

Capital Markets & Governance Insights

INSIGHTS ON SELECTED RECENT DEVELOPMENTS

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SEC Developments

SEC Climate Disclosure Rule Developments

In early March 2024, the Securities and Exchange Commission (SEC) adopted rules to enhance and standardize climate-related disclosures by public companies and in public offerings. Less than a month later, the SEC voluntarily stayed the application of those rules pending completion of judicial review by the Eighth Circuit. That stay remains in effect.

On March 27, 2025, the SEC voted to end its defense of those rules in the ongoing litigation. Despite the SEC's decision to no longer defend its climate disclosure rules, the litigation remains ongoing. On April 4, 2025, however, the District of Columbia, along with several states that intervened in the litigation, filed a motion seeking to put the litigation on hold considering the SEC's withdrawal from defending the rules; the State of Iowa, one of the petitioners, has opposed that motion. Even if the Eighth Circuit denies the motion and goes on to rule in favor of the SEC's climate disclosure rules, the current SEC could begin a new notice and comment rulemaking process to formally rescind those rules.

EDGAR Next Enrollment Period Kicks Off

On March 24, 2025, the amendments adopted by the SEC on September 27, 2024 regarding changes to access and management of filer accounts for EDGAR (referred to as "EDGAR Next"), the SEC's electronic filing system, which we discuss in detail [here](#), became effective, kicking off the transition period for existing filers to enroll in EDGAR Next. Also on March 24, 2025, the EDGAR Filer Management website dashboard, through which existing filers must enroll in EDGAR Next and new filers must file the amended Form ID (the application for EDGAR access),

went live. As a reminder, although existing filers will have until December 19, 2025 to enroll in EDGAR Next, existing filers who have not enrolled by September 15, 2025, the day filing through the EDGAR Next process will begin, will not be able to file until they enroll. We, therefore, encourage existing filers to enroll early. To enroll in EDGAR Next, existing filers will need to authorize any individual with Login.gov credentials to enroll them in EDGAR Next and provide that individual with their CCC and passphrase EDGAR codes; the name, email (matching the email registered—or to be registered—with Login.gov), business address, and business telephone numbers of their initial account administrators; and the quarter-end date they plan to use for their annual EDGAR Next confirmations.

New SEC Staff Guidance Allows Effectiveness of Non-Automatically Effective Form S-3s Before Filing of Proxy Statement

THE BOTTOM LINE

- Form S-3 registration statements filed by issuers who are not well-known seasoned issuers may now be declared effective before the filing of the proxy statement containing Part III information that was properly omitted from the issuer's timely filed Form 10-K.
- This relief will accelerate the SEC registration process for such issuers and should make it easier for these issuers to access the capital markets during the period between the filing of their Form 10-K and the filing of their proxy statement.

THE DETAILS

On March 20, 2025, staff of the SEC's Division of Corporation Finance issued guidance allowing issuers filing non-automatically effective Form S-3 registration statements (that is, Form S-3s used by issuers who are not well-known seasoned issuers (WKSI)s) to have such registration statements declared effective after filing

their Annual Report on Form 10-K but before filing information required by Part III of Form 10-K (“Part III Information”), which information issuers may, and often, opt to incorporate by reference from their forthcoming definitive proxy statement.

The new guidance, which is reflected in revised Question 114.05 and Question 198.05 of the SEC staff’s Compliance and Disclosure Interpretations (C&DIs) for Securities Act Forms, and Securities Act Rules, respectively, reverses the staff’s prior guidance (in effect since July 1997) that an issuer filing a non-automatic Form S-3 must file its definitive proxy statement or include the Part III Information in its Form 10-K (including by amendment) before such a Form S-3 can be declared effective. In adopting the new guidance, the SEC staff withdrew Question 123.01 of the Securities Act Forms C&DIs reflecting its prior guidance.

The new guidance aligns the SEC staff’s views with its longstanding guidance (in effect since 2009) applicable to automatically effective Form S-3s filed by WKSIs, putting all Form S-3 filers on equal footing in this regard. Under this guidance, the SEC staff reminds all Form S-3 filers that they remain responsible for ensuring that any prospectus used in connection with a registered offering contains the information required to be included in it by Securities Act Section 10(a) and related Schedule A. This means that issuers must still assess the completeness of a prospectus from a disclosure standpoint at the time of an offering. That assessment would often result in an issuer incorporating the prior year’s proxy statement into the prospectus by reference and requires an issuer to consider the potential materiality of its anticipated Part III Information.

This new relief will enable non-WKSI Form S-3 filers to accelerate the SEC registration process prior to filing a definitive proxy statement containing the necessary Part III Information and should facilitate capital raising transactions by these filers during the period between filing of a Form 10-K and filing the definitive proxy statement containing the Part III Information.

SEC Issues No-Action Letter Clarifying Rule 506(c) Accredited Investor Verification

THE BOTTOM LINE

- To verify investors’ “accredited investor” status in securities offerings under Rule 506(c) of Regulation D under the Securities Act of 1933 (the “Securities Act”), issuers may rely on minimum investment amounts—generally \$200,000 for natural persons and \$1 million for legal entities—and written representations regarding accredited investor status and non-third-party financing of the investments.

THE DETAILS

On March 12, 2025, the SEC Division of Corporate Finance issued a [no-action letter](#) clarifying “reasonable steps” issuers can take to verify purchasers’ accredited investor status, as required under Rule 506(c) of Regulation D under the Securities Act of 1933. The no-action letter provides an alternative path for compliance with Rule 506(c) and, thereby, additional flexibility for issuers conducting securities offerings intended to comply with the rule.

Rule 506(c) permits issuers to broadly solicit and generally advertise an offering (including making public statements) without having to register the offering and sale with the SEC, provided that the issuer “take[s] reasonable steps to verify that purchasers of securities sold in any offering ... are accredited investors.” The rule also includes non-exclusive safe harbors pursuant to which an issuer will be deemed to have taken reasonable steps to verify accredited investor status if it uses certain specified methods that generally require the review of additional investor documentation or obtaining supplemental written confirmations from an investor’s external advisers. These methods have, however, posed a challenge to, and resulted in a chilling effect on, reliance on Rule 506(c) by some issuers.

In response to the [incoming letter](#), the SEC staff, in the no-action letter, concurred that issuers may also satisfy Rule 506(c)’s verification requirements by relying on minimum investment amounts—generally \$200,000 for natural persons and \$1 million for legal entities—and related written representations from investors.

REASONABLE STEPS TO VERIFY ACCREDITED INVESTOR STATUS.

The no-action letter states that an issuer could reasonably conclude that it has taken reasonable steps to verify accredited investor status if:

- *High Minimum Investment Amounts and Written Representations.*
 - For natural persons, the issuer requires a minimum investment of at least \$200,000 and obtains written representations that the purchaser is an accredited investor, and that the minimum investment amount is not financed by a third party;
 - For legal entities accredited by total assets, the issuer requires a minimum investment of at least \$1,000,000 and obtains similar written representations;
 - For entities accredited solely by all equity owners' accredited investor status, the issuer requires a minimum investment of at least \$1,000,000, or \$200,000 for each of the purchaser's equity owners if all the purchaser's equity owners are fewer than five natural persons. In this case, the issuer must not only obtain written representations as to the accredited investor status of the purchaser and the financing of the purchaser's minimum investment amount, the issuer must also obtain written representations that each of the purchaser's equity owners has a minimum investment obligation to the purchaser of at least \$200,000 for natural persons and \$1,000,000 for legal entities, and that the minimum investment amounts of such equity owners was not financed by a third party; and
- *No Actual Knowledge of Contrary Facts.* The issuer does not have any actual knowledge of facts indicating that a purchaser is not an accredited investor or that the investment is financed by a third party for the purpose of making the particular investment.

We discuss this guidance and other related considerations, including in relation to investment funds, [here](#).

SEC Staff Enhances Its Confidential Review Program for Registration Statements

THE BOTTOM LINE

Under the SEC's confidential review program for registration statements, issuers may now also submit the following for confidential review:

- Initial registrations of securities on Forms 10, 20-F, or 40-F under Section 12(g) of the Securities Exchange Act of 1934 (the "Exchange Act");
- Initial submissions of all their Securities Act and Exchange Act registration statement filings after becoming public companies; and
- Draft registration statements for de-SPAC transactions where the SPAC is the surviving entity as though they were IPO registration statements, so long as the target company has not previously undertaken an IPO.

THE DETAILS

On March 3, 2025, the SEC's Division of Corporation Finance announced certain enhancements to its policy on the confidential, nonpublic review of draft registration statements. Prior to the announcement, the Division's policy only applied to registration statements for initial public offerings (IPOs), initial registrations of listed securities on Forms 10, 20-F, or 40-F under Section 12(b) of the Securities Exchange Act of 1934, and Securities Act registration statements of new reporting companies (submitted within a year of IPO or Exchange Act Section 12(b) registration), and issuers were not permitted to omit the names of the underwriters from their draft registration statement submissions. Effective March 3, 2025, the Division's policy was enhanced to:

- extend the availability of the confidential review process to the initial registration of a class of security on Forms 10, 20-F, or 40-F under Section 12(g) of the Exchange Act, which registration is triggered by specified assets and record holder thresholds or may be done on a voluntary basis;
- permit public companies to submit draft Securities Act registration statements, or Exchange Act Section 12(b) or 12(g) registration statements on Forms 10, 20-F, or 40-F for confidential review, without regard to how long they've been public—subject to confidential review only applying to their initial submissions and not to amendments;

- treat the draft registration statement for a de-SPAC transaction where the SPAC is the surviving entity (i.e., structures requiring the SPAC target to be a co-registrant) as though it were the target's IPO registration statement, so long as the target has not previously undertaken an IPO—thereby permitting its confidential review on the same basis as an IPO registration statement; and
- permit issuers to omit underwriter names from their initial draft registration statement submissions, provided the names are included in subsequent submissions and public filings.

We expect that many issuers filing non-automatically effective Securities Act registration statements will take advantage of these enhancements to maintain the initial confidentiality of their registration statements, including for the purpose of determining whether the SEC staff will decide to review their registration statements.

“Meme Coins” Are Not Securities, Says SEC Staff

The SEC's Division of Corporation Finance issued a statement on February 27, 2025, to clarify the application of the federal securities laws to “meme coins,” a type of crypto asset inspired by internet memes, characters, current events, or trends. Applying the Supreme Court's *Howey* test for determining what constitutes a “security,” the Division determined that meme coins do not satisfy the test and are, therefore, not securities. Concluding its analysis of meme coins through the lens of the *Howey* test, which considers whether there is an investment in an enterprise with a reasonable expectation of profits derived from the efforts of others, the Division determined that meme coins fall short of the requirements for three reasons: first, they do not involve an investment in an enterprise because funds are not pooled together to be deployed by promoters or other third parties; second, the value of meme coins is derived from speculative trading and market sentiment rather than the efforts of others; and, third, promoters do not engage in or indicate that they intend to engage in “managerial and entrepreneurial efforts from which purchasers could reasonably expect to profit.” The Division goes on to provide that “hyping the meme coin on social media and online forums and getting the coin listed on crypto trading platforms . . . are not likely to be sufficient indicia to establish that purchasers had a reasonable expectation of profits based on the efforts of the promoters.”

The Division's statement provides that transactions involving meme coins of the type described in the statement do not constitute the offer and sale of securities under federal securities laws, and, therefore, the offers and sales of such meme coins do

not need to be registered with the SEC under the Securities Act or be exempt from registration. We discuss the Division's statement in more detail [here](#).

At Florida Bar Securities Conference, Then-Acting SEC Chair Offers Insights into Possible Regulatory Changes

On February 24, 2025, Mark T. Uyeda, the then-Acting Chair of the SEC delivered a [keynote address](#) at the Florida Bar's 41st Annual Federal Securities Institute and M&A Conference, which highlighted the following steps the SEC will be taking toward improving the U.S. capital markets from startup through post-IPO:

- ***IPO Market:*** To make IPOs attractive again, the SEC staff has been asked to review the “emerging growth company” (EGC) definition and recommend changes, including as to qualification and duration of the status, and to consider how EGCs could benefit from on-ramp compliance with some existing disclosure obligations.
- ***Filer Category Reform:*** Noting that the financial thresholds for the SEC's filer categories are outdated, having not changed since they were established in 2005, Mr. Uyeda stated that the SEC should consider whether to update those thresholds to reflect the size and makeup of today's public companies.
 - Mr. Uyeda urged that, after updating its financial thresholds for filer categories, *the SEC should review its disclosure requirements focusing on appropriately scaling those requirements* by identifying rules that should apply only to the largest companies.
- ***Access to Capital by Startups and Other Early-Stage Companies:*** The SEC staff has been tasked with exploring ways to implement the recommendations of the SEC's Office of the Advocate for Small Business Capital Formation for “targeted regulatory changes” to the SEC's regulatory regime for exempt offerings, guided by the principle that regulations must be simple to comply with and cost-effective, yet protective of investors.
- ***Empowering Retail Investment in Private Companies:*** Given the pivotal role “accredited investor” status plays in private market investments due to its favored status under the SEC's exempt offering regime, the SEC staff has also been directed to explore regulatory changes, including changes to the accredited investor definition, to empower retail investment in private companies.

Case-by-Case Analysis Required for Exclusion of Shareholder Proposals Raising Significant Policy Issues

THE BOTTOM LINE

- Under Exchange Act Rule 14a-8(i)(5) (the “economic relevance” exception) and Rule 14a-8(i)(7) (the “ordinary business” exception), the SEC staff will analyze shareholder proposals that raise significant policy issues on a company-specific, case-by-case basis that considers a particular company’s facts and circumstances:
 - The staff will consider “whether a proposal is otherwise significantly related to a particular company’s business, in the case of Rule 14a-8(i)(5), or focuses on a significant policy issue that has a sufficient nexus to a particular company, in the case of Rule 14a-8(i)(7).” In essence, under both rules, significance will not be considered in abstract.
- The new guidance rescinds Staff Legal Bulletin No. 14L (“SLB 14L” or the “prior guidance”) that interpreted the two exceptions more liberally.
- The change in the staff’s interpretive position will likely make it easier for companies to exclude shareholder proposals that raise environmental or social policy issues from their proxy statements.

THE DETAILS

On February 12, 2025, the SEC’s Division of Corporation Finance issued Staff Legal Bulletin No. 14M (“SLB 14M” or the “new guidance”) to clarify its application of Exchange Act Rule 14a-8(i)(5) and Rule 14a-8(i)(7), two of the exceptions to Exchange Act Rule 14a-8’s requirement that companies include certain shareholder proposals in the proxy statements and proxy cards for their annual or special shareholder meetings.

RULE 14a-8(i)(5)

Under Rule 14a-8(i)(5) (the “economic relevance” exception), a company may exclude a shareholder proposal “if [it] relates to operations which account for less than 5 percent of the company’s total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, *and is not otherwise significantly related to the company’s business.*” Under rescinded SLB 14L, the staff’s view was that proposals that are not within the rule’s economic thresholds but raise issues of broad social or ethical concern may not be excluded.

Qualifying the prior guidance, SLB 14M provides that whether such proposals may be excluded depends on whether the social or ethical issue raised is significant to a company’s business. SLB 14M states that “proposals that raise issues of social or ethical significance may be excludable, notwithstanding their importance in the abstract, based on the application and analysis of each of the factors of Rule 14a-8(i)(5) in determining the proposal’s relevance to the company’s business.” Therefore, to overcome a company’s Rule 14a-8(i)(5) challenge to such a proposal, a proponent would need to tie any social or ethical issue raised by the proposal to a significant effect on the company’s business. The new guidance further states that “[t]he mere possibility of reputational or economic harm alone will not demonstrate that a proposal is “otherwise significantly related to the company’s business.”

RULE 14a-8(i)(7)

Under Rule 14a-8(i)(7) (the “ordinary business” exception), a company may exclude a shareholder proposal “if [it] deals with a matter relating to the company’s ordinary business operations.” According to the SEC, the general underlying policy of the exception is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.” The SEC has, however, long held the view that proposals relating to management’s ability to run a company on a day-to-day basis but focusing on significant social policy issues generally would not be considered to be excludable as “ordinary business.” This is “because [such] proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.” The prior guidance marked a departure from the staff’s prior practice of applying this significant policy exception on a case-by-case basis by evaluating the significance of a policy issue to a particular company, heralding instead the staff simply considering whether the proposal raises issues with a broad societal impact. In announcing this departure in the prior guidance, the staff noted that the prior practice complicated the application of SEC policy to proposals and that “focusing on the significance of a policy issue to a particular company has drawn the staff into factual considerations that do not advance the policy objectives behind the ordinary business exception.” The new guidance reverts the staff to the prior practice of a case-by-case analysis of significance and notes that a policy issue that is significant to one company may not be significant to another.

BOARD ANALYSIS

The new guidance also notes that while a company may include in its no-action request a discussion reflecting its board’s analysis of the particular policy issue raised under Rule 14a-8(i)(5) or 14a-8(i)(7) and its significance to the company, the SEC staff will no longer expect that analysis to be included.

SEC Staff Updates Guidance on Shareholder Engagement and Schedule 13D Filings

THE BOTTOM LINE

- Schedule 13G *may* be unavailable to an investor that pressures management on an engagement topic by conditioning its support of the issuer's director nominees on management's alignment with its position on the topic.
- The updated guidance may make certain investors more hesitant to schedule meetings with or express strong views in meetings with public companies. Public companies that wish to obtain input from those investors may in some cases need to initiate communications and request meetings, rather than waiting for investors to reach out.

THE DETAILS

On February 11, 2025, the SEC staff updated its guidance on circumstances in which investors engaging with issuers on environmental, social, governance, and other matters can file a short-form Schedule 13G as a passive or institutional investor rather than a long-form Schedule 13D.

The updated guidance states that Schedule 13G *may* be unavailable to an investor who goes beyond just discussing a particular topic and exerts pressure on management to implement specific measures or changes to a policy, by, for example:

- recommending that the issuer remove its staggered board, switch to a majority voting standard in uncontested director elections, eliminate its poison pill plan, change its executive compensation practices, or undertake specific actions on a social, environmental, or political policy and, as a means of pressuring the issuer to adopt the recommendation, explicitly or implicitly conditions its support of one or more of the issuer's director nominees at the next director election on the issuer's adoption of its recommendation; or
- discussing with management its voting policy on a particular topic and how the issuer fails to meet its expectations on such topic, and, to apply pressure on management, states or implies during any such discussions that it will not support one or more of the issuer's director nominees at the next director election unless management makes changes to align with its expectations.

We discuss the updated guidance in more detail [here](#).

SEC Launches Crypto Task Force and Cyber and Emerging Technologies Unit

In January 2025, then-Acting SEC Chairman Mark Uyeda launched a [crypto task force](#) to develop a “comprehensive and clear regulatory framework for crypto assets.” The task force is being led by Commissioner Hester Peirce, who has long been critical of the SEC's approach towards crypto regulation and the crypto industry, as we discuss [here](#). In the [release](#) announcing the task force, the SEC acknowledged that their regulatory approach toward crypto has not been the hallmark of clarity, noting that “[t]o date, the SEC has relied primarily on enforcement actions to regulate crypto retroactively and reactively, often adopting novel and untested legal interpretations along the way . . . The result has been confusion about what is legal, which creates an environment hostile to innovation and conducive to fraud. The SEC can do better.” According to the release, the task force will focus on helping the SEC “draw clear regulatory lines, provide realistic paths to registration, craft sensible disclosure frameworks, and deploy enforcement resources judiciously” and will seek input from a wide range of sources, including investors, industry participants, and academics. In line with this, the task force held its inaugural public roundtable, “How We Got Here and How We Get Out – Defining Security Status” in March and has [scheduled four more roundtables](#) through June 6, 2025.

In a related development, in February 2025, the SEC [announced](#) the creation of a Cyber and Emerging Technologies Unit under its Enforcement Division. The unit, which replaces the Crypto Assets and Cyber Unit and will complement the work of the crypto task force, will focus on combatting cyber-related misconduct and protecting retail investors from bad actors in the emerging technologies sector. Among other things, the unit will focus on crypto asset fraud, public issuer fraudulent disclosure relating to cybersecurity, regulated entities' compliance with cybersecurity rules and regulations, and the hacking of material nonpublic information.

NYSE Developments

In New Rule, NYSE Limits Fees Payable by Newly Public Companies in First Five Years

THE BOTTOM LINE

- In the first five years of listing their common equity on the NYSE, companies (other than those transferring from another exchange) will generally only be required to pay initial and annual listing fees for their primary class of common equity and listing fees for any structured products, short-term securities, or debt securities.

THE DETAILS

Effective April 1, 2025, the NYSE amended its Listed Company Manual to limit the fees payable by newly public companies during the first five years of their listing on the exchange. Under the new rule, during the first five years of listing a primary class of its equity securities (i.e., a class of common equity securities) on the exchange (the “exemption period”), an issuer will only be subject to initial and annual listing fees for such class of securities. During the exemption period, the issuer will be exempt from fees for (i) listing additional shares of the primary class of equity securities, (ii) listing additional classes of common stock, preferred stock, warrants or rights, (iii) listing securities convertible into (or exchangeable or exercisable for) listed securities, (iv) applying for relisting of shares for technical reasons (e.g., as a result of issuer reincorporation), (v) reverse stock split applications, (vi) applying for certain modifications to the exchange’s records, and (vii) poison pill-related applications. The fee exemptions will, however, not apply to listing fees for any structured products, short term securities or debt securities or to any issuer transferring its listing of common equity securities from another national securities exchange.

According to the NYSE, the fee exemption will enable issuers to better budget for listing fees by providing them with greater predictability regarding the fees they will incur during their initial years of listing and will mitigate the costs associated with their initially listing on the exchange. The NYSE believes that the fee exemption will encourage more companies to consider listing their

common equity on a national securities exchange by lessening the financial burden during the first five years of listing.

The rule will apply to issuers that initially list their common equity securities on the exchange on or after April 1, 2021. Issuers that list on or after April 1, 2021, but before April 1, 2025, will, however, only have the benefit of the exemption for the balance of the five-year period from April 1, 2025, to the fifth anniversary of their listing.

Nasdaq Developments

SEC Approves Modification to Nasdaq’s Initial Listing Liquidity Requirements for IPO and OTC-Uplisting Companies

On March 12, 2025, the SEC approved a rule change to modify the initial listing liquidity requirements for listing on the Nasdaq Global Market or Nasdaq Capital Market in connection with an initial public offering (IPO) or a public offering for an uplisting from the over-the-counter (OTC) market. The rule, which became effective on April 11, requires companies making such listings to meet Nasdaq’s minimum market value of unrestricted publicly held shares (MVUPHS) requirement solely from the proceeds of the offering. That is, previously issued shares that are registered for resale and are not being sold in the offering (“resale shares”) may not be taken into account. The minimum market value requirement is in respect of shares that are not held by an officer, director, or 10-percent-or-more shareholder of a company and which are not subject to resale restrictions of any kind. The change is intended to reduce volatility upon listing, as Nasdaq has observed that companies meeting the MVUPHS requirement by including resale shares experience higher volatility compared to those meeting the requirement with only the proceeds from the offering.

For companies uplisting from the OTC market in conjunction with a public offering, the rule also increases the minimum size of the required public offering from \$4 million to \$8 million for Nasdaq Global Market and from \$4 million to \$5 million for Nasdaq Global Market to align with the minimum MVUHPHS requirement for each market.

For initial listing on the Nasdaq Global Market, a company must have a minimum MVUPHS of \$8 million under the income standard, \$18 million under the equity standard, and \$20 million under either the market value or total assets/total revenue standards. For initial listing on the Nasdaq Capital Market, a company must have a minimum MVUPHS of \$5 million under the net income standard, and \$15 million under either the equity or market value of listed securities standards.

Bid Price Noncompliance Delisting Process: SEC Approves Nasdaq's 360-Day Noncompliance and Reverse Stock Split-Related Changes

THE BOTTOM LINE

- Companies that have not complied with Nasdaq's bid price requirement for more than 360 days will be immediately suspended from trading on Nasdaq.
- Companies that become non-compliant with the requirement within one year of a reverse stock split will immediately receive a delisting determination.

THE DETAILS

On January 17, 2025, the SEC approved a Nasdaq rule proposal that modifies Nasdaq's delisting process for noncompliance with Nasdaq's minimum closing bid price requirement of \$1.00 per share. The new rule modifies the process in two ways.

First, under the rule, companies that have been non-compliant with the bid price requirement for more than 360 days (comprised of an initial automatic 180-day compliance period and a second discretionary 180-day compliance period) will be immediately suspended from trading on Nasdaq. The rule achieves this by making a stay of a trading suspension unavailable during a Nasdaq Hearing Panel's review of a staff delisting determination that was timely requested by a company that remains noncompliant with the bid price requirement after the second compliance period. Under the current rules, a trading suspension is automatically stayed by such a timely request. Although trading would be suspended pending the hearing panel's review in such cases, the hearing panel would still retain the authority, upon concluding review, to grant an erring company up to 180 days from a delisting determination to comply with the bid price requirement.

Second, the rule stipulates that any company that becomes non-compliant with the bid price requirement within one year

of a reverse stock split will not be eligible for any compliance period and will immediately receive a delisting determination subject only to Nasdaq's appeals process. This change would subject companies to another reverse stock split-related ground for facing Nasdaq's immediate delisting process for bid price noncompliance as Nasdaq rules currently subject companies that become noncompliant after completing one or more reverse stock splits resulting in a cumulative ratio of 250 shares or more to one over the two-year period before such noncompliance to Nasdaq's immediate delisting process.

According to Nasdaq, the rule is intended to protect investors from potentially unstable companies by ensuring that companies with persistent bid price non-compliance or those that repeatedly use reverse stock splits to temporarily regain compliance, which Nasdaq believes is indicative of deep financial or operational distress, do not continue to trade on Nasdaq.

Other Developments

Delaware Enacts Corporate Law Changes Impacting Conflicted Transactions and Books and Records Demands

Amendments to Sections 144 and 220 of the Delaware General Corporation Law, which respectively deal with conflicted transactions, and stockholder inspection of books and records, were signed into law on March 25, 2025, as part of an effort to maintain Delaware's competitive edge as the preeminent jurisdiction for incorporation amid some recent exits of Delaware companies to other states.

Conflicted Transactions

Director and Officer Conflicted Transactions. The Section 144 revisions augment the safe harbor procedures for conflicted acts or transactions involving directors or officers. While the revisions continue the previous framework which protected such conflicted matters if they were approved by a majority of disinterested directors, approved by stockholders, or are fair to the corporation, they qualify that framework by:

- requiring, in the case of the board approval safe harbor, that such acts or transactions be approved by a board committee

of at least two disinterested directors in situations where the majority of the directors are not disinterested;

- making the stockholder approval safe harbor only available by the vote of a majority of votes cast by disinterested stockholders and clarifying that it also covers ratifications;
- framing the “fairness” safe harbor, without reference to the time the act or transaction was approved by the board or the stockholders, as required under the prior Section 144.

Controller Transactions. The Section 144 revisions also:

- outline safe harbor procedures for controlling stockholder transactions, which vary depending on whether the transaction is a “going private transaction.” While a controlling stockholder transaction that is not a going private transaction will be protected if it is approved by a majority of disinterested directors on a special board committee, approved or ratified by the vote of a majority of the votes cast by disinterested stockholders (if the transaction is conditioned on such approval or ratification), or fair to the corporation and its stockholders, a controlling stockholder transaction that is a going private transaction will only be protected if both the director and stockholder approvals are obtained or the transaction satisfies the fairness test;
- define who can be considered a controlling stockholder, generally by reference to control of a majority of the corporation’s voting common equity (or the functional equivalent of such control) or direct or indirect control of the election or selection of directors with a majority of the board’s voting power; and
- eliminate controllers’ liability for breaches of the duty of care.

Director Disinterestedness. Under the new Section 144, a director who is not a party to the relevant act or transaction is presumed to be disinterested if, based on the applicable criteria of the corporation’s stock exchange, the board has determined that the director is independent from the corporation, or, if applicable, the controlling stockholder or control group.

Inspection of Books and Records

Revisions to Section 220 define the materials that a stockholder may demand to inspect pursuant to a request for books and records of the corporation and set certain conditions that a stockholder must satisfy to make such inspection. The Section 220 revisions significantly restrict stockholder inspection rights by limiting “books and records” essentially to organizational documents (and documents referenced therein), board and stockholder meeting records, communications to stockholders,

stockholder agreements, annual financial statements, and director and officer independence questionnaires—a restriction that clearly seeks to rein in the current practice of stockholder plaintiffs pursuing extensive pre-complaint discovery through Section 220 books and records demands and then leveraging those documents to bolster their complaints. New Section 220(g), however, provides that a stockholder may obtain additional specific records of a corporation if the stockholder has made a showing of a compelling need to further a proper purpose for the inspection and has demonstrated by clear and convincing evidence that such specific records are necessary and essential to further such purpose.

In the Absence of Existing or Threatened Fiduciary Litigation, Business Judgment Rule Applies to Reincorporation Decisions, Delaware Supreme Court Declares

THE BOTTOM LINE

- Reincorporation decisions made on a clear day—in the absence of existing or threatened litigation against fiduciaries—will be protected by the business judgment rule.
- Reincorporation decisions in the face of existing or threatened litigation against fiduciaries may be subject to the heightened entire fairness standard.

THE DETAILS

On February 4, 2025, in *Palkon v. Maffei*, the Delaware Supreme Court, reversing a ruling of the Delaware Chancery Court denying defendants’ motion to dismiss, upheld the deferential business judgment rule as the appropriate standard of review applicable to the decisions of the directors and stockholders of TripAdvisor, a Delaware corporation, to reincorporate TripAdvisor in Nevada through conversion transactions.

In the case, which was brought against TripAdvisor’s directors and controlling stockholder, the plaintiffs alleged that the reincorporation conversions were self-interested transactions subject to entire fairness review because the move to Nevada would provide the directors and the controlling stockholder a material, unique (i.e., non-ratable) benefit in that the move was primarily aimed at insulating them from future liability as Nevada allegedly offers fiduciaries greater protection from litigation.

Noting that the plaintiffs had, however, not alleged “any past conduct [by the directors or the controlling stockholder] that

would lead to litigation” or “that the [c]onversion decisions were made to avoid any existing or threatened litigation or that they were made in contemplation of any particular transaction,” the Delaware Supreme Court concluded that the absence of such allegations was fatal to their claim of entire fairness review, stating that “the hypothetical and contingent impact of Nevada law on unspecified corporate actions that may or may not occur in the future is too speculative to constitute a material, non-ratable benefit triggering entire fairness review.”

The success of the defendants in *Palkon*, notwithstanding, *Palkon* should serve as a reminder to directors and controlling stockholders that stockholders may successfully challenge a reincorporation on the basis of entire fairness review if they are able to sufficiently plead facts, including existing or threatened litigation, that show that the reincorporation would confer a material, non-ratable benefit to directors or a controlling stockholder.

FINRA Proposes to Exempt Non-Traded BDCs from IPO Investment Restrictions

In March 2025, the Financial Industry Regulatory Authority, Inc. (FINRA) proposed a rule change to facilitate the ability of certain business development companies (BDCs) to acquire securities in initial public offerings of equity securities (IPOs) by exempting those BDCs from FINRA Rule 5130 (Restrictions on the Purchase and Sale of Initial Equity Public Offerings) and FINRA Rule 5131(b) (New Issue Allocations and Distributions—Spinning). The proposed exemption would apply to non-traded BDCs (i.e., BDCs that have shares registered under the Securities Act but that are not listed on a national securities exchange), affording them the same exemptive treatment that currently applies to publicly traded BDCs and investment companies registered under the Investment Company Act of 1940 (the “Investment Company Act”).

While FINRA Rule 5130 restricts the sale of IPOs to accounts or persons that have an insider position or a conflict of interest in the public offering process, including FINRA members, broker-dealers, broker-dealer personnel, certain owners of broker-dealers, and portfolio managers, and requires FINRA members to obtain representations as to compliance from accounts prior to IPO sales to their accounts, FINRA Rule 5131(b) restricts the allocation of IPO securities to accounts in which executive officers or directors of public companies or certain private companies have beneficial interests under certain conflict of interest situations.

The proposed change aims to facilitate easier access to IPOs for non-traded BDCs, including by reducing the operational burdens they face in demonstrating their eligibility to purchase IPOs. If approved by the SEC, the change should foster greater IPO diversification of the portfolios of non-traded BDCs to the benefit of their investors, subject to the 30 percent cap in new issue investments applicable to BDCs under the Investment Company Act.

EU Corporate Sustainability Reporting Directive (“CSRD”) Developments

In late February, the European Commission proposed significant amendments to the CSRD, known as the Omnibus Proposal. The Omnibus Proposal includes two proposed directives related to the CSRD, as well as proposed regulations to amend the EU Taxonomy Regulation, and contemplates (but not yet released) proposals to amend the European Sustainability Reporting Standards. The Omnibus Proposal is discussed in more detail in this Ropes & Gray [post](#).

The first directive, often referred to as the “stop the clock” directive, has been adopted by the European Parliament and the European Council, and on April 16 was published in the Official Journal of the European Union. The “stop the clock” directive postpones the due dates for the first CSRD reports by large undertakings that are not public interest entities and listed SMEs by two years. EU member states are required to transpose the “stop the clock” directive into national law by December 31, 2025.

The second proposed directive would make a number of substantive amendments to the CSRD, including increasing reporting thresholds. The second proposed directive is at an earlier stage than the “stop the clock” directive. It also will need to be approved by both the European Parliament and European Council, and then transposed into national law by the member states.

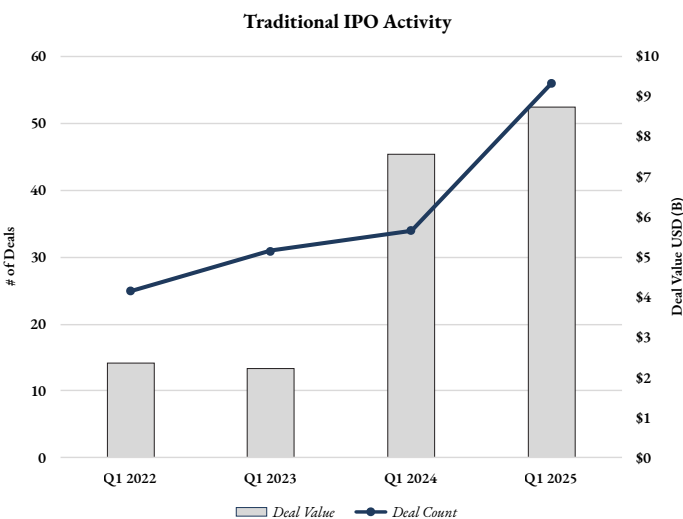
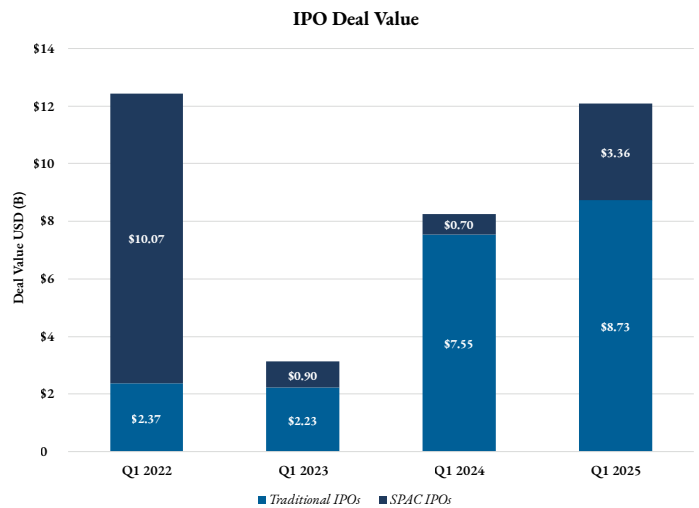
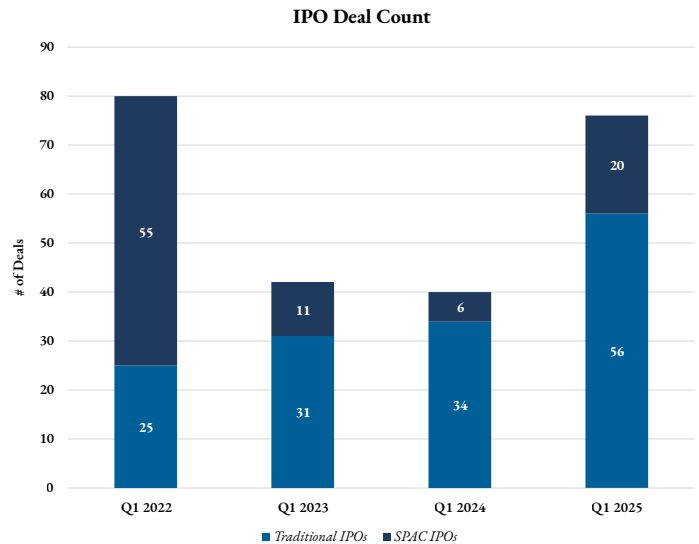
U.S. Equity & Debt Markets Activity – Q1 2025

(Data sourced from Dealogic)

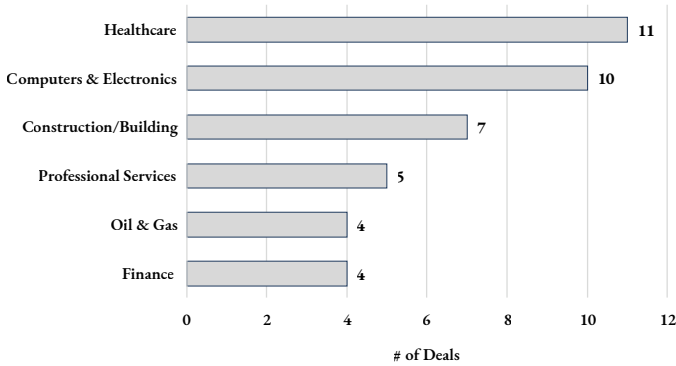
Traditional IPOs

Traditional IPOs continued their upward trend in Q1 2025, with deal value and deal count increasing by 16% and 65%, respectively, compared to Q1 2024. With 56 IPOs, the highest count for a quarter since 2021, raising \$8.73 billion, the second highest IPO raise since 2021, Q1 2025 was a record quarter. Compared to Q4 2024, deal value rose by 58% and deal count by 14%.

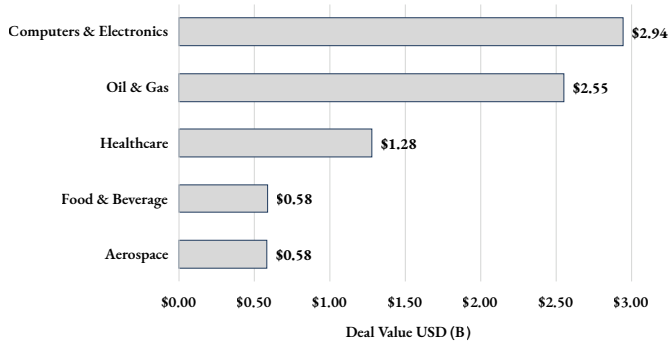
The computer and electronics industry continued to lead, raising \$2.94 billion across 10 IPOs, largely bolstered by CoreWeave’s \$1.50 billion IPO, although healthcare IPOs were ahead in deal count with 11 IPOs. The oil and gas industry was the second most active in deal value with \$2.55 billion from only 4 IPOs (tying for fifth in deal count). Venture Global’s \$1.75 billion IPO, the largest of the quarter, accounted for nearly 70% of the oil and gas industry’s deal value.



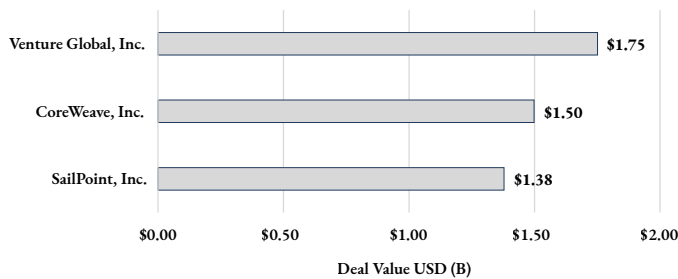
Q1 2025 IPOs - Top Industries (by deal count)



Q1 2025 IPOs - Top Industries (by deal value)



Q1 2025 Top IPOs



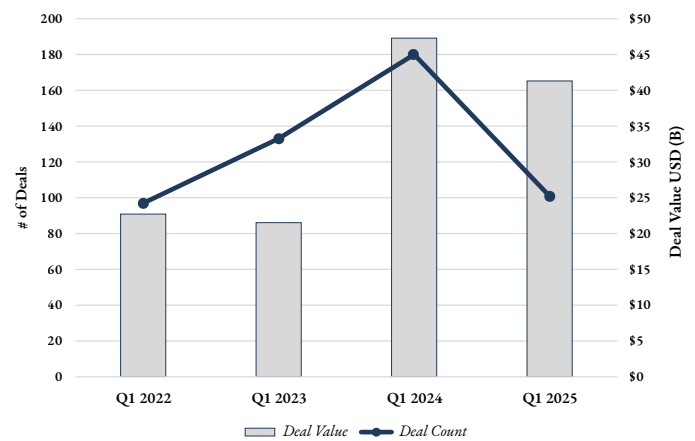
SPAC IPOs

Q1 2025 saw 20 IPOs by special purpose acquisition companies (SPACs) raising \$3.36 billion, a significant increase from the 6 SPAC IPOs in Q1 2024, which raised less than \$700 million (representing a 384% spike in deal value and 233% increase in deal count). However, when compared with Q4 2024, SPAC IPOs were down slightly, 13% by deal count and 11% by deal value.

Follow-Ons

The uptick seen across IPOs in Q1 2025 did not extend to follow-on offerings (FOs). Compared with Q1 2024, FOs were down 13% by deal value and 44% by deal count. FOs were similarly down by 31% and 33%, by deal value and deal count, respectively, as compared to Q4 2024. Despite the decrease in Q1 2025, deal value remains higher than any value seen in any quarter in 2022 or 2023, although deal count was among the lowest recorded.

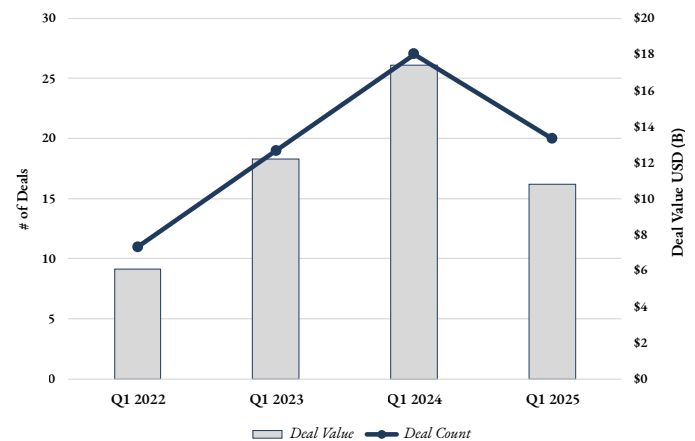
Follow-On Activity



Convertible Bonds

After a consistent rise in the first quarters over the past few years, Q1 2025 saw a decline in convertible bond offerings. Compared with Q1 2024, deal value was down 38% and deal count decreased by 26%. Numbers were similarly down compared to Q4 2024, with decreases of 41% in deal value and 23% in deal count. Both metrics in Q1 2025 were roughly consistent with Q1 2023, indicating a sharp reversal in the upward trend.

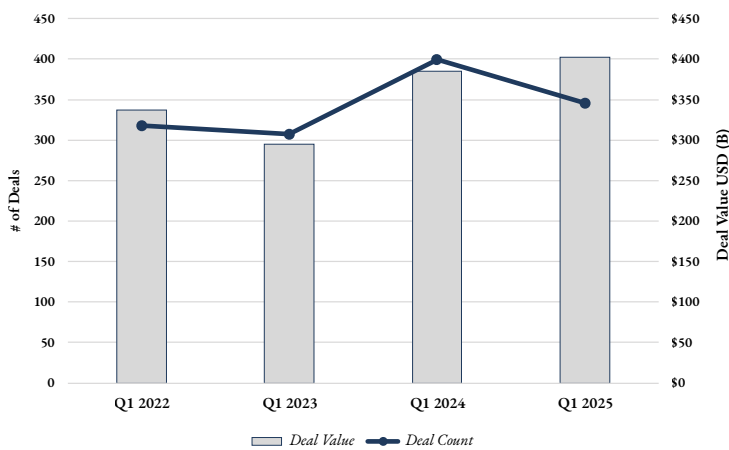
Convertible Bond Activity



Investment-Grade Debt

In Q1 2025, slightly over \$400 billion of investment-grade corporate bonds¹ were issued, the highest issuance seen since 2021. Compared to Q1 2024, Q1 2025 had mixed results, with deal value up slightly by 4% and deal count down by 13%. However, both metrics were up significantly from Q4 2024, with increases of 113% in deal value and 78% in deal count.

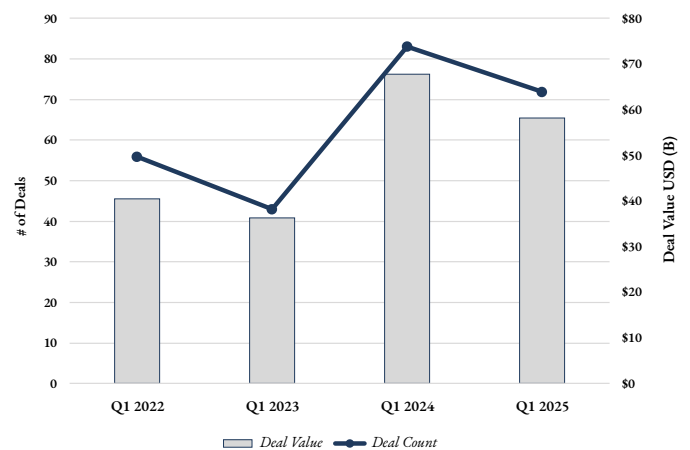
Investment-Grade Debt Activity



High-Yield Debt

While high-yield debt offerings in Q1 2025 were down compared to Q1 2024 (14% by deal value and 13% by deal count), they increased from Q4 2024, up 69% by deal value and 33% by deal count. The first quarter of this year was also up compared to Q1 2023 and Q1 2022 in both deal count and deal value. Despite the downturn from Q1 2024, high-yield debt offerings continue to hold strong.

High-Yield Debt Activity



¹ Excludes short-term debt, convertibles, asset-backed securities, and mortgage-backed securities.

About Our Capital Markets & Corporate Governance Practice

Ropes & Gray has extensive experience representing corporate issuers, leading private equity firms and other large institutional investors, and major investment banks in all aspects of capital markets financings and investments. We draw upon our significant experience to help clients interact with the SEC, including navigating all types of securities offerings, from traditional initial public offerings, follow-on offerings and private placements, to complex liability management and other structured transactions.

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10

of the largest global investment banks advised

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in transactions closed since January 1, 2024

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