



Fenwick Securities Law Update

– June 18, 2026 –

Welcome to the latest edition of Fenwick’s Securities Law Update. This issue contains updates and important reminders on the following topics:

- SEC proposing rules on registered offering reform, filer status and emerging growth company reforms, and optional semiannual reporting.
- SEC soliciting public comments on modernizing the IPO process, including reassessing gun-jumping rules and alternative methods for taking a company public, and the agency’s draft strategic plan.
- Fenwick partnering with TheCorporateCounsel.net to survey how tech and life sciences companies are thinking about optional semiannual reporting and Nasdaq’s planned move to 23×5 trading hours.
- SEC proposing rules to rescind climate-related disclosure rules.

2026 Reporting Season Considerations

- **Reminder: NYSE Annual Written Affirmation and CEO Certification:** In accordance with § 303A.12 of the NYSE Listed Company Manual, NYSE-listed companies must submit both their Annual Written Affirmation and Annual CEO Certification within 30 days of the company’s annual shareholders meeting. The Annual Written Affirmation and Annual CEO Certification should be submitted electronically through the Listing Manager.

Rules and Regulations

- **SEC Proposes Registered Offering and Filer Status and Emerging Growth Company Reforms:** On May 19, the SEC [proposed two sets of rule and form amendments](#) that, if adopted, would implement significant changes to the [registered offering](#) and [public company reporting frameworks](#). Below is a summary of the key changes being proposed.

Registered Offering Reform Proposal

- **Form S-3 Eligibility:** Removes the 12-month reporting requirement under the Exchange Act of 1934, as amended (the Exchange Act), and eliminates all transaction requirements, including the \$75 million public float threshold for unlimited shelf offerings. Issuers would still need to be current and timely in their Exchange Act reporting. The SEC estimates this could increase the number of issuers eligible for unlimited Form S-3 offerings by over 60%.
- **WKSI-Style benefits Extended:** Enhanced registration and communication flexibilities (currently limited to WKSI with \$700-plus million public float or \$1-plus billion in registered debt) would be available to any issuer eligible to use Form S-3 with at least one class of common equity listed on a national

exchange. Use of automatic shelf registration statements would still require 12 months of Exchange Act reporting. Estimated 200-plus% increase in eligible issuers.

- **State Law Preemption:** Defines "qualified purchaser" under § 18(b)(3) of the Securities Act of 1933, as amended (the Securities Act), to preempt state blue sky registration and qualification requirements for all registered offerings, including unlisted securities.
- **Form S-1 Incorporation by Reference:** Permits backward incorporation by reference regardless of whether the issuer has filed an annual report for its most recent fiscal year, and forward incorporation regardless of filer status. The SEC estimates that this change will increase the number of issuers eligible for forward incorporation by up to 106%.
- **Ineligible Issuers and Reverse Mergers:** Under proposed new General Instruction I.A.2 to Form S-3, a "BSP issuer" would not be eligible to use Form S-3. A BSP issuer would include (1) a blank check company, (2) "a shell company, other than a business combination related shell company ... provided, however, that an issuer, other than a foreign private issuer ... would not be deemed to be a shell company solely because during the past three years either the issuer or any of its predecessors was a 'special purpose acquisition company'" or (3) an issuer in an offering of penny stock.

Because the lookback for shell companies explicitly captures predecessors, a combined company that results from a reverse merger with a shell company would be ineligible to use Form S-3 for three years from the date it (or its predecessor) last had shell status. However, the proposal would provide a limited exception for issuers that were formerly SPACs from the three-year shell lookback for purposes of S-3 eligibility, so long as they are not shells at the time of filing and otherwise meet the form conditions. If adopted, this prohibition would limit the ability of companies to raise capital after completing a non-SPAC reverse merger.

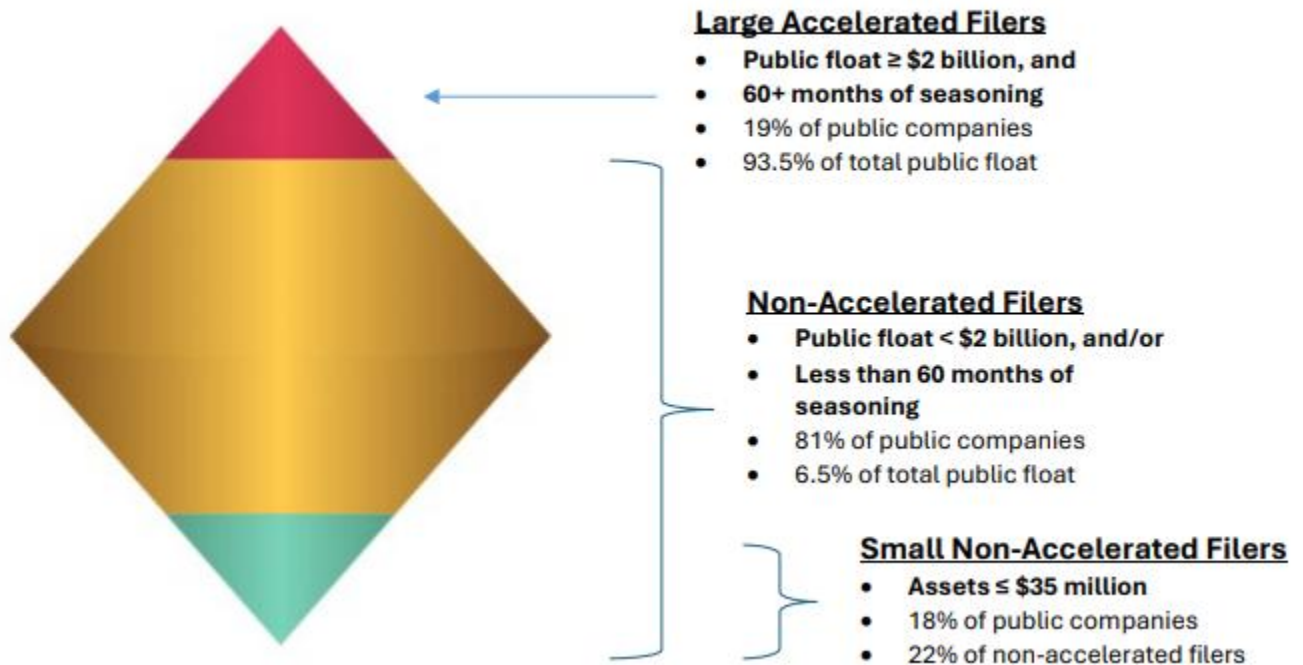
- **Comment Deadline:** [Comments](#) should be submitted by July 27, 2026.

Filer Status and Emerging Growth Company (EGC) Accommodations Reform Proposal

- **Large Accelerated Filer (LAF) Threshold Raised to \$2 Billion:** Increases the public float threshold for LAF status from \$700 million to \$2 billion, calculated based on the average stock price over the last 10 trading days of the second fiscal quarter, which must be met for two consecutive years.
- **"IPO On-Ramp":** A company cannot become a LAF until it has at least 60 consecutive months (i.e., 5 years) of SEC reporting history, regardless of public float.
- **Simplified Filer Categories:** Eliminates the accelerated filer and smaller reporting company (SRC) categories. All non-LAFs become non-accelerated filers (NAF) and would be exempt from the internal control over financial reporting (ICFR) auditor attestation requirement.
- **Extended Scaled Disclosure and Accommodations:** All NAFs would receive the disclosure scaling and accommodations currently available to SRCs and EGCs, including no say-on-pay/say-when-on-pay votes, scaled executive compensation disclosure (including no pay versus performance), and fewer years of financial statements (with reduced presentation requirements).
- **Small Non-Accelerated Filer Subcategory:** Companies with total assets of \$35 million or less for the two most recent years would receive an additional 30 days to file Form 10-K and an additional five days to file Form 10-Q. See the following graphic for a summary of the new categories.



PROPOSED NEW FILER CATEGORIES¹



¹ The percentages in the figure are based on the 5,976 registrants that filed on domestic forms in calendar year 2024. The underlying dataset includes two years of public float data, two years of asset data, and data on how long each registrant has been a public reporting company. A total of 91 registrants (1.5% of all registrants) that would be non-accelerated filers under the proposed amendments are currently co-filing with registrants that would continue to be large accelerated filers, and may therefore remain implicitly subject to the requirements and deadlines that apply to large accelerated filer status.

Securities and Exchange Commission

- **Proposed Transition Period:** Companies that are public as of the effective date would be required to assess their LAF or NAF status as of the end of their fiscal year prior to the effectiveness of the final rules. For example, if the final rules become effective on January 15, 2027, then existing calendar-year-end companies would be required to assess their filer status as of December 31, 2026, no later than December 30, 2027, but would be permitted to complete such assessment as of any date between January 15 and December 30, 2027.

For purposes of their initial assessment, existing companies would not consider their filer status prior to effectiveness of the proposed rules. A company that is currently a LAF would be an NAF if, as of the end of its fiscal year of the year prior to effectiveness of the proposed rules, it (1) has not been subject to the reporting requirements of § 13(a) or 15(d) of the Exchange Act for the preceding 60 consecutive calendar months, or (2) did not have a public float of \$2 billion or more for such fiscal year and the immediately prior fiscal year.



- **Estimated Impact:** The SEC estimates that under the proposed rules, approximately 19% of current public companies would be LAFs (down from 35%) and 81% would be NAFs. Approximately 18% of public companies would qualify as small non-accelerated filers.
- **Comment Deadline:** [Comments](#) should be submitted by July 20, 2026.
- **SEC Proposes Optional Semiannual Reporting and Simplified Financial Statement “Staleness” Rules:** On May 11, the SEC [released](#) proposed rules that would [allow Exchange Act reporting companies to file semiannual interim reports](#) on a new Form 10-S in lieu of quarterly reports on Form 10-Q and would simplify financial statement staleness rules. Below is a summary of the key changes being proposed. [Comments](#) on this proposal should be submitted by July 6, 2026.

Semiannual Option: Scope and Mechanics

- The new Form 10-S would require the same narrative disclosures and financial information as existing Form 10-Q but would cover a six-month period rather than a fiscal quarter.
- Companies would elect semiannual reporting by checking a box on the cover page of their annual report on Form 10-K or cover page of a registration statement, such as Forms S-1, S-3, or S-4. Leaving the box unchecked would default the company to quarterly reporting.
- The election would be made annually and could not be changed mid-fiscal year.
- Companies electing semiannual reporting could still voluntarily provide earnings announcements or other disclosures for the first or third quarter.

Proposed Amendments to Regulation S-X and Age of Financial Statements

- The SEC also proposed amendments to Rules 3-01 and 8-08 of Regulation S-X to facilitate semiannual reporting and to ensure that financial statements in registration statements filed by semiannual filers are not considered “stale” under existing rules built around a quarterly framework.
- In the case of a registration statement or proxy statement, a registrant would no longer assess the number of days from the filing date or from the effective date of the registration statement (or mailing date of a proxy statement) to the date of the most recent balance sheet to determine if a more recent statement is required. Rather, a registrant would be required to include the interim financials for the most recent interim period that have been filed (or were required to be filed) on Form 10-Q or Form 10-S as of the filing or effective (or mailing) date, effectively aligning “staleness” with the election of quarterly or semiannual reporting.
- A non-reporting registrant (e.g., a private company registering its initial public offering) would apply this rule as if it were a reporting company, based on whether it elects semiannual reporting.
 - For example, if a calendar-year registrant elects semiannual reporting in its IPO registration statement that becomes effective as late as August 12, the proposed rules would not require any interim financial statements to be included in the registration statement.
- The proposal would consolidate S-X Rules 3-01 and 3-12 into new Rule 3-01. Currently, Rule 3-01 addresses the dates of the balance sheets as of the filing date and Rule 3-12 addresses the age of financial statements as of the effective date of a registration statement or mailing date of a proxy statement.

- The SEC is proposing further conforming amendments to Rule 8-08, which governs SRCs, to align with Rule 3-01 as amended.

The SEC's proposing release poses numerous questions, indicating that the final rules could differ in important ways from the proposed rules. Nonetheless, the SEC will likely adopt rules allowing at least some companies to elect to report on a semiannual basis. Accordingly, reporting companies and companies anticipating an IPO in the near term may want to begin analyzing the options they will have when the final rules are adopted. The choices that companies should consider include not only the frequency of their periodic reporting (i.e. quarterly or semiannually), but also the frequency with which they report earnings. Broadly speaking, there will effectively be three choices for reporting companies when the option to adopt semiannual reporting becomes available: (1) continue to file periodic reports and report earnings quarterly, (2) file periodic reports and report earnings semiannually, and (3) file periodic reports semiannually, but continue to report earnings on a quarterly basis. Companies should start carefully weighing the advantages and disadvantages of semiannual reporting.

- **SEC Proposes to Rescind Climate-Related Disclosure Rules:** In its proposal, the SEC states that the agency is [proposing to rescind the rules in their entirety](#), because they exceed the scope of the SEC's statutory authority. The comment period on the proposal will remain open until 60 days after publication of the proposing release in the Federal Register. In the meantime, the climate-related disclosure rules remain stayed and the prior litigation challenging the rules continues to be held in abeyance.

Other SEC Developments and Announcements

- **SEC Chair Requests "Bold and Creative" Public Comments on Modernizing IPO Process:** During his [remarks at the Stanford Rock Center for Corporate Governance](#), SEC Chair Paul Atkins noted that at his request, the SEC staff are preparing recommendations to modernize the IPO process, including reassessing gun-jumping rules and alternative methods for taking a company public (such as de-SPACs and direct listings), and encouraging input from the public. The SEC is currently [accepting](#) written comments on this topic through July 27, 2026.
- **Fenwick Survey on Semiannual Reporting and Nasdaq 23x5 Trading:** Fenwick has partnered with TheCorporateCounsel.net to survey how tech and life sciences companies are thinking about two new developments that could significantly affect public company reporting and related practices:
 - The SEC's proposed rule on optional semiannual reporting
 - Nasdaq's planned move to 23x5 trading hours

Companies can provide their input through a [short survey](#) (~10 minutes). Responses will be aggregated and an anonymized summary of how peer companies are approaching these changes will be shared to help companies benchmark their own thinking against the group.

- **SEC Soliciting Comments on Draft Strategic Plan:** On June 2, the SEC published a [draft strategic plan](#) for fiscal years 2026 through 2030, which outlines three primary goals for the agency:
 1. Renew the agency's regulatory policy focus on supporting innovation, capital formation, market efficiency, and investor protection
 2. Shift the agency's regulatory practices to increase stakeholder engagement, facilitate compliance efforts of market participants, and effectively return its enforcement approach to Congress' original intent

3. Optimize its operational efficiency by enhancing the agency’s organizational structure, modernizing its technology, reforming employee performance management, and implementing robust internal performance reporting that incorporates accountability for resources and program success

The SEC is [accepting](#) written comments on the draft strategic plan through July 2, 2026.

- **SEC Commissioner Hester Peirce to depart SEC in November 2026.** Commissioner Peirce’s term expired in June 2025, but she has been serving under an 18-month extension since then. Following her [upcoming departure](#) from the SEC, the five-person, bipartisan commission will be composed of only Chair Atkins and Commissioner Mark Uyeda unless and until new members are appointed.
- **SEC Rescinds “No-Admit, No-Deny” Settlement Policy:** On May 19, the SEC announced that it was [rescinding its “no-admit, no-deny” settlement policy](#) which states that when the SEC chooses to settle an enforcement action in which a sanction is imposed, it will not settle unless the defendant or respondent also agrees not to publicly deny the allegations in the complaint or administrative order. In light of the rescission, the SEC will not enforce existing no-deny provisions that have already been entered.

Other Matters of Interest

- **WuXi AppTec Named a “Chinese Military Company” on the Department of Defense’s (DoD) Updated 1260H List:** On June 8, 2026, the DoD published its [updated list](#) of “Chinese Military Companies Operating in the United States” under § 1260H of the National Defense Authorization Act (the 1260H List), naming WuXi AppTec Co., Ltd., BGI Group, MGI Tech Co., Ltd., and Complete Genomics, Inc. among other companies. Notably, WuXi Biologics is not named on the 1260H List and does not appear to be implicated by the naming of WuXi AppTec, as it is not a subsidiary, parent, or successor of WuXi AppTec. In a [public letter](#), WuXi promised to challenge the designation.

The “Chinese Military Company” designation carries significant implications under the BIOSECURE Act (the Act), which creates a process for companies appearing on the 1260H List to be designated “biotechnology companies of concern” (BCCs). The Act prohibits federal departments and agencies from procuring, contracting with, or using the biotechnology equipment or services of BCCs, prohibits federal contractors from using such equipment or services in performing federal contracts, and bars federal grant and loan recipients from expending federal funds on them.

Companies with a relationship with WuXi or other designated companies should consider discussing any material impacts in their upcoming periodic reports and earnings.

- **AI in the Boardroom:** As artificial intelligence (AI) becomes more central to a company’s operations and long-term strategic positioning, directors must develop and maintain a robust understanding of how AI impacts their company, including the full spectrum of opportunities, risks, and ethical considerations. Key dimensions of board AI governance to consider:
 - **Fiduciary Duties:** Directors have fiduciary duties to implement and monitor AI governance systems, particularly when AI represents a mission-critical business risk. Under the *Caremark* doctrine, sustained or systematic oversight failures may expose directors to personal liability.
 - **AI Governance Framework:** Boards should consider adopting an AI governance framework aligned to business goals, covering (1) strategy and investment alignment, (2) risk assessment and oversight, (3) accountability for AI systems and ethical oversight, (4) transparency, and (5) legal and regulatory compliance.



- **Responsible AI Usage in the Boardroom:** AI tools have the potential to rebalance the information dynamic between boards and management and enable more independent board oversight, but they require guardrails around confidentiality and privilege.
- **Practical Considerations for AI-Assisted Board Operations:** To mitigate risks surrounding data retention and discovery exposure from AI tools, boards should consider establishing clear policies governing which AI tools may be used by board members, what data may be shared, how long information is retained, and what security standards the provider must meet.

For additional governance considerations, please see our recent [client alert](#) on this topic.

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As a leading technology and life sciences law firm, Fenwick advises companies on the full suite of corporate governance matters. We partner with our clients to anticipate and navigate issues arising in an evolving corporate governance landscape, including SEC reporting and governance requirements of relevant securities exchanges, board and committee structure, corporate purpose and sustainability, shareholder engagement, and executive compensation.