

“The (Former) Corp Fin Staff Forum”

Thursday, December 11, 2025

Course Materials

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2 to 3 p.m. Eastern [archive and transcript to follow]

Join former Senior Staffers from the SEC's Division of Corporation Finance to get the latest update on the rulemaking agenda, Staff interpretations and disclosure review from the Corp Fin perspective. We will discuss the most important initiatives at the SEC and Corp Fin — and provide practical guidance about what you should be doing as a result.

Joining us are:

- **Sonia Barros**, Partner, Sidley Austin LLP
- **Meredith Cross**, Partner, WilmerHale LLP
- **Tom Kim**, Partner, Gibson, Dunn & Crutcher LLP
- **Keir Gumbs**, Chief Legal Officer, Edward Jones
- **Dave Lynn**, Partner, Goodwin Procter LLP, and Senior Editor, TheCorporateCounsel.net

Among other topics, this program will cover:

1. The SEC's Regulatory Agenda for Public Companies and Capital Formation
2. Recent Staff Guidance and the Implications for Companies
3. The SEC's Evolving Approach to Shareholder Proposals and ESG Matters
4. The Corp Fin Approach to Filing Reviews Under New Leadership
5. What to Expect from Corp Fin in 2026 and Beyond

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Course Outline

1. The SEC’s Regulatory Agenda for Public Companies and Capital Formation
 - The Spring 2025 Reg Flex Agenda (released in September) emphasizes capital formation, crypto regulation, and modernization of disclosure practices.
 - Notable agenda items include the following in the proposed rule stage:
 - Rule 144 Safe Harbor (April 2026)
 - Crypto Assets (April 2026)
 - Enhancement of EGC Accommodations & Simplification of Filer Status (April 2026)
 - Shelf Registration Modernization (April 2026)
 - Updating the Exempt Offering Pathways (April 2026)
 - Rationalization of Disclosure Practices (April 2026)
 - Shareholder Proposal Modernization (April 2026)
 - Crypto Market Structure Amendments (April 2026)
 - In the pre-rule stage, it also lists Foreign Private Issuer Eligibility (no date).
 - The agenda is issuer-friendly and ambitious.
 - The listed dates signify general timeframes. New final or proposed rules could come before or after the dates suggested in the agenda. The Reg Flex Agenda only gives insight into the priorities of the Chair as of the date it was submitted — it’s not a definitive guide for anyone trying to

predict SEC rulemaking for purposes of specific board agendas, budgets and workflows.

- In 2025, the SEC launched a retrospective review of its executive compensation disclosure requirements, beginning with a roundtable discussion in June with representatives from public companies and investors as well as other experts in the field.
 - At the same time, Chairman Atkins encouraged members of the public to provide views on the executive compensation disclosure requirements to inform its retrospective review. Corp Fin Staff has been digesting comment letters and roundtable feedback. A formal rule proposal is expected in the coming months, although the process has been slowed by the government shutdown.
- According to media reports, the agency is prioritizing a proposal to eliminate quarterly reporting requirements.

2. Recent Staff Guidance and the Implications for Companies

- In 2025, the Corp Fin Staff took two big steps to make Compliance & Disclosure Interpretations (“CDIs”) easier to use. In January, the agency began marking updated versions of CDIs to reflect changes made to prior versions. Before that, people had to painstakingly review the changes to the original CDI themselves, if they even had copies of the old versions. In July, they went one step further and consolidated all of Corp Fin’s CDIs in [a single page](#) on the SEC’s website, allowing for easier searching for potentially relevant guidance simply by clicking Ctrl + F.
- Corp Fin also released substantive CDI updates in 2025, including:
 - In January, Corp Fin [issued](#) three new CDIs and updated two existing CDIs addressing Notices of Exempt Solicitations (PX14A6G filings).
 - In February, Corp Fin released [updated CDIs](#) on filing of Schedules 13D and 13G addressing when engagement with an

issuer's management on a particular topic causes a shareholder to hold securities with a disqualifying "purpose or effect of changing or influencing control of the issuer."

- In March, Corp Fin released an updated version of a [Securities Act Sections CDI](#) and a [Securities Act Forms CDI](#) governing the use of Form S-4/F-4 to register offers and sales of a buyer's securities after it has obtained "lock-up" commitments from target insiders to vote in favor of the transaction.
- In March, Corp Fin also released five new [Tender Offer Rules and Schedules CDIs](#) that clarify the Staff's views regarding when a change related to financing and funding conditions constitutes a "material change."
- In March, two [new CDIs](#) provide guidance on what the Corp Fin Staff views as an acceptable process for verifying "accredited investor" status in a Rule 506(c) offering (and issued an [interpretive letter](#)).
- In March, Corp Fin Staff released a [batch of updates](#) to CDIs that relate to the [simplified exempt offering framework](#) adopted by the SEC way back in 2020.
- In March, Corp Fin Staff [updated CDIs](#) to allow all Form S-3 issuers, not just WKSIs, to go effective on Form S-3 registration statements between the Form 10-K filing and the filing of the proxy statement containing forward-incorporated Part III disclosure.
- In April, Corp Fin posted a [handful of new CDIs](#), including six new [Exchange Act Forms CDIs](#) that address clawbacks-related checkboxes on the Form 10-K cover page and the timing of required Reg. S-K Item 402(w)(2) disclosure
- In April, one new [Exchange Act Rules CDI](#) was released that addresses co-registrants in a de-SPAC transaction.

- In April, the Staff revised 20 CDIs, added two new ones, and withdrew three, all [related to Rule 10b5-1](#).
 - In May, Corp Fin issued a couple of new and revised [CDIs relating to asset backed securities](#).
 - In June, the Staff [revised](#) two and withdrew one of the [Regulation S-K CDIs](#) addressing disclosure of environmental proceedings pursuant to Item 103 of Regulation S-K.
 - In July, Corp Fin Staff just [released](#) 18 revised [CDIs on the filing of Schedules 13D and 13G](#), reflecting updates necessary to align the CDIs with the [October 2023 amended rules](#).
 - In August, [Corp Fin issued a new CDI](#) impacting companies that lose their eligibility as smaller reporting companies under the SRC revenue test.
- The Corp Fin Staff also issued [updated guidance](#) in March that enhances the accommodations available to companies for nonpublic review of draft registration statements.
 - In September, the Commission, by a three-to-one vote, approved a [policy statement](#) that revisits the decades-long approach of the Staff not accelerating the effective date of registration statements for companies with mandatory arbitration provisions in their organizational documents.
 - The Financial Reporting Manual (“FRM”) was updated twice in 2025, including to reflect changes to S-X acquired company financial statement rules.
 - When the government shutdown in early October, the first version of Corp Fin’s shutdown guidance, like its similar guidance in 2018, indicated that Rule 430A is not available to omit pricing information when filing a registration statement that would become effective after 20 days pursuant to Section 8(a) due to language in 430A that refers to a registration statement that is *declared* effective. This would mean

that an IPO price must be fixed for those 20 calendar days. A little over a week into the shutdown, the guidance was updated to say:

Because the staff is not available to review or accelerate the effectiveness of registration statements during the shutdown, we will not recommend enforcement action to the Commission if a company omits the information specified in Rule 430A from the form of prospectus filed as part of a registration statement during the shutdown and such registration statement goes effective, either during or after the shutdown, by operation of law pursuant to Section 8(a) of the Securities Act.

- The Corp Fin Staff was back to work in mid-November following an end to the government shutdown, and they released [new guidance](#) on how they will process filings now that the government shutdown has ended.
 - Those issuers who filed a Securities Act registration statement without a delaying amendment or filed an amendment to remove the delaying amendment got some welcome relief, with the Staff essentially saying that they would not stand in the way of allowing those registration statements to become effective after 20 days had passed pursuant to Section 8(a) of the Securities Act and Rule 459 thereunder. In the prior shutdown guidance, Corp Fin had indicated that the Staff may ask companies to amend a registration statement to include the delaying amendment following an end to the government shutdown.

3. The SEC's Evolving Approach to Shareholder Proposals and ESG Matters

- In February, the Corp Fin Staff published [Staff Legal Bulletin 14M](#). SLB 14M addresses various aspects of the Rule 14-8 shareholder proposal process, but most significantly it rescinds SLB 14L — which was published in 2021 and had made it easier for proponents to put environmental and social proposals to a vote. SLB 14M says:

[I]t is the staff's view that a "case-by-case" consideration of a particular company's facts and circumstances is a key factor in the analysis of shareholder proposals that raise significant policy issues. In addition, the text of Rule 14a-8(i)(5) references the relationship of the proposal to the individual company, requiring analysis of whether the proposal is "significantly related to the company's business."

Accordingly, where relevant to the arguments raised to the staff by companies and proponents, the staff will consider whether a proposal is otherwise significantly related to a particular company's business, in the case of Rule 14a-8(i)(5), or focuses on a significant policy issue that has a sufficient nexus to a particular company, in the case of Rule 14a-8(i)(7).

- In the keynote address at the John L. Weinberg Center for Corporate Governance's 25th Anniversary Gala in October, Chairman Atkins cited an upcoming paper for the proposition that there's no firm basis under Delaware law for a shareholder right to submit non-binding proposals. After a brief discussion of the history of the SEC's position on precatory proposals, he said:

"Pulling all of this together, if there is no fundamental right under Delaware law for a company's shareholders to vote on precatory proposals—and the company has not created that right through its governing documents—then one could make an argument that a precatory shareholder proposal submitted to a Delaware company is excludable under paragraph (i)(1) of Rule 14a-8.

If a company makes this argument and seeks the SEC staff's views, and the company obtains an opinion of counsel that the proposal is not a "proper subject" for shareholder action under Delaware law, this argument should prevail, at least for that company. I have high confidence that the SEC staff will honor this position."

- He also seemed to suggest that the SEC may seek to certify this question to the Delaware Supreme Court for declaratory judgment — highlighting that the Commission has once used this option when Corp Fin was confronted with two conflicting legal opinions on Delaware law.
- In mid-November, post-shutdown, Corp Fin Staff posted a [statement](#) regarding its role in the Rule 14a-8 process, which states:
 - Due to current resource and timing considerations following the lengthy government shutdown and the large volume of registration statements and other filings requiring prompt staff attention, as well as the extensive body of guidance from the Commission and the staff available to both companies and proponents, the Division has determined to not respond to no-action requests for, and express no views on, companies' intended reliance on any basis for exclusion of shareholder proposals under Rule 14a-8, other than no-action requests to exclude a proposal under Rule 14a-8(i)(1).
 - Pursuant to Rule 14a-8(j), companies that intend to exclude shareholder proposals from their proxy materials must still notify the Commission and proponents no later than 80 calendar days before filing a definitive proxy statement. We remind companies and proponents, however, that this requirement is informational only, there is no requirement that companies seek the staff's views regarding their intended exclusion of a proposal, and no response from the staff is required.
 - On Rule 14a-8(i)(1), the Division will continue to review and express its views on no-action requests until such time as it determines there is sufficient guidance available to assist companies and proponents in their decision-making process.
 - Corp Fin recognizes that a company may wish to receive some form of a response to its notification that it intends to exclude a proposal from its proxy materials. If a company wishes to

receive a response for any proposal that it intends to exclude pursuant to a basis other than Rule 14a-8(i)(1), the company or its counsel must include, as part of its notification pursuant to Rule 14a-8(j), 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,[\[3\]](#) and/or judicial decisions. In those situations, the Division will respond with a letter indicating that, based solely on the company's or counsel's representation, the Division will not object if the company omits the proposal from its proxy materials.[\[4\]](#) In providing its response, the Division will not evaluate the adequacy of the representation or express a view on the basis or bases the company intends to rely on in excluding the proposal.

- This applies to the current proxy season (October 1, 2025 – September 30, 2026) as well as no-action requests received before October 1, 2025 to which the Division has not yet responded.
- In March, the SEC voted to discontinue its defense of the climate disclosure rules in litigation pending in the U.S. Court of Appeals for the Eighth Circuit. In April, state intervenors filed a motion to hold the case in abeyance, and on April 24, 2025, the Eighth Circuit granted the intervenors' motion to hold the litigation in abeyance. In the order granting the motion, the Eighth Circuit directed the SEC to file a status report within 90 days advising whether the SEC intends to review or reconsider the rule. The court stated that if the SEC determines "to take no action, then the status report should address whether the Commission will adhere to the rules if the petitions for review are denied and, if not, why the Commission will not review or reconsider the rules at this time." The SEC filed its status report in July.

4. The Corp Fin Approach to Filing Reviews Under New Leadership

- Generally, a "back to basics" approach to reviews and enforcement, with fewer specialized comments, is expected.

- The Enforcement Division has been more focused on individual bad actors and “bread & butter” types of offenses.
- Citing an August 2025 [OIG report](#) on Corp Fin’s disclosure review program and [research](#) from Olga Osvyatsky, a [recent blog](#) from the “Shadow SEC” (consisting of John Coates, John C. Coffee, Jr., James D. Cox, Merritt B. Fox and Joel Seligman) says that there’s been an alarming decline in the number of comment letters and points to staff reductions.

5. What to Expect from Corp Fin in 2026 and Beyond

- The SEC Staff is very “open for business” and to hearing from the issuer and investor communities about actions they could take to be flexible.
- It’s a “new day” at the SEC with a focus on ways to “reduce compliance burdens and facilitate capital formation, including by simplifying pathways for raising capital and investor access to private businesses” (from Chairman Atkins’s statement on the Spring 2025 Regulatory Agenda).

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SEC Welcomes a “New Day” with the Release of its Spring 2025 Regulatory Agenda

SEPTEMBER 8, 2025

On September 4, 2025, the SEC’s Spring 2025 “[Unified Agenda of Regulatory and Deregulatory Actions](#)” was released, accompanied by a [statement](#) from Chairman Paul S. Atkins.

In his statement, Chairman Atkins affirmed that the Spring 2025 agenda, his first as Chairman, reflects a “new day” at the SEC and represents the SEC’s renewed focus on innovation, capital formation, efficiency and investor protection. For those who have followed previous statements made by Chairman Atkins and his predecessor, then-Acting Chairman Mark T. Uyeda, the areas of focus in the updated agenda will come as no surprise. Namely, the Spring 2025 agenda includes potential rule proposals related to the regulatory framework for offers and sales of crypto assets to provide greater certainty to the market. This follows the establishment of a Crypto Task Force earlier this year as well as other actions to advance a regulatory framework for crypto assets, including the recently announced SEC “Project Crypto” and coordination among the SEC and the CFTC.

In addition, the Spring 2025 agenda covers the following topics, among others:

- Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies – potential amendments to current rules to expand accommodations available to emerging growth companies and to rationalize filer statuses to simplify the categorization of companies and reduce compliance burdens.
- Updating the Exempt Offering Pathways – potential amendments to current rules to facilitate capital formation and simplify the pathways for raising capital for, and investor access to, private businesses.
- Shelf Registration Modernization – potential amendments to current rules to modernize the shelf registration process to reduce compliance burdens and further facilitate capital formation.
- Rationalization of Disclosure Practices – potential amendments to current rules to rationalize disclosure practices to facilitate material disclosure by companies and shareholders’ access to such information.
- Shareholder Proposal Modernization – potential amendments to Exchange Act Rule 14a-8 to reduce compliance burdens for companies and account for developments since the rule

was last amended.

- Rule 144 Safe Harbor – potential amendments to Rule 144, which had initially been proposed on January 19, 2021, to increase availability of the rule’s safe harbor. A second public comment period is scheduled to open in the spring of 2026.
- Foreign Private Issuer Eligibility – potential updates to the definition of a foreign private issuer (FPI) to account for developments within the FPI population and to better represent the issuers that the SEC intended to benefit from current FPI accommodations. In June 2025, the SEC issued a concept release [soliciting public comment](#) on the FPI definition.

With the exception of the Foreign Private Issuer Eligibility and Rule 144 Safe Harbor rulemakings, as discussed above, each topic is scheduled to open for initial public comment in the spring of 2026.

Equally noteworthy is what was withdrawn from the prior agenda. Referring to the misalignment between these proposals and the goal that regulation should be “smart, effective, and appropriately tailored within the confines of [the SEC’s] statutory authority,” Chairman Atkins confirmed the withdrawal of a number of items from the prior administration, including the proposed rules on Corporate Board Diversity, Human Capital Management Disclosure, and Regulation D and Form D Improvements, along with others.

The Spring 2025 agenda and related statement by Chairman Atkins emphasize the SEC’s continued focus on crypto assets and deregulation and simplification of rules that may have previously been burdensome on companies or not tailored to maximize investor protection.

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GIBSON DUNN

Securities Regulation & Corporate Governance
Update

September 5, 2025

A New Day at the SEC: The SEC's Spring 2025 Reg Flex Agenda

This update summarizes key aspects of the Spring 2025 Agenda that potentially impact public companies.

On September 4, 2025, the U.S. Securities and Exchange Commission (the Commission or the SEC) issued the Spring 2025 Unified Agenda of Regulatory and Deregulatory Actions (the Spring 2025 Agenda or the Agenda). The Agenda outlines the Commission's rulemaking priorities under the leadership of Chairman Paul Atkins. This alert summarizes key aspects of the Spring 2025 Agenda that potentially impact public companies. It should be noted that the Agenda does not contain much substantive information, only a brief "abstract" describing each rulemaking item. Nevertheless, just the addition and removal of Agenda items can be informative.^[1]

As Chairman Atkins noted in his statement accompanying the issuance of the Agenda, "it *is* a new day at the [SEC]."^[2] As discussed below, the Agenda highlights a sea-change shift in focus toward deregulatory and disclosure simplification actions, as well as crypto assets and crypto-market structure rulemaking reforms, and away from environmental, social and governance-related (ESG) topics. There are 23 short-term Agenda items, consisting of 10 Division of Corporation Finance rule proposals, eight Division of Trading and Markets rule proposals and five Division of Investment Management rule proposals.^[3] Five of the Agenda's rule proposals (over 20% of all rule proposals) relate to crypto assets and crypto-related regulatory reforms.

I. OVERVIEW OF KEY UPDATES FROM THE SPRING 2025 AGENDA: PUBLIC REPORTING COMPANIES^[4]

The Spring 2025 Agenda reflects the significant realignment in focus of the Commission under the leadership of Chairman Atkins. Below is an overview of key updates:

Additions to the Spring 2025 Agenda

Division	Rule Proposal	Stage of Rulemaking
Trading and Markets	Crypto Market Structure Amendments	Proposed rule
Corporation Finance	Crypto Assets	Proposed rule
	Updating the Exempt Offering Pathways	Proposed rule
	Shelf Registration Modernization	Proposed rule
	Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies	Proposed rule
	Rationalization of Disclosure Practices	Proposed rule
	Shareholder Proposal Modernization	Proposed rule
	Rule 144 Safe Harbor	Proposed rule*

**Previously on the Fall 2024 Agenda*

Dropped from the Spring 2025 Agenda[\[5\]](#)

Division	Topic	Previous Stage of Rulemaking
Corporation Finance	Human Capital Management Disclosure	Proposed rule
	Corporate Board Diversity	Proposed rule
	Incentive-Based Compensation Arrangements	Proposed rule*
	Disclosure of Payments by Resource Extraction Issuers	Proposed rule
	Regulation D and Form D Improvements	Proposed rule
	Proxy Process Amendments	N/A**
	Conflict Minerals Amendments	N/A**

**Now a long-term item on the Spring 2025 Agenda*

***Previously a long-term item on the Fall 2024 Agenda*

II. CENTRAL THEMES AND INSIGHTS

A. Crypto Assets & Crypto Market Structure Amendments

The Spring 2025 Agenda provides clarity on the long-anticipated U.S. crypto assets regulatory and market structure framework. These rule proposals were anticipated and previewed by the SEC when it established the Crypto Task Force,[\[6\]](#) and have since been discussed in the Crypto Task Force’s statements and guidance, roundtables, the President’s Working Group on Digital Assets Report[\[7\]](#) and during Chairman Atkins’s related launch of “Project Crypto.”[\[8\]](#) The number and inter-divisional breadth of crypto-related rule proposals on the Agenda[\[9\]](#) are a clear reflection of the current Administration’s intense focus on the development of the crypto markets within the United States.

B. Focus on Facilitation of Capital Formation & Deregulatory Actions

The Spring 2025 Agenda introduced new rule proposals intended to further support capital formation, simplify disclosure practices and reduce compliance costs.[\[10\]](#) Rule proposals include:

- ***“Updating the Exempt Offering Pathways”*** to facilitate and streamline businesses’ access to the market.
- ***“Shelf Registration Modernization”*** to reduce compliance burdens and facilitate access to capital.

- ***“Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies”*** to expand accommodations available to emerging growth companies, simplify categorization of registrants and reduce compliance burdens.
- ***“Rationalization of Disclosure Practices”*** to focus on amendments to disclosure practices and the identification of “material” disclosures. It is likely that this broadly worded rule proposal category, which emphasizes reforms that address “material disclosures” will also address anticipated reforms related to proxy advisory firm regulation, executive compensation disclosures and/or cyber-incident disclosures.

C. De-emphasis on ESG

The Commission’s re-prioritized Agenda and policy focus is most apparent in the removal from the Agenda of topics that some viewed as socio-political issues beyond the ambit of SEC authority.^[11] Many of these former agenda items were generally categorized as ESG-related. Noticeably, the Agenda dropped ESG rulemaking items related to: climate-related disclosures,^[12] human capital management, board diversity^[13] and disclosure of payments by resource extraction issuers.

D. Shareholder Proposals

As anticipated, and on the heels of Staff Legal Bulletin No. 14M issued in February 2025 (SLB 14M),^[14] the Commission remains focused on further changes to the Rule 14a-8 shareholder proposal process. The Agenda includes “Shareholder Proposal Modernization” as a new item, indicating further changes are ahead that are intended to “modernize the requirements of Exchange Act Rule 14a-8 to reduce compliance burdens for registrants and account for developments since the rule was last amended.” As with all the items on the Agenda, only estimated time frames are provided, with the shareholder proposal proposing release given a date by April 2026.

E. Dodd-Frank-Related Rulemaking

Certain Dodd-Frank-mandated rulemakings were dropped from short-term rulemaking and moved to long-term rulemaking in the 2025 Agenda, such as an interagency rulemaking intended to implement Section 956 of Dodd-Frank, which relates to incentive-based compensation practices at certain financial institutions that have \$1 billion or more in total assets.^[15] The 2024 Agenda item “Conflict Minerals Amendments” proposed pursuant to Section 1502 of Dodd-Frank, which Commissioner Mark Uyeda recently criticized as being ineffective, has been removed from the 2025 Agenda.^[16] Similarly, “Disclosure of Payments by Resource Extraction Issuers” is no longer on the Agenda. It is possible that these rulemakings could be covered under the “Rationalization of Disclosure Practices” initiative. Nevertheless, until official SEC action or further SEC staff guidance, reporting companies remain subject to the reporting requirements on Form SD that remain in place.^[17]

III. TAKEAWAYS & LOOKING AHEAD

The additions to the Spring 2025 Agenda reflect the newly constituted majority Republican Commission's and Chairman Atkins's efforts to address major challenges facing the marketplace while attempting to simplify disclosure requirements to facilitate capital formation and lighten compliance burdens consistent with investor protection. Expect focus on crypto assets, market structure and a major shift away from ESG priorities. Despite containing fewer agenda items than the prior Fall 2024 Agenda, the Agenda remains ambitious in the scope and breadth of regulatory reforms contemplated. Chairman Atkins will play an important role in guiding the SEC staff's prioritization of Agenda items and the timeliness of the Agenda's deliverables.

[1] It should also be noted that a Reg Flex agenda provides notice to the public about what future rulemaking is under consideration and is not binding upon the Commission, including with respect to the time frames presented for agency action.

[2] See Chairman Atkins, *Statement on the Spring 2025 Regulatory Agenda* (Sept. 4, 2025), available [here](#) (the Accompanying Statement). See also Chairman Atkins, *Opening Statement at Nomination Hearing Before the Senate Banking Committee* (Mar. 27, 2025), available [here](#) (defining his tenure as a "time to reset priorities and return common sense to the SEC").

[3] In addition to three rules in the "prerule" stage, the Spring 2025 Agenda includes 18 rules in the "proposed rule" stage and two rules in the "final rule" stage. This compares to a total of 30 short-term rulemaking agenda items on the prior Fall 2024 Agenda. A "prerule" or concept release solicits public comment on whether or not, or how best, to initiate a rulemaking. In contrast, a "proposed rule" means that the Commission is at the stage in which it will propose to add to or change its existing regulations and will solicit public comment on a rule proposal.

[4] This Client Alert focuses on rule proposals relevant to public companies, but there are other notable additions to the Agenda involving rule proposals out of the Division of Trading and Markets and the Division of Investment Management (including, out of the Division of Trading and Markets, "Evaluating the Continued Effectiveness of the Consolidated Audit Trail," "Transfer Agents," "Publication or Submission of Quotations Without Specified Information," "Amendments to Broker-Dealer Financial Responsibility and Recordkeeping and Reporting Rules," "Trade-Through Rule," "Definition of Dealer" and "Enhanced Oversight for U.S. Government Securities Traded on Alternative Trading Systems," and out of the Division of Investment Management, "Updates to 'Small Entity' Definitions for Purposes of the Regulatory Flexibility Act," "Amendments to Form N-PORT," "Amendments to Rule 17a-7 Under the Investment Company Act," "Amendments to the Custody Rules" and "Customer Identification Programs for Registered Investment Advisers and Exempt Reporting Advisers"). In addition, out of the Division of Corporation Finance, a prior proposed rule related to foreign private issuer eligibility was dropped and changed to a concept release or prerule, which was issued for notice and comment ending on September 8, 2025. The Agenda also includes a concept release on Regulation AB and the registration and disclosure requirements involving asset-backed securities.

[5] Prior to the publication of the Spring 2025 Agenda, the Commission, via Notice, withdrew 14 rulemaking actions. This withdrawal previewed the deregulatory and policy shift in focus of the Commission under Chairman Atkins and of the rules dropped from the Spring 2025 Agenda. See

SEC, *Withdrawal of Proposed Regulatory Actions*, Release Nos. 33-11377; 34-103247; IA-6885; IC-35635 (June 12, 2025), available [here](#).

[6] The Crypto Task Force, led by Commissioner Hester Peirce, was established on January 21, 2025. See Press Release, *SEC Crypto 2.0: Acting Chairman Uyeda Announces Formation of New Crypto Task Force* (Jan. 21, 2025), available [here](#).

[7] Report of the President's Working Group on Digital Asset Markets, *Strengthening American Leadership in Digital Financial Technology* (July 30, 2025), available [here](#).

[8] See Chairman Atkins, *American Leadership in the Digital Finance Revolution* (July 31, 2025), available [here](#). In launching Project Crypto, Chairman Atkins previewed that the new framework would include “clear and simple rules of the road for crypto asset distributions, custody, and trading,” with focus on: (i) clarifying the classification of crypto assets, (ii) modernizing custody requirements for registered intermediaries, (iii) facilitating “super-apps,” (iv) exploring the potential of on-chain software and (v) following a principles-based approach to promote innovation. See *id.* Related to the classification of crypto assets and the promotion of innovation, the proposed rules note “potential[]” exemptions and safe harbors to the offer and sale of crypto assets and the trading of crypto assets on alternative trading systems as well as securities exchanges.

[9] Crypto-related rule proposals include “Crypto Assets,” “Amendments to the Custody Rules,” “Transfer Agents,” “Crypto Market Structure Amendments” and “Amendments to Broker-Dealer Financial Responsibility and Recordkeeping and Reporting Rules.”

[10] See Accompanying Statement; see also Chairman Atkins, *Prepared Remarks Before SEC Speaks* (May 19, 2025), available [here](#).

[11] In the Accompanying Statement, Chairman Atkins noted, “[i]mportantly, the agenda reflects our withdrawal of a host of items from the last Administration that do not align with the goal that regulation should be smart, effective, and appropriately tailored within the confines of our statutory authority.”

[12] After numerous challenges to the final climate rule, including the SEC’s stay of the rule and subsequent attempt to withdraw its defense of the rules, in July 2025, the SEC filed a status report with the Eighth Circuit, stating that it “does not intend to review or reconsider the [r]ules at this time” and asking the court to lift the court-imposed abeyance and rule on the pending challenges. See Gibson Dunn’s client alert, *Gibson Dunn ESG: Risk, Litigation, and Reporting Update (June 2025)* (July 24, 2025), available [here](#). The stay would remain in effect during the pendency of the appeal.

[13] The Commission in January 2025 approved Nasdaq’s proposal to update its listing rules to reflect the Fifth Circuit’s vacatur of the Commission’s 2021 order approving rules related to board diversity disclosures. See SEC, *Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Repeal Nasdaq’s Board Diversity Listing Requirements*, Release No. 34-102281 (Jan. 24, 2025), available [here](#).

[14] For a more detailed analysis of SLB 14M, see Gibson Dunn’s client alert, *SEC Staff Reinstates Traditional Approach to Interpreting the Shareholder Proposal Rule* (Feb. 13, 2025), available [here](#).

[15] In an atypical interagency rulemaking process, four of six federal financial regulators re-proposed the Section 956 rule on May 6, 2024. Two of six, the SEC and the Federal Reserve, did not join in the issuance of the re-proposed rule. See Department of the Treasury, Federal Deposit Insurance Corporation, Federal Housing Finance Agency and National Credit Union Administration, *Incentive-Based Compensation Arrangements* (May 6, 2024), available [here](#).

[16] See Commissioner Uyeda, *Remarks at the “SEC Speaks” Conference 2025* (May 19, 2025), available [here](#).

[17] See Rules 13p-1 and 13q-1 under the Securities Exchange Act of 1934, as amended.

The following Gibson Dunn lawyers prepared this update: Mellissa Campbell Duru, Thomas J. Kim, Brian J. Lane, James J. Moloney, Ronald O. Mueller, Geoffrey E. Walter, Andrea Shen, Chris Doherty, and Kevin Mills.

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GIBSON DUNN

Capital Markets Update

March 10, 2025

SEC Expands Accommodations for Draft Registration Statements

The accommodations provide more flexibility for certain companies to initiate registration of their securities, spin-offs, and other offering processes without making the process initially public.

On March 3, 2025, the Division of Corporation Finance of the Securities and Exchange Commission (SEC) [announced](#) that it is further [expanding existing accommodations](#) to allow more companies to confidentially submit draft registration statements for nonpublic review. These accommodations provide more flexibility for certain companies to initiate registration of their securities, spin-offs, and other offering processes without making the process initially public.

Expanded Accommodations

As discussed in greater detail below, new accommodations include the following:

- Confidential submission is available for initial registration statements under both Section 12(b) of the Exchange Act of 1934, as amended (the Exchange Act), in connection with a spin-off and Section 12(g) of the Exchange Act in connection with securities registrations upon triggering shareholder and asset value thresholds;
- Foreign private issuers now have expanded options for submitting draft registration statements, including electing to be treated as an emerging growth company (EGC) if so qualified or following earlier SEC guidance issued in May 2012;
- Issuers are able to confidentially submit registration statements regardless of how long they have been public, which would benefit non-WKSIs (well-known seasoned issuers) in the context of follow-on offerings;

- Public targets of de-SPAC transactions may now confidentially submit registration statements as if they were conducting an IPO; and
- Issuers are permitted to omit underwriter names in the initial submission of the draft registration statements, allowing the SEC review process to begin earlier.

Exchange Act Registrations

The accommodations expand the availability of nonpublic review to classes of securities registered on Forms 10, 20-F, or 40-F under both Section 12(b) and Section 12(g) of the Exchange Act (as opposed to only Section 12(b) of the Exchange Act under the prior accommodation). Section 12(b) registration is used when a company intends to list securities on a national securities exchange, often in connection with a spin-off. In addition, when a company has total assets of more than \$10 million and 2,000 record holders of its equity securities (or 500 non-accredited investors) as of the last day of its fiscal year, it must register its securities under Section 12(g) of the Exchange Act.

Issuers registering under Section 12(g) of the Exchange Act should note, however, that submitting a draft for nonpublic review does not satisfy the requirement that a registration statement be filed within 120 days of the end of the issuer's fiscal year.

In addition, issuers must continue to publicly file the registration statement and draft submissions no later than 15 days prior to a road show or, in the absence of a road show, the requested effective date. Note, however, that issuers will need to publicly file Exchange Act registration statements on Forms 10, 20-F, and 40-F so that the full 30- or 60-day period, as applicable, will run prior to effectiveness.

Foreign Private Issuers

Where desired, instead of submitting draft registration statements under these new accommodations and the prior accommodations in 2017, foreign private issuers may elect to proceed in accordance with the procedures available to EGCs (if they so qualify) or follow the guidance in the SEC's [May 30, 2012 statement](#) (the May 2012 guidance). The May 2012 guidance applies to (a) foreign governments listing their debt securities, (b) foreign private issuers that are already listed on non-U.S. exchanges, (c) foreign private issuers being privatized by foreign governments, or (d) foreign private issuers which can show that a public filing of an initial registration statement would conflict with the law of an applicable foreign jurisdiction.

Follow-on Securities Act Offerings and Exchange Act Registrations

The accommodations also remove the requirement that draft registration statements could only be submitted confidentially within a 12-month period following the date the issuer became subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act.

Under the prior accommodation, due to the time limit, companies that were public for more than one year were not eligible to submit draft registration statements for nonpublic review. The new guidance now permits nonpublic review regardless of how long a company has been a public company, which would be particularly useful for non-WKSI issuers. Such issuers (whose registration statements are not automatically effective upon filing) can initially submit their

registration statements, including shelf registration statements, for nonpublic review when they conduct follow-on offerings.

The SEC will continue to limit its nonpublic review to the initial submission. Accordingly, amendments to registration statements responding to staff comment must be publicly filed.

An issuer submitting an initial draft registration statement for nonpublic review should confirm in its cover letter that it will file publicly its registration statement and draft submission at least two business days prior to any requested effective time and date, which is a change from the previous 48-hour requirement. The SEC noted that it will consider reasonable requests to expedite this two business-day period and encourages issuers and their advisors to review their transaction timing with the staff of the SEC.

De-SPAC Transactions

The expanded accommodations also apply to de-SPAC transactions. Previously, a SPAC usually had to file its de-SPAC registration statement publicly if the filing occurred more than one year after the SPAC's IPO. Under the new guidance, the target company of a de-SPAC transaction may confidentially submit a registration statement as if it were conducting an initial public offering, provided that the SPAC survives as the public company and the target company is otherwise independently eligible to submit a draft registration statement. This approach reflects the SEC's view that a de-SPAC transaction is the functional equivalent of the target company's IPO.

Certain Omissions and Staff Processing

In a return to a prior accepted practice, the SEC will again permit issuers to omit the names of underwriters from initial draft submissions (despite the requirements under Regulation S-K Items 501 and 508), as long as the underwriters are disclosed in subsequent submissions and public filings, which would enable the registration process to start sooner.

In addition, the SEC has indicated that it will not delay its review process if an issuer omits certain financial information, so long as such issuer reasonably believes that such omitted financial information will not be required at the time the registration statement becomes publicly available.

In any of these circumstances, issuers must continue to take all steps to ensure that their draft registration statements are substantially complete when submitted.

Additional Information

The SEC will address any questions related to the use of such expanded processing procedures sent to CFDraftPolicy@sec.gov.

For additional information, please see the following documents:

- [Voluntary Submission of Draft Registration Statements – FAQs](#)
- [Fixing America's Surface Transportation \(FAST\) Act – C&DIs](#)
- [Securities Act Forms – C&DIs](#)

- [Jumpstart Our Business Startups Act Frequently Asked Questions – Generally Applicable Questions on Title I of the JOBS Act](#)
- [Jumpstart Our Business Startups Act Frequently Asked Questions – Confidential Submission Process for Emerging Growth Companies](#)

Conclusion

The key effect of these accommodations is to expand the pool of issuers that can utilize the nonpublic review process, reflecting the SEC's willingness to expedite the registration process and facilitate capital formation, as stated in the [release](#).

Please view additional information on Gibson Dunn's Securities Regulation and Corporate Governance Monitor Blog:

Read More

The following Gibson Dunn lawyers prepared this update: Andrew Fabens, Hillary Holmes, Peter Wardle, Harrison Tucker, Marie Kwon, Rodrigo Surcan, Kevin Mills, and Spencer Becerra.

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SEPTEMBER 1, 2025

SEC Issues Guidance on Filer Status Upon Loss of SRC Status

Folake Ayoola

On August 27, 2025, the staff of the SEC's Division of Corporation Finance published new Exchange Act Rules Compliance and Disclosure Interpretation Question 130.05, which provides guidance on when an issuer may become an accelerated or large accelerated filer after it loses its status as a smaller reporting company.

An issuer that is eligible to be a smaller reporting company in the most recent fiscal year for which audited financial statements are available is excluded from the definition of "large accelerated filer" or an "accelerated filer." Thus, a domestic issuer will be not be categorized as a "large accelerated filer" or an "accelerated filer" if, as of the last day of the issuer's fiscal year, it is eligible to use the requirements for smaller reporting companies under the revenue test in paragraph (2) or (3)(iii)(B) of the "smaller reporting company" definition in Exchange Act Rule 12b-2, as applicable. Given this, the SEC staff provided a scenario illustrating the transition process:

Annual SRC Determination Timing:

- **Assessment Date:** Last business day of the issuer's second fiscal quarter of 2025
- **Determination:** Company no longer qualifies as a smaller reporting company

Resulting Filer Status Classification Changes:

- **Fiscal Year 2026:** Company becomes a non-accelerated filer for filings due during this period
- **Form 10-Q Impact:** Beginning with the Form 10-Q for the first fiscal quarter of 2026, the company becomes ineligible to use smaller reporting company requirements

The post SEC Issues Guidance on Filer Status Upon Loss of SRC Status appeared first on Public Company Advisory Blog.

OCTOBER 9, 2025

SEC Division of Corporation Finance Updates Guidance Related to Removal of Delaying Amendment

David M. Lynn, Lauren Visek, Jonathan Burr

The SEC Division of Corporation Finance has updated its October 1, 2025 guidance regarding actions in advance of a potential government shutdown, with the revised version dated October 9, 2025. The most significant substantive change relates to update guidance in response to the question of whether registrants can file an amendment to their current registration statement to remove the delaying amendment so the registration statement will go effective in 20 days. The updated guidance now clarifies that the SEC will not recommend enforcement action if a company omits information specified in Rule 430A from a registration statement that goes effective by operation of law during the shutdown, even though Rule 430A technically only applies to registration statements “declared effective” by the Commission or staff. This represents a meaningful policy accommodation for registrants navigating the shutdown period.

The core operational framework remains unchanged, with limited Division staff available only for fee calculations and emergency filing relief through CFEmergency@sec.gov while EDGAR continues to accept filings but cannot declare registration statements effective or qualify Form 1-A offering statements during the shutdown.

The post SEC Division of Corporation Finance Updates Guidance Related to Removal of Delaying Amendment appeared first on Public Company Advisory Blog.



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Sophisticated Insights on Capital Markets & Corporate Governance

Division of Corporation Finance Guidance on Operations After the Government Shutdown

📅 November 13, 2025 👤 [David Lynn](#) 📁 [Capital Markets](#) [SEC Reporting](#)

On November 12, 2025, the 43-day U.S. federal government shutdown ended when legislation was enacted that funds most federal agencies until January 30, 2026, and the SEC Staff returned to work on November 13, 2025. Upon reopening, the Staff of the SEC's Division of Corporation Finance issued [guidance](#) regarding the processing of filings that were pending with the SEC during the government shutdown. As was the case following the 2018-2019 government shutdown, the Division now faces a significant backlog of filings that were submitted to the agency during the shutdown, as well as situations where filing reviews were commenced but not concluded prior to the shutdown.

The Division's post-shutdown guidance notes that companies filed over 900 registration statements during the shutdown, and that the Staff is "working expeditiously to clear the backlog of filings." The guidance addresses the following matters:

- 1. Registration Statements Without a Delaying Amendment.** The Division indicates that if a company removed a delaying amendment or filed a new registration statement without a delaying amendment while the Division's operating status was closed during the government shutdown, the company does not need to amend the registration statement to add a delaying amendment now that the Division's operating status has changed to open following the end of the government shutdown. Similar to the guidance that the Division issued at the commencement of the government shutdown, the post-shutdown guidance notes that the liability and antifraud provisions of the federal securities laws apply to all registration statements, including those that go effective pursuant to Section 8(a) of the Securities Act, and the Division cautions that the company and its representatives should ensure that the registration statement does not contain any material misstatements or omissions of material information required to be stated therein or necessary to make the statements therein not misleading. In a change from the [guidance](#) issued on October 1, 2025 (as [updated](#) on October 9, 2025), the post-shutdown guidance no longer indicates that the Staff may ask companies to amend a registration statement to include the delaying amendment.
- 2. Continuation of Rule 430A Guidance.** The Division reiterates the [Rule 430A guidance](#) that it provided on October 9, 2025, noting that "the Staff will not recommend enforcement action to the Commission if a company omitted the information specified in Rule 430A from the form of prospectus filed as part of a registration statement during the shutdown and such registration statement goes effective after the shutdown by operation of law pursuant to Section 8(a) of the Securities Act and Rule 459 thereunder."
- 3. Acceleration Requests.** Consistent with the prior guidance, the post-shutdown guidance notes that the Staff will consider requests to accelerate the effective date of registration statements for which the delaying amendment was omitted, or that were amended to remove the delaying amendment, if such registration statements are amended to include a delaying amendment prior to the end of the 20-day period "and acceleration pursuant to Rule 461 is appropriate."

4. **Pending Post-Effective Amendments.** The guidance notes that, for any post-effective amendments to registration statements that were filed during the time when the Division's operational status was closed, the Staff will declare those post-effective amendments effective, unless the Staff hears from that company indicating that it does not want the post-effective amendment to be declared effective until a later time. Companies are encouraged to reach out to their assigned industry office as soon as possible if they want to delay the effective date of a pending post-effective amendment.
5. **Pending Preliminary Proxy or Information Statements.** The guidance indicates that those companies with pending preliminary proxy or information statements can file their definitive proxy or information statement once the 10-calendar-day period has expired; however, the Division notes that if the Staff had indicated that it would review the filing prior to the shutdown, the Staff will continue its review of the filing now that the Division's operational status is open.
6. **Pending Exchange Act Registration Statements.** The guidance indicates that pending Form 10 registration statements filed to register a class of securities under Section 12(g) of the Exchange Act will go automatically effective after 60 calendar days, and the Staff reminds companies that they will be subject to the current and periodic reporting requirements of the Exchange Act once the Form 10 goes automatically effective. The Staff notes that it may review subsequent periodic reports filed by the company under the Exchange Act.
7. **Filing Reviews.** The post-shutdown guidance notes that if the Staff had indicated that it was not reviewing a pending registration statement prior to the government shutdown, the company may now submit an acceleration request when ready. For those situations where a filing was under review before the government shutdown, the Staff will continue to review those filings in the order that they were received. With respect to those registration statements that included delaying amendments and were filed during the government shutdown, the Staff will process those filings in the order that they were received. This same approach applies to draft registration statements that were submitted during the government shutdown.

The post-shutdown guidance does not address other types of SEC submissions that require Staff action, such as no-action or interpretive requests. Consistent with the Division's practice following prior shutdowns, we expect that the Staff will respond to such requests in the order in which they were received.

Those companies that are seeking to list securities on an exchange in connection with an offering conducted pursuant to a Securities Act registration statement should continue to communicate with the exchange regarding their approach to listing securities when a Securities Act registration statement goes effective by lapse of time pursuant to Section 8(a) of the Securities Act.

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Goodwin's Year-End Tool Kit



SEC Staff Issues New Guidance on Shareholder Proposals and Rescinds Staff Legal Bulletin No. 14L

FEBRUARY 14, 2025

On February 12, 2025, the SEC's Division of Corporation Finance issued [Staff Legal Bulletin No. 14M](#) (SLB 14M), which rescinds prior Staff Legal Bulletin No. 14L (SLB 14L) and provides updated guidance on shareholder proposals under Rule 14a-8, particularly regarding the scope and application of the rule's economic relevance and ordinary business exclusions. In addition, SLB 14M addresses procedural aspects of Rule 14a-8, including the use of images in shareholder proposals, deficiency notices, proof of ownership letters, and use of email. Below is a summary of SLB 14M that also highlights where changes have been made from prior guidance issued by the Staff.

Ordinary Business Exclusion

Rule 14a-8(i)(7) permits a company to exclude a shareholder proposal that "deals with a matter relating to the company's ordinary business operations." The SEC has previously stated that the policy underlying the ordinary business exclusion rests on two central considerations. One consideration is that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to shareholder oversight." The other consideration is that a shareholder proposal should not "seek[] to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." However, shareholder proposals that relate to ordinary business matters but that focus on a significant policy issue are not excludable under the first consideration because they transcend the company's day-to-day business matters.

Significant Policy Issue

Under now-rescinded SLB 14L, the determination of whether a shareholder proposal focused on a significant policy issue was based on whether the policy issue was associated with a broad societal impact regardless of whether there was a nexus between the policy issue and the company. SLB 14M reverts to the pre-SLB 14L analysis, which takes a company-specific approach in evaluating significance. In other words, whether a policy issue transcends a company's day-to-day business matters will be evaluated in light of the individual company's circumstances.

Micromanagement

SLB 14M also reinstates prior staff guidance on micromanagement that had been rescinded by SLB 14L. In particular, SLB 14M reinstates Section C.2. of Staff Legal Bulletin No. 14J (SLB 14J), Section C.3. of SLB 14J and Section B.4. of Staff Legal Bulletin No. 14K (SLB 14K) which, among other things, confirm that:

- shareholder proposals seeking intricate detail or specific timeframes or methods for implementing complex policies may be excludable as micromanaging the company, including shareholder proposals on compensation available only to senior executives and/or directors; and
- shareholder proposals that are highly prescriptive, thereby supplanting the judgment of management and the board and removing their ability to exercise discretion or flexibility, may be excludable as micromanaging the company.

Additionally, under reinstated Section B.4. of SLB 14K, the Staff expects companies making a micromanagement argument to include an analysis of how the shareholder proposal may unduly limit the ability of management and the board to manage complex matters with the flexibility necessary to fulfill their fiduciary duties to shareholders.

Economic Relevance Exclusion

Rule 14a-8(i)(5) permits a company to exclude a shareholder proposal that “relates to operations which account for less than 5 percent of the company’s total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company’s business.” Historically, this exclusion was infrequently used as both the Staff and courts had interpreted Rule 14a-8(i)(5) as not allowing for exclusion of a shareholder proposal reflecting social or ethical issues regardless of economic relevance to the company.¹

SLB 14M refocuses the Staff’s analysis under Rule 14a-8(i)(5) on the shareholder proposal’s significance to the company’s business. While proponents may continue to raise social or ethical issues in their arguments, they will now need to tie those issues to a significant effect on the company’s business. Though this company-specific analysis appears similar to the analysis of significant policy issues under Rule 14a-8(i)(7) discussed above, the Staff will apply separate analytical frameworks for these exclusions and will not look to one to inform the other.

No Board Analysis Required

In addition, SLB 14M confirms that the Staff does not expect a company to include a discussion of the board’s analysis of whether a particular policy issue is significant to the company when arguing for exclusion of a shareholder proposal under Rule 14a-8(i)(5) and/or Rule 14a-8(i)(7).

Other Topics Addressed

In addition to its discussion of substantive bases for exclusion, SLB 14M provides and/or reiterates

guidance on a number of other shareholder proposal topics, including the following:

- Companies should not apply an overly technical reading of proof of ownership letters and should instead take a plain meaning approach to interpret the language of the letters. Proponents must still, however, provide clear and sufficient evidence of their eligibility to submit a shareholder proposal.
- Companies are not required to send a second deficiency notice to a proponent if the company previously sent an adequate deficiency notice and believes the proponent's response to the initial deficiency notice nevertheless contains a defect.
- Proponents and companies should seek acknowledgment from the recipient to confirm receipt of emails used to submit shareholder proposals, deliver deficiency notices and respond to deficiency notices. The Staff encourages both companies and proponents to provide such confirming replies.
- While shareholder proposals may contain graphics, exclusion of graphics may be appropriate under Rule 14a-8(i)(3), which allows for exclusion of shareholder proposals that are contrary to the proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements.

Practical Tips and Considerations

In its Frequently Asked Questions section, SLB 14M addresses the timing of the new guidance and, in particular, the potential effects on the current proxy season and pending no-action letters. The Staff confirmed that it will consider the guidance in place at the time it issues a response; therefore, for pending letters, the Staff will look to SLB 14M and the analyses discussed above. While previously submitted no-action letters do not need to be resubmitted, companies may want to raise new or revised legal arguments in light of SLB 14M and will have extended time to do so per Rule 14a-8(j)(1). This rule permits companies to make no-action letter submissions later than 80 days before the company files its definitive proxy statement if the company demonstrates good cause. To the extent that the new or revised legal arguments stem from SLB 14M, the Staff confirmed this will be considered good cause.

The new guidance makes a number of important and welcome changes that will be helpful to companies going forward, in particular the changes in approach to the ordinary business and economic relevance exclusions as well as with regard to deficiency notices. In light of the timing of the issuance of the guidance, the full effect of the changes is unlikely to be seen until next proxy season. For this season, companies and their advisors will need to think carefully (but quickly) about whether to supplement pending letters and/or to submit new letters for shareholder proposals that may now be excludable under SLB 14M. While the Staff will try to meet print deadlines for definitive proxy statements, depending on the volume and timing of new requests and supplemental correspondence received, the Staff may not be able to respond before the relevant print deadline, so companies should take this into account in considering how to move forward.

¹ See *Lovenheim v. Iroquois Brands, Ltd.*, 618 F. Supp. 554 (D.D.C. 1985). SLB 14M confirms that the Staff will focus on the SEC's prior statements on Rule 14a-8(i)(5) rather than the court's interpretation of the rule in *Lovenheim*.

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UPDATES

SEC Grants No-Action Relief for Retail Voting Program

September 17, 2025

On September 15, 2025, the Staff of the U.S. SEC's Division of Corporation Finance issued no-action relief to a U.S. public company in connection with a new retail voting program.¹

The new program provides retail shareholders with the ability to authorize the company to vote their shares in accordance with the recommendations of its board of directors at future shareholder meetings. Participants may elect whether their standing instructions apply to all matters or to all matters except "special situations" (such as contested director elections and M&A transactions requiring shareholder approval).

The Staff stated it would not recommend enforcement action against the company in connection with this program. This marks the first time the Staff has permitted a public company to directly facilitate standing voting instructions for its retail investors. While certain institutional voting programs and pass-through voting mechanisms have drawn significant attention in recent years, the Staff's position signals a potential new avenue for issuers to engage retail investors in the proxy voting process.

I. Key Features of the Retail Voting Program

The SEC's no-action relief was based on several core program elements:

- **Eligible investors.** The program will be open to all retail investors, whether registered holders or beneficial owners (i.e., through intermediaries like banks, brokers or plan administrators). It will not be available to investment advisers registered under the Investment Advisers Act of 1940 that are exercising voting authority with respect to clients' securities.
- **Voluntary participation.** Participation will be free of charge. Investors can opt in and opt out at any time at no cost.
- **Proxy materials.** Participating retail shareholders will continue to receive all proxy materials filed for upcoming shareholder meetings. The program will not limit or restrict shareholders from voting at any time using the proxy materials they received for each meeting.
- **Annual reminders.** Enrolled investors will receive annual reminders of their participation and right to opt out (during the time period when the Company is not soliciting votes for its annual shareholder meeting).
- **Disclosure.** The company will disclose information about the program on its website and in its

Schedule 14A filing and update that disclosure as needed.

II. Implications for Public Companies

The Staff's position opens the door for other issuers to adopt similar retail voting programs as early as the 2026 proxy season. Companies considering such programs should account for several implications:

1. **Potential to increase retail participation.** Historically, retail shareholders have voted at significantly lower rates than institutional investors. A program of this kind might expand retail participation at shareholder meetings, particularly at companies with significant retail ownership.
2. **New governance dynamics.** By aligning retail votes with board recommendations, issuers may bolster management support, at least in uncontested votes. However, the option for shareholders to carve out special situations from their authorization underscores the SEC's focus on preserving shareholder discretion in proxy contests and other significant votes.
3. **Unknown reaction from market participants.** Proxy advisory firms and institutional investors have not yet taken public positions on these programs. Their response will be critical in determining whether these programs gain traction.
4. **Legal uncertainties.** Issuers should carefully evaluate compliance with state corporate law and other legal requirements, including the potential litigation risk that investors may later challenge the program.
5. **Implementation lead time.** Establishing a retail voting program will require coordination with intermediaries, vote-processing agents, and technology providers. Companies contemplating a 2026 rollout should begin preparations promptly.
6. **Operational complexity and cost.** Even if participation is free for shareholders, issuers will bear costs and operational burdens for setting up the infrastructure, working with intermediaries, and managing reminders. Boards will want to weigh these costs against the anticipated increase in retail engagement.

III. What's Next

Issuers—particularly those with large retail investor bases—should evaluate whether a retail voting program could advance their engagement and governance objectives. At the same time, boards should carefully consider the legal, disclosure, and investor-relations implications before pursuing adoption.

¹See SEC no-action letter, September 15, 2025 ([here](#)). See also *The Wall Street Journal*, September 15, 2025 ([here](#)).

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SEPTEMBER 1, 2025 - SEPTEMBER 18, 2025

SEC Publishes Spring 2025 Regulatory (and Deregulatory) Agenda

Welcome to Goodwin's Public Company Advisory News Roundup, which highlights the latest developments with SEC and stock exchange regulatory activity, corporate governance and other topics relevant to public company counseling and compliance.

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0 SEC Publishes Spring 2025 Regulatory (and Deregulatory) Agenda

On September 4, 2025, Paul Atkins, Chairman of the Securities and Exchange Commission (SEC), announced that the agency's Office of Information and Regulatory affairs had released its Spring 2025 Unified Agenda of Regulatory and Deregulatory Actions (the Reg Flex Agenda). The Reg Flex Agenda historically reflects the SEC leadership's priorities for the coming months. These include new initiatives that are relevant to public companies, such as:

- Rules on Foreign Private Issuer Eligibility
- Rule 144 Safe Harbor
- Shelf Registration Modernization
- Updating Exempt Offering Pathways
- Shareholder Proposal Modernization

- Rationalization of Disclosure Processes

The Reg Flex Agenda also reflects the withdrawal of priorities from the prior administration that Mr. Atkins views as inconsistent with the goal that regulations “should be smart, effective and narrowly tailored.” Withdrawn items include rulemaking projects addressing human capital management, board diversity and revisions to aspects of the regime governing Rule 14a-8 shareholder proposals.

0 President Trump Advocates for Semi-Annual (not Quarterly) Financial Reporting

On September 15, 2025, President Trump posted on the Truth Social media platform a statement advocating that, subject to SEC approval, public companies should no longer be forced to “Report” financial results on a quarterly basis, but should rather report on a semi-annual basis. He went on to state: “This will save money, and allow managers to focus on properly running their companies.” After Mr. Trump made a similar statement during his first administration in 2018, the SEC took preliminary steps to consider such a change; the topic of the frequency of periodic reporting was added to the SEC’s Reg Flex Agenda until it was removed under the Biden administration. While the new Reg Flex Agenda discussed above does not expressly include consideration of a change in timing of periodic reporting, the subject could be addressed under the topic of “Rationalization of Disclosure Processes” that is included in the agenda. Any such change could have wide-ranging repercussions on current regulations and practices in securities offerings and debt covenants and require amendments to a number of rules promulgated under the Securities Act of 1933 (the Securities Act) and Securities Exchange Act of 1934.

0 SEC Names New Director of Division of Corporation Finance

On September 10, 2025, the SEC announced the appointment of James J. Moloney to serve as Director of the agency’s Division of Corporation Finance, effective in October. From 1994 to 2000, Mr. Moloney was an attorney-advisor at the SEC and later a special counsel in the Office of Mergers & Acquisitions in the Division of Corporation Finance. Most recently, Mr. Moloney was a partner at Gibson, Dunn & Crutcher. In the press release announcing his appointment, Mr. Moloney is quoted as saying, “I am looking forward to rejoining my colleagues in the Division of Corporation Finance in tailoring smart, practical, and effective regulations that will allow companies to thrive and investors to benefit.”

0 SEC Approves Policy Statement that Mandatory Arbitration Provisions in Corporation Governing Documents Should Not Impact Registration Statement Effectiveness

On September 17, 2025, at an open meeting of the SEC, its commissioners, by a 3-1 vote, approved the issuance of a policy statement that the presence of provisions requiring mandatory arbitration of investor

claims arising under the federal securities laws in a company's charter documents should not impact SEC staff decisions on accelerating the effectiveness of a registration statement submitted by the company. The decision was predicated on the view that such provisions are not inconsistent with federal securities laws and are consistent with the goals of the Federal Arbitration Act. The staff of the Division of Corporation Finance will continue to focus on the quality of disclosure of mandatory arbitration provisions before granting acceleration requests. For example, a Delaware-chartered registrant may be encouraged to discuss potential uncertainty about the enforceability of mandatory arbitration provisions under that state's law. As SEC Chairman Paul Atkins noted in his statement in support of the action, previously, there were situations where the staff scrutinized, and thereby potentially delayed the acceleration of effectiveness of, registration statements filed by companies that sought to include a mandatory arbitration provision in their governance documents – injecting uncertainty into whether and when these registration statements would be declared effective.

0 SEC Approves Change to its Rules of Practice to Remove Declarations of Effectiveness From Circumstances in Which Automatic Stays of Challenged Staff Actions are Triggered

On September 17, 2025, at an open meeting of the SEC, its commissioners approved, by a 3-1 vote, an amendment to Rule 431(e) of its Rules of Practice (Commission Consideration of Actions Made Pursuant to Delegated Authority). Under Rule 431(e), an action made pursuant to delegated authority to the SEC's staff shall have immediate effect and be deemed the action of the Commission. This delegated authority includes empowering the staff to accelerate the effectiveness of a registration statement. Upon filing with the SEC of a notice of intention to petition for review, or upon notice to the Secretary of the vote of a Commissioner that a matter be reviewed, an action made pursuant to delegated authority shall be automatically stayed until the Commission orders otherwise subject to certain exceptions. The revised Rule 431(e) would add review requests related to declarations of effectiveness as an additional exception to triggers of an automatic stay. SEC Chairman Atkins indicates in his statement in support of the rule change that stays of an effective registration statement may be extremely disruptive; therefore, rather than requests to review such action automatically triggering such adverse consequences, the SEC should have the opportunity to carefully weigh the equities involved before a stay takes effect.

0 SEC Issues Guidance on Filer Status Upon Loss of SRC Status

On August 27, 2025, the staff of the SEC's Division of Corporation Finance published new Exchange Act Rules Compliance and Disclosure Interpretation Question 130.05, which provides guidance on when an issuer may become an accelerated or large accelerated filer after it loses its status as a smaller reporting company (SRC). Specifically, an issuer that is eligible to be an SRC in the most recent fiscal year for which audited financial statements are available is excluded from the definition of "large accelerated filer" or an "accelerated filer." Thus, a domestic issuer will not be categorized as a "large accelerated filer" or an "accelerated filer" if, as of the last day of the issuer's current fiscal year, it is eligible to use the requirements

for smaller reporting companies under the revenue test in paragraph (2) or (3)(iii)(B) of the “smaller reporting company” definition in Exchange Act Rule 12b-2, as applicable.

0 SEC Releases Updates to Financial Reporting Manual

The staff of SEC's Division of Corporation Finance publishes a Financial Reporting Manual that provides informal guidance on a range of accounting disclosure matters. On August 29, 2025, the staff announced that an updated version of the Financial Reporting Manual has been posted to reflect (i) real estate related and other miscellaneous revisions to conform to the May 20, 2020 amendments to the Regulation S-X Acquisition Rules, (ii) revisions for amendments to MD&A, selected financial data and supplementary financial information, (iii) revisions for changes to standards issued by the Public Company Accounting Oversight Board (PCAOB) and other clarifications related to independent accountants and (iv) additional miscellaneous updates.

0 PCAOB Postpones Effective Date of QC 1000 and Related Standards, Rules, and Forms

On August 28, 2025, the PCAOB announced that it is postponing for one year, to December 15, 2026, the effective date for QC 1000, *A Firm's System of Quality Control*, and other new and amended PCAOB standards, rules, and forms previously adopted by the Board on May 13, 2024. QC 1000 is a new risk-based standard to guide audit practices. The PCAOB's action also postpones the related rescission date of certain existing rules and standards as highlighted in the text of the announcement.

Check Out Goodwin's Latest Industry Insights

New Blog Post: SEC Announces Open Meeting to Consider Policy on Mandatory Arbitration Provisions

September 10, 2025

New Blog Post: SEC Announces the Appointment of a New Director of Division of Corporation Finance

September 10, 2025

New Blog Post: SEC Launches Cross-Border Task Force to Combat International Securities Fraud Targeting U.S. Investors

September 8, 2025

New Blog Post: SEC Issues Guidance on Filer Status Upon Loss of SRC Status

September 1, 2025

Public Company Advisory Resources

Year-End Tool Kit

Making year-end reporting and annual meetings easier for public companies.

Public Company Advisory Blog

Providing sophisticated insights on capital markets and corporate governance matters.

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