

[Securities Regulation Daily Wrap Up, SECURITIES OFFERINGS—Advisory committee ponders how SEC proposals affect small businesses, \(Aug. 6, 2026\)](#)

Securities Regulation Daily Wrap Up

By Anne Sherry, J.D.

Committee members differed on whether to push back on asset thresholds and federal preemption.

After a fire alarm cut its previous meeting short, the SEC's [Small Business Capital Formation Advisory Committee](#) reconvened remotely to continue its discussion of the agency's recent [filer status](#) and [offering reform](#) proposals. The committee generally supported the proposals, but it will recommend that the Commission reevaluate how the offering reform proposal affects companies that are technically penny stock companies.

Filer status. The filer status proposal would eliminate the current “accelerated filer” and “smaller reporting company” categories in favor of two tiers of non-accelerated filers. NAFs reporting total assets of \$35 million or less would be small non-accelerated filers. NAFs above that threshold, but below \$2 billion in public float, would be large non-accelerated filers.

Small NAFs. The committee debated two aspects of the proposed small NAF threshold: whether \$35 million is the right level and whether looking only at assets is appropriate.

Wendy Stevens (Forvis Mazars, LLP) said that looking only at assets could have unintended consequences. Andrew Prystai (Event Vesta) suggested there may be some categories of assets that could be excluded. Cash on hand is one thing, but a company whose assets are large buildings, machinery, or intellectual property might still need the extra time allotted to non-accelerated filers. But Stevens cautioned against carving out some assets without knowing where digital assets fit in.

Instead of assets, Wemimo Abbey (Esusu) suggested going by revenue. A startup may have \$40 million in paid-in capital but still just be getting off the ground. But Joseph Lucosky (Lucosky Brookman LLP) said that a revenue-based test would be tricky to apply consistently, and an if/then or A/B test would be too complicated.

The members also discussed the \$35 million threshold. This would bring in the smallest 20 percent of public issuers, while bumping it up to \$50 million would bring in about 25 percent. Prystai supported the higher threshold, and Robert Bolen (National Ombudsman and Assistant Administrator for Regulatory Enforcement, SBA), who is a nonvoting observer, chimed in that the data his office has seen would support the \$50 million threshold.

Ultimately, the committee voted not to recommend that the SEC look into raising the asset threshold or evaluate metrics other than assets. The committee's recommendation will generally support the proposal as written.

Large NAFs. The committee next discussed the criteria for being a large NAF, which means not having to secure an auditor's attestation. As with the proposal for small NAFs, the committee ultimately recommended to support the proposal as written and not to ask the SEC to look at a threshold below \$2 billion or to consider scaled disclosure instead of the binary of either being a non-accelerated filer or an accelerated filer.

Stevens observed that the auditor attestation requirement received a lot of pushback at first, but now nearly 20 years on, companies say that the requirement is beneficial and helps them in their financial reporting. But she worried that the proposal will actually burden the companies in the middle. Rose Standifer (Foley Hoag LLP) sees the proposal as

indirectly affecting small businesses and said that from that perspective the threshold feels too high, but she did not have a specific alternative.

Offering reform. The committee next turned to the offering reform proposal, which would trigger automatic S3 eligibility, expand WKSJ status, and preempt state registration.

Standifer strongly supported the proposal, emphasizing that it would help address barriers to entry. While she thinks there is room for clarity, it would entice companies to go public if they knew that they could use the WKSJ benefits to tap the public market when it turns favorable—as long as they are current on their filing obligations.

Lucosky said that barring penny-stock companies from S3 eligibility is problematic. From his read of the proposal, any company that has raised money under \$5—which is most of them leading up to a public offering—would be ineligible. He also observed that a lot of companies that are listed on NYSE or other “senior” exchanges would be considered penny stocks but for being on the exchange.

Claire McHenry (Securities Bureau, Nebraska Department of Banking and Finance) is NASAA’s nonvoting appointee on the committee. She spoke up to reiterate NASAA’s concerns with the “qualified purchaser” definition. Specifically, NASAA [opposes](#) preempting state registration and qualification requirements, which ensure that non-traded REITs, BDCs, and other direct participation programs meet information, fairness, and investor protection requirements. The proposal would create a new class of offerings based not on qualification of the investor but merely on registered securities’ status, McHenry said.

Anya Coverman (Institute for Portfolio Alternatives), who represents non-traded REITs and BDCs, countered that these are registered offerings sponsored by large, reputable global asset managers. Additionally, they are a double layer of small business: BDCs themselves invest in small businesses that don’t get traditional bank loans, while real estate companies are financing economic development at local levels. Coverman said that the most important thing to look at is where the capital is going: to private offerings under Reg D. Ordinary investors are being left out.

Ultimately, the committee voted to support the registered offering reform proposal; to recommend that the SEC reevaluate the current exemptions to S3 eligibility, including but not limited to penny stocks; and to recommend that penny-stock status not exclude companies that are current in their reporting from being S3 eligible.

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