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Quarterly Survey of SEC Rulemaking and Major Court Decisions (April 1, 2026 – June 30, 2026)

By Kenneth M. Silverman and Kerrin T. Klein[*]

This issue's Survey focuses on the U.S. Securities and Exchange Commission's ("SEC") rulemaking activities and other decisions relating to the Securities Act of 1933, as amended (the "1933 Act"), the Securities Exchange Act of 1934, as amended (the "1934 Act"), and other federal securities laws from April 1, 2026 through June 30, 2026.

In the second quarter of 2026, the SEC approved three new rules, proposed six new rules and published one concept release. Notably, the SEC's proposals include a proposed rule that, if approved, would allow U.S. public companies the option to file with the SEC semiannual reports, instead of quarterly reports. This proposed rule follows the SEC's announcement in mid-2025 that it is taking a serious look at reducing the frequency of corporate earnings reports. Many of the proposed rules this quarter pointed toward the SEC's intent to simplify SEC reporting obligations, encourage capital formation and rollback rulemaking that occurred during the Biden administration. The rulemaking activity during the second quarter of 2026 marked a continued increase in activity that began in the first quarter. The volume and focus of the final rules and proposals released this quarter accentuate the SEC's current mission to create a less burdensome regulatory landscape for reporting companies.

Final Rules

Rescission of Policy Regarding Denials in Settlements of Enforcement Actions

On May 18, 2026, the SEC adopted a final rule to rescind Rule 202.5(e), which set out a proscriptive policy that, in cases where a sanction was imposed on a defendant in an enforcement action, prohibited the SEC from settling such actions until the defendant

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or respondent agreed not to publicly deny the allegations set forth in the relevant complaint or administrative order.

The SEC originally adopted Rule 202.5(e) out of concern that, without such a rule, the public might believe decrees and sanctions were being imposed on defendants for conduct that never actually occurred. Essentially, the SEC wanted to have recourse in situations where a defendant enters into a settlement agreement with the SEC, later denies the allegations asserted by the SEC and potentially creates a false sentiment among the public that the SEC never had a basis for commencing the enforcement action against the defendant. By conditioning settlement of enforcement actions on a defendant's agreement not to deny allegations to which they are subject, Rule 202.5(e) allowed the SEC to have a remedy in situations where a defendant made such a denial, as the SEC could request the court to vacate the settlement (or reopen an adjudicatory proceeding). These provisions in settlement agreements were known as "no-deny" provisions and were often paired with complementary "no-admit" provisions which provided that the defendant was also not admitting any of the allegations asserted against them.

The SEC rescinded Rule 202.5(e) after taking into account six key considerations:

1. The absence of no-deny provisions will have a minimal effect on public interest.
2. A policy mandating no-deny provisions creates a false impression that the SEC is trying to avoid public scrutiny.
3. Benefits accrued from Rule 202.5(e) have not been realized as the SEC has not been able to make use of any of its remedial options.
4. As time passes after a settlement, the SEC is unlikely to pursue recourse by reopening a case in the wake of a denial as the facts of the case would be harder to prove and, similarly, the courts would be less likely to grant a request to reopen due to procedural or evidentiary concerns.
5. It may be wasteful for the SEC to dedicate resources and time to determining whether a defendant has breached a no-deny provision. The no-deny provisions apply to public denials, not denials that are privately communicated. Since the adoption of Rule 202.5(e), technology has changed dramatically and communication has become more free-flowing. Mediums such as instant messaging and social media have allowed communication presumed as private to be publicized and have blurred the line between what communication can be considered public or private. Litigating or determining whether communication is private or public would be a waste of the SEC's resources.

6. Rescinding Rule 202.5(e) makes it easier for the SEC to settle actions and quickly provide a cure for injured investors. Rule 202.5(e) requires the SEC to include a no-deny provision in settlements with defendants, which makes them unable to settle in cases where defendants do not wish to agree to such a provision. Without a settlement in those cases, injured investors have to wait to have their money returned.

In addition to rescinding Rule 202.5(e), the SEC has declared that it will not seek to enforce existing no-deny provisions in settlements that have already been entered.

The SEC's rescission of Rule 202.5(e) became effective on May 21, 2026.

Proposed Rules

Form PF Reporting Requirements for All Filers

On April 20, 2026, the SEC and the Commodity Futures Trading Commission (the "CFTC" and, together with the SEC, the "Commissions") proposed amendments to Form PF, the confidential reporting form on which certain SEC-registered investment advisers to private funds must report information about their funds' assets, strategies and risk exposure. These proposed amendments are in response to amendments adopted in 2024 and would cut back many of the rules adopted in 2024.

In 2024, the Commissions adopted comprehensive amendments to Form PF to require more detailed reporting from large hedge fund advisers (the "2024 Amendments"). The 2024 Amendments attempted to enhance the Financial Stability Oversight Council's (the "FSOC") ability to monitor and assess systemic risk and the SEC's regulatory oversight. However, the Commissions delayed the compliance date multiple times, allowing advisers to continue to file the old version of Form PF that was in place before the 2024 Amendments. The Commissions delayed the compliance date to: (1) address challenges with the reporting cycle timing; (2) give the industry more time to comply with the 2024 Amendments; and (3) give the Commissions time to complete a review in accordance with President Trump's Presidential Memorandum, issued on January 20, 2025 (the "Memorandum"). The Memorandum directed agencies to consider postponing the effective date of rules that were issued but had not taken effect, including the 2024 Amendments, to review any questions of fact, law and policy those rules might raise. If the rules raised a substantial question, the Memorandum directed the agencies to provide notice and take further action. In response to these events, the Commissions conducted a thorough investigation, subsequently proposing multiple changes to Form PF.

The proposed amendments would: (1) raise filing thresholds for (a) all filers and (b) large hedge fund advisers; (2) eliminate certain reporting obligations related to (a) certain feeder funds, (b) "look through" requirements, (c) identification requirements for certain trading vehicles, (d) performance volatility, (e) trading and clearing reporting requirements, (f) qualifying adjusted exposure requirements, (g) portfolio turnover reporting, (h) rehypothecation reporting, (i) current reporting for large hedge fund advisers concerning certain margin defaults, (j) operations events, (k) the inability to satisfy redemption requests and (l) quarterly event reporting for all private equity fund advisers; (3) modify certain requirements to allow (a) filers to report fewer digits of the NAICS codes for industry exposures, (b) large hedge fund advisers to only include a description of the largest exposure contributing to an extraordinary investment loss, (c) a more streamlined large hedge fund counterparty exposure reporting and (d) a more lax timeframe associated with the reporting trigger for all current reports; and (4) revise certain Form PF rules in an effort to clarify the Form PF requirements for filers.

Raising Filing and Reporting Thresholds

Currently, any SEC-registered adviser must file Form PF if, as of the last day of their most recently completed fiscal year, they have at least $150 million in private fund assets under management. The Commissions' proposed amendments would increase this Form PF filing threshold for all private fund asset advisers to $1 billion. This change would allow the Commissions to possess the ability to obtain information on over 90% of private fund gross asset value that advisers report while eliminating filing requirements for smaller advisers who currently must file Form PF. Advisers who would no longer meet this threshold would still publicly report certain information about their private funds on Form ADV as all SEC-registered private fund asset advisers are required to do so.

In addition, the Commissions proposed an amendment to increase the reporting threshold for large hedge fund advisers from $1.5 billion to $10 billion. Currently, a "large hedge fund adviser" is a fund adviser that manages at least $1.5 billion in hedge fund assets and manages a qualifying hedge fund as of the last day of any month in the fiscal quarter immediately preceding their most recently completed fiscal quarter. A qualifying hedge fund is any hedge fund that has a net asset value of at least $500 million as of the last day of any month in the fiscal quarter immediately preceding its most recently completed fiscal quarter. This can be either individually or in combination with any feeder funds, parallel funds, and/or dependent parallel managed

accounts. Form PF requires large hedge fund advisers to report certain information quarterly on Sections 1 and 2 of Form PF and to report certain other information as soon as practicable, but no later than 72 hours upon a qualifying event through Section 5 of Form PF. Section 1 of Form PF collects general information on the private fund advisers themselves, the private funds they advise, and the hedge funds they advise, while Section 2 of Form PF collects more detailed information on qualifying large hedge funds. Section 5 of Form PF requires large hedge fund advisers to report current events for qualifying hedge funds within 72 hours of a triggering event. Hedge fund advisers that do not qualify as "large hedge fund advisers" must report on Section 1 on Form PF on an annual basis, and do not have to report on Sections 2 and 5 on Form PF unless they are required to do so under other requirements (e.g., according to Form PF General Instructions 9, "large liquidity fund advisers" must file Section 1 quarterly, among other requirements). Thus, the proposed amendment would allow advisers who manage at least $1.5 billion, but less than $10 billion, in hedge fund assets to file Section 1 annually and no longer file Section 2 or 5. This change would allow the Commissions to reduce the percentage of advisers who were previously required to file as large hedge fund advisers by almost two-thirds while quarterly obtaining information on 80 percent of hedge fund gross asset value that advisers report. Advisers would continue to report information about their private funds on Form ADV.

The SEC claims these changes will better differentiate advisers with significant private fund assets from smaller advisers while remaining consistent with the Commissions' original intent for the filing and reporting thresholds. In addition, the proposed amendments would reduce the obligations of smaller advisers for whom filing can be burdensome. At the same time, the Commissions would be able to continue to obtain information on a substantial portion of the assets of the hedge fund industry and analyze and understand data on private fund advisers.

Elimination of Reporting Requirements

Currently, advisers are required to report various events that they or their reporting fund go experience to assist the SEC in understanding the market and predicting any risk. The SEC proposed several amendments to streamline reporting requirements to avoid any duplicative effects and ease the burden on advisers while still obtaining all the data necessary.

First, the SEC proposed to allow advisers to aggregate master-feeder arrangements that hold less than five percent of their gross asset value in investments outside the master fund, a

change that industry members and filers have requested. This change would still allow the Commissions and FSOC to understand fund structures and the risk exposure of their component funds while aligning the Form PF requirements with the manner advisers actually track and manage the risk profile of feeder funds.

Second, the SEC proposed to eliminate both the "look through" requirement and instructions to use the "best represent" standard when doing so. The "look through" requirement was created in the 2024 Amendments requiring advisers to only "look through" the reporting fund's investments in internal private funds and external private funds when reporting indirect exposures. Before the 2024 Amendments, Form PF did not address how to report indirect exposures, resulting in some advisers reporting it while others were not. After the 2024 Amendments, industry members foresaw significant burdens with this new, requisite rigid and granular reporting. In response, the SEC proposed this change to preserve the ability to assess systemic risk without enforcing a higher burden on advisers. However, the SEC admits that this amendment would also lead more filers to use their internal practices to report indirect exposures less precisely, likely reducing the specificity and comparability of indirect exposures the current Form PF has.

Third, the SEC proposed to reduce the scope of trading vehicles that must be reported to only those that face counterparties and creditors or are reported on Form ADV as a private fund. Currently, advisers are required to identify trading vehicles, with Form PF using a broad definition of "trading vehicle" to ensure the Commissions had a clear view of a reporting fund's use of trading vehicles to both monitor systemic risk and protect investors. However, since the 2024 Amendments, filers have expressed concern that the definition of "trading vehicle" is too inclusive, as it includes entities that do not actively trade or engage in other activities directly related to the fund's counterparty or credit exposures. The proposed amendment would allow the Commissions and FSOC to continue their systemic risk oversight and investor protection efforts while ensuring that advisers do not have to be over-inclusive in their reporting.

Fourth, the SEC proposed to eliminate the requirement for private funds to report additional performance-related information if the adviser calculates a market value daily for any position in the reporting fund's portfolio as data captured in other parts of Form PF can assist in contextualizing performance-related volatility. While the SEC foresees a loss in insight into significant performance volatility swings occurring on an intra-month basis, it argues this data can have limited use with

evaluating performance volatility. Additionally, the advisers' differences in calculating this information, even sometimes relying on assumptions, can undermine the collected information's comparability.

Fifth, the SEC proposed to eliminate the reporting requirement for the value of hedge fund's positions at the end of the reporting period. Currently, hedge fund advisers must report how they use trading and clearing mechanisms, including the value of the fund's positions at the end of the reporting period. In response to filers' complaints that they do not otherwise calculate the value of positions in the way required making it burdensome to track, calculate and report as necessitated on Form PF, the SEC proposed this amendment. As other parts of Form PF still gather information related to trading and clearing mechanisms, this amendment aligns with the SEC's intent to reduce the filers' burden while still retaining the ability to evaluate trading and clearing mechanisms.

Sixth, the SEC proposed to eliminate a way of reporting adjusted exposure. Currently, large hedge fund advisers must report the adjusted exposure of long and short positions for each sub-asset class in which a fund has a reportable position. In doing so, the adjusted exposure must be reported in two ways. The first requires calculating and reporting for the adjusted exposure of long and short positions for each sub-asset class by netting positions that have the same underlying reference asset across instrument type and within the same term using pre-ascribed maturity buckets for fixed income positions. The second requires reporting adjusted exposure based on its internal methodology if an adviser does not net all positions across all instrument types in monitoring the economic exposure of the reporting fund's investment positions under its own methodologies for internal reporting and reporting to investors. This proposed amendment would eliminate the second reporting requirement. The SEC proposed this change to remove duplicative reporting and ease the burden on large hedge fund filers.

Seventh, the SEC proposed eliminating the requirement for advisers to report the value of turnover in certain asset classes in their hedge funds' portfolios for each month during the quarterly reporting period. This includes listed equities, corporate bonds, sovereign bonds, various types of derivatives, consolidated foreign exchange and currency swaps. This proposed amendment is in line with the SEC's goal to reduce the burden on filers while still obtaining important data as it can use other parts of Form PF to obtain information relating to hedge funds with exposure in various asset classes with significant trading and liquidity.

Eighth, the SEC proposed to eliminate requiring qualifying

hedge funds to report the percentage of the total amount of collateral and other credit support that counterparties have posted to the reporting fund that may be and/or has been rehypothecated. The SEC proposed this amendment as the SEC argued this is burdensome for advisers to acquire the required information and has not resulted in reliable data. Previously, Form PF was even more expansive with rehypothecation reporting requirements, but the 2024 Amendments changed the requirements as the SEC claimed they were challenging and burdensome for advisers to fulfill, and the data acquired was not reliable. As filers have continued to identify both operational and data challenges with rehypothecation reporting, the SEC-proposed amendment eliminates rehypothecation reporting requirements.

Ninth, the SEC proposed to modify the current reporting filing deadline; eliminate current reporting for notice of margin default or determination of inability to meet a call for margin, collateral or equivalents; streamline reporting of "operations events;" and eliminate current reporting for inability to satisfy redemption requests. Presently, large hedge fund advisers must report the occurrence of extraordinary investment losses, certain margin events, counterparty defaults, material changes in prime broker relationships, operations events and certain events associated with redemptions "as soon as practicable, but no later than 72 hours" after the occurrence of either the event or when the adviser reasonably believes the event occurred. The SEC is proposing to eliminate the requirement to report "as soon as practicable" so that the current reporting filing deadline would be no later than 72 hours after the reportable event. Similarly, there would be no requirement to report a qualifying hedge fund's margin default or inability to meet a call for margin, collateral or similar items. The definition of an "operations event" would be revised to operations necessary for the investment, trading, valuation, reporting and risk management, thereby removing the second prong of operations necessary for action in accordance with the federal securities laws and regulations. Lastly, there would no longer be a requirement to file a current report if a qualifying hedge fund cannot pay a redemption request.

Finally, the SEC notably proposed to eliminate the Section 6 quarterly reporting requirement in its entirety. Under the existing rule, advisers to any private equity funds that undergo certain private equity events, such as an adviser-led secondary transaction, general partner removal or termination of the investment period or fund, must disclose such event under Section 6 within 60 calendar days after the end of the applicable quarter. The SEC claims the events in these private equity quarterly reports reflect things occurring in specific firms, not necessarily an indication of a broader, more urgent harm. Additionally, in the two years these

reports have been required, the SEC received a relatively infrequent number of Section 6 filings. Thus, the SEC foresees the loss of information for investor protection or systemic risk assessment to be small. By eliminating the Section 6 reporting requirement, the SEC anticipates streamlining Form PF to reduce burdens on private equity fund advisers while still retaining critical information for investor protection or identifying systemic risk.

These proposed modifications are consistent with the SEC's intention to make Form PF reporting less burdensome for advisers while eliminating requirements that it sees as producing duplicative results. The SEC argues that these modifications will improve the quality and completeness of data in the current reports to support FSOC's assessment of risk and the SEC's ability to protect investors.

Modification of Requirements

Currently, large hedge fund advisers must report information about their qualifying funds' exposures to industry, reference assets and counterparties. One such way is they must classify their reporting funds' industry exposures using NAICS codes, which are used to describe a company's primary business activity and principal source of revenue. Those who use the NAICS codes must do so at the national industry, six-digit level, of which there are more than 1,000 options. The proposed amendment would modify this requirement, allowing filers to choose any level of classification within the NAICS hierarchal code system. The SEC predicts this will streamline filers' options while still being able to obtain important industry-specific exposure data, simultaneously reducing the burdens and costs filers can face with this classification.

In addition, large hedge fund advisers must also report detailed information about their qualifying hedge funds' monthly portfolio exposure to reference assets. Question 39 of Form PF requires reporting of certain information about qualifying hedge funds' long and short netted exposure, and Question 40 of Form PF requires reporting certain information about qualifying hedge funds' monthly gross exposure to certain reference assets. The SEC-proposed amendment would eliminate this requirement in Questions 39 and 40, while adding some exposure reporting to Section 5, Item B of Form PF, to mitigate the loss of this data. Section 5, Item B, would have an additional reporting field that would require large hedge funds to file a current report no later than 72 hours after the qualifying hedge fund experiences an extraordinary investment loss and describe the largest exposure contributing to said loss. The SEC believes this would reduce the

burden on large hedge fund filers, while still ensuring Form PF collects the information necessary for systemic risk assessment and investor protections.

Finally, large hedge fund advisers presently must report counterparty exposures including information on each type of borrowing, lending or transaction by collateral type. This is done primarily in a consolidated counterparty exposure table, though other tables and questions in Form PF collect similar aspects of the data. The proposed amendment would eliminate this counterparty exposure table requirement, instead requiring qualifying filers to complete a simpler, consolidated counterparty exposure table elsewhere in Form PF. To make up for other potential losses of data, large hedge fund advisers would report information about the value of the reporting fund's total borrowings and counterparty exposures elsewhere.

The proposed amendments are intended to improve the efficiency, accuracy and usability of Form PF data, facilitate the FSOC's ability to monitor systemic risk and financial stability and aid clarity and ease of use by advisers.

Public comments to this proposed rule were due to be submitted with the SEC by June 23, 2026.

Semiannual Reporting

On May 5, 2026, the SEC proposed amendments to Rules 13a-13 and 15d-13 to allow public companies to file their interim financial statements on a semiannual basis on a new Form 10-S instead of a quarterly basis on Form 10-Q. With certain exceptions, Rules 13a-13 and 15d-13 require public companies to file their interim financials on Form 10-Q. Additionally, public companies must file their financials, along with other pertinent information, annually on Form 10-K, resulting in reporting financials four times per fiscal year. Form 10-Q must be filed with the SEC within 40 or 45 days after the end of a fiscal quarter, depending on the filer status of the reporting company and requires reporting financial statements prepared in accordance with U.S. Generally Accepted Accounting Principles ("GAAP"), reviewed by an independent public accountant and data tagged.

Public companies have been publicly disclosing their financials on a quarterly basis since 1946, with Form 10-Q being adopted in 1970 as a result of the 1969 Wheat Report. The 1969 Wheat Report examined disclosure requirements to determine how to best improve investor protection and regulatory effectiveness and recommended quarterly instead of semiannual reporting. The Form 10-Q rules require public companies disclose narratives about a variety of topics including, but not limited to, manage-

ment's analysis of financial conditions and results of operations, market risk, effectiveness of disclosure controls and procedures, material changes in internal control over financial reporting, legal proceedings, material changes in risk factors, material changes to the procedures by which security holders may recommend nominees to the registrant's board of directors and disclosure of director or officer adoptions or terminations of certain plans for the purchase or sale of registrant securities.

The SEC proposed to amend Rules 13a-13 and 15d-13 to allow reporting companies to choose between reporting quarterly through Form 10-Q or semiannually through new Form 10-S. Reporting companies would disclose their decision on the cover page of their annual report on Form 10-K, 1933 Act registration statements (Forms S-1, S-3, S-4 or S-11) or 1934 Act registration statements on Form 10, as applicable. Those who choose semiannual filing would do so through the new Form 10-S which would require the same narrative disclosures and financial information as Form 10-Q and must be filed within 40 or 45 days (depending on the company's filer status) after the end of such company's first semiannual period of the fiscal year. Thus, a company that chooses semiannual reporting would publicly disclose their financials twice per year compared to a company that elects to continue with quarterly filing who would publicly disclose their financials four times per year.

Additionally, the SEC proposed corresponding amendments to Regulation S-X, which establishes the form and content requirements for financial statements necessary for SEC filings. These amendments would incorporate provisions applicable to those who select semiannual reporting and simplify the rules governing the age of financial statements in registration statements and proxy statements. In order to do so, Rules 3-01 and 8-08 would be reorganized, Rule 3-12's requirements governing the age of financial statements in a registration or proxy statement would be consolidated into the balance sheet requirements of Rule 3-01, the age requirements would be revised to incorporate semiannual reporting and other rules would be revised to similarly incorporate semiannual reporting. Currently, under Rule 3-12 of Regulation S-X, a reporting company must measure backward from the effective date of a registration statement or the mailing date of a proxy statement that is required to include financial statements to determine whether its most recently filed financial statements are dated within the applicable 130-day or 135-day period, as the case may be, depending on whether the registrant is an accelerated filer. Under the proposed amendment, reporting companies would instead be required to include only the interim financial statements required to be filed in the most recent Form 10-Q or Form 10-S as of the filing date of the registration statement.

These proposed changes reflect the SEC's efforts to encourage additional companies to go and remain public by reducing the costs associated with reporting while granting companies flexibility to choose the frequency with which they disclose their financials. The SEC argues that this flexibility would allow reporting companies to choose the reporting frequency that best serves the company and its investors, allowing for financial and strategic benefits. For example, companies that choose semiannual reporting could see a reduction in time and monetary costs from fewer filings, which the SEC notes such additional time and funds could then be invested in the company's business growth. Moreover, the SEC noted that fewer filings could also allow companies to be more focused on the daily business, focusing strategy on business development instead of interim reporting, and possessing the ability to engage in transactions that might not have previously been possible when focusing on quarterly reports. This could particularly benefit emerging growth and smaller companies, reducing the burdens on them for quarterly reporting. Reducing compliance requirements could also contribute to more private companies becoming and remaining public as the costs would be reduced by the lower frequency of reporting.

While the SEC predicts a reduction in the frequency of interim reports and the loss of data from that frequency of reporting, it expects certain material information to still be disclosed voluntarily or through other requirements. For example, several of the Form 10-Q disclosure requirements largely duplicate those of Form 8-K, the form on which domestic public companies file current transaction- or event-driven disclosure, allowing for that information to still be publicly disseminated. As companies can still choose to report quarterly, these amendments would permit flexibility for companies to choose the reporting frequency that aligns most effectively for their strategic priorities and investor expectations.

Public comments to this proposed rule were due to be submitted with the SEC by July 6, 2026.

Registered Offering Reform

On May 19, 2026, the SEC published a series of proposed amendments intended to facilitate capital formation in public securities markets. Through the proposed amendments, the SEC seeks to provide issuers with greater flexibility and reduced costs related to their registered offerings. In addition, the amendments seek to simplify and modernize existing applicable rules.

Form S-3

Form S-3 is a short form registration statement that public

companies, subject to Form S-3's eligibility requirements, may file with the SEC to register securities. Over the years, some market participants have pushed to expand Form S-3 eligibility to lower compliance costs and promote capital formation. The SEC's proposed amendments indicate that it believes Form S-3's flexibility should be available to a wider range of issuers. In line with this view, the SEC proposed to amend the registration and eliminate the transaction requirements in an effort to expand access to public markets by increasing eligibility for the form's flexible registration requirements.

Currently, Form S-3 requires issuers to meet certain registrant and transaction requirements to use the form. The registrant requirements place certain prerequisites on the types of issuers allowed access to the form, as well as require issuers to have made certain reports and filings in adherence with the 1934 Act.

The SEC's proposed amendments would modify various requirements for Form S-3 eligibility, most notably the elimination of the one-year seasoning requirement, which requires issuers to have been a 1934 Act reporting company for at least 12 months prior to filing using Form S-3. Under the proposed amendments, all issuers would be immediately eligible to use Form S-3, regardless of their tenure, as a 1934 Act reporting company. However, the SEC proposed to retain the requirement that issuers be current and timely with their 1934 Act reporting requirements. Thus, while more issuers will be automatically eligible for Form S-3 use, their eligibility will hinge on compliance with 1934 Act reporting and timeliness requirements.

The SEC also proposed elimination of all transaction requirements associated with Form S-3 eligibility. Namely, issuers would no longer be required to have $75 million or more in public float to register an unlimited amount of securities on the form.

Despite the elimination of all transaction requirements and certain registrant requirements in order to widen form access, the SEC believes investors will remain protected from certain issuers with high non-compliance risks. To ensure protection, the SEC also proposed to add a subset of certain "ineligible issuers," as defined in Rule 405, who have been deemed historically unsuited for certain kinds of short-form registration and offering accommodations. The proposal would introduce as ineligible a new category of "BSP issuers" that, within the prior three years, had existed as a blank check company, shell company, or penny stock issuer. The other ineligible issuers would consist of those issuers whose conduct has resulted in securities-related convictions, or otherwise been subject to judicial or SEC scrutiny within the prior three years.

Taken together, the amendments reflect the SEC's intention to

expand eligibility for the form to a greater number of issuers while retaining certain investor protections. With these amendments, the SEC believes that newly eligible issuers would benefit from cost savings and capital raising efficiencies in a manner that would promote capital formation in public markets.

Enhanced Registration & Communication Benefits

The SEC proposed to expand the automatic shelf registration rules to a larger set of issuers by removing certain qualification metrics and expanding the definition of "well-known seasoned issuers" ("WKSIs").

Currently, WKSIs are granted the greatest flexibility in receiving registration and communication benefits. To qualify as a WKSI, an issuer must either have at least $700 million in public float or at least $1 billion in debt securities, as well as other qualification standards. These threshold requirements have not been revisited since they were adopted over 20 years ago.

Now, the SEC has proposed to revise the eligibility standards for such benefits by replacing the current WKSI eligibility criteria with new requirements. Specifically, the SEC proposed to replace the WKSI definition with two new categories of issuers: Eligible Listed Issuer ("ELI") and Seasoned Eligible Listed Issuer ("SELI"). The SEC would define an ELI as an issuer that meets Form S-3's proposed registrant requirements and is exchange-listed, meaning it would have at least one class of common equity listed on a national exchange. A SELI would be defined as an ELI who has been a 1934 Act reporting company for a period of at least 12 calendar months. In effect, the change would eliminate the current categories of issuers for enhanced registration and communication benefits - "unseasoned issuer," "seasoned issuer," and "WKSIs" - and create three new tiers: (1) Form S-3 eligible issuers, (2) ELIs and (3) SELIs. These benefits would be allocated on a graduated basis: Form S-3 eligible issuers would have access to benefits under Rule 139 and Rule 433; ELIs would receive all enhanced registration and communication benefits with the exception of automatic shelf registration; and SELIs would have access to the full suite of benefits, including automatic shelf registration.

As with the other proposed amendments, the expanded access to registration and communications benefits serves the SEC's goal of increasing access to public securities markets on demand.

Preemption of State Securities Law Registration and Qualification

Another proposed amendment would update the definition of "qualified purchaser" in Section 18(b)(3) to preempt state law

registration and qualification requirements for any registered offering under the 1933 Act. Currently, preemption applies only to securities offered and sold on national securities exchanges, not for unlisted securities.

Section 18(a) of the 1933 Act prohibits states from requiring registration or qualification for "covered securities." However, "covered securities" does not encompass all securities offered and sold pursuant to a registered offering. Consequently, those securities that do not fall under the umbrella of covered securities, namely unlisted securities, are subject to the varying state law securities frameworks and requirements.

To bring the registration of unlisted securities under the auspices of federal securities law, the SEC's proposed amendment would add the term "qualified purchaser" to Rule 146 and define the term to include any person to whom securities are offered or sold pursuant to an offering registered under the 1933 Act. As a result, those securities offered or sold to a qualified purchaser would become "covered securities," and therefore be exempt from state securities law requirements.

As the SEC views it, the preemptive effect of the amended definition would limit costs for issuers associated with complying with numerous different state requirements for unlisted securities.

Form S-1

The proposed amendments also seek to modernize issuers' ability to backward and forward incorporate information on Form S-1. Form S-1 is the default form that issuers can use to register securities offerings under the 1933 Act. Form S-1 allows issuers to incorporate by reference information found within other 1934 Act reports if they satisfy certain eligibility requirements.

Currently, backward incorporation on Form S-1 (that is information incorporated by reference *before* the effective date of the registration statement) is limited to issuers who, among other things, have filed an annual report for their most recent completed fiscal year. Forward incorporation, or incorporation by reference *after* the effective date, is similarly limited to issuers who are classified as smaller reporting companies ("SRCs").

In the most recent amendments to Form S-1 in 2019, the SEC restricted the ability of issuers to incorporate by reference. The SEC has departed from the current restrictive framework in an effort to facilitate capital formation consistent with investor protection.

The proposed amendments would eliminate these restrictions for backward and forward incorporation. Issuers would no longer be required to have filed an annual report in their most recent

fiscal year to be eligible for backward incorporation, nor would their eligibility for forward incorporation be dependent on their status as an SRC. The SEC believes that these Form S-1 amendments would allow issuers to enjoy greater cost savings associated with the incorporation by reference.

Business Development Companies & Closed-End Funds

In addition to the modifications to the registration and offering process for registered investment companies, referred to by the SEC as "operating companies" who generally register securities under the 1933 Act using Form S-3 and Form S-1, the SEC proposed an amendment to extend eligibility for Form N-2 short form registration. The amendment would grant eligibility to a broader group of registered closed-end funds ("CEFs") and business development companies ("BDCs"). These amendments build upon the directive provided by Congress that the SEC increase parity between operating companies and affected funds in relation to registration, offering and communication rules.

A CEF is a type of fund that issues a fixed number of shares in a one-time IPO, rather than continuously issuing and redeeming shares. A BDC is a type of CEF that invests specifically in developing and financially distressed companies.

Currently, while operating companies are treated differently based on their assigned category, the SEC treats all affected funds alike. The SEC's proposal would bring affected funds in line with the treatment of operating companies by basing treatment on their categorization. For instance, some proposed amendments would apply to all BDCs and registered CEFs, while others will only apply to exchange-listed affected funds.

Like the amendments related to operating companies in Form S-3, the amendment related to BDCs and CEFs would remove the seasoning and public float requirements. In addition, and similar to the enhanced registration and communication benefits changes, the proposed amendment would extend registration and communication benefits to a broader set of BDCs and CEFs, regardless of their WKSI status.

Registered Non-Variable Annuity Advertising

Previously, the SEC considered, but ultimately refrained from, extending certain advertising flexibilities under Rule 482 to registered non-variable annuities. Now, after further consideration, the SEC has proposed an amendment that would extend Rule 482 to cover such annuities.

Under Rule 482, registered investment companies may provide investors with advertising and sales materials absent an accompanying prospectus pursuant to certain requirements. With

this rule, investment companies are afforded flexibility in how they advertise their services. However, Rule 482 does not extend to the advertisement of registered non-variable annuities, which are issued mainly by insurance companies and provide for fixed interest rates and thus consistent streams of income. Instead, insurance companies who advertise such annuities must comply with Rule 433, which has much stricter requirements for providing advertising materials without an accompanying prospectus.

The SEC's proposed amendment would permit registered non-variable annuity issuers advertising non-variable annuities to do so on broad-based platforms, such as in print, television and other similar media. The amendment would eliminate the requirement that non-variable annuity issuers satisfy Form S-3 requirements or adhere to Rule 433 prospectus delivery requirements in order to participate in flexible advertising like other investment companies.

With this proposed amendment, the SEC hopes to provide a consistent advertising framework for non-variable and variable annuity issuers alike.

Public comments on these proposed amendments were due to be submitted with the SEC by July 27, 2026.

Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies

On May 19, 2026, the SEC proposed rule and form amendments designed to incentivize companies to go and stay public. Namely, the proposal reorganizes and simplifies the existing filer status framework and redistributes the various requirements and disclosure accommodations for each filer status.

Currently, the framework consists of five filer statuses with corresponding levels of disclosure and other requirements: Large Accelerated Filers ("LAF"), Accelerated Filers ("AF"), Non-Accelerated Filers ("NAF"), Smaller Reporting Companies ("SRC") and Emerging Growth Companies ("EGC"). The framework subjects LAFs to the more stringent requirements, while SRCs and EGCs enjoy the most accommodations. Nevertheless, disclosure levels and requirements for each often overlap, which makes the framework complex for issuers.

The proposed amendments would condense the filer status framework into two categories and one subcategory: LAF and NAF with Small Non-Accelerated Filers ("SNF") as a subcategory. Status under this proposal would primarily be determined by a company's public float. The framework would remain similar to the current framework, with the largest companies being subject

to comprehensive and non-scaled disclosure requirements, while smaller companies would enjoy scaled disclosure and other accommodations.

Large Accelerated Filers

The SEC's proposed amendments would revise the definition of LAF. Currently, to be classified as a LAF, an issuer's public float must be $700 million or more. Under the proposal, that threshold would be increased to $2 billion, which would be calculated by multiplying the aggregate worldwide number of shares of voting and non-voting common equity held by non-affiliates as of the last day of the issuer's second fiscal quarter by the issuer's average stock price over the last ten trading days of that quarter. This threshold must be met in two consecutive years. The SEC believes that public float is a reasonable indicator of which companies the market follows most closely, and that a consecutive two-year requirement establishes stability of LAF status.

The proposal would also include a seasoning requirement, withholding LAF status until the company has completed 60 consecutive months of reporting under the 1934 Act. This would be a sharp increase from the current 12-month requirement. The SEC believes that a longer seasoning period is in line with the other heightened requirements to apply for LAF status.

The SEC based its proposal on the belief that investors have a heightened demand for quicker and more comprehensive information about registrants with the largest U.S. equity market capitalization. Because of the heightened demands, LAF companies must also have the means to adhere to more demanding compliance requirements.

Non-Accelerated Filers

The proposed amendment reconfigures the current filer status framework by condensing all companies that are not LAFs into a broad category of Non-Accelerated Filers. Because of the 60 consecutive months of reporting on-ramp, all registrants would be classified as an NAF at the time of their initial registration and for five years following, at which point, a registrant would either remain an NAF or be reclassified as an LAF if its public float surpassed the $2 billion threshold.

The recalibration of the filer status framework includes two key areas of benefits for would-be NAFs. First, under the proposal, no NAF would be required to obtain auditor attestation on the company's internal control over financial reporting. The SEC believes this may incentivize some companies to go public sooner because it gives new public companies an adjustment period before they become exposed to auditor attestation requirements

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and costs. Of course, this raises the concern that some of the reliability of financial statements would be lost. However, the SEC noted it balanced this risk against the benefits both companies and investors would receive from increased participation in public markets.

Second, the proposal would extend to all NAFs the disclosure requirements and other accommodations currently available only to SRCs and EGCs. Extended SRC accommodations include, most notably, scaled financial statement requirements under Regulation S-X, fewer years of financial statements and executive compensation disclosures, and fewer required disclosures regarding performance and risk management. Extended EGC accommodations include the elimination of the auditor attestation, pay versus performance disclosure and shareholder advisory votes on executive compensation requirements.

While the SEC acknowledged the risks associated with fewer disclosure requirements of smaller companies, it reemphasized the overall benefit investors would receive from increased investment options in the public market.

Small Non-Accelerated Filers

Within the NAF category, the SEC proposal includes a subcategory of SNF. To fall within this subcategory, a company would have to (1) be an NAF; and (2) report total assets of $35 million or less as of the end of each of its two most recent second fiscal quarters. Once an SNF company satisfied these two prongs, it would receive an additional 30 days to file its Form 10-K, thereby extending the filing deadline from the 90 days applicable to NAFs to 120 days after its fiscal year ends. SNFs, under the proposed amendments, would also be granted an additional five days to file their quarterly reports on Form 10-Q, extending the filing deadline to 50 days compared to the 45-day requirement for other NAFs.

The SEC believes that the $35 million threshold opens these benefits to the types of companies that would most benefit from the relaxed requirements and extra time. In the SEC's view, such allowances would reduce the compliance burdens for smaller registrants, thus encouraging them to continue as public companies.

Public comments on the proposed amendments were due to be submitted with the SEC by July 20, 2026.

Rescission of Climate-Related Disclosure Rules

On May 29, 2026, the SEC proposed to rescind, in their entirety, the climate-related disclosure rules adopted by the SEC on March 6, 2024 (the "Climate Disclosure Rules"). The Climate

Disclosure Rules amended the SEC's rules under the 1933 Act and the 1934 Act to require registrants to provide certain climate-related information in their registration statements and annual reports. The SEC's proposal would withdraw those previously adopted rules before they become effective.

The Climate Disclosure Rules were adopted by the SEC in March 2024 by a 3-2 vote after a contentious rulemaking process. The rules would have created a new subpart 1500 of Regulation S-K and a new Article 14 of Regulation S-X. Regulation S-K generally governs non-financial statement disclosure in SEC filings, such as risk factors, business descriptions and management's discussion and analysis. Regulation S-X, by contrast, governs the form and content of financial statements included in SEC filings. By amending both Regulation S-K and Regulation S-X, the Climate Disclosure Rules would have required climate-related disclosure both outside of the financial statements and, in certain respects, within the notes to the audited financial statements.

The Climate Disclosure Rules would have required public companies to disclose, among other things, information regarding greenhouse gas ("GHG") emissions, climate-related risks, the board's oversight of climate-related risks, management's role in assessing and managing such risks, climate-related targets or goals and certain financial statement effects of severe weather events and other natural conditions. "Climate-related risks" generally refer to risks that climate-related matters could materially affect a company's business, results of operations or financial condition. These risks may include physical risks, such as risks arising from hurricanes, floods, wildfires or extreme temperatures, and transition risks, such as risks associated with changes in law, technology, market preferences or business strategy related to a transition to a lower-carbon economy.

One of the more significant components of the Climate Disclosure Rules related to GHG emissions. GHG emissions are commonly categorized into different "scopes", Scope 1 and Scope 2, based on their source. Scope 1 emissions are direct GHG emissions from sources owned or controlled by the company, such as emissions from company-operated facilities or vehicles. Scope 2 emissions are indirect GHG emissions that result from the generation of electricity, steam, heating or cooling that the company purchases and consumes. Under the Climate Disclosure Rules, large accelerated filers and accelerated filers that were not otherwise exempt would have been required to disclose Scope 1 and/or Scope 2 emissions if such emissions were material.

The Climate Disclosure Rules also would have required certain registrants to provide an attestation report covering their GHG emissions disclosure. An attestation report is a report prepared

by an outside assurance provider that evaluates the reliability of specified information, somewhat similar in concept to the way an auditor provides assurance over financial statements, although the applicable assurance standards and level of assurance may differ. The attestation requirement was subject to phased-in compliance dates, and the level of assurance would have increased over time for certain larger registrants.

In addition, the Climate Disclosure Rules would have required certain disclosures regarding internal carbon pricing, if material. Internal carbon pricing generally refers to a company's internal practice of assigning a cost to carbon emissions for planning, budgeting or decision-making purposes. The Climate Disclosure Rules also would have required disclosure regarding climate-related targets or goals that had materially affected, or were reasonably likely to materially affect, the company's business, results of operations or financial condition. These targets or goals could include, for example, goals related to reducing emissions, increasing renewable energy use or achieving carbon neutrality.

With respect to financial statement disclosure, the Climate Disclosure Rules would have required registrants to disclose certain capitalized costs, expenditures expensed, charges and losses incurred as a result of severe weather events and other natural conditions, subject to specified thresholds. These financial statement disclosures also would have covered certain costs and losses related to carbon offsets and renewable energy credits or certificates ("RECs") if used as a material component of a registrant's plan to achieve its disclosed climate-related targets or goals. Carbon offsets generally refer to instruments intended to represent reductions or removals of GHG emissions, while RECs generally represent the environmental attributes associated with renewable electricity generation.

After the Climate Disclosure Rules were adopted, various parties filed petitions for judicial review in multiple federal courts of appeals. These petitions were later consolidated in the U.S. Court of Appeals for the Eighth Circuit. On April 4, 2024, the SEC stayed the Climate Disclosure Rules pending completion of judicial review. On March 27, 2025, the SEC voted to end its defense of the Climate Disclosure Rules in the litigation. On September 12, 2025, the Eighth Circuit held the consolidated petitions for review in abeyance until the SEC either reconsiders the rules through notice-and-comment rulemaking or renews its defense of the rules.

In proposing to rescind the Climate Disclosure Rules, the SEC stated that the rules exceeded the scope of its statutory authority. The SEC explained that its disclosure authority under the federal securities laws allows it to require disclosure that is within the

scope of the securities laws and useful to investors, but that the Climate Disclosure Rules, in the SEC's current view, went beyond those statutory limits by imposing a highly specific disclosure regime focused on climate-related matters. The SEC also emphasized the importance of materiality, the securities law concept that information is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. The SEC has now taken the position that the Climate Disclosure Rules went outside the scope of what an investor would consider important.

The SEC also identified several policy reasons for rescinding the Climate Disclosure Rules. First, the SEC stated that the rules were unnecessary and inconsistent with a registrant-specific, materiality-based approach to disclosure. A registrant-specific approach means that disclosure should depend on the particular facts and circumstances of the company, rather than imposing the same prescriptive disclosure requirements on nearly all public companies regardless of size, industry or business model. The SEC reasoned that existing disclosure requirements already require companies to disclose material risks, including material climate-related risks, when those risks are relevant to the company.

Second, the SEC stated that the Climate Disclosure Rules strayed beyond the policy concerns of the federal securities laws. In the SEC's view, the federal securities laws are designed to protect investors through disclosure that is material to investment and voting decisions, not to require disclosure of information because it may be useful to particular policy goals or certain stakeholders outside the traditional investor-protection framework.

Third, the SEC stated that the Climate Disclosure Rules imposed substantial costs on public companies and their shareholders that were not justified by the informational benefits they may provide to some investors. These costs would include costs associated with collecting climate-related data, developing disclosure controls and procedures for that data, obtaining third-party assurance for certain emissions information and preparing additional financial statement disclosures. The SEC also expressed concern that the costs of the rules could discourage companies from becoming or remaining public companies, which would contravene the SEC's policy objectives of facilitating capital formation and promoting public company status.

The SEC acknowledged that some investors and market participants use climate-related information in their investment decisions and that registrants may continue to provide climate-related disclosure voluntarily or pursuant to other existing legal

requirements. However, the SEC stated that market-driven disclosure and existing principles-based disclosure obligations are better suited to elicit material climate-related information than the prescriptive requirements set forth in the Climate Disclosure Rules.

Public comments on the proposed rescission were due to be submitted with the SEC by August 4, 2026.

The Trade-Through Rule and Locked and Crossed Markets Provisions of Regulation NMS

On June 11, 2026, the SEC proposed amendments to Regulation NMS under the 1934 Act that would rescind (i) Rule 611 of Regulation NMS, commonly referred to as the "trade-through rule" or "order protection rule," (ii) Rule 610(e) of Regulation NMS, which restricts locked and crossed markets, (iii) certain related defined terms in Rule 600 of Regulation NMS and (iv) certain related provisions in Regulation NMS and other SEC rules. Adopted in 2005, Regulation NMS is the SEC's regulatory framework for the national market system for exchange-listed securities. The "national market system" generally refers to the regulatory structure designed to link trading markets together so that investors can benefit from efficient execution, fair competition among trading venues, price transparency and best execution of investor orders.

Rule 611 of Regulation NMS (Trade-Through Rule)

Rule 611 was adopted as one of the central components of Regulation NMS and was intended to protect better-priced quotations displayed on one trading venue from being ignored by another trading venue. To comply with Rule 611, trading centers must establish, maintain and enforce written policies and procedures that are reasonably designed to prevent trade-throughs of "protected quotations", unless such trade-through is subject to an exception. "Trading center" includes national securities exchanges, alternative trading systems ("ATSs"), over-the-counter ("OTC") market makers and other broker-dealers that execute orders internally. An ATS is a trading platform that brings together buyers and sellers of securities but is generally regulated as a broker-dealer rather than as an exchange. An OTC market maker is a dealer that regularly buys and sells securities for its own account outside of a national securities exchange. A "trade-through" occurs when a trading center executes an order of an NMS stock (which are generally exchange-listed securities (other than listed options) for which consolidated market data is circulated) at a price that is worse than a protected quotation displayed by another trading center. For example, if one trading

center is displaying an offer to sell a stock at $10.00, and another trading center executes a buy order in that stock at $10.01 without an applicable exception, the $10.01 execution may constitute a trade-through because the buyer paid more than the better-priced offer displayed elsewhere.

Rule 611 protects quotations referred to as "protected quotations." A protected quotation is generally the best-priced automated quotation of a national securities exchange or national securities association that is immediately and automatically accessible and displayed in round-lot size. A "round lot" generally refers to a standardized trading unit for a security, which is historically 100 shares for most stocks, although Regulation NMS has been amended to include a tiered round-lot framework for certain higher-priced NMS stocks. The best bid and best offer on a given venue are often referred to as the "BBO," and when consolidated across protected markets, they form the national best bid and offer, or "NBBO," which reflects the best displayed prices available across those markets.

The purpose of Rule 611 was to promote intermarket price protection by requiring trading centers to respect better-priced quotations displayed on other venues. The SEC believed that this requirement would encourage investors to display limit orders, orders to buy or sell a security at a specified price or better, by providing assurance that those orders would not be bypassed by inferior-priced executions elsewhere. However, Rule 611 does not establish a comprehensive priority system across all markets. It protects only the best displayed quotations at protected markets and does not govern time priority across venues or protect all price levels on an exchange's order book.

Rule 611 includes several exceptions, including for intermarket sweep orders ("ISOs"), which allow market participants to execute against liquidity on one venue while simultaneously routing orders to access better-priced protected quotations on other venues. Additional exceptions apply in circumstances such as rapidly changing quotations, opening and closing transactions and certain benchmark-priced trades.

The SEC's proposal to rescind Rule 611 reflects its view that the U.S. equity markets have evolved significantly since 2005. The SEC noted that markets are now highly automated, interconnected and competitive, with trading dispersed across numerous venues, including exchanges, ATSs and broker-dealer systems. The SEC expressed concern that Rule 611 may contribute to market fragmentation and operational complexity by requiring market participants to account for protected quotations across many venues, including those with limited liquidity.

The SEC also stated that Rule 611 may constrain order

handling and execution choices by emphasizing displayed price over other execution-quality factors, such as speed, size, likelihood of execution, transaction costs and market impact. The SEC believes that rescinding Rule 611 could allow market participants greater flexibility to consider these factors, particularly for large or complex orders. At the same time, the SEC emphasized that broker-dealers would remain subject to their duty of best execution, which requires them to seek the most favorable terms reasonably available for customer orders based on the circumstances.

Rule 610(e) of Regulation NMS (Locked and Crossed Markets)

Rule 610(e) addresses locked and crossed markets. A locked market occurs when the best bid equals the best offer, while a crossed market occurs when the best bid exceeds the best offer. For example, a market is locked if one venue displays a bid at $10.00 and another displays an offer at $10.00, and crossed if one venue displays a bid at $10.01 and another displays an offer at $10.00.

Rule 610(e) requires exchanges and national securities associations to adopt rules requiring their members reasonably to avoid displaying quotations that lock or cross protected quotations. When adopted, these restrictions were intended to encourage market participants to execute against existing quotations rather than display new quotations that would create locked or crossed conditions.

The SEC proposed to rescind Rule 610(e) based on similar considerations underlying its proposal to rescind Rule 611. The SEC noted that advances in automation, connectivity and access to market data may reduce the need for regulatory restrictions on locked and crossed quotations. The SEC also suggested that permitting locked markets could enhance price discovery and competition by allowing market participants to display trading interest at prices where they are willing to transact, rather than requiring them to adjust or route their orders to avoid locking another quotation.

With respect to crossed markets, the SEC acknowledged that they may raise concerns because they can indicate that executable buying and selling interest has not interacted. However, the SEC noted that modern trading systems and incentives may cause crossed markets to resolve quickly. The SEC therefore requested comment on whether both locked and crossed market restrictions should be rescinded or whether a more tailored approach would be appropriate.

Overall, the SEC stated that the proposal is intended to reduce compliance costs and allow competition, innovation and market

forces to shape the continued evolution of the U.S. equity markets. The SEC also recognized that Regulation NMS is a highly interconnected framework and that rescinding Rules 611 and 610(e) could affect trading behavior, market data, exchange competition, displayed liquidity and best execution practices. Accordingly, the SEC requested public comment on a wide range of issues, including the potential effects on fragmentation, displayed liquidity and the NBBO, as well as the appropriate implementation period if the proposed amendments are adopted.

Public comments on the proposal were due to be submitted with the SEC by August 17, 2026.

Concept Release

Concept Release on Consolidated Audit Trail and Other Audit Trails and Data Sources

On April 16, 2026, the SEC issued a concept release soliciting public comment in support of a comprehensive review of the Consolidated Audit Trail ("CAT") and other audit trails and related data sources currently used in the regulation of U.S. securities markets. A concept release is a tool the SEC uses to gather information and public input before determining whether future rulemaking or other regulatory action may be appropriate for a particular matter. The SEC issued this concept release to better understand whether changes should be made to existing audit trails and data sources in light of current market conditions, demonstrated regulatory needs, civil liberty, privacy and confidentiality concerns, cost-efficient technology solutions and cybersecurity considerations.

Background and Purpose of Audit Trails

Effective oversight of U.S. securities markets depends in part on regulators' access to accurate and timely market data. Because modern securities transactions occur electronically, at high speeds, in high volumes and across multiple trading venues, regulators often need cross-market data to reconstruct trading activity and identify potential market abuse or rule violations. "Audit trails" refer to sets of records that allow regulators to track the lifecycle of orders and transactions, including when an order was received, routed, modified, canceled or executed.

The SEC and self-regulatory organizations ("SROs") use audit trails and related data sources for market surveillance, investigations, enforcement activities, examinations and cross-market reconstructions. SROs include national securities exchanges and national securities associations, such as FINRA, and have regulatory responsibilities over their members and markets. In practice,

the SEC and SROs need access to reliable trading data to oversee market participants such as broker-dealers, exchanges and others, and to evaluate whether trading activity complies with applicable law and rules.

Before the CAT, regulators relied on several different audit trails and data sources, including the electronic blue sheet system, the Order Audit Trail System ("OATS"), the Consolidated Options Audit Trail System ("COATS"), trade reporting facilities, market-specific order book data and other manual or automated data requests. "Blue sheets" were originally paper questionnaires used to request trading information from broker-dealers. The electronic blue sheet system, or "EBS," later replaced that paper-based process with a standardized electronic request-and-response system. OATS, by contrast, was a FINRA-operated audit trail that collected order information for certain equity securities. Although these systems were useful, they did not provide a single, comprehensive, cross-market view of order activity, and combining data across systems could be cumbersome, time-consuming and prone to error.

The CAT and the CAT NMS Plan

To address those limitations, the SEC adopted Rule 613 of Regulation NMS ("Rule 613") in 2012, which required the SROs to jointly develop a national market system plan to create, implement and maintain the CAT. A national market system plan, or "NMS plan," is a plan jointly submitted by the SROs and approved by the SEC to govern certain market-wide systems or processes as required by Rule 613. The CAT NMS Plan was approved by the SEC in November 2016.

The CAT is intended to provide the SEC and SROs with access to a comprehensive, uniform, accurate and linked set of trading data. In general terms, the CAT allows regulators to follow the lifecycle of orders in NMS securities and over-the-counter equity securities across markets and trading centers. NMS securities generally include any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options, while over-the-counter equity securities are equity securities that are not NMS securities and transacted through a decentralized network of dealers.

The CAT collects information from SROs and members of a national securities exchange or national securities association (such members hereinafter referred to as "Industry Members"). The collected information includes data about the original receipt or origination of an order, order routing, receipt of routed orders,

executions, modifications and cancellations. FINRA CAT, LLC ("FINRA CAT"), a subsidiary of FINRA, currently serves as the plan processor (the "Plan Processor"). As the Plan Processor, FINRA CAT is responsible for operating the CAT processing functions, including the central repository that receives, consolidates and retains CAT data.

The CAT uses a "lifecycle linkage" process to connect order events together. When an order is created, routed, modified, canceled or executed, those events must be reported to the CAT and linked so that regulators can reconstruct what happened to the order over time. The CAT uses unique order identifiers and assigns a CAT-generated order ID to create this linked view of the order lifecycle.

Developments Since Approval of the CAT NMS Plan

The concept release was prompted by several developments since the SEC approved the CAT NMS Plan in 2016. Most importantly, the CAT has been implemented and is operating. The SROs represented to the SEC in July 2024 that the CAT had been fully implemented. Once FINRA determined that its members were effectively reporting to the CAT and that the CAT's accuracy and reliability met certain standards, FINRA retired OATS, effective September 1, 2021. As a result, the CAT is now the only audit trail or data source that provides cross-market order-level information to regulators.

At the same time, other data sources remain in use. For example, the EBS system remains operational and continues to be used by the SEC and FINRA to request certain transaction and customer information from broker-dealers. This is significant because the CAT has changed over time, particularly with respect to personally identifiable information ("PII"). PII generally refers to information that can identify a specific person, such as names, addresses, Social Security numbers, taxpayer identification numbers, dates of birth and account numbers. The SEC has provided exemptive relief and approved amendments to the CAT NMS Plan that allow the SROs to remove certain customer and account-level information from the CAT. As a result, regulators may need to rely on other systems, including EBS, to obtain customer-identifying information that is no longer collected directly in the CAT.

The SEC also highlighted cost developments. When the SEC approved the CAT NMS Plan in 2016, the SEC estimated annual operating costs of approximately $55.8 million. The concept release states that the annual costs of maintaining and operating the CAT have grown well beyond that estimate, increasing to over $248 million per year in the 2025 budget initially approved

by the SROs, while the 2026 budget approved by the SROs was approximately $156 million. The SEC noted that higher-than-anticipated trading volumes and trading activity have contributed to increased costs for data storage, processing and message traffic.

Regulatory Purpose and Scope of the CAT

The SEC requested comment on whether the CAT continues to serve its intended regulatory purpose and whether its current scope is appropriate. The SEC asked whether the CAT is necessary to enable regulators to conduct market surveillance, investigations, examinations and market reconstructions, or whether some of those uses could be satisfied through other audit trails or data sources. The SEC also asked whether any features of the CAT could be eliminated because they are unnecessary or because other data sources could provide the same information in a more efficient or cost-effective manner.

The SEC further inquired whether the CAT should continue in its current form or whether it should be replaced or substantially modified. For example, the SEC asked whether it should eliminate the CAT in favor of a different audit trail or data source, and what improvements might be gained from creating a different system rather than making incremental changes to the current CAT framework. These questions did not mean that the SEC proposed to eliminate the CAT. Rather, the concept release is designed to solicit views on a broad range of possible approaches.

Structure and Governance

The concept release also sought comment on the CAT's structure and governance. The CAT is currently structured as an NMS plan, jointly owned by the SROs and operated through Consolidated Audit Trail, LLC. The CAT NMS Plan is overseen by an Operating Committee composed of one voting member from each SRO. The Operating Committee is responsible for governance and administration of the CAT, including oversight of the Plan Processor.

The SEC asked whether the CAT should continue to be structured as an NMS plan or whether a different governance model would be preferable. For example, the concept release asked whether replacing the CAT NMS Plan with an SEC rule requiring the reporting of certain information to the SEC and/or SROs could strengthen the SEC's ability to control the scope and costs of the CAT. The SEC also requested comment on the role of the CAT Advisory Committee, which includes industry representation but does not have binding decision-making authority.

CAT Funding and Cost Management

The SEC also requested comment on CAT funding and cost management. The CAT is currently funded by both SROs and Industry Members under a funding model approved by the SEC in 2026. The concept release notes that the CAT funding model has been subject to legal challenges and that the SEC has received petitions and suggestions from market participants regarding CAT funding and operation.

The SEC asked whether there is sufficient transparency regarding CAT costs and expenses and whether additional cost-management controls should be required. The SEC also asked for comment on the allocation of CAT fees, reserve funds and potential alternative funding methods. These questions are important because CAT costs are ultimately borne by market participants in some form, and the SEC is evaluating whether the current funding and cost structure remains appropriate given the CAT's size, scope and operational costs.

CAT Design, Functionality and Data Retention

The SEC requested comment on several aspects of the CAT design and functionality, including the scope of reportable events, lifecycle linkage, processing timelines, data storage, data retention and the generation of CAT Customer IDs ("CCIDs"), identifiers that allow regulators to analyze a particular customer's trading activity across markets, brokers and accounts without the CAT itself collecting all customer-identifying information directly. The SEC also asked whether any CAT requirements should be modified or eliminated in light of prior technical changes to the CAT.

Potential Changes to EBS and Other Data Sources

The SEC also sought comment on whether other audit trails and data sources should be modified, retained, replaced or retired due to the implementation of the CAT. It also asked whether the EBS system should be modified or replaced.

The EBS system remains important because it can provide customer and account-level information that is no longer collected directly in the CAT. However, the SEC noted that some market participants have raised concerns about the security and sensitivity of PII transmitted through the EBS process. The concept release therefore asked whether there are ways to modify or replace EBS that would allow regulators to obtain necessary customer information while improving security and reducing unnecessary burdens.

The SEC also sought comment on the relationship between

CAT data and large trader reporting under Rule 13h-1. Rule 13h-1 requires certain large traders to identify themselves to the SEC and obtain a large trader identification number ("LTID"). The LTID helps regulators identify and analyze trading by persons or entities whose trading activity meets specified activity thresholds. The SEC asked whether CAT data could substitute for some transaction data currently obtained through EBS in connection with large trader reporting, and whether any large trader reporting or recordkeeping requirements should be modified.

Privacy, Civil Liberties and Confidentiality

The concept release places significant emphasis on privacy, civil liberties and confidentiality. The SEC has already taken steps to remove certain PII from the CAT, but the concept release asked whether additional changes are appropriate. The SEC sought comment on how to balance regulators' need for detailed trading data against the risks associated with collecting, storing and accessing sensitive personal or customer information.

The SEC also asked whether the SEC should further restrict how regulatory users may access or use CAT data. "Regulatory users" generally include authorized SEC and SRO personnel who access CAT data for regulatory purposes, such as surveillance, examinations, investigations and market analysis. The SEC asked whether information about the policies, procedures and controls governing use of CAT data should be made public, and whether CAT data should ever be made available to market participants in the rulemaking context, subject to appropriate aggregation, confidentiality or other safeguards.

Cybersecurity

The SEC also requested comment on cybersecurity risks relating to the CAT, EBS and other audit trails and related data sources. Cybersecurity is particularly important because these systems may contain highly sensitive trading, customer and market information. A security breach could expose confidential trading strategies, customer information or regulatory investigation information.

The SEC also asked whether existing cybersecurity protections are sufficient and whether additional requirements should apply to the CAT, EBS, the Request and Response system, the Large Options Positions Reporting system and other audit trails or related data sources. The SEC also asked how much information about cybersecurity controls should be shared with market participants or the public, recognizing that transparency may improve accountability but excessive disclosure could create security risks.

Public comments on the concept release were due to the SEC on or before June 22, 2026.

Major Case Decisions Supreme Court Resolves Circuit Split and Holds that the SEC Can Seek Disgorgement as a Securities Fraud Remedy Without Showing Pecuniary Loss

On June 4, 2026, the Supreme Court resolved a critical circuit split and unanimously held that the SEC can seek disgorgement as a remedy for securities violations even where the victims suffered no financial loss.

The SEC's target in this case was Ongkaruck Sripetch, a trader who engaged in "pump and dump" fraudulent schemes involving penny stock companies. The SEC initiated a civil enforcement action against Mr. Sripetch and charged him with six counts of securities fraud and one count of selling unregistered securities. Initially, Mr. Sripetch consented to the entry of judgment against him and the order allowing disgorgement of profits. However, when the SEC sought over $4.1 million in disgorgement, Mr. Sripetch objected, asserting that there were no victims to whom the disgorgement would be awarded because none of the investors in his scheme suffered financial loss.

The Supreme Court's analysis first traced the evolution of the disgorgement remedy under traditional equitable principles and clarified a prior Supreme Court decision, *Liu v. Securities and Exchange Commission*, 591 U.S. 71, 140 S. Ct. 1936, 207 L. Ed. 2d 401, Fed. Sec. L. Rep. (CCH) P 100851 (2020). In *Liu*, the Supreme Court addressed the decades-long development of disgorgement as an equitable remedy. *Liu* held that disgorgement exists as an available form of equitable relief for use by the SEC but placed limits on how the SEC may use the remedy. First, *Liu* clarified that disgorged funds may not exceed the net profits derived from the unlawful activity; second, any funds secured by the SEC must be awarded to the victims, not the Treasury. *Liu* further emphasized that disgorgement must follow "traditional equitable principles," and cannot act as a penalty.

Both the SEC and Mr. Sripetch addressed the effect of two statutory provisions: 15 U.S.C.A. §§ 78u(d)(5) and 78u(d)(7). Mr. Sripetch argued that § 78u(d)(7), which Congress enacted in response to *Liu*, carried the same equitable constraints on disgorgement enumerated in *Liu*, including that disgorgement be only "awarded for the victims." Mr. Sripetch's position was that without a showing of financial loss, the SEC could not collect a disgorgement award. The SEC, on the other hand, held the view that disgorgement under the new statutory provision did not

require disgorgement to be reserved only for victims who suffered financial loss.

The Supreme Court assumed without deciding that disgorgement under § 78u(d)(7) remained an equitable remedy and thus focused its analysis on whether, under traditional equitable principles, victims must have suffered pecuniary loss for the SEC to pursue disgorgement. The Court explained that under traditional equitable principles, equitable relief, as distinct from damages, measures the final disgorgement award based on the defendant's wrongful gain, rather than the victim's loss. Therefore, the Court held, that since disgorgement is a form of equitable relief, courts need not require victims to have suffered a financial loss to order disgorgement of funds. As such, the Court affirmed the Ninth Circuit's decision that the SEC was not required to make a showing of pecuniary loss in order to justify disgorgement of funds.

The decision resolved a deepening circuit split between the Ninth and Second Circuits and further clarified the standard behind the powerful disgorgement remedy.

Sripetch v. Securities and Exchange Commission, Case No. 26-466, United States Supreme Court

Circuit Court Allows Texas ESG Ban to Go into Effect

On May 29, 2026, the United States Court of Appeals for the Fifth Circuit granted Texas' motion to stay a lower court injunction that barred the enforcement of a Texas law that prohibits state entities from investing in or contracting with companies that "boycott fossil fuels."

In 2021, the Texas Legislature passed Senate Bill 13 ("SB 13") which prohibited certain state investment funds from investing in financial companies that boycott fossil fuel energy companies. As a result, Plaintiff, an organization representing over 200,000 businesses advocating for sustainable business practices, brought suit alleging violations of the First and Fourteenth Amendments. On February 4, 2026, a federal judge in the Western District of Texas declared SB 13 unconstitutional under the First and Fourteenth Amendments, and preliminarily enjoined Texas from implementing and enforcing SB 13. Texas promptly appealed and sought a stay of the lower court's injunction.

The Fifth Circuit's one-sentence per curiam order came alongside a single concurrence by Judge James Ho. Judge Ho focused on the First Amendment issue, emphasizing that "SB 13 is about spending, not speech." While private companies generally have wide discretion in how they conduct business, nondiscrimination is often a prerequisite to receiving public funds. As

Judge Ho noted, "state officials have the right to champion nondiscrimination by refusing to engage with those who discriminate. They're allowed to boycott those who boycott others." Doing so, the concurrence stated, is not viewpoint suppression because investment decisions are neither speech nor inherently expressive conduct.

Similar laws have been challenged on First Amendment grounds. The Eighth Circuit reached the merits of such a challenge in *Arkansas Times LP v. Waldrip,* 37 F. 4th 1386 (8th Cir. 2022) (en banc), cert. denied, 143 S. Ct. 774 (2023), where it rejected a First Amendment challenge to an Arkansas law that prohibited public contracts with organizations that boycott Israel. The Fifth Circuit may be the next circuit to rule on the issue.

Am. Sustainable Bus. Council v. Hegar, No. 26-50111, United States Court of Appeals for the Fifth Circuit

No More Private Right of Action to Rescind Contracts Subject to the Investment Company Act.

On June 11, 2026, in a 6-3 decision authored by Justice Barrett, the Supreme Court held that the Investment Company Act (the "ICA") does not empower private parties to sue for rescission of any contract that allegedly violates the ICA. The Supreme Court reversed and remanded the United States Court of Appeals for the Second Circuit's affirmance of summary judgment in favor of activist investors and allowed activist investors to use the ICA as a private right of action.

The case stemmed from a dispute between activist investors, Saba Capital Master Fund, Ltd., and Saba Capital Management, L.P. (together, "Saba Capital"), and a collection of investment management companies that managed closed-end funds ("the Funds"). The Funds were incorporated under Maryland law and adopted resolutions that opted into the Maryland Control Share Acquisition Act ("MCSAA"), which limits the voting power of shareholders with a disproportionate number of shares, such as activist investors. Saba Capital brought suit under Section 47(b) of the ICA, alleging that the Funds' adopted resolutions violated the ICA's requirement that every share of stock has equal voting rights and sought rescission.

The Court explained that Congress is explicit when it confers a private right of action within a statute. Where no express right of action appears, the Court will look at whether one may be impliedly found within the statute's text and structure. This consists of searching for "rights-creating language" that indicates the statute's focus on the "persons benefitted" or demonstrates a lack of an alternative enforcement scheme.

Here, the Court identified no such language. Starting with the

text of the statute, Section 47(b) makes unenforceable contracts that violate the ICA, unless a court finds that enforcement would produce more equitable results. This, taken with the fact that contract law generally treats rescission as a remedy, demonstrated to the Court that the provision was focused on the remedial powers of a court, rather than the private enforcement powers of an individual party.

Saba Capital argued that the "at the instance of any party" language in Section 47(b) demonstrates a congressional intent to create a private right of action. According to Saba Capital, the ICA language mirrors that of a different statute-the Investment Advisers Act (IAA)-that the Court in a 1979 decision *had* found to contain a private right of action. Yet, the Court reasoned, Congress's 1980 amendments to the ICA discredited the relevant similarities between the two statutes.

The dissenting Justices-Jackson, Kagan, and Sotomayor-contended that the majority had misread the text and structure of the ICA and ignored relevant legislative history.

The decision marks a victory for investment companies, which are now further insulated from litigation commenced by private actors.

FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd. No. 24-345, United States Supreme Court.