INVESTOR CHOICE ADVOCATES NETWORK
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July 20, 2026

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

Via email: rule-comments@sec.gov

Re: Comment Letter in Support of the Proposed Registered Offering Reform
Release Nos. 33-11418; 34-105513; IC-36160 (May 19, 2026)
File No. S7-2026-17

Dear Commissioners and Staff:

The Investor Choice Advocates Network ("ICAN") appreciates the opportunity to comment on the Securities and Exchange Commission's proposed Registered Offering Reform, which would make Form S-3 and shelf registration available to far more companies and extend benefits now reserved for the largest issuers to a much broader group.[1] The comment period is open through July 27, 2026.[2] ICAN is a nonprofit public interest law firm and advocacy organization dedicated to expanding access to the capital markets and to protecting the fundamental right of ordinary investors to make their own informed financial decisions.

ICAN strongly supports the Proposed Rule because it supports a principle at the heart of our mission: ordinary investors should be free to decide for themselves where to invest their money.[3] The benefits to small, early-stage companies are real, and we describe them below. But for the individual investor, every company that can raise money in the public markets, rather than in private deals open primarily to the wealthy, is an additional company that an ordinary investor is free to evaluate, buy, and sell comforted by the transparency afforded by the disclosure regime of the federal securities laws. Just as importantly, the reform helps support the development of more liquid and accessible markets in the kinds of small stocks that rarely attract widespread attention; markets where an investor can not only buy a share but has a realistic opportunity to sell it as well.[4] Liquidity is not a luxury for sophisticated traders; it is the everyday investor's exit. It is what separates an investment from a potential trap.

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[1]Registered Offering Reform, Securities Act Release No. 33-11418, Exchange Act Release No. 34-105513, Investment Company Act Release No. IC-36160, 91 Fed. Reg. 31037 (proposed May 26, 2026 [hereinafter Proposed Rule], available at https://www.sec.gov/rules-regulations/2026/05/s7-2026-17.

[2]Proposed Rule, supra note 1 (Comments should be received on or before July 27, 2026.).

[3]See Proposed Rule, supra note 1, at 8 (stating that the proposed amendments are intended to facilitate capital formation in the public securities markets).

[4] Proposed Rule, *supra* note 1, at 9 n.7 (quoting *Solicitations of Interest Prior to a Registered Public Offering*, Securities Act Release No. 33-10699, 84 Fed. Reg. 53011, 53028 (Oct. 4, 2019)) (registered securities may benefit

1. TODAY'S RULES WERE BUILT FOR BIG COMPANIES AND THEY QUIETLY NARROW WHAT ORDINARY INVESTORS CAN BUY

Before explaining our stance, it is worth looking at an issue confronting many early-stage public companies. When a company wants to raise capital by selling shares to the public, it generally must register that sale with the SEC. Once a company conducts its initial public offering, there is a fast, flexible, and inexpensive way to raise additional capital. It is known as a shelf registration on Form S-3. Form S-3 allows a public company to register a securities offering and keep the effective registration statement "on the shelf" enabling a company to conduct its securities offering timely during favorable market conditions. The cost advantage is not merely theoretical; when the Commission first created shelf registration under Rule 415, then only available to large issuers, equity offerings off the shelf cost meaningfully less than comparable non-shelf offerings, with no evidence that shelf registration depressed the issuer's share price.[5] Without a shelf registration statement, the alternative is a slow, expensive, one-deal-at-a-time way to register a securities offering on Form S-1.[6] Currently, for a public company to raise capital in the public markets using a shelf registration statement on Form S-3, it must clear two hurdles: it must have a "public float" (the market value of the shares held by public investors) of at least $75 million, and a track record of having reported to the SEC for at least a year.[7]

That $75 million line is a relic that dates back to 1992. It was never really about a company's size. The Commission used public float as a rough stand-in for how widely a company's information had spread through the market.[8] As the Commission itself has acknowledged, the internet and EDGAR now give the public "widespread, direct, and contemporaneous accessibility to company disclosure at little or no cost."[9]

For an early-stage or small public company, the $75M float hurdle is often impossible to clear. The one narrow accommodation for smaller companies, the so-called "baby shelf," is itself available only to companies already listed on a national exchange, and it caps how much they

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from greater secondary market liquidity as compared to exempt securities, and that greater liquidity makes the issuers' securities potentially more attractive to prospective investors).

[5] Rule 415, 17 C.F.R. § 230.415; *See* Sanjai Bhagat, M. Wayne Marr & G. Rodney Thompson, *The Rule 415 Experiment: Equity Markets*, 40 J. Fin. 1385 (1985) (finding that shelf offerings cost approximately 13% less than non-shelf offerings for syndicated issues and approximately 51% less for non-syndicated issues, and that the data did not support the "market overhang" argument that shelf registration depresses the registrant's share price)

[6] *Form S-1*, Legal Info. Inst., Cornell L. Sch., https://www.law.cornell.edu/wex/form_s-1 (last reviewed Jan. 2022); *see also Public Company Handbook: Chapter 12 Follow-On Offerings and Shelf Registrations*, PERKINS COIE, https://perkinscoie.com/public-company-handbook-chapter-12-follow-offerings-and-shelf-registrations (last visited June 23, 2026).

[7] *Id*., at 15–16 (describing the existing public float and One-Year Seasoning requirements that condition Form S-3 eligibility).

[8] *See* Revisions to the Eligibility Requirements for Primary Securities Offerings on Forms S-3 and F-3, Securities Act Release No. 33-8878, at 9 (Dec. 19, 2007) (describing public float as "an approximate measure of a stock's market following").

[9] Release No. 33-8878, *supra*, at 8.

can sell at one-third of their public float each year.[10] A small public company that is not exchange-listed cannot even register its existing investors' shares for resale on Form S-3, because that path, too, requires a national-exchange listing.[11]

Shut out of the efficient form, these companies are relegated to private market investors every time they need to raise money.[12] Those private placements are far costlier to existing shareholders than a public offering would be: private investments in public entities (PIPE) investors typically demand discounts averaging roughly 15%, compared to roughly 3% for public seasoned equity offerings, a gap that transfers value away from the shareholders already there.[13]

2. MORE COMPANIES IN THE PUBLIC MARKETS MEANS MORE OPPORTUNITIES FOR ORDINARY INVESTORS

The Proposed Rule's central change is simple and powerful: it eliminates the $75 million public float requirement and the one-year seasoning requirement for using Form S-3.[14] The Commission estimates this single change could expand the number of companies eligible to use the efficient short-form shelf by more than 60 percent.[15]

For a company too small or too new for a national listing, this is the difference between being locked out of the modern, efficient capital-raising system and being fully inside it.[16] When more smaller companies can practically and affordably raise money from the public, and allow investors to choose to invest at earlier stages of a public company's growth cycle, more companies will raise capital in the public markets rather than in private deals open only to the

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[10] *Id*., supra note 1, at 28 (General Instruction I.B.6 permits a non-shell issuer to register a primary offering only if it is exchange-listed and the aggregate market value of securities sold during the prior 12 months does not exceed one-third of its public float).

[11] *Id*., supra note 1, at 29 (General Instruction I.B.3 permits resales of outstanding securities on Form S-3 by an issuer with a public float below $75 million only if the securities are listed on a national securities exchange).

[12] *Id*., *supra* note 1, at 84 (explaining that issuers ineligible to use Form S-3 may look to other financing alternatives with less favorable terms that could create significant dilution to the shareholder base, or may forgo certain securities offerings altogether, and that such issuers may issue "extreme convertibles" — convertible securities, often issued by distressed issuers, that convert at a steep discount to the market price and, upon conversion, result in significant dilution to existing investors) (internal quotation marks omitted).

[13] *See* Matthew T. Gustafson & Peter Iliev, *The Effects of Removing Barriers to Equity Issuance*, 124 J. Fin. Econ. 580, 597 (2017) (reporting average PIPE offer discounts of approximately 15%, versus approximately 3% for public offerings); Shane A. Corwin, *The Determinants of Underpricing for Seasoned Equity Offers*, 58 J. Fin. 2249 (2003) (documenting average seasoned-offering underpricing of 2.2%, rising over time). *See also* Michael Hertzel & Richard L. Smith, *Market Discounts and Shareholder Gains for Placing Equity Privately*, 48 J. Fin. 459 (1993).

[14] *Id*., supra note 1, at 11 (proposing to eliminate the public float and One-Year Seasoning requirements for Form S-3 eligibility and to condition eligibility instead on the issuer being current and timely in its Exchange Act reporting).

[15] *Id*.

[16] Commissioner Mark T. Uyeda, Remarks to the Small Business Capital Formation Advisory Committee (Apr. 28, 2026), https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-sbcfac-042826.

wealthy.[17] That is the heart of why this reform serves the small investor: every company that comes to the public markets instead of staying private is a new opportunity for an ordinary person to invest.[18]

The SEC itself has long recognized that capital is cheaper in the public markets than in private ones, because freely tradable shares do not carry the illiquidity discount that restricted private shares do.[19] That efficiency does not just help the company: less dilution protects the value of the shares ordinary investors already hold, and a registered offering is what lets an everyday investor buy in on the same freely tradable terms available to everyone else.[20]

3. For the Everyday Investor, Being Able to Sell is the Whole Point

Owning a stock and being able to sell it are two very different things. That gap is what worries ICAN most about the small investor, and it is where this reform does its most important work.

When a small company can only raise money through exempt private offerings, the shares it issues are "restricted." That is, investors in those shares may not resell them generally for 12 months. Consequently, investors take them at a discount precisely to compensate for their relative illiquidity, because they cannot be freely resold.[21] Making those shares freely tradable prior to the 12-month holding period requires registering them, and that is exactly what current rules make impractical for a small, unlisted company: a company with a public float below $75 million can register its investors' resales on the efficient Form S-3 only if it is listed on a national exchange.[22]

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[17] *See* Gustafson & Iliev, *supra* note 12, at 580 (finding that after the SEC's 2008 extension of shelf eligibility to firms with public floats under $75 million, affected firms roughly doubled their reliance on public equity, shifted away from private placements, and saw offering discounts fall by 8.4 percentage points relative to comparable unaffected firms).

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

[19] *See* Proposed Rule, supra note 1, at 9 (noting that issuers can raise capital through the public markets on more favorable terms as compared to the private markets, due in large part to the substantial pricing discounts that private investors often demand to compensate them for the relative illiquidity of the restricted shares they are purchasing) (internal quotation marks omitted).

[20] *See* Proposed Rule, *supra* note 1, at 9.

[21] *See* Proposed Rule, supra note 1, at 9; *see also Id*. at 237 (observing that registered offerings avoid the pricing discounts associated with exempt offerings that compensate for the illiquidity of restricted securities, and that issuers with less than $75 million in public float experienced a significant reduction in offering discounts following the expansion of Form S-3 eligibility).

[22] *See* Proposed Rule, *supra* note 1, at 29 (General Instruction I.B.3 permits an issuer with a public float below $75 million to register resales of outstanding securities on Form S-3 only if the securities are listed on a national securities exchange).

By making shelf registration practical for these companies, the reform helps a genuine, liquid public market form around their shares, a market where there are real buyers and real sellers, visible prices, and the ability to get out when you want to. Liquidity is not a luxury for sophisticated traders; it is the everyday investor's exit.[23] It is what separates an investment from a potential trap. A liquid public market in a small stock means that the investor who bought a few hundred shares of a company they believed in is not left holding paper they can never sell. Greater liquidity also tends to draw more attention to these small companies, more buyers, more information, which protects investors further.[24]

4. The Proposed Rule Should Expand The Enhanced Registration and Communication Benefits to all Form S-3 Eligible Issuers

The decline of the small IPO can be attributed to many factors, but a compelling case has been made that waning research coverage of smaller and earlier-stage companies prevents many of those companies from being discovered and seen.[25]

Although the Proposed Rule would extend certain benefits currently reserved for "well-known seasoned issuers (WKSIs)" and other seasoned issuers, it does not confer these benefits to smaller companies. Among other things, these benefits include automatic effectiveness of shelf registration statements on Form S-3 and greater flexibility in pre-filing and post-filing communications ("Enhanced Registration and Communication Benefits").

The Proposed Rule expands the Enhanced Registration and Communication Benefits to a new "Eligible Listed Issuer" category that generally requires both Form S-3 eligibility and exchange listing. A first-time IPO issuer ordinarily will not satisfy those conditions during the IPO itself. Thus, as a practical matter, much of the proposed communication relief benefits follow-on offerings rather than the initial IPO process. We recommend that the Commission extend the Enhanced Registration and Communication Benefits to all Form S-3 eligible issuers regardless of listing status.

Further, we recommend expanding other issuer communication rules beyond those included in the Enhanced Registration and Communication Benefits by amending 17 CFR 230.163B and

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[23] *See* Amihud & Mendelson, *supra* note 20 (establishing that liquidity is a measurable component of price and the cost of capital).
[24] Gary Shorter & Eva Su, *Capital Markets: Public and Private Securities Offerings*, Cong. Rsch. Serv., R45221 (Oct. 2, 2024), https://www.congress.gov/crs-product/R45221.
[25] *See* Marshall Lux and Jack Pead, *Hunting High and Low: The Decline of the Small IPO and What to Do About It*, M-RCBG Associate Working Paper Series, No. 86, Harvard Kennedy School (April 2018). Other factors include: a financial system that features greater scale and consolidation in both financial intermediaries and institutional investors; the fallout from the Eliot Spitzer-led Global Analyst Research Settlements in 2003, which left many smaller startups without research coverage; the rise of private capital, from private equity to liberalized rules on other forms of private capital offerings; a shift in institutional investing from active to passive strategies; and an increasing burden of regulation on all public companies.

17 CFR 230.169 to permit retail "testing the waters" for IPOs, as is permitted for offerings under Regulation CF and Regulation A+.[26]

5. The Proposed Rule Should Further Enhance Small Company Discovery and Dissemination of Small Company Offering Materials By Adopting A Nonexclusive Safe Harbor for Independent Online IPO-Information Platforms

Since 2012, when Congress enacted the Jumpstart Our Business Startups (JOBS) Act fostering online securities offerings through Regulation CF, Rule 506(c) of Regulation D, and Regulation A+, many retail investors learn about securities offerings through online crowdfunding portals or other online platforms that disseminate offering materials required for equity offerings under exemptions provided by the JOBS Act. These market intermediaries have existing technology, issuer relationships, communications systems, compliance personnel, and investor databases, all of which can play a critical role in further enhancing discovery of smaller and earlier-stage companies.

While the JOBS Act authorized these portals to launch public securities offerings without registering with the SEC as a broker, the portals are limited to selling securities exempt from registration to retail investors under Regulation CF and to accredited investors under Rule 506(c).[27] There is presently no exemption or safe harbor that enables a registered Regulation CF portal or Regulation D online platform to offer securities in registered offerings without registering as a broker.

Determining what activities the SEC and courts consider as broker-dealer indicia is not always easy. Even the SEC's *Guide to Broker-Dealer Registration* acknowledges that "finders" and other individuals and entities that engage in finding investors or customers for, making referrals to, or splitting commissions with registered broker-dealers or other securities intermediaries, as well as persons that operate or control electronic or other platforms to trade

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[26] *See Petition for Rulemaking – Proposed Amendments to Securities Act Rules 163B and 169 to Harmonize IPO Communication Rules with Regulation Crowdfunding and Regulation A+ Extending Retail "Testing the Waters" Provisions to IPOs* (Mar. 26, 2026). The term "offer to sell", "offer for sale", or "offer" shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. The term "prospectus" means any prospectus, notice, circular, advertisement, letter, or communication, written or by radio or television, which offers any security for sale or confirms the sale of any security. 15 USC 77b(10). The SEC interprets both terms broadly, so online pages, videos, graphics, emails, mobile notifications, hyperlinks, and other electronic communications could constitute an offering of securities.

[27] Exchange Act §3(a)(4) defines a broker as a person "engaged in the business of effecting transactions in securities for the account of others." Section 15(a) generally prohibits an unregistered broker from using interstate means, including the Internet, to effect transactions or to induce or attempt to induce securities purchases or sales.

securities may fall within the definition of broker depending on the activities that the person or entity actually performs.[28]

In evaluating whether online portals engage in broker-dealer activity, the Commission should distinguish electronic dissemination from securities intermediation. A platform that neutrally publishes compliant registered-offering materials, does not recommend securities or participate in transactions, and receives no transaction-contingent compensation should not be treated as a broker-dealer solely because its publication informs or facilitates an investor's independent decision to contact a registered broker-dealer. Clear conditions addressing content, compensation, investor data, and transactional functionality would expand retail access to IPO disclosure without removing the investor protections associated with broker-dealer registration.

We urge the Commission to consider adopting, using its §15(a)(2) exemptive authority and corresponding Securities Act rulemaking authority, a nonexclusive safe harbor permitting registered funding portals and bona fide private-offering information platforms to assist with registered IPO communications without becoming brokers solely because they publicize the offering and provide a neutral link to a registered underwriter. Funding portals and unregistered platforms at a minimum should be allowed to disseminate statutory prospectuses, Rule 134 communications, filed free writing prospectuses, bona fide electronic roadshows, and clearly identified independent editorial material with requisite Section 17(b) compensation disclosures. The safe harbor should also address more difficult issues such as whether the information portal may publish issuer interviews or sponsored pages; send issuer-specific promotional alerts; collect investor contact information and transfer it to the underwriter; receive per-lead fees; provide proprietary summaries, ratings, or comparisons; and use calls to action designed to convert readers into purchasers.[29]

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[28] Guide to Broker-Dealer Registration, Division of Trading and Markets, U.S. Securities and Exchange Commission (April 2018), https://www.sec.gov/about/divisions-offices/division-trading-markets/division-trading-markets-compliance-guides/guide-broker-dealer-registration. We commend the staff for including in its Spring 2026 Regulatory Flexibility Agenda a new initiative to clarify the regulatory status of "finders" under Section 15(a) of the Exchange Act. *See* Agency Rule List - 2026, Office of Information and Regulatory Affairs, Office of Management and Budget,
https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=3235&csrf_token=5D89EE95A92B0007D1CD5A29753E53DD947DD8C1DEE098C6D90C1C4E1B13FF2AB13333070E158FD7B3A57BF2E49B1923441C

[29] In the staff's recent statement on broker-dealer registration of certain user interfaces in crypto asset securities transactions, the staff distinguished objective, nondiscretionary interface functions from specific solicitation, recommendations, negotiation, documentation, custody, execution, settlement, and order routing. *See* Staff Statement Regarding Broker-Dealer Registration of Certain User Interfaces Utilized to Prepare Transactions in Crypto Asset Securities, Division of Trading and Markets (April 13, 2026),
https://www.sec.gov/newsroom/speeches-statements/staff-statement-regarding-broker-dealer-registration-certain-user-interfaces-utilized-prepare-staff-statement-regarding-broker-dealer-registration-certain-user-interfaces-utilized

6. The Reform Removes Needless Cost While Keeping Every Investor Protection in Place

This reform is not a radical step; it finishes a road Congress already started. In 2012, the JOBS Act created what became widely known as "IPO on-ramp," which eased rules, lasting up to five years, to help smaller companies reach the public markets.[30] Once a company is public and filing audited reports, the $75 million float cutoff for Form S-3 does just that, blocking the efficient, low-cost path to follow-on capital. Extending Form S-3 to these companies simply completes the on-ramp Congress began.

The Commission has, moreover, already tested this exact approach at the top of the market. The Proposed Rule rests on the premise that a company's timely, ongoing public reporting can substitute for transaction-by-transaction staff review, the same premise underlying the 2005 Securities Offering Reform.[31] For two decades the largest issuers have raised capital under that framework: streamlined and automatic shelf access, liberalized pre- and post-filing communications through the free writing prospectus, and an "access equals delivery" model of prospectus delivery.[32] Each rested on a single idea that a company current in its reporting has already told the market what it needs to know.[33] Extending that settled framework down the size curve to smaller companies, and to the ordinary investors excluded along with them, is not an experiment run on the public.

The current reform lowers cost for companies without lowering a single protection for investors.[34] A company must still be current and timely in its SEC reports to qualify, so investors keep the audited financials and disclosures that public-company status requires.[35] The federal securities laws' anti-fraud protections continue to apply in full, and investors who buy in a registered offering keep their private rights to sue for false or misleading statements.[36]

One especially costly piece of that friction is the patchwork of state "blue sky" laws. Today, a small company doing a registered offering can be forced to register it separately in every single state where it wants to sell its securities unless those securities are approved for listing on a national securities exchange. Thus, for example, non-traded business development companies

[30] *See* Jumpstart Our Business Startups Act, Pub. L. No. 112-106, tit. I, §§ 101–107, 126 Stat. 306, 306–313 (2012) (establishing the "emerging growth company" category and the scaled disclosure and compliance regime widely known as the "IPO on-ramp," under which a qualifying company retains eased obligations for up to five years following its initial public offering).
[31] Nemit Shroff et al., Voluntary Disclosure and Information Asymmetry: Evidence from the 2005 Securities Offering Reform, 51 J. ACCT. RES. 1299 (2013).
[32] Securities Offering Reform, Securities Act Release No. 33-8591, 70 Fed. Reg. 44,722 (Aug. 3, 2005).
[33] *See id.*; 17 C.F.R. §§ 230.415, 230.456(b), 230.457(r), 230.462(e) (shelf access); *id.* §§ 230.163, 230.164, 230.433 (free writing prospectus); *id.* § 230.172 (access equals delivery).
[34] *See* Proposed Rule, supra note 1, at 17
[35] *Id*. at 21.
[36] *Id*. at 54

(BDCs) must comply with state blue sky laws on a state-by-state basis.[37] Each state runs its own process, with its own forms, its own filing fees, and its own reviewers, and in some states, an official can demand changes to a company's governance.[38] There is a double standard at work: private deals sold only to wealthy "accredited" investors were freed from this same state red tape back in 1996, while the public offerings ordinary people can actually buy were left to fight through it.[39]

The Proposed Rule addresses this by preempting state registration and qualification requirements for registered offerings, while expressly retaining the states' authority over fraud. It keeps the parts that actually protect investors, the audited financials, the required disclosures, and the fraud laws, both federal and state, and removes only the piece that protects no one: a state official's power to second-guess whether an offering is "fair" enough for ordinary people to be allowed to buy it. For securities subject to the disclosure and reporting regime mandated by the Securities Act, whether an investment is worth the risk is the investor's call, not a regulator's.

The Commission is also on well-trodden legal ground here. To accomplish this preemption, the Proposed Rule uses the same tool Congress gave the SEC in Section 18(b)(3) of the Securities Act; the power to define who counts as a "qualified purchaser," which in turn makes an offering's shares "covered securities" beyond the reach of state registration.[40] The SEC used that exact tool a decade ago to lift state review from Regulation A-Plus "Tier 2" offerings, and a federal appeals court upheld it.[41] If that definitional power was proper for Regulation A-Plus, it applies with even greater force to companies that have gone through the full rigor of Securities Act registration. Requiring those companies to also clear fifty separate state reviews is simply redundant.

Stepping back from the mechanics, opponents of the reform often invoke a paternalistic frame: that retail investors must be shielded from smaller public companies. That view is backwards. Retail investors are *already* fully exposed to these same small companies, but under

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[37] Steven Boehm et al., *SEC Proposes Sweeping Changes to Registered Offering Rules: Considerations for Regulated Funds*, JD Supra (June 19, 2026), https://www.jdsupra.com/legalnews/sec-proposes-sweeping-changes-to-1464078/.
[38] *See* Meredith Abrams et al., *SEC Proposes Blue Sky Preemption and Shelf Registration Reform Significantly Impacting Non-Traded BDCs, REITs and Registered Closed-End Funds*, Simpson Thacher & Bartlett LLP (May 27, 2026), https://www.stblaw.com/about-us/publications/view/2026/05/27/sec-proposes-blue-sky-preemption-and-shelf-registration-reform-significantly-impacting-non-traded-bdcs-reits-and-registered-closed-end-funds.
[39] *See* Michael Ewens & Joan Farre-Mensa, *The Deregulation of the Private Equity Markets and the Decline in IPOs*, 33 Rev. Fin. Stud. 5463 (2020) (documenting that the National Securities Markets Improvement Act of 1996 exempted private Rule 506 / Regulation D offerings from state blue-sky registration, expanding the supply of private capital and helping firms grow larger and stay private longer).
[40] *See* 15 U.S.C. § 77r(b)(3) (defining as "covered securities," exempt from state registration and qualification, securities sold to "qualified purchasers, as defined by the Commission by rule"); Proposed Rule, *supra* note 1 (proposing to amend Rule 146 to define "qualified purchaser" for purposes of Section 18(b)(3) to include any person to whom securities are offered or sold in a registered offering).
[41] *See Lindeen v. SEC*, 825 F.3d 646 (D.C. Cir. 2016) (upholding the Commission's exercise of its Section 18(b)(3) authority to define "qualified purchaser" so as to preempt state registration of Regulation A Tier 2 offerings).

the current regime they are forced to buy in late, at higher prices in the secondary market, after private-equity and institutional PIPE investors have extracted steep discounts. The reform attacks the most predatory dynamic in this space, what the release calls "extreme convertibles," the toxic-financing death spiral in which distressed issuers sell stock that converts far below market and craters existing shareholders, by giving small issuers a clean, registered alternative to the discounted private convertibles that drive the worst dilution.[42]

True investor protection means giving retail investors equal footing at the primary-offering stage, not walling them off from it, and that definition is not ICAN's alone. When the Commission acts in the public interest, the law directs it to weigh efficiency, competition, and capital formation alongside the protection of investors, not to treat access as an afterthought once the other boxes are checked.[43] A rule that protects ordinary investors by denying them the choice to invest at all vindicates none of these mandates.

CONCLUSION

As Chairman Paul Atkins recently remarked before the SEC's Small Business Capital Formation Advisory Committee Meeting, the IPO pipeline has diminished by roughly 40 percent since the mid-1990s.[44] Among the companies that do go public, many tend to be "unicorns." Today, companies tend not to go public, if at all, until after their Series E round in private fundraising, whereas twenty years ago, an IPO would be the equivalent of today's Series B or C. According to the Chairman, the SEC's regulatory framework should be "one that represents a capital raising mechanism for the company rather than a liquidity event for insiders."

The Proposed Rule is a thoughtful, pro-investor reform. It opens the public markets to the smaller, earlier-stage companies that today's size-based rules quietly exclude; it gives ordinary people the chance to invest in those companies rather than watching the opportunity disappear into private deals; and it helps build genuine, liquid markets in small stocks. It accomplishes all of this while preserving the disclosure obligations, audited financials, and anti-fraud protections on which investors rely.

Above all, the Proposed Rule restores a choice that today's rules quietly take away: the right of every ordinary investor to decide for themselves where to invest their money. ICAN

[42] Proposed Rule, *supra* note 1, at 84 (describing issuers' resort to "extreme convertibles" — convertible securities, often issued by distressed issuers, that convert at a steep discount to market price and cause significant dilution to existing investors) (citation omitted).
[43] Securities Act of 1933 § 2(b), 15 U.S.C. § 77b(b) (directing that, when engaged in rulemaking and required to consider whether an action is in the public interest, the Commission "shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation")
[44] Chairman Paul S. Atkins, Remarks at the Small Business Capital Formation Advisory Committee Meeting (April 28, 2026), https://www.sec.gov/newsroom/speeches-statements/atkins-042826-remarks-small-business-capital-formation-advisory-committee-meeting.

respectfully urges the Commission to adopt the Proposed Rule. We thank the Commission and its staff for their work on this important reform.

Respectfully submitted,

Nicolas Morgan, President
Investor Choice Advocates Network