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Submitted by SEC Webform

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

RE: File No. S7-2026-18: Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status

Dear Ms. Countryman:

On behalf of the North American Securities Administrators Association, Inc. ("NASAA"),[1] I am writing in response to the U.S. Securities and Exchange Commission ("SEC" or the "Commission") Release No. 33-11419, *Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status* (the "Proposal"). The Proposal seeks to streamline the filer status framework under the Securities Exchange Act of 1934 ("Exchange Act") by raising the public float and seasoning thresholds for large accelerated filer ("LAF") status, defining all other public companies to be non-accelerated filers, and permitting non-accelerated filers to provide less detailed disclosures and forego certain reporting obligations.

NASAA has consistently advocated for robust public markets, rooted in the fundamental bargain that if a company wishes to sell its securities to the general public, then it must disclose detailed information about the business publicly. This disclosure framework has required public companies to register with the SEC, file detailed disclosures on Forms 10-K, 10-Q, and 8-K, and ensure that all material facts and associated risks are made available to prospective investors so they can make informed decisions. NASAA generally supports regulatory efforts intended to revitalize the public capital markets consistent with this time-tested fundamental bargain, and we stand ready to work with the Commission to achieve this laudable goal. Unfortunately, the Proposal in its current form would deprive the markets and investors of important financial and other information. The Commission should, therefore, decline to move the proposal forward.

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[1] Organized in 1919, NASAA is the oldest international organization devoted to investor protection. NASAA's membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, México, Puerto Rico, the U.S. Virgin Islands, and Guam. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

In short, the proposed revisions to the Exchange Act filer status framework would decrease the amount, quality, and timeliness of information available to investors through public disclosures. While the Commission expects that the Proposal will encourage more companies to go public by reducing compliance costs, the Proposal fails to analyze the impact of other factors that have contributed to the declining number of public companies and IPOs, and thus fails to make a convincing case that the Proposal's value will outweigh its potential costs. Further, even if the Proposal would materially grow the public markets, it does not adequately consider the potential impact of the proposed amendments on investor protection. Additionally, the Proposal does not adequately justify the decisions to nearly triple the current $700 million public float threshold for LAFs or to delay full reporting obligations for five years, regardless of an issuer's public float, valuation, organizational maturity, or any other metric.

I. **The Proposal Would Decrease The Amount, Quality, And Timeliness Of Information Available To Investors.**

The existing filer status framework embodies the straightforward principles of full disclosure, targeted accommodations for smaller issuers, and accelerated filing deadlines for larger companies able to bear them. Indeed, the three-tier framework established by the Commission between 2002-2007 was relatively simple. Filers were divided into three statuses: LAFs, accelerated filers ("AF"), and smaller reporting companies ("SRC"), with targeted disclosure accommodations available for the latter.[2] The framework has become more complex as the SEC and Congress have added layers and accommodations over time, such as adding the emerging growth company ("EGC") status (based on annual revenue) and applicable accommodations, raising the public float and revenue thresholds for SRC accommodations to overlap with AF status, and expressly excluding companies that are SRCs by annual revenue, rather than by public float, from the definitions of AF and LAF.[3]

The goal of simplifying the existing framework to make it easier for companies to comply is an important one that could result in savings of time and resources. However, instead of approaching that goal through a series of targeted adjustments meant to preserve fundamental investor protections, the Proposal would deprive the markets of information through an overhaul of the existing framework by increasing the public float and seasoning thresholds for LAFs to $2 billion and 60 months, respectively, eliminating the AF and SRC statuses, and defining all non-LAF issuers as non-accelerated filers ("NAF"), subject to longer filing deadlines and the reduced disclosure requirements currently applicable to SRCs and EGCs.[4]

The Proposal acknowledges that "this approach will result in the loss of some information, loss of auditor attestation of [the effectiveness of issuers' internal control over financial reporting

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[2] *See* Proposal at 26-28.

[3] *See id*. at 30-35.

[4] *See id*. at 64-85 (detailing the SRC and EGC disclosure accommodations proposed to be extended to all issuers with less than $2 billion in public float and five years of seasoning as a public company).

("ICFR")], and longer reporting deadlines for certain registrants that currently qualify as LAFs or AFs but would qualify as NAFs under the proposed rules."[5] The Proposal would fundamentally alter the current disclosure framework by causing approximately 29% of all issuers, collectively representing nearly 6% of total public market float, to transition from a full-disclosure regime to one permitting substantially less detailed disclosures about matters such as material risks, financial condition, and executive compensation.[6] In sum, the Proposal would shrink the population of issuers required to provide full disclosure from approximately 48% to 19.2% of public companies, a decrease of approximately 60%, and would reduce the portion of total public market float subject to fulsome disclosure by nearly 6%.[7] The Proposal would also newly exempt approximately 27% of all current issuers from the ICFR auditor attestation requirement, reducing the population of issuers subject to that requirement by approximately 58%.[8] The Proposal would also reduce the timeliness of the information provided. For issuers that would transition from LAF or AF status to NAF status under the Proposal – approximately 28.8% of all public companies today[9] – investors would need to wait an additional 15-30 days before those issuers are required to file their annual reports and an additional five days for quarterly reports.[10]

Investors, analysts, and other market participants rely on the disclosures in issuers' annual and quarterly reports to assess those companies' financial conditions, price the companies' securities, and make informed investment decisions. Research cited in the Proposal indicates that share prices react to these filings, and that "analysts and other information intermediaries that provide information to investors often rely on Commission-required disclosures of the company and peer firms in their research coverage."[11] The benefits of the ICFR attestation requirement, and the potential cost of removing that requirement from such a significant portion of issuers in the public markets, are well documented in the Proposal. Among other benefits, the ICFR attestation requirement is effective at revealing internal-control deficiencies, enhancing the quality and reliability of issuers' financial statements, preventing fraud and insider trading, improving investor confidence, and ultimately reducing the cost of capital for public issuers.[12] Conversely, the Proposal acknowledges the risk that losing the ICFR attestation requirement could lead to less

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5 *Id*. at 55.

6 Calculations are based on the data provided in the Proposal. *See* Proposal at 12-13, Table 2 (providing data about the percentage of public issuers and total public market float represented by different filer status combinations under the current framework), 149-50 (estimating that 19.2% of all public companies would continue to be LAFs under the Proposal, and that those issuers would represent approximately 93.5% of total public market float).

7 *See id*. at 12-13, 149-50.

8 Proposal at 12-13, Table 2; *id*. at 152.

9 *Id*. at 146.

10 *See id*. at 11, Table 1.

11 *Id*. at 165, 166 n.384. *See also id*. at 170 (acknowledging that the Proposal would also "reduce the information available to . . . lenders, suppliers, customers, etc. to assess the company's financial condition and price the registrant's securities" (internal parentheses omitted)).

12 *See id*. at 62-63, 157-60.

effective ICFR, which could adversely affect financial controls, reporting quality, and operations, increase the risk of fraud, and lead to less efficient capital allocation overall.[13] Unsurprisingly, the Proposal acknowledges that these losses would make it more costly and more difficult for investors to evaluate issuers for potential investment, resulting in "less informed investment and voting decisions."[14]

These potential impacts would likely be magnified by the proposed five-year seasoning requirement. In addition to establishing a $2 billion floor for comprehensive disclosure requirements and ICFR attestation, the Proposal would relieve every issuer of those important obligations for five years upon going public, regardless of the company's size, sophistication, maturity, market attention, or any other metric. If this component of the Proposal is implemented, investors and others would be deprived of information not only about small companies and niche start-ups, but also about companies with mega-cap valuations and robust, extensive market interest.[15]

The primary rationale offered in the Proposal is the expectation that reducing compliance costs will make the public markets more attractive, thereby encouraging more companies to go public and stay public.[16] However, efforts to expand access to investor capital in the public markets can result in unintended negative consequences, especially when that goal is pursued by reducing standards and safeguards necessary to access the benefits of those markets.[17] Any effort to revitalize the public markets should seek not only to increase the number of public companies, but to do so in a way that promotes and maintains investor protection and trust in the markets. As explained further below, the Commission has not done enough in the Proposal to show that it is likely to achieve its primary goal, or that it would do so without weakening investor protection.

II. <u>The Proposal Fails To Analyze Why Public Company Listings Have Declined</u>.

The factors that have contributed to the decades-long decline in the number of public companies and IPOs are multifaceted, layered, and complex. However, as was the case with the Commission's *Semiannual Reporting* proposal, this Proposal does little to diagnose the underlying causes to ensure that the Proposal is appropriately tailored to address the reasons for the decline in

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13 *See id*. at 158-60.

14 *Id*. at 168, 170, 174.

15 *See*, *e.g.*, Hal Bundrick, *Anthropic IPO: What to know before you buy the stock*, Yahoo! Finance (June 16, 2026); Reuters, *BofA extends first $520 million loan to OpenAI ahead of IPO, source says* (July 8, 2026); Laurence Darmiento, *SpaceX is poised to make history with record $75-billion stock IPO*, Los Angeles Times (June 11, 2026).

16 *See*, *e.g.*., Proposal at 35, 38-39.

17 *See*, *e.g.*, *Order Granting Approval of a Proposed Rule Change to Adopt Additional Requirements for Listings in Connection with an Offering Under Regulation A of the Securities Act*, SEC Rel. No. 34-86246 (June 28, 2019) (approving proposed new listing requirements for Nasdaq, noting "concerns regarding maturity and preparedness for listing" of issuers seeking to list securities on a national exchange in connection with offerings under Regulation A, as well as the "lighter disclosure requirements" under that framework).

public company listings.[18] As a result, the Commission has not made a convincing case that the Proposal will materially increase the number of public companies and IPOs, or draw more investors to those issuers that may be incentivized to go public.

One critical factor that the Proposal fails to address is the impact of decades of rules and policies designed to expand the private capital markets. While the Proposal acknowledges that the private markets have grown as the public markets have shrunk,[19] it fails to assess how the Commission's policy choices have contributed to the growth of the private markets or how those policies have affected the incentives to go public relative to the incentives to remain private.[20] As we explained in response to the *Semiannual Reporting* proposal, any effort to increase the number of public company listings as a result of this Proposal would be frustrated by actions, both past and present, designed to further expand private-market investment.[21] In a 2023 report, NASAA found that prior efforts to reinvigorate the public markets were largely offset by contemporaneous initiatives that collectively allowed issuers to raise unlimited amounts of capital in the private markets and forestall indefinitely the need to become a public reporting company, thereby reducing the size, diversity, and growth of companies in the public markets.[22] Recent proposals and actions appear poised to have similar results and erode any gains achieved as a result of the Proposal.[23]

While the Proposal seeks to increase the supply of public company issuers, it fails to meaningfully consider the extent to which other factors have contributed to the decline by reducing or limiting buy-side demand. For example, a typical investor is more likely to invest in stocks indirectly, through mutual funds, exchange-traded funds, and other registered funds, than they are to invest directly. Today, more than 56% of U.S. households invest in registered funds.[24] The assets under management of these institutional investors has grown from $19 trillion at the end of 2016 to nearly $45 trillion today, and these funds now hold 33% of U.S. stocks and 24% of U.S.

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[18] *See* Letter from Marni Rock Gibson, NASAA President, to Vanessa A. Countryman, Secretary, SEC, Re: File No. S7-2026-15: *Semiannual Reporting* (July 6, 2026) ("July 6 Letter").

[19] *See* Proposal at 13-14 ("Unsurprisingly, a similar time period (2009-2017) saw significant growth in private markets, with private markets regularly outpacing public markets in capital raised.").

[20] *See generally* Elisabeth de Fontenay and Gabriel Rauterberg, The New Public/Private Equilibrium And The Regulation Of Public Companies, Symposium Article, 3 Col. Bus. L. Rev. 1199, 1236-40 (2021) (discussing the growth in the availability of private capital and resulting changes in the incentives to go public); *id.* at 1240 (citing evidence "suggest[ing] that increasing the disclosure obligations imposed on *private* companies increases their propensity to *go public*." (emphases original)).

[21] *See* July 6 Letter, *supra* note 18.

[22] NASAA Report and Recommendations for Reinvigorating Our Capital Markets, 11-12 (Feb. 7, 2023).

[23] *See*, *e.g.*, July 6 Letter, *supra* note 18, at 3-4; Fiduciary Duties in Selecting Designated Investment Alternatives, 91 Fed. Reg. 16,088 (proposed Mar. 31, 2026) (to be codified at 29 C.F.R. pt. 2550); Paul S. Atkins, Chairman, SEC, Prepared Remarks Before SEC Speaks (May 19, 2025); SEC Proposed Rule on Updating the Exempt Offering Pathways (Spring 2025), Unified Agenda of Regulatory and Deregulatory Actions (last visited July 15, 2026).

[24] ICI, 2026 Investment Company Fact Book, 10 (Apr. 27, 2026).

corporate bonds.[25] While these institutional investors comprise a significant portion of the demand for public securities, they tend not to invest in smaller public companies, due in large part to concerns about the liquidity of those securities and the availability of private-market alternatives.[26] While the Proposal recognizes these and other factors among the "conditions influencing companies . . . to remain private,"[27] its analysis of factors other than regulatory burden effectively ends there. In short, the Proposal does not explain how the proposed amendments would alleviate or overcome these obstacles or why smaller companies would issue securities into less liquid markets, even at a lower cost.

Before proposing to fundamentally alter the current disclosure framework, the Commission should more fully analyze and report on how the deliberate expansion of the private markets and other factors have affected the incentives to go public, and then explain why it expects the Proposal will materially increase the number of public companies and IPOs. Absent a clear explanation of how the Proposal will be effective, the Commission has not made a convincing case that the Proposal will be worth the potential costs.

III. The Proposal Does Not Adequately Consider The Potential Impact To Investor Protection.

When the Commission is engaged in rulemaking under the Exchange Act, it must "consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation."[28] As it did in the *Semiannual Reporting* proposal, the Commission spends considerable time in the Proposal discussing the impact of compliance costs on companies' decisions to go public or stay private. However, it gives only passing attention to the very real costs that it would impose on investors and the markets more broadly.

As discussed above, the Commission admits that the Proposal "will result in the loss of some information, loss of auditor attestation of ICFR, and longer reporting deadlines"[29] for a significant portion of existing issuers, and for all newly-public issuers for a period of five years. The Proposal acknowledges that decreasing the information available through public disclosures would make it more difficult and more costly for investors to evaluate public companies for potential investment, potentially resulting in less informed decisions,[30] and ultimately "weakening

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25 ICI, 2017 Investment Company Fact Book, 24 (Apr. 26, 2017); ICI, 2026 Investment Company Fact Book, 10 (Apr. 27, 2026)

26 *See*, *e.g.*, Proposal at 145 n.329; Speech, Rick A. Fleming, Fmr. SEC Investor Advocate, *Enhancing the Demand for IPOs*, NASAA 2017 Public Policy Conference (May 9, 2017); Marshall Lux and Jack Pead, Mossavar-Rahmani Ctr. For Bus. And Gov't, *Hunting High and Low: The Decline of the Small IPO and What to Do About It*, (M-RCBG Associate Working Paper Series No. 86), 11-12 (Apr. 2018).

27 *See* Proposal at 14. *See also id*. at 145 n.329.

28 15 U.S.C. § 78c(f).

29 *See* Proposal at 55.

30 *See*, *e.g.*, Proposal at 168, 170, 174, 176.

investor protection."[31] It also recognizes that the loss of ICFR attestation could negatively impact financial controls, undermine the quality and reliability of financial reporting, and increase the risk of fraud, which could in turn reduce investor confidence and result in less efficient capital allocation.[32]

While the Commission recognizes all of these potential consequences as possibilities, it fails to grapple with the likelihood that the potential harms will manifest or the extent of those harms. Instead, the Proposal speculates that NAFs might comply voluntarily with the more onerous reporting requirements applicable to LAFs,[33] or that information may be disseminated through alternative channels during the very reporting delays caused by the Proposal.[34] The Proposal attempts to minimize the risk of fraud by noting that smaller issuers, which are more frequently among those associated with restatements and alleged fraud, generally receive SRC disclosure accommodations and are exempt from the ICFR attestation requirement already, and that the issuers that would be newly exempt from the ICFR attestation requirement under the Proposal "would generally be larger and more established[.]"[35] Even accepting both of those propositions as true, the Proposal fails to explain the justification for extending those accommodations to companies with $1.9 billion public floats, or to the very largest, most widely followed companies for five years after they go public.[36] Indeed, the ICFR attestation requirement stems from devastating accounting scandals at companies that would have been considered "larger" and "more established" than most.[37]

Ultimately, the Commission concludes that "any loss of information and assurance or increased costs to investors . . . would be justified by the expected reduction in costs to those

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31 *Id*. at 201.

32 *Id*. at 158-60. *See also* James D. Cox, *Sox's Impact on the Quality of Financial Reporting*, 78 Bus. Law. 685, 697 (2023) ("Abundant evidence explains, in part, that weaknesses within a firm's financial reporting system impede firm performance. To this end, evidence reflects that weak internal controls contribute to the generation of poor information that leads to suboptimal performance. Overall, a reliable reporting system is correlated with better management stewardship.").

33 *See*, *e.g.*, *id*. at 168 (stating that some issuers newly-eligible to provide reduced disclosures "might elect to continue to provide existing disclosures"), 155 (stating that issuers exempt from the ICFR attestation requirement "may choose to voluntarily obtain an ICFR auditor attestation," even though "[t]he rate of voluntary compliance with ICFR auditor attestation has generally been low").

34 *See*, *e.g.*, *id*. at 165 ("[I]t is reasonable to assume that the disclosures in periodic reports become incrementally less important to the extent that key information filters into the marketplace through other channels over time."), 174 ("The economic effects would be lower to the extent that the information being omitted is provided in other filings or may be readily obtained elsewhere[, such as in] recently filed registration statements.").

35 *Id*. at 86, 160-61 and n.372.

36 *See* Cox, *supra* note 32, at 701 (citing "a recent study finding that more than one-third of the firms that graduated into the accelerated filer designation, so that their auditor was required to attest to management's assessment of internal controls, garnered negative attestations of managements' earlier assessments").

37 *See id*. at 685-86 (discussing the Sarbanes-Oxley Act of 2002 and its origins in accounting scandals at companies such as Enron, WorldCom, and AOL-Time Warner).

registrants, as well as by effects that may encourage more companies to go and stay public, which ultimately would benefit investors in those companies."[38] However, the Proposal does not support the Commission's predictive judgment on this point. Nor does the Proposal analyze the likelihood of voluntary compliance or offer any reason to expect that it will occur to any meaningful degree. Voluntary compliance appears unlikely, given that the Proposal relies on cost-reduction as the necessary means to induce companies to go public and remain public, characterizes the ICFR attestation requirement as "the most costly aspect of being an AF," and admits that "[t]he rate of voluntary compliance with ICFR auditor attestation has generally been low."[39] Although the Commission acknowledges that the Proposal could increase costs and other burdens for investors, it does little to estimate or quantify those costs, or to hazard a guess about the extent of the harm that could be caused to investors and the markets.

The Proposal's speculation is not a replacement for careful comparison and analysis. While we generally agree that investors are better served when they receive more disclosure than less (or none), the Commission does not do enough to assess the impact that the Proposal may have on the quality and reliability of disclosures in issuers' periodic reports, the risk of fraud, and investors' trust in the public markets. We do not believe that simply comparing the Proposal's reduced disclosure to the private markets, especially when the Commission appears to acknowledge that those markets lack the transparency needed to truly protect investors,[40] provides a convincing rationale for a framework that could negatively affect investors across the entire spectrum of market capitalization. As other commenters have already addressed, the Commission should consider more thoroughly the costs and benefits of the Proposal, including its potential impact on both investor protection and investor confidence in the public markets.[41]

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38 Proposal at 39.

39 *See*, *e.g.*, *id*. at 62, 155.

40 *See id*. at 86 ("On balance, investors in smaller companies are better protected if those companies are subject to the requirements of the Exchange Act with scaled disclosure rather than in the private markets where there is often less disclosure.").

41 *See*, *e.g.*, Letter from Prof. Shivaram Rajgopal *et al*. to Office of the Secretary, SEC, Re: *File No. S7-2026-18 — Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies (Release Nos. 33-11419; 34-105515)* (July 12, 2026) (identifying material gaps in the Proposal's cost-benefit analysis and proposing reasonable alternatives that are not analyzed in the Proposal); Letter from John C. Coates *et al*. to Vanessa A. Countryman, Secretary, SEC, Re: *Comment on SEC Proposal, Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies*, 19 (June 26, 2026) (arguing that "to justify [further accommodations from the ICFR attestation requirement] would require a serious discussion of why this is appropriate given the higher levels of fraud, ineffective internal control over financial reporting and restatements summarized by the Commission in this Proposal Release"); Letter from Weili Ge *et al*. to Vanessa A. Countryman, Secretary, SEC, Re: *Comment on SEC Proposal, Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies* (July 1, 2026) (explaining that "the discussion of academic research appears to omit or underweight relevant evidence, resulting in an incomplete assessment of the tradeoffs involved"); Letter from Lawrence J. Trautman to Chairman Paul S. Atkins, c/o Vanessa A. Countryman, Secretary, SEC, Re: *Comments to File S7-2026-15 - Proposed Amendments to Exchange Act Rules 13a-13 and 15d-13*–*Optional Semi-annual*

IV. <u>The Proposed 60-Month Seasoning Period Is Excessive</u>.

As proposed, the 60-month seasoning period would allow any newly public issuer to delay compliance with the fulsome reporting and other requirements applicable to LAFs for five years, regardless of the issuer's public float, valuation, organizational maturity, or any other metric. The proposed seasoning period is excessive, particularly when combined with the proposed increase in the LAF public float threshold.

The Proposal offers no reason to accept the proposition that an issuer large enough to have a public float at or approaching $2 billion genuinely needs five years to adjust to the disclosure and filing requirements of a public company, especially as companies have been successfully adjusting to those requirements at or near the current $700 million threshold.[42] To the extent that the proposed $2 billion public float threshold reasonably approximates the type of issuer about which investors are likely to demand fulsome and timely disclosure, a five-year delay cannot be squared with investor protection. This is particularly true where the seasoning threshold would apply to issuers with large- or mega-cap valuations.[43] While these issuers might be new to the public markets, they often have extensive operational history, resources, and infrastructure that largely obviates the need for an extended on-ramp.

The analogy to the statutory accommodations available to EGCs is unpersuasive. EGC accommodations were designed to accommodate issuers with a particular combination of size, growth trajectory, and capital needs.[44] Seasoning serves a different purpose, allowing a newly-public issuer sufficient time to establish the necessary systems, internal governance, and compliance infrastructure to meet the obligations of a public company. Once those objectives are substantially achieved, continued delay no longer advances the rationale for a seasoning requirement.

If the Commission elects to adopt the proposed $2 billion public float threshold, it should leave the seasoning threshold at 12 months. As the Commission explains in its discussion of alternatives considered, this approach may benefit investors by reducing information asymmetry and costs, compared to the Proposal.[45] If an extended seasoning period beyond 12 months is necessary, it should be significantly shorter than five years. A 24-month seasoning period would

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Reporting In lieu of Quarterly Reports on Form 10-Q, 16-20 (June 24, 2026) (making "the case for more corporate disclosure, not less").

[42] To the extent that a company at or near the $2 billion threshold needs a full five years, it is reasonable to question whether that company is operationally mature enough to enter the public markets at all.

[43] *See*, *e.g.*, Yahoo! Finance, *Space Exploration Technologies Corp. (SPCX)* (last visited July 9, 2026).

[44] Notably, Congress sought to keep EGCs and the accommodations designed for them conceptually distinct from LAFs by defining the EGC status such that an issuer ceases to be an EGC as of the date on which that issuer is deemed to be an LAF. 15 U.S.C. § 77b(a)(19)(D). Extending the accommodations intended for EGCs to all issuers, regardless of size, maturity, or sophistication, is not consistent with Congress' intent in establishing the EGC status.

[45] *See* Proposal at 207.

afford new public issuers an extended on-ramp to Exchange Act compliance, avoid unnecessary delay in full reporting, and would ensure that the issuer has gone through at least one annual reporting cycle and four quarterly reporting cycles. It would also complement the requirement that the public float threshold be met for two consecutive years before an issuer would change from NAF to LAF under the Proposal.

V. **The Proposal Does Not Adequately Justify Increasing The Public Float Threshold To $2 Billion.**

Full disclosure has long been the default for public companies, with targeted accommodations provided for smaller issuers that warrant them. The AF and LAF categories were established principally to accelerate filing deadlines for certain issuers to comply with those default requirements, rather than to define the substantive disclosure regime for those issuers.[46] Thus, when the Commission established the $75 million and $700 million public float thresholds for accelerated filers and large accelerated filers, respectively, it did so because it determined that those thresholds were reasonable proxies for market interest in accelerated disclosure and sufficient resources to comply with accelerated reporting deadlines.[47] Over time, the Commission has adjusted the framework by establishing targeted accommodations from the default requirements for certain companies, including for companies with public floats up to $250 million.[48]

We generally agree that principled adjustments to the framework may be appropriate, given that the AF and LAF thresholds have not been updated since they were established. However, by nearly tripling the LAF threshold and eliminating the AF status, the Proposal would turn full

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46 *See* *Revisions to Accelerated Filer Definition and Accelerated Deadlines for Filing Periodic Reports*, SEC Release No. 33-8644 (Dec. 21, 2005) ("LAF Adopting Release"); *Acceleration of Periodic Report Filing Dates and Disclosure Concerning Web Site Access to Reports*, SEC Rel. No. 33–8128, 67 Fed. Reg. 58480 (Sept. 16, 2002) ("AF Adopting Release").

47 *See* LAF Adopting Release at 17 (recognizing the scope of the LAF threshold, and explaining that such issuers "are more closely followed by the markets and by securities analysts" and "larger issuers generally have sufficient financial reporting resources and sufficiently robust infrastructures to comply with the [accelerated] deadlines"); AF Adopting Release, 67 Fed. Reg. at 58488 (agreeing that "investors in smaller companies value the timeliness of corporate disclosures" and recognizing the need to "balance the market's need for information with the ability of companies to prepare that information without undue burden"), 58489 (explaining that "a public float test serves as a reasonable measure of company size and market interest," that "larger companies . . . are more likely than smaller companies to have the infrastructure and resources to report on an accelerated timeframe," and that the "$75 million public float threshold excludes nearly half of all publicly traded companies").

48 *See*, *e.g.*, *Smaller Reporting Company Definition*, SEC Rel. No. 33-10513 (June 28, 2018) ("2018 Adopting Release") (increasing the public float threshold at which a company would cease to be an SRC from $75 million to $250 million and including as SRCs all companies with annual revenues under $100 million and less than $700 million in public float); *Accelerated Filer and Large Accelerated Filer Definitions*, SEC Rel. No. 34-88365 (Mar. 12, 2020) (excluding SRCs meeting the revenue test from the AF and LAF definitions).

disclosure into the exception, rather than the rule. The Proposal fails to make a convincing case that $2 billion is the appropriate floor for those vital investor protections.[49]

The Commission justifies the proposed increase to $2 billion by estimating that the increased threshold (in combination with the increased seasoning requirement) would include approximately 19% of public companies and 93.5% of total public market float in the LAF category, similar to the coverage of the $700 million threshold (with 12 months of seasoning) when it was adopted.[50] Thus, the Commission claims that the Proposal would "reestablish the relationship" that existed when the current thresholds were adopted.[51] This rationale puts too much weight on the 2005 Commission's observations. Instead of focusing on the proportion of public companies and public float that would be LAFs under the proposed thresholds, the Proposal should focus on the characteristics of issuers likely to be at, above, or below the proposed thresholds to determine whether those issuers attract the kind of market interest and have the compliance resources that justified the current thresholds when they were adopted. The Proposal does not do enough to assess these characteristics or explain why $2 billion is the right number. It is particularly noteworthy that the section of the Proposal entitled "Registrant Characteristics"[52] includes no discussion of market demand for information about companies at, above, or below the proposed threshold, nor does it provide an explanation of why it believes that an issuer with $2 billion in public float is more capable of complying with full disclosure and ICFR attestation requirements than an issuer with a public float of $1.9 billion.

The Proposal also fails to adequately consider potential alternatives. While the Proposal acknowledges certain alternative thresholds, it does not explain its rejection of those alternatives other than to observe that lower thresholds would reduce the number of companies receiving the proposed relief and higher thresholds would increase the number.[53] While the Commission invites comment about certain alternatives, such as adjusting the LAF threshold for inflation, the Proposal

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[49] We do not disagree that public float is a reasonable proxy for market attention and compliance resources. However, we agree with other commenters that public float is an imperfect metric and the Commission should more fully consider its continued reliance on public float in this context. *See*, *e.g.*, Letter from John C. Coates *et al*., *supra* note 41, at 13-14 (stating that "the commitment to continuing to rely on public float deserved more attention," "[b]etter proxies [exist] for the net value of preserving current disclosures," and identifying certain "reasonable alternatives that should be considered – and if discarded, an explanation provided for why – in any economic analysis"); Letter from Drew E. Hardy, CPA, to Vanessa A. Countryman, Secretary, SEC, Re: *File No. S7-2026-18; Release Nos. 33-11419; 34-105515 - Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies*, 3 (July 9, 2026) ("Public float alone is not an adequate proxy for the need for [risk-factor and market-risk] disclosure.").

[50] Proposal at 41-42, 149.

[51] *Id*. at 42, 149-50. *See also* LAF Adopting Release at 40-41 (observing that "companies with a public float of over $700 million represent approximately 18% of the total number of companies on these markets and nearly 95% of the total public float on these markets").

[52] *See* Proposal at 133-45.

[53] *Id*. at 206-07.

offers scant reasons for not proposing or considering them and meager support for the number it offers.

One reasonable alternative would be to retain the existing tripartite structure and recalibrate the applicable thresholds. For example, a $250 million threshold for AF status would ensure that nearly 49% of public companies would be NAFs and eligible for SRC disclosure accommodations, similar to the proportion of issuers excluded from the AF status when it was adopted and larger than the proportion of issuers eligible for those accommodations when the SRC thresholds were increased in 2018.[54] Issuers above that threshold would continue to be AFs, subject to full disclosure requirements by default, possibly with targeted accommodations justified by the typical characteristics of those companies and the applicable compliance costs. Issuers above a potentially-heightened LAF threshold would continue to be subject to the most stringent requirements. This approach would simplify the existing framework, while more appropriately tailoring accommodations and preserving investor protections.

The Commission asks whether it should instead update the current threshold for inflation, rather than increasing it to $2 billion.[55] The Commission estimates that adjusting for inflation would result in a threshold of $1.15 billion.[56] Before advancing the Proposal in its current form, the Commission should thoroughly consider adjusting the existing threshold for inflation, and provide a reasoned explanation for its rejection of that approach, if applicable. Alternatively, the Commission should use the inflation-adjusted threshold as the baseline for its analysis and provide a detailed explanation for any increase from that number, with a focus on the characteristics of the issuers affected, the need for and value of maintaining full disclosure requirements for those issuers, and the potential impact on investor protection and trust in the public markets. While a lower threshold may result in fewer companies being permitted to provide reduced disclosure and exempt from the ICFR attestation requirement, that should not be the only, or even the primary, justification for such a significant overhaul of the Exchange Act reporting framework.

In sum, the Proposal does not provide a reasoned justification for increasing the LAF public float threshold to $2 billion, nor does it properly consider or explain its rejection of reasonable alternative approaches. Absent these considerations, the Proposal fails to adequately justify nearly tripling the LAF public float threshold, from $700 million to $2 billion.

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[54] *See id*. at 12-13, Table 2; AF Adopting Release, 67 Fed. Reg. at 58482 ("A one-year reporting history requirement and a $75 million threshold excludes nearly half of all publicly traded companies from the category of accelerated filers."). *See also* 2018 Adopting Release at 17 ("Increasing the public float threshold to $250 million would have resulted in approximately 39% of registrants qualifying as SRCs in 2016 based on their public float.").

[55] Proposal at 51.

[56] *Id*. at 42 n.137.

VI. Conclusion

NASAA appreciates the opportunity to comment on the Proposal. Thank you for considering these views. Should you have any questions about this letter, please contact either the undersigned or NASAA's General Counsel, Vince Martinez, at (202) 737-0900.

Sincerely,

Marni Rock Gibson

Marni Rock Gibson
NASAA President and
Commissioner, Kentucky Department of
Financial Institutions