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Invested in America

November 13, 2026

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: IPO Modernization (File No. CLL-16)

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates the opportunity to submit this letter in response to the request of the Securities and Exchange Commission for public comment on the Commission's rules related to initial public offerings.[2] SIFMA's membership includes underwriters, placement agents and dealers for issuers of all sizes that seek to raise capital in the public markets in the United States. As we have discussed, SIFMA strongly supports the efforts of the Commission and the staff of the Division of Corporation Finance to evaluate the Commission's existing "gun-jumping" framework with a view to encouraging more companies to go and stay public.

I. Overview of Proposal

Since the adoption of the Securities Act of 1933, the Commission's regulatory regime governing offering communications has evolved into a complex set of rules that, as Chairman Paul S. Atkins has noted, are "often confusing and difficult to navigate" and "can also chill issuers' and underwriters' communications with investors."[3] Any violation of the technical requirements of Section 5—irrespective of the communication's quality or substance, including "foot fault" violations—can have severe, disproportionate consequences for the issuer and other offering participants,[4] even though all investors receive a statutory prospectus before they make their

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1 SIFMA is the leading trade association for broker-dealers, investment banks, and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly one million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

2 *See* Commission request for comment appended to Paul S. Atkins, Remarks at the Stanford Rock Center for Corporate Governance (May 26, 2026), https://www.sec.gov/newsroom/speeches-statements/atkins-052626-remarks-stanford-rock-center-corporate-governance (inviting comments on communications rules and other measures to modernize the IPO process).

3 Paul S. Atkins, Remarks at the Small Business Capital Formation Advisory Committee Meeting (Oct. 27, 2026), https://www.sec.gov/newsroom/speeches-statements/atkins-remarks-sbcfac-meeting-102726.

4 In particular, these consequences include potential claims for rescission under Section 12(a)(1) of the Securities Act if securities are sold in the offering to investors who received the communication.

investment decision. The existing framework is particularly difficult to apply in an environment of rapid and widespread electronic communications, including through social media, by issuers and other market participants. This environment has evolved significantly since the Commission last comprehensively reviewed the registered offering communication framework over 20 years ago.[5] We believe the Commission's goals to streamline these rules, facilitate the offering process and encourage more companies to go and stay public could be achieved by modernizing Rules 163, 164 and 433 substantially as summarized below:

- Expand Rule 163 to communications by all issuers, including IPO issuers, and by any other offering participant, including any underwriter or dealer, so that pre-filing offers are exempt from Section 5(c), so long as the other conditions of the rule are met.

- Eliminate Rule 163's legend requirement for pre-filing written offers; alternatively, provide that the failure to include the specified legend in a free writing prospectus ("FWP") will not result in a violation if a Section 10 prospectus is delivered to the investor before the time of sale.

- Eliminate Rule 433's legend requirement and the requirement that a Section 10 prospectus accompany or precede an FWP of a non-reporting or unseasoned issuer; alternatively, provide that the failure to include the specified legend in an FWP or to satisfy the "accompany or precede" requirement will not result in a violation if a Section 10 prospectus is delivered to the investor before the time of sale.

- Eliminate Rule 433's filing requirement for FWPs; alternatively, provide an exception to the extent that the substance of an FWP is included in another FWP or in a Section 10 prospectus filed or delivered before the time of sale.

Our proposal rests on the fundamentally sound proposition that the Commission's rules should focus on the quality of disclosures and the substance of the information available to an investor at the time of the investment decision, consistent with the policies underpinning the Commission's registered offering reform proposal[6] and Regulation S-K reform.[7] The statutory prospectus is readily available to investors before the time of sale, and the antifraud and liability provisions of the securities laws—together with the Commission's broad examination and enforcement authorities—incentivize

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[5] *See* Securities Offering Reform, Release Nos. 33-8591; 34-52056; IC-26993 (July 19, 2005), 70 F.R. 44721 (Aug. 3, 2005), at 41–52 (§§ III.B–C).

[6] *See* Registered Offering Reform, Release Nos. 33-11418; 34-105513; IC-36160 (May 19, 2026), 91 F.R. 31022 (May 26, 2026); *see also* Letter from Kenneth E. Bentsen Jr., President & CEO, SIFMA, to Vanessa A. Countryman, Secretary, SEC (July 27, 2026), re Registered Offering Reform (Release Nos. 33-11418; 34-105513; IC-36160; File No. S7-2026-17) and Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies (Release Nos. 33-11419; 34-105515; File No. S7-2026-18), at 2 (supporting the Commission's proposition that Form S-3 eligibility should focus on an issuer's status as a current and timely reporting company, rather than on seasoning, public float or other qualitative criteria).

[7] *See* Paul S. Atkins, Remarks at the Texas Stock Exchange Event: Welcome to the Boom Belt: A Return to First Principles in Public Markets (Apr. 7, 2026), https://www.sec.gov/newsroom/speeches-statements/atkins-remarks-boom-belt-040726; Paul S. Atkins, Remarks at the Texas A&M School of Law Corporate Law Symposium (Feb. 17, 2026), https://www.sec.gov/newsroom/speeches-statements/atkins-02-17-2026-remarks-texas-am-school-law-corporate-law-symposium (emphasizing materiality as the "north star" of Regulation S-K's substantive disclosure rules).

issuers and other offering participants to provide accurate and meaningful disclosures. We believe that our proposal would simplify the Commission's registered offering communication framework, limit compliance costs and meaningfully reduce the risk of inadvertent violations by issuers and other offering participants, including underwriters. We expect that these improvements to the registered offering process would (1) encourage more issuers to offer and sell securities on a registered basis,[8] which would bring more offerings within the registered disclosure and liability framework, thereby enhancing investor protection, and (2) help avoid circumstances in which an offering may be delayed, or certain investors may be excluded from participation, in order to reduce gun-jumping or illegal prospectus risks associated with an untimely or inadvertent communication.

II. Modernizing the Pre-Filing Framework—Rule 163

Rule 163 currently exempts oral and written offers made by or on behalf of a well-known seasoned issuer in an intended registered offering from Section 5(c)'s prohibition on offers before a registration statement is filed, so long as the conditions of the rule are met. Written communications made in reliance on the rule are free writing prospectuses that must contain a prescribed legend and be filed promptly when the registration statement is filed, subject to specified exceptions and cure provisions (including that the filing condition is deemed to be satisfied if the issuer would not be required to file pursuant to Rule 433). A communication is made by or on behalf of the issuer only if the issuer or an agent or representative authorizes or approves it before use; an underwriter or dealer cannot serve as that agent or representative. Rule 163 therefore is unavailable to any issuer that is not a well-known seasoned issuer, including any non-reporting IPO issuer, and does not provide an exemption to underwriters and dealers.[9] For the reasons outlined above, we believe the Commission should consider modernizing the pre-filing communication framework by amending Rule 163 as follows:

- **Expand Rule 163 to all issuers and offering participants**. The Commission should consider expanding Rule 163 to communications by all issuers, including IPO issuers, and other offering participants, including underwriters and dealers, so that pre-filing offers are exempt from Section 5(c), subject to the rule's conditions. When Rule 163 was adopted, the Commission limited the exemption to well-known seasoned issuers because of their level of market following.[10] The Commission's pending registered offering reform proposal would make Rule 163 available to eligible listed issuers without a seasoning requirement,[11] and would permit those issuers that had not been required to file a Form

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[8] *Cf.* Securities Offering Reform, Release Nos. 33-8591; 34-52056; IC-26993 (July 19, 2005), 70 F.R. 44721, 44794 (Aug. 3, 2005), at 287 (§ VI.D.3) (noting that "[p]roviding flexibility for registered offerings may encourage issuers to raise capital through the registration process instead of through private placements").

[9] *See* 17 CFR 230.163(a), (b)(1)–(2), (c).

[10] *See* Securities Offering Reform, Release Nos. 33-8591; 34-52056; IC-26993 (July 19, 2005), 70 F.R. 44721 (Aug. 3, 2005), at 82 (noting that "[t]he level of following of well-known seasoned issuers by market participants lessens our concerns that these issuers, in general, will use the exemption to evade the registration requirements of the Securities Act. Accordingly, we are limiting this exemption to well-known seasoned issuers.").

[11] *See* Registered Offering Reform, Release Nos. 33-11418; 34-105513; IC-36160 (May 19, 2026), 91 F.R. 31022, 31028 (May 26, 2026) (noting that in light of "the ease with which investors may obtain Exchange Act disclosure documents and other information about an issuer, we believe that eligibility to use Form S-3 and the Enhanced Registration and Communication Benefits should not depend on the extent of an issuer's market following, including analyst coverage (*e.g.*, by reference to its public float or initial Exchange Act seasoning). Instead, we believe a more

10-K to incorporate by reference into their Form S-3 a Securities Act or Exchange Act filing that contains "Form 10 information"—including the IPO prospectus—to satisfy the requirement to provide a current Section 10(a) prospectus. In light of the substantially similar level of disclosure required in an IPO prospectus and the prospectus for a follow-on offering, we encourage the Commission to go a step further and expand Rule 163 to communications by all issuers. The relevant policy objective should be to ensure the availability of accurate and complete disclosure at the time of the investment decision, rather than whether the issuer had been a reporting company when the communication occurred. We would suggest further that the Commission extend Rule 163 to communications by other offering participants, including underwriters and dealers, and eliminate the rule's prior authorization requirement. When the Commission proposed to permit well-known seasoned issuers to authorize underwriters and dealers to communicate on their behalf, it requested comment as to whether authorization of the communication should be required.[12] An authorization requirement would effectively eliminate the exemption for inadvertent communications—where the consequences of a Section 5 violation appear particularly disproportionate—and we believe that requiring issuer authorization is not necessary to protect investors. The antifraud and liability provisions of the securities laws apply with respect to the communication irrespective of whether the communication is authorized by the issuer. Removing the issuer authorization requirement also would align the treatment of pre-filing communications under Rule 163 with the treatment of post-filing communications under Rules 164 and 433. Rule 163 would continue to exclude certain ineligible issuers.

- **Eliminate Rule 163's legend requirement or permit cure by prospectus delivery before the time of sale**. The Commission should consider eliminating Rule 163's requirement that each written communication contain a specified legend. The legend principally directs investors to the statutory prospectus and other Commission filings for more complete information and advises them to read those documents before investing. However, once publicly filed, the statutory prospectus is available on EDGAR, giving investors ready access to the substantive offering disclosures, which we believe eliminates the need for a legend requirement.[13] Alternatively, if the Commission retains the legend requirement, it should consider providing that failure to include the specified legend will

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appropriate criterion is whether investors can readily obtain issuer-specific information that is incorporated by reference into a prospectus and the related registration statement to make an informed investment decision.").

[12] *See* Revisions to Rule 163, Securities Act Release No. 33-9098 (Dec. 18, 2009), at 12–13, 16 (§ III) (requesting comment on whether underwriters and dealers should need written authorization to act for the issuer and prior approval of their communications).

[13] In the proposing release for the 2005 securities offering reform, the Commission noted that "[o]ur proposed legend condition is intended to identify more clearly materials as free writing prospectuses used in connection with a registered offering. We believe that this legend would assist investors in evaluating the content and would provide a record of the free writing materials the issuer prepared and used or issuer information included in free writing prospectuses used in connection with the offering." Securities Offering Reform, Release Nos. 33-8501; 34-50624; IC-26649; International Series Release No. 1282; File No. S7-38-04 (Nov. 3, 2004), 69 F.R. 67392, 67417 (Nov. 17, 2004) (§ III.D.3.b.iii.A.4.a). We submit that, given the further widespread adoption of the internet and electronic communications, investors, regulators and members of the public are able to identify and access offering-related and other publicly available information about an issuer with ease. We note further that, under our proposal, the record retention requirements of Rule 433(g) would continue to apply to the extent an FWP is not voluntarily filed.

not result in a violation of Section 5(c) or loss of the Rule 163 exemption with respect to an investor who receives delivery of the Section 10 prospectus before the time of sale. Delivery of the prospectus to which the legend directs investors—which in IPOs is required under Rule 15c2-8(b)—fulfills the legend's principal informational purpose.

III. Modernizing the Post-Filing Framework—Rules 164 and 433

Rules 164 and 433 generally permit the issuer and other offering participants, including underwriters, to use free writing prospectuses after a registration statement containing a Section 10 prospectus has been filed. In an IPO, that prospectus must include a bona fide price range and precede or accompany the free writing prospectus. Free writing prospectuses generally must contain a prescribed legend, and their information must not conflict with the registration statement. Subject to certain exceptions, the issuer must file issuer free writing prospectuses and issuer information in other offering participants' free writing prospectuses, and an underwriter must file its own free writing prospectus if it is distributed in a manner reasonably designed to lead to broad, unrestricted dissemination. Media communications and road shows receive distinct treatment. Rules 164 and 433 govern both issuer communications and communications by other offering participants, including underwriters. For the reasons outlined above, we believe the Commission should consider modernizing the post-filing communication framework by amending Rules 164 and 433 as follows:

- **Eliminate the accompanying prospectus and legend conditions or permit cure by prospectus delivery before the time of sale**. The Commission should consider eliminating Rule 433(b)(2)(i)'s requirement that a Section 10 prospectus accompany or precede an FWP for a non-reporting or unseasoned issuer. The requirement makes the permissibility of a communication depend on the prior delivery of the prospectus, even though the investor receives the Section 10 prospectus before making its investment decision. The Commission's pending registered offering reform proposal would permit issuers eligible to use Form S-3 to use FWPs without preceding or accompanying the FWP with a Section 10 prospectus.[14] In light of the ease with which investors may obtain the prospectus and the substantially similar level of required disclosure, we see no policy reason that would justify drawing a substantive distinction, for disclosure purposes, between an IPO issuer and a newly public company. If the Commission nonetheless retains this condition, it should at least deem it satisfied if a Section 10 prospectus is delivered before the time of sale. The Commission should likewise eliminate Rule 433(c)(2)'s legend requirement or, alternatively, provide that the failure to include the specified legend in an FWP is cured if a Section 10 prospectus is delivered before the time of sale, consistent with the alternative Rule 163 proposal discussed above.

- **Eliminate the mandatory filing condition or permit cure by disclosure before the time of sale**. The Commission should consider eliminating the mandatory filing requirement for FWPs under Rule 433.[15] The filing obligation can create unnecessary incremental compliance

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[14] *See* Registered Offering Reform, Release Nos. 33-11418; 34-105513; IC-36160 (May 19, 2026), 91 F.R. 31022 (May 26, 2026).

[15] *See* also the recommendation in Letter from Dixie L. Johnson, Chair, Committee on Federal Regulation of Securities, ABA Section of Business Law, to Jonathan G. Katz, Secretary, SEC (Feb. 11, 2005), re Securities Offering Reform (Release Nos. 33-8501 and 34-50624; File No. S7-38-04), at 3, 26–27 ("In light of the proposal that Section 12(a)(2) liability attach to free writing prospectuses, we believe no filing should be required for any free writing prospectus.").

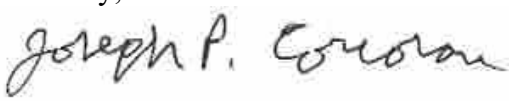
burdens without improving an investor's understanding of an offering, particularly where the FWP's substance is already reflected—or will be reflected before the time of sale—in the prospectus or another FWP. The statutory prospectus is readily available to investors before the time of sale, and the antifraud and liability provisions of the securities laws apply to the prospectus and the FWP. If the Commission nonetheless retains a mandatory filing requirement, it should provide an exception to the filing requirement if the substance of an FWP is included in another FWP or prospectus filed—or, alternatively, delivered—before the time of sale. This approach would expand on the existing filing exemptions in Rule 433(d) and (f). These filing exemptions should be available for issuer FWPs as well as communications of other offering participants and should not depend on whether the substantive disclosure was filed before the initial use of the communication because, in our view, the focus should be on the quality of disclosures and the substance of the information available to an investor at the time of the investment decision.[16]

IV. Conclusion

The proposed amendments described in this letter would reduce uncertainty and the risk of potentially disproportionate consequences arising from procedural compliance failures by offering participants, while preserving the Commission's substantive disclosure requirements, investor remedies and the Commission's enforcement authority under the antifraud and liability provisions of the securities laws. Together with the Commission's pending offering, reporting and disclosure reforms, we believe these changes would encourage more issuers to conduct registered offerings and therefore extend the protections of the registered offering framework to more investors.

We appreciate the opportunity to provide these recommendations and would welcome further discussion with the Commission and its staff. Please contact Joseph Corcoran at 202-962-7300 or SIFMA's outside counsel, Mario Schollmeyer, Sullivan & Cromwell LLP, at 212-558-4000, with any questions.

Sincerely,



Joseph Corcoran
Managing Director & Associate General Counsel
SIFMA

Although the Commission introduced cure provisions for unintentional failures to file FWPs in response to comments on the 1998 "aircraft carrier" proposals expressing concern that failures to file would result in Section 12(a)(1) rescission rights, interpretive questions under the existing rules remain, including as to what constitutes "unintentional," a "good faith and reasonable effort" to comply, and a "discovery" of a failure to file a free writing prospectus. We believe eliminating the mandatory filing requirement for FWPs would significantly streamline the Commission's gun-jumping rules.

[16] If the Commission retains the filing requirement without any of these proposed exceptions, the Commission should at least consider amending Rule 433(f)(2)(i), which currently provides an exemption from filing a media FWP if its substance has previously been filed, to permit that exemption if the substance of the FWP is included in another FWP or prospectus filed (or, alternatively, delivered to the investor) before the time of sale.