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Vanessa Countryman
Secretary, Securities and Exchange Commission
100 F Street, N.E.
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Re: CLL-16 – IPO Modernization

Thank you for inviting comments on "ways to improve the SEC's communication" during the IPO process.[1] I offer these comments as an independent academic who has studied this topic and published several papers on point.[2]

My research has led me to conclude that SEC staff review of IPO filings is too often counterproductive and that it is time to rethink this part of the IPO process. Others agree, including NASDAQ,[3] many leading practitioners,[4] and groups representing business and

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[1] *See* SEC Chair Paul S. Atkins, *Remarks at the Stanford Rock Center for Corporate Governance* (May 26, 2026).

[2] Alexander I. Platt, *Rethinking the IPO Bureaucracy,* 22 BERKELEY BUS. L.J. 344 (2025); Alexander I. Platt, *The Administrative Origins of Mandatory Disclosure,* 49 J. CORP. L. 1143 (2024); Alexander I. Platt, *Dual-Track Bias,* 104 WASH. U. L. REV. (forthcoming 2026) https://ssrn.com/abstract=6283578.

[3] UNLOCKING AMERICA'S CAPITAL MARKETS: FUELING ECONOMIC GROWTH AND INNOVATION 15 (June 5, 2025) (report co-authored by NASDAQ warning that the IPO comment letter process had become "cumbersome and time-consuming," creating "uncertainty in the timeline for SEC approval" that "raises the risk that the company may not be able to complete its IPO due to market conditions or other reasons" and suggesting reforms).

[4] Statement of Edwin O'Connor (Goodwin Procter) at SEC Small Business Capital Formation Advisory Committee, Panel on "Deep Dive on Encouraging More IPOs" at 1:20:45–1:29:00 (April 28, 2026) (stating his "number one takeaway" was for the SEC to give issuers "more certainty on timelines" in the IPO process because "if we can give companies more certainty on the timeline to be public and give them more opportunities to hit accessible market windows, I think that would be a meaningful change. . . I think we will in fact have more public companies," pointing to staff review as the primary driver of delay and uncertainty and stating that "If we could shorten that [comment process] so that IPO hopefuls had more certainty on timelines, that would make a meaningful difference . . ."); Statement of Melanie Neary (Gibson Dunn) at SEC Roundtable on Reexamining the IPO Onramp at 14:20-

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investor interests.[5]

This comment briefly summarizes my research on the staff IPO review process, beginning with its historical origins, turning to its costs and benefits, and then pointing to some possible reforms.

I. History: Staff IPO Review Has Outlived Its Purpose

Although the staff's practice of reviewing IPO filings and sending "comment letters" dates to the earliest days of securities regulation, no such process was actually contemplated by the original statute (the Securities Act of 1933).[6] That statute provided that registration statements would become effective *automatically* 20 days after filing unless the agency filed a formal administrative action to block it.[7] Agency staff implemented the comment letter process to deal with challenges that arose while attempting to administer the new mandatory disclosure system.[8] Congress eventually ratified the staff review process in 1940.[9]

In those early years, this mandatory screening of all IPO filings conducted by government accountants and attorneys made good sense. IPO firms had little access to any expertise on how to comply with the brand-new securities regulation system, so direct engagement with agency staff was the best (and only) way for them to learn what they had to do.[10] Further, notwithstanding the stringent liability standard created by the Securities Act, IPO firms faced little practical threat of *ex post* liability for violations during the first several decades under the

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15:13 (June 18, 2025) (observing that "the review process . . . can be unpredictable in terms of timing" and urged the SEC to impose "more guaranteed timelines" to "let companies plan out really like if we want to be hitting the market in mid-June let's back up and how do we get there and just knowing for certain."); Statement of Brad Goldberg (Cooley) at SEC Roundtable on Reexamining the IPO Onramp at 15:15-23 (June 18, 2025) (agreeing that "streamlining the review process" is something "worth addressing or at least looking at"); Joseph Lucosky (Lucosky Brookman), LinkedIn Post https://www.linkedin.com/posts/josephlucosky_time-to-abolish-ipo-bureaucracy-law-professor-share-7302414035151433729-zS03 (noting that staff IPO review is often "simply too long for today's fast-moving markets" and that the process is "certainly outdated" and calling for a "thoughtful recalibration of the process"); *see also* Vijay Sekhon, *Efficient Access to Public Capital,* 40 SECURITIES REG. L. J. 463 (2012) (practitioner arguing for abolition of SEC review of IPO filings for large issuers).

[5] See UNLOCKING, *supra* note 3 at 15 (report co-authored by U.S. Chamber of Commerce warning that the IPO comment letter process had become "cumbersome and time-consuming," creating "uncertainty in the timeline for SEC approval" that "raises the risk that the company may not be able to complete its IPO due to market conditions or other reasons"); INVESTOR CHOICE ADVOCACY NETWORK, SEC 2025 ACTION PLAN at 3-4 (warning that the staff "currently has unlimited discretion to delay the effectiveness of company filings," which creates "uncertainty and potentially significant costs for companies seeking to access public markets" and urging reform); *see also* Luca Enriques, *EU Prospectus Regulation: Some Out-of-the-Box Thinking,* OXFORD BUS. L. BLOG (May 10, 2016) (academic proposing to reform the EU's IPO system by moving away from "securities regulators' pre-approval of the prospectus").

[6] Platt, *Administrative Origins, supra* note 2 at 1153.

[7] *Id.* at 1158-70.

[8] *Id.* at 1153-56 & 1171-75.

[9] *Id.* at 1156-57.

[10] Platt, *Rethinking, supra* note 2 at 372-73 & 378-79.

statute, so it was especially important for agency staff to do what they could to spot material misstatements or omissions on the front end.[11] Also, during that period, IPO investors were predominantly ordinary people not well-positioned to "fend for themselves," necessitating aggressive and individualized staff interventions.[12] Finally, in that era, firms seeking to raise capital had few real alternatives to the public market, which meant that making the IPO process more costly would not deter too many firms from pursuing that option.[13]

Times have changed. IPO firms now have access to an abundance of expertise on compliance with the mandatory disclosure system and no longer require the government to hold their hands through the process.[14] Similarly, IPO firms now face a robust *ex post* deterrent threat from the plaintiffs' bar, giving them a powerful incentive to avoid material misstatements or omissions.[15] Further, today's IPO investors are sophisticated institutions armed with experience, advisors, and deal-relevant information – hardly the sort of vulnerable investors who require government protection.[16] And, unlike their predecessors, startup firms today who seek to raise significant capital or access liquidity have access to a menu of alternatives (e.g., private placement, M&A, deSPAC, etc.) so that increasing the regulatory costs of an IPO can now be expected to simply make alternatives more attractive.[17]

The institutional and market realities in the early 20th century that originally justified the staff IPO review process have disappeared, leaving behind a regulatory process that has outlived its original role.

II. STAFF IPO REVIEW IS TOO OFTEN COUNTERPRODUCTIVE

Delays - Staff review adds four or five months to the average IPO timeline.[18] It takes a startup about *twice* as long to get through the staff review process as it takes to draft the filing in the first place.[19] In addition to the direct costs of responding to the staff's voluminous questions

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[11] *Id.* at 373-75 (noting that between 1933 and 1951 only 32 cases had been filed under Section 11 of the Securities Act and that, according to Congressional testimony, most of these were filed against a single defendant).

[12] *Id.* at 376-78.

[13] *Id.* at 380.

[14] *Id.* at 372-73 & 378-79 (discussing the rise of specialized and highly trained professional advisers; the increasing sophistication of the "IPO team" inside the firm; the proliferation of and easy access to agency precedents, regulations, and guidance; and the plentiful private guides and other resources available to help issuers comply).

[15] *Id.* at 373-75 (discussing the adoption of FRCP 23, the rise of the professional securities class action bar, and a study showing that, in a recent period, 10-20% of IPO firms were targeted by class actions).

[16] *Id.* at 376-78.

[17] *Id.* at 380.

[18] *Id.* at 367 (collecting studies).

[19] *Id.* at 346-47 n.9 (collecting law firm memos estimating the amount of time it takes to draft a registration statement, ranging from 1 month to 10 weeks).

and comments,[20] these additional months of delay can prevent firms from opportunistically hitting a favorable market window for their offering.[21] In our current environment where firms have access to many alternative courses for accessing capital and liquidity, the timing risks of the IPO review process can make a meaningful difference in pushing firms away from going public towards alternatives.

The IPO As Stalking Horse - Since the JOBS Act allowed for confidential IPO filing and review, the comment letter process has also perversely helped to transform the IPO process into a stalking horse for non-IPO exits.[22] "Dual-tracking" firms – startups pursuing an acquisition and IPO simultaneously – now frequently leverage SEC staff review as a form of certification on the acquisition market.[23] Empirical evidence confirms that, under the JOBS Act, acquisition values are up,[24] IPO prices are down,[25] staff review takes longer,[26] and IPO filers are withdrawing before completing an offering *twice* as often as before the JOBS Act.[27] SEC staff review seems to be effectively subsidizing acquisitions at the expense of IPOs.

Merits Review - Staff IPO review is in tension with the mandatory disclosure philosophy at the foundation of the securities regulation system. The staff review process encourages the perception that the SEC staff "approves" of offerings on the merits just like the FDA "approves" a new drug as safe and effective.[28] This perception has been bolstered over the years when the staff has indeed used the IPO review process as a vehicle to conduct quasi-merits review.[29]

Questionable Benefits - These costs might be worth paying if staff review contributed material information to the IPO process, but any such benefit is often highly doubtful.[30] SEC staff are poorly positioned to add value in the IPO context where *private* incentives to elicit

[20] On average, the staff's first letter raises 40-60 distinct issues and the staff send 4-6 letters for each IPO. *See id.* at 347 (collecting studies); *see also id.* at 367 (discussing both financial costs and other costs, such as managerial time, associated with dealing with these comments).

[21] *Id.* at 368-69; *see also* O'Connor, *supra* note 4 at 1:20:45–1:29:00; Neary, *supra* note 4; UNLOCKING, *supra* note 3 at 15.

[22] Platt, *Dual-Track Bias, supra* note 2 at 17-18.

[23] *Id.* at n.72 (collecting statements from leading law firms to this effect).

[24] *Id.* at 13-14 (collecting studies).

[25] *Id.* at 14-16 (collecting studies).

[26] Platt, *Rethinking, supra* note 2 at 359 n.122 (collecting studies)

[27] *Id.* at 370-71.

[28] *See* Platt, *Administrative Origins, supra* note 2 at 1182-83.

[29] *See id.* at 1183; *see also* Chair Paul S. Atkins, *Open Meeting Statement on Policy Statement Concerning Mandatory Arbitration and Amendments to Rule 431 of the Commission's Rules of Practice* (Sept. 17, 2025).

[30] *Cf.* Platt, *Administrative Origins, supra* note 2 at n.131 (collecting statements from early SEC luminaries James Landis, Jerome Frank, and others expressing doubts about the utility of many IPO comment letters).

information are especially powerful.[31] Furthermore, empirical studies have failed to find convincing evidence that staff review meaningfully enriches the information environment in the IPO context; in fact, studies find that SEC comments fail to mitigate IPO underpricing or securities class actions.[32] Importantly, this is distinct from staff review of periodic filings, where private incentives to produce information are considerably weaker and where studies have found that staff review *does* add significant value.[33]

Repeat-Players - While benefits to investors and the public are doubtful, the IPO comment letter process does seem to benefit one group: the gatekeeping professionals who earn fees for guiding clients through the regulatory thicket.[34] SEC staffers who revolve to and from the private sector seem to reap special benefits: researchers have found that former SEC lawyers appear to obtain more favorable results in the comment process, and that IPO firms receive fewer and less aggressive comments when they are audited by accounting firms for which the SEC reviewer previously worked.[35]

III. RETHINKING STAFF IPO REVIEW

Abolition – A "bold"[36] reform would be to abolish staff review of IPO filings and restore the system enacted by Congress in 1933.[37] This would follow the model set by the SEC's recent changes to the "no action" process for Rule 14a-8 shareholder proposals.[38] The SEC's role in the IPO process would be restricted to making and interpreting disclosure rules and punishing violations of those rules. The work of producing, inspecting, and evaluating IPO filings would shift out of the government back to market actors.[39]

Opt-Out - More moderately, the SEC could empower firms to "vote with their feet" by opting in or out of staff IPO review.[40] This could be done, for instance, by amending Rule 430A

[31] Platt, *Rethinking, supra* note 2 at 362-63 (discussing the disclosure and accounting rules that dictate what information must be included in registration statements; the litany of sophisticated, well-resourced, and well-incentivized actors who work to elicit material information; and the stringent liability, reputational, and market discipline many of these actors face for getting it wrong); *see also id.* at notes 139 & 157 (showing that even the staunchest defenders of the mandatory disclosure system acknowledge that the IPO context presents especially powerful *private* incentives to elicit material information).

[32] *See id.* at 359-60 & 364-67.

[33] *Id.* at 366-67 (collecting studies).

[34] *Id.* at 382-84; *see also* Platt, *Administrative Origins, supra* note 2 at 1181 (collecting early criticisms of the comment letter process by Adolf Berle and others for facilitating the enrichment and concentration among elite gatekeepers).

[35] Platt, *Rethinking, supra* note 2 at 384 (collecting studies).

[36] *See* Atkins, *supra* note 1 ("All ideas are most welcome. I have just one request—that you be bold and creative.").

[37] Platt, *Administrative Origins, supra* note 2.

[38] SEC, Division of Corporation Finance, *Statement Regarding the Division of Corporation Finance's Role in the Exchange Act Rule 14a-8 Process for the Current Proxy Season* (Nov 17, 2025).

[39] For a sketch of how abolition might be implemented, see Platt, *Rethinking, supra* note 2 at 384-85.

[40] *See* Platt, *Dual-Track Bias, supra* note 2 at 46.

to replace the words "is declared" with "becomes,"[41] which would enable all IPO firms to omit pricing information from the pre-effective registration statement regardless of whether they become effective via staff acceleration or the statutory 20-day waiting period.[42]

Tiered Review - The SEC could also consider a "tiered" review system for IPO filings[43] along the lines of FINRA's review of underwriter agreements.[44] For instance, staff could make an initial prompt determination as to whether a filing would receive a full review, a limited review (focusing perhaps only on the financial statements), or no review. The determination could be based on some confidential set of criteria developed and maintained by agency staff or on some objective pre-established criteria, such as the issuer's size, details of the offering, or other relevant factors.

Upfront Guidance – The Division of Corporation Finance should also consider implementing a better system for pro-actively identifying issues arising in IPO reviews and translating those into public guidance. This would streamline the process and enable firms to proactively comply with staff views without having to wait for an individualized letter.[45]

CONCLUSION

For nearly a century, SEC staffers have been standing on the "IPO On-Ramp," blocking, slowing, and directing traffic. I believe it may be time for them to get off the ramp and let cars drive.

Respectfully,

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[41] The amended rule would read as follows: "The form of prospectus filed as part of a registration statement that ~~is declared~~ **becomes** effective may omit information with respect to the public offering price . . ." This would effectively make permanent the no-action relief that the SEC provided during the 2025 government shutdown. *See* Alexander I. Platt & Matthew Wansley, *Public, Private, Acquired,* 5.2 U. CHI. BUS. L. REV. (2026).

[42] *See id.*

[43] O'Connor, *supra* note 4 at 1:20:45–1:29:00; INVESTOR CHOICE, *supra* note 5 at 4; *see also* Sekhon, *supra* note 3.

[44] FINRA, Filing Guidance - Public Offering Review § 4, https://www.finra.org/rules-guidance/key-topics/public-offerings/filing-guidance#4.

[45] O'Connor, *supra* note 4 at 1:29:00–1:29:30 (suggesting the staff provide more ex ante guidance on "hot button" disclosure issues to enable "the companies who intend to put their best foot forward . . . [to] proactively address them and not need to wait to review the SEC comments').