation Finance and Investment Management announced that they will only respond to or express views on no-action requests to exclude shareholder proposals pursuant to Rule 14a-8(i)(1) during the 2026 proxy season
  - The decision to continue to review requests to exclude proposals under Rule 14a-8(i)(1) seems to be temporary, based on "uncertainty in the application of state law and Rule 14a-8(i)(1) to precatory proposals," such that these reviews may stop when "there is sufficient guidance available to assist companies and proponents in their decision-making process"
- If an issuer provides notice to the SEC and a proponent of its intent to exclude under Rule 14a-8(j), the issuer or its counsel must include, as part of its notification, "an unqualified representation that the company has a reasonable basis to exclude the proposal based on the provisions of Rule 14a-8, prior published guidance, and/or judicial decisions." The relevant Division will respond with a statement that, based solely on the aforementioned opinion, it will not object if the issuer omits the proposal from its proxy materials. However, no substantive views or opinions will be expressed

Alternatives to Delaware

- Interest in state-law alternatives to Delaware is likely to persist into 2026
- A series of Delaware decisions scrutinizing transactions involving controlling stockholders has prompted some issuers to reassess the balance of litigation risk, predictability, and governance flexibility offered by Delaware compared with states such as Nevada and Texas
- Although only a small number of issuers have actually reincorporated away from Delaware to date, the topic remains active in boardrooms, particularly at controlled companies that perceive other jurisdictions to provide more extensive litigation protections for controllers than Delaware
- For IPO candidates, the offering is a natural inflection point to choose a non-Delaware charter jurisdiction without a stockholder vote
    - That said, issuers will weigh potential valuation and demand impacts: Some investors may apply a discount or push for governance concessions based on concerns about reduced stockholder protections, less-developed jurisprudence, or perceived enforcement frictions outside Delaware. These dynamics can influence bookbuilding, pricing, and the breadth of the investor base

Alternatives to Delaware (*cont'd*)

- The enactment of S.B. 21 in March 2025, which amended the DGCL to clarify aspects of conflicted director and controller transactions, may mitigate certain litigation concerns and support deal efficiency
- As issuers and boards increasingly structure transactions to rely on S.B. 21's safe harbors, we are likely to see more challenges in court
  - The ultimate market reaction to Delaware's reforms and whether they reduce any perceived "litigation premium" associated with Delaware will be an ongoing question during 2026
- From a capital-raising perspective, the choice of state of incorporation will continue to be a signaling device about governance posture and litigation risk
  - Controlled companies may be more inclined to opt for non-Delaware regimes that they view as more protective, while widely held issuers may favor Delaware to avoid investor pushback
  - Underwriters and investors will generally prefer Delaware due to the well-established and predictable corporate framework

Foreign Private Issuers

2025 FPI Concept Release

- In June, the SEC published a concept release seeking comment on the definition of “foreign private issuer”
- The concept release stems from concern that that the current FPI definition allows certain foreign reporting companies, especially those that are not subject to meaningful and substantial home country regulatory systems, to avoid effective regulatory oversight, potentially harming U.S. investors and the competitive position of U.S domestic companies
- Comments on the release were due in September 2025, although the SEC is obligated to consider all comments, regardless of when they are received
- Even if changes to the FPI definition are adopted, the process will be long—first the SEC will need to propose rules for comment, followed by a period of notice and comments and, then, final rules

2025 FPI Concept Release *(cont'd)*

The release seeks comment on several potential new approaches to the FPI definition, including:

Updating existing eligibility criteria by lowering the 50% threshold of U.S. holders in the shareholder test or revising the business contacts test

Adding a new foreign trading volume requirement

Requiring FPIs to be listed on a "major foreign exchange," with listing criteria related to market size, corporate governance, reporting and disclosure, and enforcement

Requiring FPIs to be incorporated or headquartered in a jurisdiction with robust regulatory oversight

Developing a system of mutual recognition for companies from select foreign jurisdictions similar to MJDS

Requiring FPIs to be incorporated or headquartered in a jurisdiction that has signed the Int'l Org. of Securities Commissions Multilateral Memorandum of Understanding or Enhanced MMoU

Section 16 Reporting Obligations for FPIs

- Section 16(a) reporting applies to FPI directors & officers starting March 18, 2026
- What is Section 16(a) under the Exchange Act?
  - Section 16 requires directors and officers of FPIs to report transactions in the issuer's securities to the SEC
- What is the purpose of Section 16 reporting?
  - Promote transparency, prevent insider trading, and ensure fair markets/build investor confidence

Section 16 Reporting for FPIs: **Who** Must File?

OFFICERS

- President, CEO, CFO, COO, and Chief Accounting Officer or controller

DIRECTORS

- ALL members of the board of directors

- *Policy-Makers*: Vice Presidents in charge of major business units, divisions, or functions (like sales or finance)
- *Other Key Personnel*: Anyone else performing similar policy-making functions, regardless of title

Also includes those sharing the same household with reporting persons and those for whom reporting persons are considered to control transactions in the issuer's securities, for example, spouses and minor children

Section 16 Reporting for FPIs: What Must be **Reported**?

Ownership of equity securities

Restricted stock units and stock options, whether or not granted under an employee equity incentive plan

Purchases and sales on the open market or in private transactions

Indirect beneficial ownership of equity securities, such as securities owned by a trust or by a family member

Exercises and conversions of derivative securities

Gifts of securities

* The above is not a comprehensive list of reportable transactions

Section 16 Reporting for FPIs: What Must be **Filed**?

Form 3: initial statement of beneficial ownership filed by new directors or officers; filed within 10 calendar days of becoming a director or officer or, in connection with an IPO, on the day the Exchange Act registration statement is declared effective, which is generally the day of pricing

Form 4: filed by directors and officers when their holdings in the issuer's securities changes; filed within two business days after the transaction (e.g. a sale on Tuesday must be reported by 10:00 pm Eastern time on Thursday)

Form 5: filed to report any transactions not reported on Form 4; annual catch-all for any unreported or exempt transactions filed within 45 calendar days after the end of the fiscal year

Section 16: Controls and Procedures

- Will the issuer file for reporting persons (note that this is the case for many domestic U.S. issuers, although reporting persons are still responsible for ensuring that the issuer has the information necessary to file)? Consider a system for timely information sharing.
- Consider adopting a policy to assist directors and officers, as well as their family and household members, in complying with reporting requirements.
- Issuers sometimes require mandatory pre-clearance of any transactions in issuer securities by directors, executive officers and their family members, prior to engaging in any transaction involving the issuer's securities
- Those subject to pre-clearance requirements must obtain clearance prior to entering into a Rule 10b5-1 trading plan. Transactions effected pursuant to the plan will not require further preclearance; however, they must be reported immediately to the issuer or its designee in order to timely file a required Form 4
- Include reminders in annual D&O questionnaires and provide trainings/opportunities for refreshers, especially since Section 16 compliance is new for FPIs

Section 16 Reporting for FPIs: What to Do Now

To begin as soon as possible: All officers and directors must complete a notarized Form ID, which enables them to file on EDGAR Next. The SEC is likely to take some time to process these forms given the likely volume, so timing is extremely important

Ensure that all delegations are made in EDGAR Next so that companies can file on behalf of reporting persons, if desired

Ensure that all directors and officers know their holdings, including indirect holdings and those of spouses and minor children, and are prepared to report on Form 3 by March 18

Develop controls and procedures to assist directors and officers in complying with their filing requirements

Provide training so that directors and officers are aware of reporting obligations and timing requirements

Waivers and Settlements

Waivers and Settlements

- SEC enforcement actions can trigger collateral consequences such as automatically disqualifying companies from key exemptions:
  - Loss of well-known seasoned issuer status
  - Loss of safe harbors for forward-looking statements
  - Loss of private placement exemptions including Regulations A, D and Crowdfunding under the ’33 Act
  - Loss of exemption from registration under the ’33 Act for certain small business investment companies and BDCs under Reg. E
  - Inability to act or serve in certain capacities under Section 9(a) of the ’40 Act
- Therefore, issuers often settle enforcement actions while simultaneously requesting waivers for these disqualifications from the SEC
  - Issuers facing SEC enforcement actions experienced frustration in attempting to weigh the costs and benefits of a proposed resolution given the uncertain outcome of their waiver request
- Chairman Atkins has announced(1) that the SEC will restore “**simultaneous consideration**” of settlement offers and waiver requests that are submitted as a single recommendation

(1) https://www.freewritings.law/2025/10/statement-by-sec-chairman-on-the-simultaneous-consideration-of-settlement-offers-and-related-waiver-requests/

Waivers and Settlements (*cont'd*)

- The SEC can still accept, reject, or separate the settlement and waiver decisions.
- If a waiver is denied but the settlement accepted, the SEC Staff will promptly notify the party (typically 5 business days) to confirm if it will proceed with the accepted settlement portion; otherwise, the settlement order may be withdrawn
- What this means for the IPO market:
  - ***Informed decision making and clarity on consequences***: Simultaneous settlement-and-waiver review enables issuers to learn whether key regulatory waivers will be granted before they are definitively bound by a settlement, providing a clearer view of post-settlement access to public and private capital markets
  - ***Attractiveness of going public:*** Chairman Atkins has likened this policy to his broader efforts to make being a public company more attractive by minimizing regulatory uncertainty and legal complexities
  - ***Greater transparency in the face of shifting enforcement policies:*** Under the new administration, the SEC is prioritizing enforcement cases related to fraud and de-emphasizing technical violations; SEC focus on anti-fraud enforcement makes it more important than ever to understand the collateral consequences of any fraud allegations and settlements

Market Structure Developments

Market structure developments

- Extension of the Treasury clearing mandate
- Rollback of the securities lending rule and the short sale reporting rule (these were the subject of a litigation challenge)
- Withdrawal of Amendments Regarding the Definition of “Exchange” and Alternative Trading Systems
- The focus has moved away from Best Execution, away from predictive data analytics, away from the regulation of private funds and their managers and is squarely on digital assets; tokenization; and extended trading hours

Market structure developments

- Digital assets and tokenization
  - In May 2025, the Division confirmed that a broker-dealer carrying crypto asset securities for a customer account or a proprietary securities account for another broker-dealer may establish control for purposes of Rule 15c3-3
  - Although certain “control locations” in 15c3-3(c) reference a security in certificated form, the Staff will not object if crypto asset securities are not in certificated form when held at an otherwise qualifying control location
  - Addressed facilitation of in-kind creations and redemptions of certain crypto ETPs
  - Provided guidance with respect to transfer agent activities
  - Confirmed that a transfer agent could use distributed ledger technology to maintain its official master securityholder file
  - Relief for DTCC for tokenization pilot program

Resources

See our Legal Alerts & Blog Posts:

- Staff Report from the Office of the Advocate for Small Business Capital Formation (January 14, 2026) & Staff Report from the Office of the Advocate for Small Business Capital Formation: Part II (January 13, 2026)
- 26 Trends Affecting Capital Markets in 2026 (January 4, 2026)
- 2026 SEC Filing Deadlines and Financial Statement Staleness Dates (December 22, 2025)
- National Defense Spending Bill Expands Section 16(a) Disclosure Requirements to Foreign Private Issuers (December 16, 2025)
- House Passes Bipartisan Capital Formation Package: The INVEST Act (December 11, 2025)
- Bringing Back Smaller IPOs? (December 5, 2025)
- 2026 U.S. Annual Report and Proxy Season: It's Go Time! (November 20, 2025)

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