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VIA ELECTRONIC SUBMISSION

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: SEC Request for Comments on IPO Modernization
File No. CLL-16 — IPO Modernization (Chairman's Comment File opened May 26, 2026)

Dear Ms. Countryman:

Hamilton & Associates Law Group, P.A. respectfully submits this letter in response to the invitation for public input on modernizing the initial public offering process and removing unnecessary roadblocks to other methods of becoming a public company. Our firm represents public companies, emerging growth companies, smaller reporting companies, private companies seeking access to the public markets, officers, directors, investors, and securities holders. We regularly advise clients on registered initial public offerings, direct public offerings, Regulation A offerings, Exchange Act registrations, reverse mergers, special purpose acquisition company transactions, exchange listings, OTC quotations, and the continuing obligations of public-company status.

Hamilton & Associates strongly supports a comprehensive modernization initiative. The present framework is the product of statutory provisions, rules, staff interpretations, exchange standards, FINRA review processes, and market practices developed at different times for different purposes. Each layer may be defensible in isolation, but their combined effect is often a costly, uncertain, and sequential process that is particularly difficult for smaller and mid-sized companies. Modernization should preserve full and fair disclosure, reliable financial statements, meaningful liability, and effective enforcement while eliminating restrictions that regulate the timing, medium, or form of truthful communications without a corresponding investor-protection benefit.

The Commission should not evaluate modernization solely by asking whether a particular reform will increase the number of traditional, firm-commitment IPOs. A successful framework should give companies several credible routes to the public markets, allow them to select a method suited to their size and capital needs, shorten the period during which market conditions can defeat an otherwise viable transaction, and make it more sustainable to remain public after the transaction closes.

I. Executive Summary

Hamilton & Associates recommends that the Commission pursue the following principal reforms:

1. Replace the fragmented gun-jumping framework with a unified communications regime. The rules should distinguish offering-specific solicitations from ordinary-course corporate communications and should regulate materially false or misleading statements rather than treating truthful communications as unlawful because of timing or medium.

2. Permit carefully conditioned retail testing-the-waters communications. The Commission should adapt the safeguards already used in Regulation A to allow issuers to measure retail interest before effectiveness, provided that communications contain standardized legends, are publicly accessible, do not accept money or binding commitments, and remain subject to the antifraud provisions.

3. Modernize the rules for digital communications. An issuer should not be required to remove or prevent the continued circulation of material that was lawfully posted online. The rules should focus on whether the issuer continues to promote the material, whether offering-specific communications are archived and accessible, and whether material information is consistent with the registration statement.

4. Adopt predictable, risk-based SEC review timelines without eliminating staff review. Initial registration statements should receive prompt intake screening and either full, limited, or targeted review. The staff should identify material issues early, consolidate comments, avoid reopening resolved matters absent new facts, and provide a defined escalation process when timing becomes critical.

5. Create separate regulatory paths for resale-only and capital-raising direct listings. A resale-only direct listing should be permitted on the basis of an Exchange Act registration statement containing full IPO-level disclosure. A direct listing in which the issuer sells newly issued securities should continue to use a Securities Act registration statement, but the process should be streamlined around the exchange opening auction and actual method of distribution.

6. Recalibrate the SPAC and de-SPAC framework. The Commission should retain clear disclosure of sponsor compensation, conflicts, redemptions, and dilution, while providing a tailored framework for reasonable projections, clarifying underwriter status, streamlining duplicative registration mechanics, and beginning the public-company on-ramp when the private operating company actually becomes public. Comparable relief should extend to reverse mergers, including exchange seasoning requirements and the treatment of former shell companies under Rule 144(i).

7. Create a coordinated pathway for direct public offerings and OTC quotations. For smaller issuers that do not use an underwriter, SEC effectiveness or qualification should be coordinated with FINRA Form 211 review and the quotation process so that a compliant offering does not end with securities that cannot obtain an orderly public market.

8. Permit innovation in pricing and distribution. Commission rules should remain neutral among traditional bookbuilding, auctions, hybrid methods, direct allocations, and other transparent pricing mechanisms. Regulation should establish disclosure and antifraud standards, not protect a single distribution model from competition.

9. Support transparent pricing, allocation, and digital investor education. Permit auctions, hybrid offerings, standardized cohort or batch-processing pilots, and company-produced video or interactive offering materials, subject to equal access, filing or archiving requirements, and the same antifraud standards that apply to written materials.

10. Improve research coverage and aftermarket liquidity for smaller issuers. Broaden the research safe harbors, permit connected research by analysts at participating underwriters subject to conflict safeguards, establish a clear framework for issuer-sponsored research with prominent compensation and conflict disclosure, and test market-making and liquidity-support programs that do not guarantee prices or insulate market participants from competition.

11. Reduce unnecessary litigation uncertainty while preserving meaningful liability. Support carefully conditioned protection for forward-looking information that has a reasonable basis and meaningful cautionary disclosure, clarify due-diligence expectations, and promote consistent federal treatment of Securities Act claims without protecting fraud.

12. Preserve a strong materiality-based investor-protection baseline. Every route to the public markets should require audited financial statements, disclosure of material business and financial risks, capital structure, use of proceeds, conflicts, dilution, related-party transactions, and management. Bad actors, undisclosed paid promotion, manipulation, and materially misleading projections should remain enforcement priorities.

II. Modernization Should Address the Entire Path to Public-Market Access

The decline in the number of exchange-listed companies reflects many forces, including the depth of private capital, changes in market structure, litigation exposure, underwriter economics, research coverage, and the cost of remaining public. Regulatory friction is not the only cause, but it is one of the few causes the Commission can address directly. The relevant burden is not limited to a filing fee or a discrete legal requirement. It includes management distraction, repeated professional review, uncertain timelines, sequential SEC, FINRA, and exchange processes, and the possibility that a transaction will miss a narrow market window after substantial expense has already been incurred.

These costs are not proportionate across issuers. A large, well-known company may be able to sustain a lengthy review, engage several national firms, and wait for a favorable market window. A smaller operating company may have a short cash runway, a concentrated management team, a limited number of qualified accounting personnel, and no underwriter willing to commit resources until regulatory timing is clearer. Rules that appear neutral can therefore reserve public-market access for the companies least in need of it.

The Commission should also distinguish an IPO from the broader act of becoming public. A firm-commitment IPO is an important path, but it is not the only path. Direct listings, de-SPAC transactions, direct public offerings, Regulation A offerings followed by exchange or OTC market access, and Exchange Act registrations serve different issuers and different objectives. A modernization initiative should establish a coherent baseline across these methods while recognizing their structural differences.

Modernization also should address the infrastructure surrounding an offering. Smaller offerings frequently face weak underwriter economics, limited research coverage, inadequate market-making, and fragile aftermarket liquidity. Reducing the time or cost required to produce a registration statement will not fully restore public-market access if a newly public company cannot obtain credible distribution, price discovery, analyst attention, or an orderly secondary market.

The depth of private capital further changes the issuer’s calculation. A company that can remain private for many years may avoid the costs, litigation exposure, and public scrutiny associated with an IPO. The better response is to make the public markets more attractive and predictable, not to rely principally on lower private-company reporting thresholds to force companies into public reporting. Any reconsideration of Exchange Act Section 12(g), record-holder thresholds, or scaled disclosure for very large private companies should proceed separately and should be calibrated so that it does not impair private capital formation.

Restoring practical access to the public markets also serves ordinary investors. When companies remain private through their highest-growth years and list only after that growth has occurred, the associated gains accrue disproportionately to venture, private-equity, and institutional investors, while retail investors participate late or not at all. A modernization program that makes it feasible for companies to become public earlier, through a method suited to their circumstances, broadens the opportunity for ordinary investors to share in that growth within a framework of audited financial statements, mandated disclosure, and enforceable accountability.

III. The Gun-Jumping Rules Should Be Replaced with a Clear, Technology-Neutral Framework

A. The Rules Should Distinguish an Offering Solicitation from Ordinary-Course Communications

The current communications rules require issuers and counsel to navigate multiple safe harbors that turn on filer status, timing, audience, medium, historical practice, and whether a communication is deemed an offer.

The resulting analysis is often disconnected from the investor-protection question that should matter: whether the communication is materially false, misleading, selectively distributed in a manner that creates unfair informational advantage, or used to obtain an unlawful commitment before effectiveness.

Hamilton & Associates has separately published a practical analysis of the existing rules and their application to ordinary-course, testing-the-waters, and digital communications. See *Talk Is Cheap - Until It Tanks Your IPO: A Guide to IPO Communications and the Quiet Period* (June 19, 2026).

The Commission should create a single safe harbor for ordinary-course communications by any operating company. Factual product announcements, customer and supplier developments, hiring, operating milestones, industry presentations, website content, social-media communications, and other business information should not become unlawful offers merely because an IPO is contemplated or a draft registration statement has been submitted. The safe harbor should apply when the communication does not solicit an investment decision, is disseminated through a channel used by the company for business communications, and is not materially inconsistent with information provided to the Commission or investors.

The existing concept that an issuer must take reasonable steps to prevent further distribution of an earlier communication is especially ill-suited to modern media. Once material is posted on a website, social-media platform, streaming service, podcast, or third-party news site, the issuer cannot reliably retrieve every copy or prevent recirculation. The appropriate inquiry should be whether the issuer stopped actively promoting the communication for offering purposes, not whether the internet retained it.

B. The Commission Should Establish a Unified Offering-Communication Safe Harbor

Offering-specific communications should be permitted before and after the filing of a registration statement under a unified safe harbor. Written materials should identify the issuer, state that no sale can occur before effectiveness, explain where the registration statement or draft disclosure can be obtained when publicly available, and remain subject to Securities Act Section 17(a), Exchange Act Section 10(b), and Rule 10b-5. Material offering communications should be retained in an electronic archive, and information that materially changes the investment case should be included in or incorporated into the prospectus before sale.

This approach would permit the Commission to simplify or consolidate the overlapping functions now performed by Rules 134, 135, 163A, 168, 169, and 433. It also would reduce the risk that a technical mistake concerning a legend, filing date, hyperlink, or social-media format becomes a Section 5 violation even though investors received accurate information. A reasonable cure provision should protect an issuer that promptly corrects an immaterial or inadvertent filing or legend failure.

C. Retail Testing the Waters Can Be Permitted Without Permitting Retail Sales Before Effectiveness

Rule 163B permits testing-the-waters communications with qualified institutional buyers and institutional accredited investors. That accommodation helps issuers assess institutional demand but provides limited information about potential retail interest. Regulation A already demonstrates that retail solicitations of interest can occur before qualification when the communication contains clear legends, no money or consideration is accepted, no binding commitment is obtained, and the communication remains subject to antifraud liability.

The Commission should permit a similar retail testing-the-waters process for registered IPOs. To protect investors, the issuer should be required to use a standardized legend, make written materials publicly available through EDGAR or a linked Commission repository, retain records of communications, and disclose in the registration statement any material feedback that caused a meaningful change in the offering. No investor should be asked to fund an account, reserve securities, or make a binding commitment before effectiveness.

Retail testing the waters could be especially useful to smaller consumer-facing companies, community-based companies, and issuers considering direct or auction-based offerings. It would provide information about actual demand before the issuer incurs the full cost of an offering and would reduce the current asymmetry under which institutional investors can evaluate an offering privately while retail investors are largely excluded until the process is far advanced.

D. Interim Rule-by-Rule Reforms Should Not Await a Complete Reconstruction

A consolidated communications framework is the best long-term solution, but several targeted amendments could provide immediate relief. Rules 134 and 135 should permit a plain-English description of the issuer, its business, the proposed use of proceeds, and the reasons for the offering, provided that the information is consistent with the registration statement. Rule 163A's 30-day period should be shortened to 15 days or eliminated for communications that do not solicit an investment decision, and the requirement to take reasonable steps to prevent further distribution should be replaced with a standard focused on whether the issuer continues to promote the communication for offering purposes.

Rule 169 should focus on whether factual business information was disseminated through an established company channel in the ordinary course, not on an increasingly artificial distinction between investor and non-investor audiences. The definition of factual business information should expressly include operational milestones, product and customer updates, workforce information, supply-chain developments, and other non-promotional business communications. The Commission also should permit company-produced video presentations, podcasts, interactive data rooms, and similar digital materials as offering communications or free writing prospectuses when they are filed or archived, equally available, consistent with the prospectus, and subject to full antifraud liability.

IV. SEC Review Should Be Faster, More Predictable, and Risk-Based

Commission staff review can materially improve an initial registration statement, particularly where the issuer has complex accounting, related-party transactions, unusual capitalization, a limited operating history, or management unfamiliar with public-company disclosure. Hamilton & Associates does not recommend eliminating staff review of IPO registration statements. Wholesale elimination would remove a useful investor-protection mechanism and could make the quality of public disclosure depend too heavily on the resources of the issuer and its advisers.

Eliminating staff review altogether would be too broad. In the smaller-company market, review frequently identifies undisclosed shell-company history, inconsistent capitalization, related-party arrangements, promotional claims, accounting problems, auditor issues, and material weaknesses that may not otherwise receive sufficient scrutiny. The Commission can obtain most of the timing benefit sought by advocates of abolition through prompt intake screening, limited and targeted review tracks, and predictable response periods without surrendering the ability to examine higher-risk filings.

The Commission could also conduct a limited pilot under which an issuer may elect a streamlined review track when objective criteria demonstrate a comparatively simple transaction and disclosure record. The criteria could include PCAOB-audited financial statements, no recent restatement or unresolved material weakness, no shell or blank-check history, no novel security, and no material unresolved related-party issues. The staff should retain authority to move a filing to full review, issue a stop order, or pursue enforcement, and the prospectus should state the scope of the review actually performed. A pilot would produce evidence concerning timing, disclosure quality, withdrawals, and investor outcomes before any broader change is adopted.

The principal problem is not review itself. It is unpredictability concerning scope, timing, repeated comment cycles, and coordination among reviewing offices. The Commission should adopt published service standards under which the staff ordinarily provides an initial response within 20 business days and a subsequent response within 10 business days. Those standards need not create automatic effectiveness, but they would allow issuers, underwriters, auditors, and exchanges to plan around a realistic schedule.

Each initial registration statement should receive a prompt intake assessment and be assigned to one of three tracks: full review, limited review, or targeted review. Full review would remain appropriate for novel accounting, complex financial instruments, extensive related-party arrangements, shell-company histories, weak or recently changed auditors, material restatements, or other elevated risks. A limited or targeted review could focus on financial statements, capitalization, material contracts, use of proceeds, dilution, and identified industry issues where the filing otherwise follows established disclosure patterns.

The review process should include the following safeguards and efficiencies:

- The first comment letter should identify all material issues reasonably apparent from the filing and should distinguish required changes from suggestions for improved presentation.
- Comments should identify the applicable disclosure rule or materiality basis, and acceleration should not be conditioned on unwritten merits of judgments, governance preferences, or policy positions unrelated to required disclosure.
- Subsequent rounds should focus on unresolved matters and material new disclosure rather than reopening issues that were fully addressed absent a change in facts or law.
- Comments from accounting, legal, industry, and specialized offices should be consolidated to the extent practicable, so the issuer receives one coordinated set of instructions.
- An issuer should have access to a rapid escalation process when a comment turns on an interpretive issue or threatens a documented market window.
- The Division of Corporation Finance should publish recurring IPO comments, model disclosure, and resolution principles more frequently so issuers can address common issues before filing.
- The Commission, FINRA, and exchanges should coordinate review calendars and avoid requesting duplicative information already available in EDGAR filings or public correspondence.

The confidential draft submission process should remain available broadly. It permits companies to resolve disclosure and accounting issues before exposing proprietary information or a failed transaction to competitors and the market. The Commission should continue recent accommodations that permit more nonpublic review and should evaluate whether the public-filing lead time can be shortened for issuers not subject to a statutory minimum, while still providing investors adequate time to review the filed prospectus before pricing. (See SEC Division of Corporation Finance, Enhanced Accommodations for Issuers Submitting Draft Registration Statements.)

The Commission should also reduce the cost of preparing required financial information without reducing its reliability. Preparation of audited financial statements is frequently the longest and most expensive element of IPO readiness for a smaller company. Financial-statement age and staleness requirements should be harmonized across Form S-1, Form 1-A, and de-SPAC filings so that substantially similar transactions are not subject to different cut-off dates. The Commission should confirm that two years of audited financial statements are sufficient for all first-time registrants, not only emerging growth companies, and should work with the PCAOB to evaluate whether audit and interim-review requirements for smaller first-time registrants can be scaled without diminishing audit quality.

V. Direct Listings Should Be Divided into Resale-Only and Capital-Raising Paths

A direct listing can serve at least two different purposes. In a resale-only direct listing, existing shareholders obtain liquidity and the company becomes exchange-listed without selling newly issued shares. In a primary direct listing, the company also raises capital by selling newly issued shares into the opening auction. Treating these transactions as though they are identical produces unnecessary legal complexity.

Direct listings are useful, but they are not a universal substitute for an IPO. A well-known company with substantial shareholder liquidity and no immediate need for primary capital presents a different case from a smaller company that needs financing, investor education, and committed distribution. The Commission should remove unnecessary friction from direct listings without assuming that the mechanism can replace the underwriting, research, and aftermarket support required by many emerging companies.

A. Resale-Only Direct Listings Should Be Permitted on an Exchange Act Registration Statement

For a resale-only direct listing in which the issuer does not sell securities, the Commission should permit an exchange listing based on an effective Exchange Act registration statement on Form 10 or Form 20-F without requiring a concurrent Securities Act resale registration statement. The Exchange Act filing should contain the same core information investors would receive in an IPO prospectus, including audited financial statements, management discussion and analysis, capitalization, beneficial ownership, related-party transactions, material contracts, risk factors, the number of shares eligible for immediate sale, contractual lockups, and the mechanics of the opening auction.

The Supreme Court has held that a plaintiff asserting a Section 11 claim must trace the purchased shares to the registration statement alleged to contain the misstatement or omission. In a resale-only direct listing, registered and unregistered shares may begin trading together, making tracing difficult. Requiring a Securities Act registration statement while the associated Section 11 remedy may be unavailable to many purchasers imposes cost without reliably delivering the assumed protection. If Congress determines that direct-listing purchasers should receive a different Section 11 remedy, the more direct solution is to address tracing expressly rather than require a duplicative registration form. (Slack Technologies, LLC v. Pirani, 598 U.S. 759, 768-70 (2023).)

Investor protection in an Exchange Act-only direct listing should be reinforced through adequate public availability of the registration statement, exchange standards for public float and shareholder distribution, an orderly opening auction, disclosure of lockups and sale availability, and clear identification of any financial adviser and its compensation. Section 10(b), Rule 10b-5, Section 18, and other applicable remedies would remain available.

B. Primary Direct Listings Should Remain Securities Act Offerings but Use Tailored Rules

When the issuer sells newly issued securities in the direct listing, the transaction is a capital-raising distribution and should remain registered under the Securities Act. The Commission and exchanges should, however, tailor the process to the actual auction method. Rules should permit a sufficiently flexible price range, explain how the opening price determines the number of shares sold and proceeds received, and allow the issuer to use testing-the-waters and digital investor education without forcing the transaction into a traditional bookbuilding model.

The Commission should remain neutral among traditional underwriting, auction pricing, hybrid methods, and direct allocation. The regulatory question should be whether the price-discovery process and conflicts are described accurately, whether investors receive equal access to material information, and whether the distribution is orderly—not whether the transaction resembles a conventional underwriting.

C. Opening-Auction and Pricing Disclosure Should Reflect the Actual Method of Distribution

The final registration statement should describe how the exchange opening auction will determine the price, the maximum and minimum number of primary shares that may be sold, the effect of the opening price on proceeds and dilution, and any conditions that could postpone or cancel the listing. After the opening, the issuer or exchange should publish aggregate information concerning the clearing price, total eligible demand, primary shares sold, and the categories of investors receiving allocations, without disclosing investor identities or proprietary order information.

VI. SPAC Modernization Should Preserve Core Transparency While Removing Duplicative Friction

SPACs can provide valuation certainty, committed capital, transaction flexibility, and a negotiated route to the public markets. They also present distinctive risks involving sponsor incentives, redemptions, warrants, dilution, conflicts, projections, and the possibility that a transaction will be completed primarily to avoid liquidation. A sound modernization program should not recreate the market excesses that produced unreliable projections and severe dilution, but neither should it make the structure economically unavailable through cumulative and duplicative requirements.

The Commission should retain prominent disclosure of sponsor compensation, conflicts of interest, redemption levels, sources of financing, warrant and promote dilution, and the post-closing capital structure. Those matters are material and specific to the SPAC structure. The Commission should also retain target-company responsibility for the accuracy of material disclosure. At the same time, the 2024 SPAC framework should be recalibrated where it imposes costs that are not necessary to achieve those objectives. (See Special Purpose Acquisition Companies, Shell Companies, and Projections, Securities Act Release No. 33-11265, Exchange Act Release No. 34-99418, Investment Company Act Release No. IC-35096 (Jan. 24, 2024).)

A. The Public-Company On-Ramp Should Begin When the Operating Company Becomes Public

For a private operating company that becomes public through a de-SPAC transaction, the relevant seasoning period should begin at the closing of the business combination, not at the SPAC IPO. Before the closing, the SPAC is a shell with a different management focus, accounting system, internal-control environment, and business purpose. Inheriting the shell company's reporting history can shorten or eliminate accommodations before the operating company has had a meaningful period to function as a public company.

B. Reasonable Projections Should Be Permitted Under a Tailored Safe Harbor

Projections may be important in a de-SPAC transaction because investors are voting on and financing the acquisition of an operating business whose value may depend on future development. Prohibiting or effectively deterring projections does not necessarily eliminate them; it can move them into private negotiations among sponsors, private investment in public equity investors, lenders, and advisers, leaving public shareholders with less information.

To the extent permitted under existing statutory authority, the Commission should provide a tailored safe harbor for projections used in a de-SPAC transaction. The safe harbor should require a reasonable basis, identification of material assumptions, disclosure of the period covered and the party that prepared the projections, presentation of material sensitivity or downside information where appropriate, board or committee review, and an obligation to update or withdraw projections that are no longer reasonably supportable before the shareholder vote or investment decision. It should not protect statements made with actual knowledge of falsity or reckless disregard of known contrary facts. The Commission should support legislation if broader statutory protection is necessary.

C. Underwriter Status and Registration Mechanics Require Clear Rules

The Commission should replace open-ended guidance concerning potential underwriter status in de-SPAC transactions with objective rules. A financial adviser, placement agent, sponsor, or SPAC IPO underwriter should not be treated as a statutory underwriter in the de-SPAC solely because it performed customary services, received disclosed compensation, or participated in both stages of the transaction. Underwriter status should turn on actual participation in a distribution, purchase and resale activity, or other conduct within the statutory definition.

The target company should remain accountable for its disclosures, but the Commission should eliminate duplicative signature, filing, consent, and delivery requirements that do not add substantive protection. Financial-statement age, predecessor, pro forma, and smaller-reporting-company determinations should be harmonized and stated in one transaction-specific framework. The final rules also should clarify treatment of de-SPACs involving a previously reporting target, multiple targets, foreign private issuers, and transactions in which the target becomes the legal parent.

D. Sponsor Economics Should Be Transparent and Better Aligned

The cover of the de-SPAC proxy statement and prospectus should include a concise table showing the sponsor's at-risk investment, promote, warrants, other compensation, redemption scenarios, financing costs, and resulting dilution at stated levels of redemptions. The Commission should not prescribe one sponsor-compensation model, but its rules and exchange standards should facilitate performance-based vesting, forfeiture, or earnout arrangements that tie a portion of the promote to post-closing performance rather than transaction completion alone. Those arrangements should be described in plain English and should not create adverse regulatory treatment merely because they improve alignment.

E. Reverse Mergers Should Receive Parallel, Principles-Based Treatment

The reverse merger remains a legitimate route to public-company status for smaller operating companies, and the principles recommended above for de-SPAC transactions should apply to it as well. The exchange seasoning requirements adopted in 2011, which generally require a reverse-merger company to trade in the U.S. markets for an extended period and maintain a qualifying price before listing, responded to disclosure failures that predate the amended Rule 15c2-11 framework, expanded shell-company disclosure, and modern enforcement tools. The Commission should work with the exchanges to reassess whether those requirements remain calibrated to actual risk, and should permit a reverse-merger company that provides IPO-level disclosure, PCAOB-audited financial statements, and evidence of adequate internal controls to qualify for listing on a timetable comparable to that of a similarly situated de-SPAC target.

The Commission should also revisit Rule 144(i), under which securities of a former shell company remain subject to a current-information condition that never expires, regardless of how long the combined operating company has functioned and reported as a public company. A permanent disability is disproportionate once an issuer has established a sustained record of timely Exchange Act reporting following a business combination. The Commission should consider permitting the condition to sunset after a defined period of continuous, timely reporting by an operating company, while preserving the condition for issuers that fail to maintain current information and for repeat shell promoters.

VII. Smaller Issuers Need a Coordinated Direct Public Offering, Regulation A, and Quotation Pathway

For many smaller companies, the practical alternative to a traditional IPO is a self-underwritten or direct public offering registered on Form S-1, a Regulation A Tier 2 offering, or an Exchange Act registration followed by an application for market quotation. These routes can reduce underwriting expense and permit issuers to raise capital from customers, community members, and other investors. They also expose a serious gap in the present framework: an effective registration statement or qualified offering statement does not itself create a public market.

Regulation A Tier 2 is presently limited to $75 million in a 12-month period. The Commission should consider increasing the limit to $150 million and indexing it at regular intervals. The existing Tier 2 framework already requires audited financial statements, ongoing reports, bad-actor disqualification, and investment limits for non-accredited investors when the securities are not exchange-listed. A higher ceiling would make the exemption useful to a broader group of operating companies, but the benefit will be limited unless qualification, exchange review, and OTC quotation can proceed concurrently. (See 17 C.F.R. § 230.251(a)(2).)

An issuer seeking an exchange listing following qualification should be able to use a short-form Exchange Act registration that incorporates the Form 1-A disclosure, and the exchange should begin substantive review before qualification. An issuer seeking OTC quotation should be able to begin the Form 211 process on the same timetable. The Commission also should publish Form 1-A review service standards comparable to those recommended for registered IPOs.

A broker-dealer generally must satisfy Exchange Act Rule 15c2-11 and submit information to FINRA under Rule 6432 before initiating or resuming quotations in an OTC security. The issuer ordinarily cannot file the Form 211 on its own. A small issuer may therefore complete an SEC-reviewed or SEC-qualified offering and still be unable to find a broker-dealer willing to sponsor quotation, or may face a second, sequential review that repeats questions already addressed during the offering process. (17 C.F.R. § 240.15c2-11; FINRA Rule 6432.)

The Commission should work with FINRA to create a coordinated pathway with the following elements:

- A broker-dealer should be permitted to begin Form 211 review when a substantially complete registration statement or offering statement is publicly filed, with quotation authority conditioned on effectiveness or qualification and satisfaction of final market requirements.
- FINRA should publish service standards for completeness review, initial comments, and subsequent responses, together with a defined escalation procedure for interpretive issues.
- The review should rely on EDGAR filings, SEC correspondence, audited financial statements, and transfer-agent records already available, rather than requiring the issuer to recreate the same record in a separate format.
- A broker-dealer that follows a Commission- and FINRA-prescribed due-diligence protocol, verifies specified information, and discloses compensation and conflicts should receive a safe harbor concerning the adequacy of its Rule 15c2-11 review absent knowledge or reckless disregard of false information.
- The issuer should be permitted to submit supporting information directly to FINRA and track the status of the review, while the broker-dealer remains responsible for initiating the quotation and satisfying its regulatory obligations.
- A Form 211 should not be denied merely because the issuer used a direct public offering rather than an underwritten IPO. The relevant considerations should be the completeness and reliability of disclosure, operating history, shareholder distribution, transfer-agent controls, capitalization, and the absence of manipulative or abusive circumstances.

In addition, where the Commission has completed review of a registration statement or qualification of a Regulation A offering statement immediately before quotation is sought, the Commission should provide that the staff's review, together with current EDGAR disclosure and specified transfer-agent confirmations, satisfies the information-review requirement of Rule 15c2-11. The sponsoring broker-dealer would remain responsible for confirming the identified items and for its obligations under FINRA rules, but the Form 211 would become a largely ministerial confirmation rather than a second substantive review of a record the Commission has just examined.

This pathway would not reduce protections against shell-company abuse, undisclosed control persons, toxic financing, promotional campaigns, or inaccurate issuer information. It would instead make the SEC and FINRA processes operate in sequence only where necessary and concurrently where possible. For a legitimate smaller operating company, completing a compliant offering should be the beginning of public-market access, not the beginning of an indefinite search for a second regulatory sponsor.

VIII. Pricing, Research, and Aftermarket Liquidity Are Part of IPO Modernization

A. Regulation Should Be Neutral Among Bookbuilding, Auctions, Hybrid Methods, and Cohort Platforms

The Commission should not require issuers to use traditional discretionary bookbuilding. Auctions, hybrid book-and-auction methods, direct allocations, and standardized cohort or batch-processing platforms may improve price discovery, broaden participation, and reduce bespoke transaction costs. The Commission should permit controlled pilots in which multiple issuers use standardized processes and shared infrastructure, provided that each issuer has its own registration statement, audited financial statements, disclosure obligations, liability, and separately determined offering price.

No pricing method should be presumed superior in every offering. Larger, well-known companies may be able to attract broad auction participation, while smaller and less familiar companies may require significant underwriter-led education and curation. The governing rules should require accurate disclosure of how demand is collected, how price is determined, who controls allocations, what stabilization may occur, and what conflicts or compensation affect the process.

B. Pricing, Allocation, and Digital Presentation Should Be More Transparent

For a firm-commitment IPO, the final prospectus should provide a concise explanation of the pricing methodology, including the principal valuation approaches, material changes from the preliminary price range, the role of indications of interest, and any material non-price considerations that affected allocations. After pricing, aggregate demand by price band and allocation by broad investor category could be reported without revealing investor identities. This would permit investors to evaluate price discovery and allocation practices while preserving legitimate confidentiality.

The Commission also should recognize that many investors learn through video, audio, interactive graphics, and other digital formats. Company-produced presentations should be permitted as registered offering materials or free writing prospectuses when they are filed or archived, remain equally accessible, identify the responsible speakers, and are subject to the same accuracy, consistency, and liability standards as written offering materials. Digital presentation should supplement, not replace, the prospectus.

C. Smaller Public Companies Need Research and Market-Making Support

Research and secondary-market liquidity are central to whether a newly public company can remain public successfully. Rules 137 through 139b should be revised so that smaller issuers do not lose meaningful research coverage because of public-float, seasoning, or listing distinctions unrelated to the quality of the research. The Commission should also provide a clear interpretive framework for issuer-sponsored research, including prominent disclosure of sponsorship, compensation, conflicts, the analyst relationship, methodology, and issuer review rights, together with compliance with Securities Act Section 17(b) and applicable FINRA research-conflict rules. Any relief should distinguish bona fide research from paid promotion and should not protect materially misleading reports, undisclosed trading conflicts, or broker-dealer conduct prohibited by other rules.

The Commission and FINRA should also permit research analysts at participating underwriters to publish research on an issuer before and during a registered offering, consistent with the connected-research model used in other major markets, subject to prominent conflict disclosure, information barriers concerning material nonpublic information, and full antifraud liability. Post-offering research quiet periods should be shortened or eliminated so that coverage is available when investors most need it, and analysts should be able to attend issuer diligence sessions without converting their research into an offering communication.

The Commission should work with FINRA and the exchanges on data-driven pilots for designated liquidity providers, market-maker obligations and incentives, and, where supported by evidence, issuer-elected quotation increments for smaller securities. Any program should require transparent compensation, objective participation criteria, published performance data, and safeguards against price support, manipulation, or exclusion of competing market makers.

IX. Litigation and Forward-Looking Information Should Be Rationalized, Not Eliminated

Meaningful Securities Act liability is an important part of investor protection, but uncertain and duplicative litigation exposure can deter otherwise suitable companies from entering the public markets. The Private Securities Litigation Reform Act safe harbors generally do not protect forward-looking statements made in connection with an IPO and do not protect statements by blank-check companies. The result is that the companies most dependent on communicating a developing business plan may face the greatest uncertainty when discussing the future. (See Securities Act § 27A; Exchange Act § 21E.)

Hamilton & Associates supports legislation extending a carefully conditioned forward-looking-statement safe harbor to IPOs and de-SPAC transactions. Protection should require a reasonable basis, identification of material assumptions, meaningful cautionary disclosure tailored to the forecast, disclosure of the person or process responsible for preparation, and prompt correction or withdrawal when management no longer has a reasonable basis. The safe harbor should not protect a statement made with actual knowledge of falsity or reckless disregard of known contrary facts.

Within its existing authority, the Commission should clarify due-diligence expectations for forecasts and other forward-looking information, recognize the role of meaningful cautionary language, and support consistent enforcement of valid federal-forum provisions for Securities Act claims. A single registered offering should not face duplicative proceedings in multiple forums based on the same alleged disclosure defect. These reforms should preserve Sections 11, 12(a)(2), and 17(a), Exchange Act Section 10(b), and Rule 10b-5 for false present-tense facts, omitted material information, and forecasts lacking a reasonable basis.

X. Investor Protection Should Focus on Material Information, Equal Access, and Accountability

Modernization should not create a hierarchy in which investors receive materially less information solely because an issuer selected a different route to market. Each pathway should provide a common baseline of audited historical financial statements; material information concerning the business, liquidity, capital requirements, management, ownership, conflicts, related-party transactions, use of proceeds, dilution, and securities being offered or listed; and clear identification of the persons receiving transaction-based compensation.

The specific protections should then reflect the transaction. A traditional IPO requires disclosure of underwriting and allocation arrangements. A direct listing requires disclosure of shares immediately available for sale, lockups, opening-auction mechanics, and the role of financial advisers. A de-SPAC requires transparent sponsor economics, redemptions, dilution, financing, conflicts, and assumptions underlying projections. A direct public offering followed by OTC quotation requires clear disclosure of the absence of a traditional underwriter, liquidity risk, market-maker arrangements, and any compensation paid to persons assisting with distribution or quotation.

Materiality should be applied rigorously when an issuer’s growth narrative depends on infrastructure that may not yet exist or may not be deliverable on the assumed timetable. When material, offering disclosure should distinguish contracted demand from aspirational demand; available power from deliverable power; planned interconnection from operational capacity; and announced manufacturing, data-center, mining, energy, water, transportation, or supply-chain capacity from funded and permitted capacity. The issuer should disclose material dependencies, who bears the cost, timing constraints, curtailment or congestion risk, and sensitivity to delays. These matters can be addressed through existing risk-factor and management-discussion principles rather than a rigid new industry checklist.

Comparable modernization should be available to foreign private issuers that access the U.S. public markets. Communication relief, direct-listing rules, auction flexibility, de-SPAC guidance, and registration-process improvements should be coordinated across Forms F-1, F-3, and 20-F where the underlying investor-protection considerations are the same. The Commission’s separate review of foreign-private-issuer eligibility should not unintentionally deny foreign issuers the capital-formation benefits made available to domestic companies.

The Commission should pair reduced technical restrictions with stronger enforcement against conduct that directly harms investors: materially false or misleading offering communications, concealed compensation, undisclosed paid promotion, manipulative trading, fabricated customer or financing claims, misleading projections lacking a reasonable basis, and misuse of offering proceeds. A framework that permits truthful communication while aggressively policing fraud will protect investors more effectively than a framework that imposes technical silence on compliant issuers while sophisticated wrongdoers evade substance-based requirements.

XI. Implementation Recommendations

Hamilton & Associates recommends that the Commission and its staff:

1. Propose a consolidated Securities Act communications framework. Replace overlapping, status-dependent safe harbors with clear rules for ordinary-course communications, offering-specific communications, electronic roadshows, social media, and prompt cure of immaterial technical failures.

2. Expand testing the waters to retail investors under Regulation A-style safeguards. Require standardized legends, public availability of written materials, no acceptance of funds or commitments, record retention, and full antifraud liability.

3. Adopt published IPO review service standards. Use 20-business-day initial and 10-business-day subsequent review targets, early issue identification, consolidated comments, and an expedited escalation process.

4. Use full, limited, and targeted review tracks. Retain intensive review for higher-risk or novel filings while permitting established disclosure patterns and lower-risk offerings to move more predictably.

5. Permit Exchange Act-only resale direct listings. Require IPO-level company disclosure and robust exchange standards, but do not require a Securities Act registration statement where the issuer is not selling securities.

6. Tailor primary direct-listing rules to auction execution. Preserve Securities Act registration while permitting flexible pricing mechanics and neutral treatment of nontraditional distribution methods.

7. Recalibrate the de-SPAC rules. Begin the on-ramp at the business-combination closing, permit reasonable projections under guarded conditions, preserve core conflict and dilution disclosure, and provide objective rules concerning underwriter status and transaction mechanics. Extend parallel seasoning relief and Rule 144(i) modernization to reverse mergers.

8. Coordinate SEC, FINRA, and exchange review. Create concurrent review where possible, eliminate duplicative information requests, and establish transparent timelines for quotation and listing decisions.

9. Create a workable Form 211 pathway for direct public offerings. Allow conditional pre-effectiveness review and a due-diligence safe harbor for sponsoring broker-dealers that follow prescribed procedures and disclose conflicts. Where the Commission has just completed review or qualification, deem that review, together with current EDGAR disclosure, to satisfy the Rule 15c2-11 information-review requirement.

10. Increase and index the Regulation A Tier 2 ceiling. Consider a $150 million limit, simplified transition into Exchange Act reporting, and concurrent SEC, exchange, and Form 211 review.

11. Permit pricing and distribution innovation. Allow auction, hybrid, cohort, and other transparent methods; require clear pricing and allocation disclosure; and permit equally available digital presentations subject to full liability.

12. Expand research and aftermarket-liquidity tools. Broaden Rules 137 through 139b, permit connected research by participating underwriters with appropriate safeguards, create a carefully conditioned framework for issuer-sponsored research, and test transparent market-maker and liquidity-support programs for smaller issuers.

13. Reduce unnecessary litigation uncertainty. Support guarded forward-looking-statement protection for IPOs and de-SPACs, clarify due-diligence expectations, and promote consistent federal treatment of Securities Act claims without limiting liability for fraud.

14. Apply modernization consistently and preserve material disclosure. Extend comparable relief to foreign private issuers and emphasize existing materiality principles for infrastructure-dependent growth claims, financing assumptions, and other issuer-specific risks.

15. Reduce financial-statement preparation burden. Harmonize financial-statement age and staleness requirements across offering pathways, confirm that two years of audited financial statements suffice for all first-time registrants, and work with the PCAOB to scale audit requirements for smaller first-time registrants without reducing audit quality.

16. Evaluate modernization using measurable outcomes. Track transaction timing, review rounds, issuer costs, offering withdrawals, market-window failures, direct-listing and de-SPAC activity, Regulation A and direct-public-offering market access, research coverage, liquidity, restatements, enforcement matters, and investor outcomes after implementation.

XII. Conclusion

The public markets should not require every company to use the same transaction structure, the same communication method, or the same distribution model. They should require accurate material disclosure, reliable financial statements, transparent conflicts and compensation, fair access to information, and accountability for fraud. The Commission can preserve those principles while making the process faster, clearer, more predictable, and more compatible with modern technology and market practice.

Hamilton & Associates Law Group, P.A. respectfully urges the Commission to pursue comprehensive IPO modernization and to include smaller-issuer direct public offerings, Regulation A, post-offering market access, research, liquidity, pricing innovation, litigation certainty, and foreign-issuer access within that initiative. Modernizing only the traditional underwritten IPO would leave many of the companies most affected by regulatory friction outside the reform.

We appreciate the opportunity to submit these comments.

Respectfully submitted,

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