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An SEC Sea Change? Proposed Amendments Could Reshape the Public Company Landscape

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On Tuesday, 19 May, the U.S. Securities and Exchange Commission (SEC) announced proposed amendments that would **change the public reporting framework** to "better calibrate disclosure obligations with a company's size and maturity." The SEC also proposed amendments to **reform its rules governing registered offerings**. According to the Commission, these proposals are designed to increase efficiency, flexibility and cost savings for public companies while maintaining robust investor protections.

The SEC asserts that regulatory requirements evolving over recent decades have coincided with a decline in the number of public companies. The proposed amendments – including the recently proposed optionality for semi-annual interim reporting and other forthcoming rule proposals – represent, to the Commission, important steps toward incentivising companies to go and stay public. Public comment will determine the extent to which the various stakeholders in the registration and reporting processes, and the users of that information, agree. The public comment period for these two proposals will remain open for 60 days following publication of the proposing releases in the Federal Register.

If you are currently …	Under the proposed rules, you would …
Large accelerated filer (LAF) (≥ $700M float)	Remain LAF only if float ≥ $2B for two consecutive years and 60 months of reporting history
Accelerated filer (AF)	Category eliminated – reclassified as LAF or NAF
Smaller reporting company (SRC)	Category eliminated – reclassified as NAF with scaled accommodations
Emerging growth company (EGC)	EGC accommodations extended to all NAFs

Following is a summary of each proposal.

Changes to the Public Company Reporting Framework

The SEC's proposed amendments would:

- **Simplify the public reporting company filer status framework.** The SEC proposes to eliminate the accelerated filer and smaller reporting company (SRC) filer categories so that all companies are classified as either large accelerated filers (LAFs) or non-accelerated filers (NAFs). NAFs would not be required to obtain an auditor's annual attestation (i.e., Section 404(b) of the Sarbanes-Oxley Act) on a company's internal control over financial reporting. In addition, the amendments would establish a new sub-category of small NAFs for companies with total assets of $35 million or less as reported for the two most recent years. These smaller companies would have an additional 30 days to file Form 10-K annual reports and an additional five days to file Form 10-Q quarterly reports.

- **Extend current disclosure scaling and other accommodations to simplify reporting by most public companies.** The proposed amendments extend to all NAFs the same disclosure scaling and other accommodations currently available to SRCs and emerging growth companies (EGCs). This includes "no say-on-pay" or "say-when-on-pay" shareholder advisory votes, scaled executive compensation disclosure, and two rather than three years of audited statements of comprehensive income, cash flows and changes in stockholders' equity. In addition, these issuers would not be required to comply with certain form and presentation requirements related to the financial statements; disclose certain financial statement schedules or certain general notes to the financial statements; and provide separate financial statements of majority-owned unconsolidated subsidiaries and 50 percent or less owned entities accounted for by the equity method of accounting otherwise required by Regulation S-X.

- **Grant smaller public companies extended deadlines to file their periodic reports.** The proposed amendments would raise the public float threshold for becoming an LAF from $700 million to $2 billion and calculate the threshold based on the average stock price over the last 10 trading days of the second fiscal quarter. Thus, the definition of an LAF is now changed to an issuer that, as of the end of each of its two most recent second fiscal quarters, had an aggregate worldwide market value of the voting and non-voting common equity held by non-affiliates of $2 billion or more. This two-consecutive-year public float threshold requirement is intended to avoid a

one-year swing that alters an issuer's filer status. In addition, they would require at least 60 consecutive calendar months of reporting under the requirements of section 13(a) or 15(d) of the 1934 Exchange Act before a company can become an LAF.

Under these proposed amendments, the SEC indicates that if they were in place today, 19% of public companies would be LAFs compared to 35% currently. As a result, approximately 950-1,000 companies classified today as LAFs would become NAFs.

Overall, 81% of public companies would be NAFs under the proposed amendments, versus approximately half today. As a result, an estimated 1,600 companies – 26%-27% of all issuers – would be exempt from the requirement for the auditor's attestation on internal control effectiveness (Section 404(b)).

Nearly one in five (18%) of public companies (or 22% of NAFs) would be small NAFs. The proposed amendments also would update the SEC's Regulatory Flexibility Act issuer "small entity" definitions.

Registration Offering Reform

The SEC's proposed amendments would:

- **Revise Form S-3's eligibility criteria.** SEC Form S-3 is a streamlined registration statement used by well-established issuers to offer securities to the public in a manner that saves time and administrative costs. Used for "shelf offerings" under SEC Rule 415, Form S-3 relies heavily on a company's past public filings. Instead of re-entering basic company and financial data, issuers using Form S-3 can reference their previously filed Forms 10-K, 10-Q and 8-K – a much streamlined approach in comparison to a comprehensive Form S-1 filing. Specifically, the proposed amendment removes the requirement that issuers be subject to the reporting requirements of the Securities and Exchange Act of 1934 for 12 months before using Form S-3, and it eliminates all of the form's transaction requirements, including one for issuers to have at least $75 million in public float to register an unlimited amount of securities. The purpose of this amendment is to allow significantly more issuers to avail themselves of the form's flexibility to access the capital markets.
- **Extend registration and offering communication flexibilities to a broader set of issuers.** The purpose of the SEC's enhanced registration and communication benefits is to give the largest, most financially stable public companies maximum

flexibility and speed when raising capital. Because these companies are already widely followed by investors and file regular reports, the SEC's provisions remove regulatory red tape so they can quickly capitalise on favourable market conditions. These specific benefits fall into two main categories: (1) automatic shelf registration and simplified paperwork to offer faster access to capital, and (2) easier investor outreach exemption from pre-filing communication blocks and use of custom, written marketing materials or oral presentations early in the offering process. The proposed amendments would revise the eligibility requirements to enable more issuers to qualify for these benefits. For example, issuers would no longer be required to have at least $700 million in public float or at least $1 billion of debt securities in registered offerings. The benefits available to issuers are determined based on their classification using three categories of issuers.

- **Pre-empt state securities law registration and qualification requirements for all registered offerings.** While this pre-emption currently applies to registered offerings in which the securities being offered and sold are listed or approved for listing on a national securities exchange, it does not apply to registered offerings of unlisted securities. The proposed amendments would eliminate the costs in different states associated with complying with numerous registration and qualification requirements for registered offerings of unlisted securities. These amendments are intended to lower the cost of a registered offering of unlisted securities by mitigating the complexity of conducting a multi-state registered offering.

- **Maintain parity between certain Form N-2 filers and operating companies across registration, offering and communication provisions.** The proposed amendments would make a broader group of business development companies and registered closed-end funds eligible to use short-form shelf registration statements on Form N-2, in part by removing related seasoning and public float requirements.

- **Update Form S-1 by expanding the ability to incorporate information by reference into that form.** Form S-1 is the default form that issuers use to register securities offerings under the Securities Act. It is the default form because it may be used by any issuer, other than foreign governments and asset-backed issuers, for an offering for which no other form is authorised or prescribed and without any additional eligibility requirements. Under the proposed amendments, various aspects of the registration process would be streamlined, such as the ability to incorporate by

reference information filed after the effective date of the Form S-1 filing. These amendments would allow a greater number of issuers to enjoy the cost savings associated with incorporation by reference.

Key Takeaways: What Companies Need to Know

If adopted, these proposals would significantly restructure the public company reporting framework and registered offering process. All NAFs would be exempt from the requirement to obtain an independent auditor's attestation on their internal control over financial reporting (ICFR). This means that about 45% of those issuers that were previously required to provide an auditor attestation will no longer be required to do so. New public companies will enjoy scaled disclosure accommodations for a minimum of five years regardless of their public float. Updates to capital raising procedures are on the way, through expanded flexibility for pre- and post-filing offering communications, broadened use of "free writing" prospectuses, allowing "pay-as-you-go" filing fee treatment, and establishing a new tiered framework replacing the long-standing Well-Known Seasoned Issuer (WKSI) designation. According to the SEC, these changes are designed to reduce compliance costs and encourage more companies to go public.

That said, the proposals do not impact the underlying disclosure system (Regulation S-K for qualitative disclosures, Regulation S-X for financial statements). Companies still must provide the same categories of disclosures (e.g., MD&A, risk factors, executive compensation, business description and financial statements). Importantly, the registration reform proposal focuses on *how* companies access markets – not *what* they must disclose.

Key takeaway: Disclosure content requirements remain intact; the proposals primarily seek to change *eligibility and process*, not *substantive disclosure obligations*.

Both proposals explicitly emphasise maintaining robust investor protections while expanding access to capital markets. Thus, there will be continued reliance on full and fair disclosure, anti-fraud liability under the Securities Act, and SEC staff review and enforcement authority.

Key takeaway: The SEC states that these proposals are intended to ease access and reduce process friction while preserving the fundamental "truth in securities" regime.

Due diligence expectations haven't been relaxed. Issuer, underwriter and auditor diligence standards remain unchanged. Liability exposure under the Securities Act (strict

liability/negligence standards) still applies. This reality imposes a practical implication such that even with faster processes (e.g., shelf offerings, expanded communications), deal teams must maintain the same rigor in diligence, disclosure controls and verification.

Key takeaway: Faster execution does not equate to reduced diligence; it is important to note that accelerated execution timelines do not alter existing diligence standards. Market participants continue to operate under the same liability framework.

There is no proposed change to the quarterly (or, if altered, semi-annual) SOX Section 302 certification and annual SOX Section 906 certification. These statutory requirements remain untouched by both proposals.

Key takeaway: Executive accountability for financial reporting remains fully intact.

The SOX Section 404(a) management ICFR assertion remains a requirement for *all* public companies.

Key takeaway: Management must continue to report on the design and operating effectiveness of ICFR. The SEC's 2007 interpretive guidance provides principles-based, scalable approaches for management to conduct a top-down, risk-based evaluation of ICFR to support its Section 404 assertions. Thus, there must be a basis for this assertion.

Anti-fraud liability and disclosure responsibility are also unchanged. Across both proposals, companies remain fully liable for material misstatements or omissions, prospectus requirements and Section 10(a) principles remain in force, and communications flexibility (e.g., testing the waters) still operates within anti-fraud guardrails.

Key takeaway: More communication flexibility does not reduce legal exposure for misleading disclosure.

Corporate governance and risk management expectations are broadly unchanged. Board oversight responsibilities, audit committee roles, risk management expectations, and disclosure controls and procedures remain unaffected and relevant. However, governance-related disclosures may be scaled for NAFs (e.g., reduced executive compensation details).

Key takeaway: The governance architecture stays intact, though disclosure *volume* may be reduced for smaller issuers.

Ongoing reporting obligations using Forms 10-K, 10-Q and 8-K are largely unchanged (the same holds true for the equivalent forms used by foreign private issuers). Companies must still file periodic reports and maintain current and timely reporting status. This discipline is a prerequisite for enjoying the key benefits under the SEC's proposals (e.g., Form S-3 eligibility).

Key takeaway: The continuous reporting regime remains the backbone of the system.

In summary, across both rule proposals, the SEC is changing the process for access to capital markets and simplifying classifications, but it is not weakening the regulatory foundation. The most notable change relates to who qualifies for certain reporting requirements (e.g., 404(b) auditor attestation) – not the underlying expectations that companies maintain strong ICFR, provide transparent disclosures and remain accountable to investors.

Actions Management and Boards Should Take Now

Monitor the comment period – The 60-day public comment window is the primary opportunity to influence the final rules, if issuers wish to comment.

Engage your auditor and legal counsel – Discuss how these proposals, if adopted, would affect your organisation's registration strategy, public reporting, SOX compliance program and offering flexibility. For example:

- Assess your likely accelerated filer reclassification by modelling whether your company would be reclassified from LAF to NAF under the proposed $2 billion threshold.
- Determine the extent to which the company would qualify for the SEC's proposed broad extension of scaled disclosure accommodations.
- Review your registrant status against the proposed changes that expand Form S-3 and shelf offering access to a broader universe of listed companies to ascertain whether there is flexibility to conduct unlimited primary offerings.
- If your company would be reclassified as an NAF, consider the implications of no longer being required to obtain an auditor attestation on ICFR, including the rigor of the evidence required to support management's own assertion regarding the effectiveness of ICFR.

How Protiviti Can Help

Protiviti helps boards and management teams evaluate how proposed SEC reforms may affect filer status, registration flexibility, and ongoing governance and compliance obligations. We assist companies in assessing readiness for expanded offering options, aligning disclosure controls and ICFR frameworks to support faster execution, and managing SOX and SEC reporting requirements as regulatory thresholds and classifications evolve. Protiviti supports informed decision-making and disciplined execution as organisations navigate potential changes to public company reporting, registration optionality and continued regulatory compliance.

About Protiviti

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