July 27, 2026

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

Re: IPO Modernization, CLL-16

Dear Ms. Countryman:

Better Markets[1] appreciates the opportunity to comment on the SEC's proposed IPO modernization. The SEC's blueprint for modernizing IPOs appears to be to remove guardrails that have long protected investors. This is not the way to modernize IPOs.

The plan to modernize IPOs appears to be part of Chair Atkins's goal to "Make IPOs Great Again." We agree with Chair Atkins that the SEC should take steps to reverse the decline in the number of public companies over the last few decades. We disagree that the way to do that is to make the public markets more like the private markets by eliminating investor protections.

Chair Atkins said that "revitalizing our public markets means driving away the barriers that drove companies away in the first place."[2] The problem is that regulatory barriers are not what has caused the decline in the number of public companies over the last few decades. Instead, the SEC's continual expansion of the private markets is what has caused that decline.

Over the last few decades, the Commission has continuously expanded the ability of companies to raise money privately.[3] So companies are choosing to stay private because they can raise the money they need in the private markets without complying with the investor protections

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1 Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans' jobs, savings, retirements, and more.

2 Paul S. Atkins, Chairman, *Remarks at the Stanford Rock Center for Corporate Governance* (May 26, 2026), https://www.sec.gov/newsroom/speeches-statements/atkins-052626-remarks-stanford-rock-center-corporate-governance.

3 Ben Schiffrin, *Private Securities Offerings Should Be the Exception, Not the Rule*, Better Markets (May 19, 2025), https://bettermarkets.org/wp-content/uploads/2025/05/BetterMarkets_Private_Markets_Report_05-19-2025.pdf, at 6.

that are a hallmark of the public markets.[4] Reducing the protections that safeguard investors in the public markets will not incentivize companies to go public because they can still raise all the money they need privately with no safeguards; less safeguards are still more than no safeguards.[5]

Empirical evidence supports the view that there is no basis for the SEC to eliminate investor protections under the guise that doing so will reduce costs for public companies and therefore lead more companies to go public. Professors Michael Ewens and Kairong Xiao of Columbia Business School and Professor Ting Xu of the University of Toronto recently found that regulatory cost "isn't the smoking gun" and that "even removing all post-2000 regulatory costs would not change the declining trend in IPOs."[6] Instead, the problem is "the growing availability of private funding through avenues like venture capital and private equity."[7]

> "Firms are staying private because they *can* now in ways that they couldn't before," Ewens says. "They can raise money at crazy valuations and not worry about running out and having to tap the public markets."[8]

So, as the SEC's own Small and Emerging Companies Advisory Committee was told almost a decade ago, the real reason companies are staying private is "because they can."[9] The narrative that overregulation is the reason for the decline in public companies is simply "wrong."[10]

Even the financial industry recognizes that companies now stay private because they do not need to go public. For example, David Solomon, the chief executive of Goldman Sachs, said last year that the reason there have been so few IPOs recently was that startups could get all the capital they needed from private market investors.[11] Despite so-called regulatory burdens being an easy scapegoat for the decline in IPOs, the fact is that companies shun the public markets because the private markets provide them with all the capital they need.[12]

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4 Benjamin Schiffrin, *The SEC is Killing IPOs*, Better Markets (Feb. 25, 2025), https://bettermarkets.org/wp-content/uploads/2025/02/SEC-is-Killing-IPOs-Fact-Sheet-02.25.25-Final.pdf., at 1.

5 *See* Better Markets, Comment Letter re: Semiannual Reporting (July 6, 2026), https://bettermarkets.org/wp-content/uploads/2026/07/Better-Markets-Comment-Letter-Semiannual-Reporting.pdf, at 8.

6 *Fewer Companies Are Going Public. Are Regulations Driving the Drop?*, Columbia Business School (Aug. 13, 2025), https://business.columbia.edu/research-brief/regulations-costs-public-companies-ipo-decline.

7 *Id.*

8 *Id.* (emphasis in original).

9 https://www.sec.gov/info/smallbus/acsec/acsec-transcript-021517.txt, at 120-121.

10 George S. Georgiev, The Breakdown of the Public-Private Divide in Securities Law: Causes, Consequences, and Reforms, 18 N.Y.U. J.L. & Bus. 221, 262 (2021).

11 Erin Griffith, *They've Been Waiting Years to Go Public. They're Still Waiting.*, N.Y. Times (Feb. 18, 2025), https://www.nytimes.com/2025/02/18/technology/tech-ipo-delays.html.

12 Robert Frank, *Startups are staying private longer thanks to alternative capital*, CNBC (Oct. 7, 2025), https://www.cnbc.com/2025/10/07/ipo-market-startups-staying-private-longer-alternative-capital.html.

This means that the solution to the recent decline in the number of public companies is to curb the private offering exemptions that have allowed the private markets to proliferate. The solution is not to weaken the investor protections that safeguard public company investors.

Nonetheless, the SEC seems intent on doing just that. In his speech about IPO modernization, Chair Atkins touted the SEC's recent policy statement that mandatory arbitration provisions are not inconsistent with the federal securities laws.[13] Yet mandatory arbitration "would *undercut* federal securities law by precluding most shareholders from seeking its enforcement through a class action."[14] And because "shareholder class actions can serve vital deterrence and remedial functions in both corporate governance and capital markets[,] [c]hanneling this litigation into private arbitration that shareholders could only pursue on an individualized basis would largely neuter those functions and, thus, reshape the manner in which public corporations and securities markets operate."[15] This transformation in securities regulation would be "to the detriment of large and small shareholders alike."[16]

Chair Atkins also touted the SEC's proposal to allow companies to file reports semiannually instead of quarterly, which he described as "removing the SEC's thumb from the scale."[17] The fact that the chair of the SEC would describe a requirement that ensures investors have timely and frequent updates about the public companies in which they invest their hard-earned money as the SEC somehow unfairly siding with investors is shameful. The SEC is supposed to be the investor's advocate. It is not supposed to make it easier for public companies to provide investors with less information with which to make informed investment decisions. The SEC is supposed to enforce a disclosure-based regulatory regime, and the requirement that companies provide quarterly reports has been a bedrock of that regime for over 50 years.[18]

Chair Atkins touted further the SEC's proposals to expand the use of shelf registration to almost all public companies and to subject more companies to reduced disclosure obligations. But expanding the use of shelf registration to almost all companies is inconsistent with the historical underpinnings of shelf registration, which limited shelf registration to only large companies that trade in an efficient market. And over the last two decades, the Commission has

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13 Atkins, supra note 2.

14 Mohsen Manesh and Joseph A. Grundfest, *The Corporate Contract and Shareholder Arbitration*, 98 N.Y.U. L. Rev. 1106, 1142 (2023) (emphasis in original).

15 *Id.* at 1110-1111.

16 *Id.* at 1142.

17 Atkins, supra note 2.

18 Better Markets, *SEC's Plan to Eliminate Quarterly Reporting is a Slap in the Face to Investors* (July 6, 2026) https://bettermarkets.org/newsroom/secs-plan-to-eliminate-quarterly-reporting-is-a-slap-in-the-face-to-investors/.

continually subjected more and more companies to reduced disclosure obligations, yet reducing disclosure obligations has proven unsuccessful at increasing the number of public companies.[19]

These proposals will not, as Chair Atkins asserts, "incentivize more companies to go and stay public."[20] Instead, they will simply reduce the information investors receive to help them make informed investment decisions and make the public markets more like the private markets.

In addition to these proposed rule changes, Chair Atkins stated that the staff is developing other recommendations to "modernize" public company disclosure requirements, including with respect to executive compensation, presumably in response to the request for comment the SEC issued regarding Regulation S-K. With respect to executive compensation, the public should know how much CEOs get paid.[21] With respect to Regulation S-K, the SEC must not lose sight of the need for investors to be fully informed about the public companies in which they invest.[22]

Chair Atkins says he wants to revert to the minimum dose of regulation necessary to elicit information that is material to a reasonable investor, without requiring information that is indisputably immaterial. But Regulation S-K has long focused on providing investors with only material information. Indeed, the Commission does not require the disclosure of information pursuant to Regulation S-K unless it has determined that the information is material. The fact that this Commission may disagree does not constitute a finding that the information is indisputably material, and the fact that two different Commissions might disagree whether the information is material by definition means that whether the information is material is in dispute. Regardless, it should require overwhelming evidence for the Commission to now conclude that a disclosure obligation it previously considered to be material is not actually material.[23]

Disclosure obligations aside, Chair Atkins also appears poised to eliminate other investor protections. For example, he would like to see "considerable reforms" to the "gun-jumping" rules under the Securities Act of 1933. Yet the gun-jumping rules provide crucial protections to

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19 Better Markets, SEC Proposal to Increase the Number of Public Companies by Reducing Disclosure Obligations Flies in the Face of History and Evidence (July 20, 2026), https://bettermarkets.org/newsroom/sec-proposal-to-increase-the-number-of-public-companies-by-reducing-disclosure-obligations-flies-in-the-face-of-history-and-evidence/.

20 Atkins, supra note 2.

21 *See* Benjamin Schiffrin, *The Public Has a Right to Know How Much CEOs Get Paid*, Better Markets (June 26, 2025), https://bettermarkets.org/newsroom/the-public-has-a-right-to-know-how-much-ceos-get-paid/.

22 *See* Benjamin Schiffrin, *The SEC Should Be Making It Easier, And Not Harder, For Investors to Receive Material Information About Public Companies*, Better Markets (April 13, 2026), https://bettermarkets.org/newsroom/the-sec-should-be-making-it-easier-and-not-harder-for-investors-to-receive-material-information-about-public-companies/.

23 *See* Better Markets, Comment Letter re: Request for Information Regarding Reforming Regulation S-K (Apr. 13, 2026), https://bettermarkets.org/wp-content/uploads/2026/04/Better-Markets-Comment-Letter-SEC-RFI-Regulation-S-K.pdf.

investors "by ensuring that all investors receive material information regarding the offered securities at the same time" and by preventing companies from hyping the offered securities.[24]

> Second, gun-jumping rules (sometimes referred to as quiet-period rules) are also meant to protect investors by encouraging appropriate disclosure to all public investors at the appropriate time. Though gun-jumping rules increase the IPO timeline, gun-jumping rules are intended to provide public investors with all relevant information by regulating not only the company directly but also indirectly the analysts and reports and even journalists, in some cases, by requiring that the company essentially police these other players, in turn, and provide in a public filing accessible by all investors any related communication leading up to the offering. Gun-jumping rules allow the SEC time to carefully review registration statements without the interference of the company making public comments about the offering, potentially artificially inflating the IPO stock price by fueling the interest generated by the media and analysts disseminating more "glossy" materials, or materials that would paint an unregulated, more positive review of the company.[25]

So the gun-jumping rules have long prevented companies from "percolating the prospect of buying into some new venture without the investing public having the benefit of and access to a vetted document that has the prescribed business and financial disclosures regarding the company."[26] There is no reason for the SEC to backtrack from these essential protections.

Nor is there reason for the SEC to invite a "workaround" to the process of going public that is less protective of investors than the IPO process. Chair Atkins notes that one such workaround is a company combining with a special purpose acquisition company, or SPAC. The problem is that SPACs have been a disaster for retail investors.[27] They allow "less worthy' companies that might not have been able to launch a successful IPO" to more easily reach public markets.[28] The process may be easier than a traditional IPO, but it is far less protective of investors.[29] The SEC should be protecting investors from such a process, not encouraging it.

Another workaround that Chair Atkins touts is a direct listing. He notes that, following the Supreme Court's decision in *Slack v. Pirani*, investors who purchase shares following a

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24 Tayler Tanner, Spotify's Direct Listing and Foreign Private Issuers: Protecting Investors When Foreign Private Issuers List on a U.S. Exchange But Not On Their Home Exchange, 2019 B.Y.U. L. Rev. 573, 592 (2019).

25 *Id.* at 600.

26 Neal F. Newman and Lawrence J. Trautman, *Securities Law: Overview and Contemporary Issues*, 16 Ohio St. Bus. L.J. 149, 171 (2021).

27 Benjamin Schiffrin, *SPACs + Crypto = Buyer Beware*, Better Markets (July 24, 2025), https://bettermarkets.org/analysis/spacs-crypto-buyer-beware/.

28 Andrew Packer, *SPACs 101: What Is a SPAC and How Does it Work?*, Kiplinger (Mar. 26, 2024), https://www.kiplinger.com/investing/stocks/ipos/603076/spacs-101-what-is-a-spac-how-does-it-work.

29 Schiffrin, supra note 27 (quoting Packer, supra note 28).

direct listing may find it difficult to trace their shares and therefore establish a claim against the company pursuant to section 11 for material misstatements or omissions in the registration statement that must be filed under the Securities Act. His proposed solution, apparently, is to eliminate the need to file a Securities Act registration statement in a direct listing entirely.

We would suggest that the SEC should not use a Supreme Court decision that weakens investor protections to further weaken investor protections. Instead, the SEC should take steps to insulate investors from the harmful ramifications of the *Slack* decision. Fortunately, former SEC Chair Jay Clayton and law professor Joseph Grundfest filed an amicus brief in the *Slack* case arguing "that the SEC 'can take a variety of administrative actions to address the tracing challenge that arises in direct listings, and in other forms of Section 11 litigation.'"[30]

> One such potential measure is an SEC requirement that registered and exempt shares offered in a direct listing trade with "differentiated tickers, at least until the expiration of the relevant Section 11 statute of limitations." They also offer a "narrower approach" whereby the SEC mandates what is essentially a one-day lockup period.[61] Specifically, exempt (unregistered) shares would not be tradeable "until *the day after* an initial auction that is limited to registered shares." In terms of the entry of registered and unregistered shares into the market, this would make a direct listing resemble an IPO with universal one-day lockups.[31]

Similarly, Professors John Coffee and Joshua Mitts propose an accounting methodology that would allow plaintiffs to trace their shares. They propose that the SEC adopt a rule "which explicitly provides that standard accounting methods shall satisfy Section 11's tracing requirement."[32] They further propose that the SEC make clear to FINRA that records held in the Consolidated Audit Trail, which under SEC rules are discoverable and could help establish tracing, must be produced to private litigants in the course of Section 11 litigation.[33] Professors Coffee and Mitts note that "[t]hese are the sorts of actions that the SEC could take immediately to ensure that *Slack* and its progeny do not result in a complete loss of standing, thereby leading to the death of Section 11 litigation."[34] These actions in seeking to preserve Section 11 "would be fully consistent with the SEC's mission of promoting investor protection."[35]

We have argued similarly that the SEC should address the *Slack* decision by placing conditions on insider direct listings contemporaneously with the IPO or requiring some sort of

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[30] John C. Coffee and Joshua Mitts, *Can Section 11 Be Saved?: 'Tracing' a Path to its Survival*, 15 Harv. Bus. L. Rev. 1, 17 (2025) (quoting Brief for the Honorable Jay Clayton and the Honorable Joseph A. Grundfest as Amici Curiae Supporting Petitioners at 3, Slack Techs., LLC v. Pirani, 598 U.S. 759 (2023) (No. 22-200)).

[31] *Id.* (emphasis in article) (quoting Slack amicus brief, supra note 30, at 31-33).

[32] *Id.* at 33.

[33] Id.

[34] Id.

[35] Id.

legend to be applied to various types of offerings explaining the attendant liability protections."[36] So there are many actions that the SEC could take to ameliorate the impact of the *Slack* decision, which would be consistent with the SEC's investor protection mission. What would not be consistent with the SEC's investor protection mission is using the *Slack* decision to further undermine investor protections. Yet that is what the SEC appears poised to do. As Professor Brent Horton said in another context where the SEC dismissed tracing concerns regarding Section 11 liability, "[t]his sort of two-wrongs-make-a-right reasoning is, at best, baffling from an institution tasked with protecting investors."[37] Given that protecting investors is the SEC's "primary task,"[38] it should be acting in investors' interests, not eliminating key protections.

The bottom line is that SPAC mergers and direct listings "dispense with nearly century-old techniques for capital raising, weakening investor protection," and their overstated benefits "fail to justify the erosion of investor protection implicit in these transactions."[39]

Conclusion

We hope these comments are helpful as the Commission considers this matter.

Sincerely,

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36 Dennis M. Kelleher, et al., *The SEC is Demolishing Investor Protection, Threatening Capital Formation & The U.S. Economy*, Better Markets (Nov. 12, 2025), https://bettermarkets.org/analysis/the-sec-is-demolishing-investor-protection-threatening-capital-formation-the-u-s-economy/.

37 Brent J. Horton, *Direct Listings and the Weakening of Investor Protections*, 50 Fla. St. U. L. Rev. 279, 330 (2023).

38 Id.

39 Andrew F. Tuch and Joel Seligman, The Further Erosion of Investor Protection: Expanded Exemptions, SPAC Mergers, and Direct Listings, 108 Iowa L. Rev. 303, 305, 308 (2022).