June 30, 2026

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

Attention: Division of Corporation Finance

Re: Interpretive Guidance on Item 303(b)(2)(ii) for AI Exposure Disclosure; Supplement to Indemnify AI Comment Letter of May 12, 2026 (File No. 265-28, Comment 778527-2373974)

Dear Secretary Countryman:

Indemnify AI supplements its May 12, 2026 comment letter on File No. 265-28 with four developments through June 30, 2026 that strengthen the case for interpretive guidance under Item 303(b)(2)(ii) of Regulation S-K:

- A material new securities action against Microsoft that pleads Item 303 by name and joins a 12-month pattern of AI-disclosure shareholder suits against Mag7-scale issuers.
- A side-by-side comparison of AI capital expenditure to pharmaceutical R&D showing AI is more concentrated, more accelerated, and less disclosed than its closest comparable category.
- An empirical audit of 36 Form 10-K filings across twelve issuers in three industries (medical claims, consumer AI, fast food) confirming the Investor Advisory Committee's finding that AI disclosures "currently remain uneven and inconsistent."
- A specific request that the Division of Corporation Finance issue CF Disclosure Guidance clarifying what constitutes material AI exposure for purposes of Item 303(b)(2)(ii), and that quantified forward-looking AI risk is appropriately disclosed as a Critical Accounting Estimate.

I. New Evidence: The Microsoft Securities Action

On June 12, 2026, *City of St. Clair Shores Police & Fire Retirement System v. Microsoft Corp.* (W.D. Wash. 2:26-cv-02071) was filed. The complaint quotes §229.303(b)(2)(ii) and §229.105 and alleges that Microsoft "violated Item 303" and "violated Item 105" at paragraphs 43 and 44. It is the largest of four AI-disclosure shareholder suits filed against Mag7-scale issuers in the past 12 months. To our knowledge, it is also the first to plead §229.303(b)(2)(ii) by name.

The four cases together form a pattern.

Case / Docket	Court / Filed	Theory (per complaint)	Mkt-cap loss
Tucker v. Apple 5:25-cv-05197-NW	N.D. Cal. 06/20/25	Apple Intelligence / Personal-Context Siri delivery timeline	~$900B
Morand v. Tesla 1:25-cv-01213	W.D. Tex. 08/04/25	Full Self-Driving / Robotaxi capability and commercialization	~$68B
Barrows v. Oracle 1:26-cv-00127-JLH	D. Del. 02/03/26	AI capital expenditure and OpenAI customer concentration	~$400B
St. Clair Shores v. Microsoft 2:26-cv-02071	W.D. Wash. 06/12/26	Copilot adoption and AI infrastructure capacity; expressly pleads Item 303	~$357B
Combined			**~$1.7 trillion**

Market-cap figures represent class-period per-share decline multiplied by shares outstanding. Recoverable damages, calculated after class certification, will be substantially smaller and subject to PSLRA limitations.

AI-disclosure shareholder litigation is now reaching Item 303. St. Clair Shores names the specific sub-provision the other three complaints did not.

II. AI Investment Exceeds Comparable Capital Categories

AI capital expenditure runs higher and faster than its closest comparable category, pharmaceutical research and development. Two differences stand out.

Capital Intensity. Top-twenty pharmaceutical R&D averages roughly 20 percent of revenue (fiscal 2025: Merck 24%, Novartis 21%, Pfizer 17%). Hyperscaler AI capital intensity in 2026, measured as guided 2026 capital expenditure against consensus 2026 revenue, ranges from approximately 25 percent to 57 percent: Amazon near 25 percent on capital-expenditure guidance of about $200 billion, Alphabet near 38 percent on guidance of $180 to $190 billion, and Meta 49 to 57 percent on guidance of $125 to $145 billion. Microsoft and Oracle are not quantified here because their capital-expenditure guidance is reported on different fiscal-period bases, but both spend at or above the high end of this range. At the index level, Goldman Sachs Global Institute projects about $765 billion of AI capital expenditure in 2026 (Tracking Trillions, May 2026). Pharmaceutical R&D is spread across dozens of issuers. AI capital expenditure is concentrated in a small number of issuers, and passive investors cannot diversify away from that concentration.

Acceleration. Pharmaceutical R&D ratios formed over decades alongside ClinicalTrials.gov public visibility, FDA Phase I/II/III empirical success rates, mature product-liability case law, and per-asset revenue attribution. AI capital expenditure roughly doubled in twelve months. Combined hyperscaler spend grew 77 percent year-over-year from 2025 to 2026. None of the four supporting frameworks listed above exist for AI.

III. Empirical Confirmation

To test the IAC's December 2025 finding that AI disclosures "currently remain uneven and inconsistent," Indemnify AI audited 36 Form 10-K filings. The set covers twelve issuers across three segments for FY2023 through FY2025. We looked at the four places a filer could disclose material AI exposure: Item 105 risk factors, Item 103 legal proceedings, Item 303 MD&A known trends, and the ASC 450 loss-contingencies note. Item 303(b)(2)(ii) is the focus of our request because it is the rule that converts a known trend into quantified, comparable MD&A disclosure.

Audit scope.

Segment	Filers studied	Fiscal years	Filings
Medical Claims	UNH, HUM, CI, CVS	FY23–FY25	12
Consumer AI	AMZN, MSFT, META, GOOGL, AAPL	FY23–FY25	15
Fast Food	MCD, YUM, SBUX	FY23–FY25	9
Combined	**12 issuers**		**36**

Findings.

Disclosure rule	Positive filings	What we found
Item 105 Risk Factors	35 of 36	Generic AI/ML risk-factor language. Sole exception is Humana FY23.
Item 103 Legal Proceedings	3 of 36	Meta names Kadrey, Chabon, and (from FY24) Farnsworth at Item 3 caption level in FY23, FY24, and FY25. No other issuer names an AI case.
Item 303 MD&A Known Trends	**0 of 36**	No issuer treats AI as a known trend or uncertainty under Item 303(b)(2)(ii).
ASC 450 Loss Contingencies	**0 of 36**	No issuer carries a specific AI accrual outside Meta's contingencies aggregate.

Each of the twelve named filers is publicly associated with at least one AI-failure event that arguably constitutes a "known trend" reasonably likely to be material under Item 303. This is the empirical record the IAC described as "uneven and inconsistent."

The unevenness reflects a tension between management's discretion in interpreting "material" under Item 303(b)(2)(ii) and investors' need for comparable AI disclosure across issuers. Issuers reading the same rule are reaching different conclusions about what AI capital expenditure, AI litigation exposure, or AI deployment risk requires forward-looking trend disclosure. Interpretive guidance from the Division can resolve that tension.

The analysis needed to close the gap already sits inside the issuers. Management is making AI capital-allocation decisions in real time and weighing each tranche of spending against internal models of expected return and risk. Investors cannot see that analysis through current periodic reports. The dollar amounts are unprecedented and the concentration creates index-level exposure. Issuers should be required to explain how they are pricing this risk.

IV. Why Interpretive Guidance Is Time-Sensitive

Four reasons timing matters now.

- AI-disclosure shareholder litigation is now reaching Item 303 faster than the Commission has issued clarifying guidance. Without guidance, AI disclosure doctrine will develop through judicial decisions rather than through the Commission's direction.
- AI capital-expenditure commitments are made on multi-quarter forward-planning horizons. Each quarter without guidance adds more undisclosed exposure to periodic reports.
- The March 2026 National Policy Framework for Artificial Intelligence directs federal agencies to use existing authorities and to avoid new AI-specific rulemaking. Interpretive guidance under Item 303 fits that direction.
- The IAC's December 2025 recommendation on AI disclosure is still pending Commission action. The IAC concluded that "Reg S-K items 101, 103, 106, and 303 are flexible enough to accommodate the rise in the use of AI by registrants." That is a direct endorsement of the existing-rule interpretive-guidance approach we request here. Staff guidance would respond to that recommendation.

V. Specific Request

We respectfully request that the Division of Corporation Finance issue CF Disclosure Guidance on the application of Item 303(b)(2)(ii) of Regulation S-K to material AI exposure. The guidance should:

- Clarify what constitutes "material" AI exposure for purposes of Item 303(b)(2)(ii). The vagueness of "material" as applied to AI capital expenditure, AI litigation exposure, and AI deployment risk is the root cause of the uneven disclosure pattern documented in Section III.
- Confirm that quantified forward-looking AI risk is appropriately disclosed as a Critical Accounting Estimate under §229.303(b)(3), with the safe-harbor protections of §27A of the Securities Act of 1933 and §21E of the Securities Exchange Act of 1934. To bound the obligation, the guidance could specify that the CAE is required only when AI investment exceeds a material percentage of total capital expenditure and research and development.

No new rulemaking is required.

As we noted in our May 12, 2026 letter, qualitative AI disclosure guidance alone is unlikely to produce consistent or comparable disclosure across issuers. A Critical Accounting Estimate framework gives investors the quantified consistency they need and shows how management is pricing AI-related risk in capital-allocation decisions.

Indemnify AI thanks the Commission for its consideration of this supplement and of our prior letter. We remain available to respond to questions from Staff.

Respectfully submitted,

/s/ Josh Bottum

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