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SEC Acting Chair Previews Policy Priorities and Potential Rulemaking Initiatives

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New leadership outlines rulemaking priorities to improve capital access for startups, expand retail investor participation in private markets, incentivize more companies to go public and enhance public company scaled disclosure benefits

> "My first priority is to return normalcy to the Commission. I have been at the Commission for nearly 19 years, under presidents from both political parties. What occurred under the Biden Administration was a stark aberration from longstanding norms as to what the Commission has historically viewed its legal authority, policy priorities and use of enforcement."
>
> *—SEC Acting Chair Mark T. Uyeda*

On February 24, 2025, SEC Acting Chair Mark Uyeda delivered keynote remarks at the Florida Bar's 41st Annual Federal Securities Institute and M&A Conference, where he focused on the SEC's role in fostering innovation, job creation and economic growth by maintaining practical and cost-effective regulations for every stage of a company's lifecycle. Among the policy priorities and potential rulemaking initiatives he identified were:

- **Improving capital-raising opportunities for entrepreneurs**, including by implementing "targeted regulatory changes" to the SEC's exempt offering pathways to improve their utility (including through amendments to Regulation Crowdfunding).

- **Empowering retail investment in private companies**, including by expanding the accredited investor definition.
- **Making IPOs attractive again**, including by redefining emerging growth company (EGC) status and appropriately tailoring SEC disclosure requirements (both new and existing) for EGCs.
- **Enhancing public company scaled disclosure benefits**, including by updating the financial qualification thresholds for accelerated filers and large accelerated filers, better scaling the disclosure requirements between the two categories, and re-aligning the smaller reporting company and non-accelerated filer definitions.

A New Beginning

Uyeda opened his remarks by highlighting the SEC's accomplishments since the start of the new administration. "Over the past five weeks," he said, "**the Commission has begun the process of returning to its narrow mission to facilitate capital formation**, while protecting investors and maintaining fair, orderly and efficient markets. One purpose of the Commission's regulatory mandate is to create capital markets that facilitate the competitiveness and ingenuity of American industry. Properly implemented, we can help President Trump achieve his goal of a new golden age of economic growth and innovation, creating more jobs, wealth and prosperity for all Americans."

In particular, he cited the issuance of Staff Legal Bulletin No. 14M, which reinstated the SEC staff's traditional, company-specific approach to evaluating the excludability of shareholder proposals under Rule 14a-8; the decision to pause the agency's legal defense of the climate disclosure rules, which are currently being challenged in the Eighth Circuit; and the establishment of a new crypto task force led by Commissioner Hester Peirce that is "dedicated to developing a comprehensive and clear regulatory framework for crypto assets."

Improving Capital-Raising Opportunities for Entrepreneurs

Reinvigorate Crowdfunding and Other Exempt Offerings

To help alleviate challenges facing entrepreneurs, **Uyeda urged reducing the complexity of the SEC's exempt offerings regulations and their associated compliance costs**.

He noted that many entrepreneurs have raised concerns about the complexity of the current regulatory regime for exempt offerings, including Regulation Crowdfunding (Regulation CF) which was adopted in 2015. "Notwithstanding the availability of

Regulation CF, along with other rules available to entrepreneurs to raise capital without registration," Uyeda said, "77% of small business owners reported being concerned about their ability to access capital." In addition, "[p]aying operating expenses, such as legal and compliance fees, was one of the top three financial challenges facing early-stage companies, and running out of cash was one of the top two reasons that startups fail."

Uyeda criticized the Gensler-led SEC for not acting on the repeated policy recommendations of the SEC's Office of the Advocate for Small Business Capital Formation to effectuate "targeted regulatory changes" to the agency's exempt offerings framework to improve its utility (including through amendments to Regulation CF), and announced **he has requested the staff to begin the process of exploring ways to implement these recommendations**.

According to Uyeda, the proposed changes could take several forms, including legislative action to amend the governing statutes. "However, **when crafting regulations that are intended to be relied upon by startup companies, the Commission should follow a guiding principle — the regulations must be relatively straightforward to comply with and not impose a disproportionate amount of compliance costs, while still providing appropriate investor protection**," he advised. "A company relying on Regulation CF to raise $5 million may need to pay over $500,000 in fees to the funding portal, lawyers and accountants. Should more than 10% of the funds raised by an entrepreneur who may still be working out of his garage go towards paying compliance and legal fees? Or is a portion of that money better spent executing the business plan to build a product or provide a service?"

Empowering Retail Investment in Private Companies

Broaden the Accredited Investor Definition

Uyeda announced **he has directed the staff "to explore regulatory changes that enable greater retail investor participation in the private markets, whether through modifications to the accredited investor definition or otherwise, while continuing to ensure that those investors are protected against fraud and bad actors."**

Most commentators, Uyeda noted, "seem to agree that the current income and net worth thresholds for an individual to qualify as an accredited investor [$200,000 annual income (or $300,000 joint annual income together with spouse) and $1 million net worth] either need to be changed or are insufficient. Some call for the thresholds to be indexed to inflation, either from 1982 levels or only on a going-forward basis.

Others call for non-financial ways to qualify — either in addition to or in lieu of the income and net worth tests — such as qualitative professional criteria or certifications, completion of an educational program or an investor test.”

When considering ways to allow for greater retail investing in private companies, **Uyeda queried whether the “all or nothing” approach of the accredited investor definition is appropriate**: “If an individual does not qualify as an accredited investor, even under an expanded definition, should he or she not be able to have any exposure to private offerings? **Or should the Commission’s exempt offering regime use a sliding scale approach** [as used in Regulation CF and Regulation A Tier 2] and allow any individual to invest at least a small amount in private companies over the course of a year?”

He also suggested that any changes to the accredited investor definition be considered together with how companies are likely to accept investments from individuals — directly or through pooled investment vehicles. If the latter, he added, then **consideration should also be given to changes under the Investment Company Act that would permit more retail investors to invest through private funds**.

Uyeda acknowledged that, although most startup companies fail and return nothing to their investors, “investments in private, growth-stage companies that are higher-risk, higher-reward may be beneficial as part of a person’s diversified portfolio, particularly if the exposure itself is through pooled investment vehicles. **If an individual believes that the risk is appropriate and is protected against fraud, then our regulatory regime should not deny such individual a source of potential wealth accumulation and portfolio diversification. Investor protection cannot be achieved through paternalistic policies**.”

Making IPOs Attractive Again

Redefine Emerging Growth Company Status

To combat the steep decline in the number of IPOs over the past two decades, Uyeda announced **he has asked the staff “to review the EGC definition and recommend potential changes, including how a company qualifies and the duration for which it retains the status,” and “to consider how EGCs could benefit from having an on-ramp to comply with certain existing disclosure obligations.”**

While lauding the JOBS Act’s creation of EGCs and the concept of an on-ramp for compliance with disclosure requirements, Uyeda faulted the Biden-era SEC for failing to provide relief for EGCs to use this on-ramp in several recently adopted rulemakings, such as those relating to clawbacks, cybersecurity disclosure and Rule 10b5-1/insider trading, and for providing only limited relief for EGCs in connection with the (now-stayed) climate disclosure rules.

"**Appropriately tailoring the Commission's wide-reaching disclosure requirements for newly public companies may, on the margin, incentivize more companies to go public**," Uyeda posited. "In turn, venture funds may see more attractive exit opportunities for their investments and decide to provide funding. This funding would then enable companies to execute their business plan, create jobs and contribute to economic growth."

Scaling Public Company Disclosure Requirements

Update and Simplify Filer Categories and Associated Disclosure Obligations

Uyeda announced **he has requested the staff to consider "whether to re-align the Commission's filer categories [accelerated filer/large accelerated filer/non-accelerated filer/smaller reporting company] to reflect the size and makeup of public companies today," and, following any potential re-alignment, to "review [SEC] disclosure requirements and identify rules that should apply only to the largest companies."**

By way of background, he explained that to ensure that smaller companies are not disproportionately burdened as they compete, the SEC introduced scaled disclosure based on a company's size in 1992. According to Uyeda, however, **the SEC's current rules with respect to filer categories and associated disclosure obligations "are needlessly complex and do not provide sufficient scaled disclosure benefits**. As an example, a company with a $250 *million* public float is subject to the same disclosure requirements as a company with a $250 *billion* public float."

Uyeda specifically admonished the SEC for:

- **Not updating the financial thresholds to qualify as a large accelerated filer or accelerated filer since they were first established in 2005**: "At the time, approximately 18% of reporting companies had a public float of at least $700 million and qualified as a large accelerated filer, while 23% of companies had a public float between $75 million and $700 million and qualified as an accelerated filer. Today, the percentage of large accelerated filers has doubled — to 36% — while the percentage of accelerated filers has declined to 7%."

- **Not sufficiently scaling the disclosure requirements between the two categories**: “Currently, only one requirement differentiates large accelerated filers [from accelerated filers] — the 60-day deadline for filing Form 10-K.”

- **Increasing complexity and compliance costs due to potential overlap of the filer categories and the smaller reporting company definition** *(“even we at the SEC need diagrams to figure…out [the overlapping definitions]”*). Uyeda observed that, depending on a company’s public float and revenue, it can qualify as both a smaller reporting company and either an accelerated filer or a non-accelerated filer, a distinction which “has real-world cost implications as non-accelerated filers do not need to provide an auditor attestation of the company’s evaluation of its internal control over financial reporting. **Does it make sense that some smaller reporting companies need to continue to pay for this annual attestation? When the Commission last had the opportunity to address this issue in March 2020, Commissioner Peirce lamented that she ’continue[d] to be disappointed that [the Commission] ha[s] not fully re-aligned the [smaller reporting company] and non-accelerated filer definitions**.’”

“Outdated financial thresholds, lack of scaling and overlapping definitions can result in a complex and ineffective regulatory regime,” Uyeda maintained, “imposing unnecessary costs on companies and their shareholders.”

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