GIBSON DUNN

November 18, 2026

VIA ELECTRONIC SUBMISSION

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

Re: Statement on Reforming Regulation S-K (File No. CLL-15)

Ladies and Gentlemen:

We appreciate the opportunity to comment on the request by the Securities and Exchange Commission (the "Commission") for public input on reforming Regulation S-K.[1]

Gibson Dunn's Securities Regulation and Corporate Governance practice group works with and advises hundreds of large-, mid-, and small-cap publicly traded companies across every major industry group, including companies that have been publicly traded for over a century and companies that have entered the public markets in recent years. We are ranked Band 1 by Chambers in the categories of Corporate Governance and in Securities: Regulation: Advisory.

We offer these comments from the standpoint of having one of the most active securities regulation and corporate governance practices in the United States, advising approximately 1,500 corporate clients worldwide, including approximately 500 public companies. We likewise advise many of the other market participants who prepare, audit, and rely on Regulation S-K disclosure, including accounting firms, financial institutions, and private equity sponsors. Our lawyers help these clients prepare and review that disclosure every day, covering everything from initial public offerings through periodic reporting by mega cap filers, and that front-line experience over many years informs the observations and recommendations below.

We support the Commission's effort to modernize Regulation S-K for the benefit of both the investing public and the issuer community. We share the view, reflected in Chairman Atkins's statement and across the comment file, that the disclosure regime should allow a reasonable investor to separate the wheat from the chaff, and that the requirements should be revised to elicit material information and to avoid compelling the disclosure of immaterial information that does nothing more than bury investors "in an avalanche of trivial information."[2] The increase in the length of the documents in which this information is delivered is well documented. Studies of the full population of annual reports find that the median Form 10-K roughly doubled in length between 1996 and 2013, and that the average report grew from under 15,000 words in 1996 to roughly 48,000 words in 2022, with the business section alone expanding more than fourfold. The same research attributes the increase principally to a small number of mandated topics rather than to any change in the underlying business and finds that redundancy and boilerplate rose over the period while specificity and readability fell.[3]

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1 Chairman Paul S. Atkins, Statement on Reforming Regulation S-K (Jan. 13, 2026).

2 *Id.*; *see TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 448-49 (1976) (cautioning against burying shareholders in "an avalanche of trivial information").

3 *See* Travis Dyer, Mark Lang & Lorien Stice-Lawrence, *The Evolution of 10-K Textual Disclosure: Evidence from Latent Dirichlet Allocation*, 64 J. Acct. & Econ. 221 (2017) (finding that median 10-K text length doubled from

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Length is not a neutral attribute. Research indicates that investors place less weight on information conveyed in less readable filings and rely more heavily on sources outside the filing, that individual investors hold larger positions in registrants whose filings are more concise, and that analyst forecasts for registrants with less readable reports are more dispersed and less accurate.[4] A filing serves its purpose only if it is read. A document of more than one hundred pages, written by lawyers and accountants for lawyers and accountants, does not advance investor understanding. We recognize that a number of investor commenters value the comparability that standardized line items can provide and that some commenters favor expanding the scope and scale of the current requirements. In our view, the recommendations below preserve that value where it matters: they are anchored in materiality, they leave the antifraud framework intact, and they retain the information a reasonable investor needs while removing disclosure that does not aid investment or voting decisions.

Rather than duplicate the comprehensive, item-by-item letters that others have submitted, we write to endorse the recommendations on which the leading commenters have reached broad consensus, to offer a focused set of practice-based observations on the requirements we consider most in need of reform, and to provide order-of-magnitude estimates of the burden these requirements impose. Where our views align with those of the Society for Corporate Governance, the American Bar Association's Federal Regulation of Securities Committee, the U.S. Chamber of Commerce, the Business Roundtable, or other prominent organizations that submitted comments, we endeavor to indicate that and, in the interest of conciseness, refer the Commission to those letters for the detailed supporting analysis.[5]

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approximately 23,000 words in 1996 to nearly 50,000 words in 2013; that three disclosure topics, fair value, internal control over financial reporting, and risk factors, account for virtually all of the increase; and that redundancy, boilerplate, and stickiness rose while specificity and readability declined); Yaron Lesmy et al., *Lost in the Fog: Growing Complexity in Financial Reporting*, 12 Humans. & Soc. Scis. Commc'ns (2025) (finding that the average Form 10-K grew from approximately 14,700 words in 1996 to approximately 48,000 words in 2022, that Item 1 alone grew from approximately 4,600 words to approximately 21,000 words over the same period, and that the Gunning-Fog index for Item 7 rose from 17.6 to 20.19); Vipal Monga & Emily Chasan, *The 109,894-Word Annual Report*, Wall St. J. (June 2, 2015).

[4] *See* Reuven Lehavy, Feng Li & Kenneth Merkley, *The Effect of Annual Report Readability on Analyst Following and the Properties of Their Earnings Forecasts*, 86 Acct. Rev. 1087 (2011) (finding greater dispersion and lower accuracy in analyst forecasts for registrants with less readable reports); Alastair Lawrence, *Individual Investors and Financial Disclosure*, 56 J. Acct. & Econ. 130 (2013) (finding that individual investors hold larger positions in registrants with more concise and more readable filings); H. Scott Asay, W. Brooke Elliott & Kristina Rennekamp, *Disclosure Readability and the Sensitivity of Investors' Valuation Judgments to Outside Information*, 92 Acct. Rev. 1 (2017) (finding that investors place less weight on less readable disclosure and rely more heavily on sources outside the filing).

[5] Society for Corporate Governance (the "Society"), Letter re: Statement on Reforming Regulation S-K (File Number CLL-15) (Apr. 13, 2026) (the "Society Letter"), available at https://www.sec.gov/comments/cll-15/cll15-748671-2315735.pdf; Federal Regulation of Securities Committee, Business Law Section, American Bar Association, Letter re: File No. CLL-15, SEC Request for Comment on Reforming Regulation S-K (May 1, 2026) (the "ABA Letter"), available at https://www.sec.gov/comments/CLL-15/cll15-766107-2351034.pdf; U.S. Chamber of Commerce, Letter re: Statement on Reforming Regulation S-K (Feb. 11, 2026) (the "February U.S. Chamber Letter"), available at https://www.sec.gov/comments/cll-15/cll15-702507-2207294.pdf; U.S. Chamber of Commerce, Letter re: Statement on Reforming Regulation S-K (CLL-15) (Apr. 10, 2026) (the "April U.S. Chamber Letter" and, together with the February U.S. Chamber Letter, the "U.S. Chamber Letters"), available at https://www.sec.gov/comments/cll-15/cll15-745889-2311294.pdf; Business Roundtable, Letter re: File Number CLL-15, Statement on Reforming Regulation S-K (Apr. 13, 2026) (the "Business Roundtable Letter"), available at https://www.sec.gov/comments/cll-15/cll15-750527-2317354.pdf; National Association of Manufacturers, Letter re: Request for Comment on Reforming Regulation S-K (File CLL-15) (Apr. 13, 2026) (the "NAM Letter"), available at https://www.sec.gov/comments/cll-15/cll15-750187-2316858.pdf. Unless otherwise noted, statistics attributed below to registrant surveys are drawn from the Society Letter.

Three themes underlie our comments.

- **Brevity is not the same as burden.** Even a short disclosure can require extensive fact-gathering, cross-functional coordination, verification, and multiple layers of review. The cost of a requirement is measured by the work needed to make the disclosure complete and accurate, not by the number of words it produces.[6]
- **Material to a reasonable investor is not the same as of interest to a particular constituency.** A requirement may generate information that a particular group finds useful for its own purposes without that information being material to a reasonable investor (i.e., important to the investor's investment or voting decisions). Mandated disclosure should be calibrated to the latter.[7]
- **Guideposts should be permissive, not triggers.** Bright-line thresholds can be useful to give issuers comfort that disclosure is not required below a stated level. Such thresholds should operate as safe harbors below which no disclosure is required, and should not be phrased so as to deem information material, or to require disclosure, merely because a threshold is crossed.[8]

I. Overarching Recommendations

A. Re-anchor Regulation S-K in materiality by adding a general materiality qualifier in Item 10. Many of the concerns below share a root cause: individual items compel disclosure without regard to whether the information is material to the particular registrant. We support adding a general materiality overlay to Item 10 providing that, except where an item expressly provides otherwise, disclosure under Regulation S-K is required only to the extent material. This approach is consistent with the materiality conventions already embedded in Regulation S-X and U.S. GAAP,[9] and it has been supported by commenters.[10] The provision should confirm that a registrant may provide additional, non-material information in its discretion, and that doing so is not a concession that the item or the information is material. The overlay provision should relieve registrants of the obligation to provide immaterial disclosure while leaving the antifraud provisions fully intact, including the obligations under Exchange Act Rule

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6 Society Letter at 3 (describing the compliance burden a single requirement imposes across business, accounting, financial reporting, legal, risk, compliance, internal audit, and investor relations functions, and the successive layers of review that follow).

7 Society Letter at 3-4 (noting the search, comparison, and processing costs that immaterial disclosure imposes on investors and analysts); April U.S. Chamber Letter at 2 (noting that many Regulation S-K items no longer elicit information a reasonable investor would consider important).

8 April U.S. Chamber Letter at 6-7 (disfavoring arbitrary, one-size-fits-all dollar thresholds for materiality); Society Letter at 25 (framing its proposed Item 404 dollar levels as safe harbors rather than disclosure triggers).

9 *See* 17 CFR 210.4-02 (Reg. S-X) ("If the amount which would otherwise be required to be shown with respect to any item is not material, it need not be separately set forth"); ASC 105-10-05-6 ("The provisions of the Codification need not be applied to immaterial items").

10 Business Roundtable Letter at 3 (recommending that Item 10 be amended to reflect the materiality principle and confirm that registrants may omit immaterial disclosure without enforcement or liability risk); Federal Regulation of Securities Committee, Business Law Section, American Bar Association, Letter re: Business and Financial Disclosure Required by Regulation S-K, File No. S7-06-16 (Dec. 15, 2017) (proposing a new Item 10(g) permitting omission of immaterial line-item responses outside Items 402 and 404, with a presumption that any such omission was intentional rather than a compliance failure). Leading law firms propose comparable Item 10(g) formulations. *See* Davis Polk & Wardwell LLP, Letter re: Recommended Changes to Regulation S-K (May 18, 2026), available at https://www.sec.gov/comments/CLL-15/cll15-781667-2379094.pdf at 5 (proposing a new Item 10(g) permitting omission of immaterial responses); Cravath, Swaine & Moore LLP, Letter re: Regulation S-K Reform (File No. CLL-15) (Apr. 13, 2026), available at https://www.sec.gov/comments/cll-15/cll15-748672-2315736.pdf at 3 (same); Sullivan & Cromwell LLP, Letter re: Comprehensive Reform of Regulation S-K (File No. CLL-15) (April 13, 2026), available at https://www.sec.gov/comments/cll-15/cll15-750069-2316795.pdfat 2 (same).

12b-20 and Securities Act Rule 408 to disclose any additional information necessary to make the required statements not misleading.

B. Address the liability dynamics that drive defensive over-disclosure. Much immaterial disclosure is defensive. It is included not because a registrant believes investors would find it important in making investment or voting decisions, but because registrants fear that an omission will be second-guessed with hindsight in litigation or enforcement proceedings. Survey data collected by the Society for Corporate Governance from its members bears this out: registrants identify fear of litigation (84%), a desire to match peers (82%), and concern about hindsight review (79%) as the strongest drivers of immaterial risk-factor disclosure.[11] Historical experience has shown these to be valid concerns.[12] We therefore support the Commission's consideration of appropriately designed safe harbors, in particular a safe harbor for risk-factor disclosure that satisfies clarified standards under Item 105, and clarification that a failure to make a prescribed Regulation S-K disclosure does not, by itself, establish a violation of the antifraud provisions.[13] A measured reduction in litigation risk is among the few reforms likely to shorten filings in practice, because it addresses a primary reason issuers include immaterial disclosure.

C. The cost of Regulation S-K compliance is substantial and systemic. The burden of a requirement extends well beyond outside legal and accounting fees. A single item typically requires recurring fact-gathering, drafting, verification, and review across the business, accounting, financial reporting, legal, risk, compliance, internal audit, and investor-relations functions, followed by review by outside counsel, auditors, the disclosure committee, senior management, and the board. Drawing on our own practice across approximately 500 public-company clients, we estimate that the attorneys, accountants, and other staff at a typical large-cap registrant spend thousands of hours preparing a single annual report, and that the reforms described below could save a typical registrant several hundred thousand dollars annually, with proportionally greater savings for newly public and smaller reporting companies. We offer these as informed estimates from long experience, not as formal economic analysis. As other commenters note, advances in artificial intelligence do not eliminate these burdens, because human judgment remains necessary at each step and the same tools are equally available to the plaintiffs' bar.[14]

II. Item-Specific Recommendations

Item 101(c)(2)(ii) (Human capital). Since the 2020 amendments to Item 101(c) added a provision requiring discussion of human capital resources, we have conducted annual surveys of the substance and format of human capital disclosures among S&P 100 companies.[15] Those

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[11] Society Letter at 7.

[12] *See*, *e.g.*, *Construction Laborers Pension Trust of Greater St. Louis v. Funko, Inc.*, No. 24-4909 (9th Cir. Feb. 4, 2026); *In re Facebook, Inc. Sec. Litig.*, 87 F.4th 934 (9th Cir. 2023). Even meritless claims impose substantial defense costs and settlement pressure, which encourages precautionary disclosure of immaterial risks.

[13] ABA Letter at 4 and n.4 (recommending clarification that noncompliance with a Regulation S-K item does not itself establish an antifraud violation, and safe harbors for good faith omissions); April U.S. Chamber Letter at 8-9 (recommending a safe harbor to curb risk-factor litigation risk); Society Letter at 2 (recommending appropriately designed safe harbors to reduce defensive over-disclosure). The requested clarification would be consistent with existing law. *See Macquarie Infrastructure Corp. v. Moab Partners, L.P.*, 601 U.S. 257 (2024) (holding that a pure omission does not support liability under Rule 10b-5(b) absent a duty to disclose).

[14] Society Letter at 4.

[15] *See generally* Gibson, Dunn & Crutcher LLP, Five Years of Evolving Form 10-K Human Capital Disclosures (Jan. 22, 2026), available at https://www.gibsondunn.com/wp-content/uploads/2026/01/SRCG-LE-2025-Human-Capital-

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surveys show that the Item has not produced information that supports comparison over time or across companies. Despite the materiality qualifier, the sweeping reference to "measures or objectives that address the development, attraction and retention of personnel" has instead yielded disclosure about workforce initiatives, corporate mottos, and employee perks.[16] Our most recent survey shows a marked year-over-year shift in the length and tone of these disclosures, one that appears to track the prevailing legal, regulatory, and political environment rather than any material change in the underlying businesses.[17] In our experience, this has been an area where companies' disclosures can be driven more by peer benchmarking, public relations and employee relations considerations than by consideration of what information would be decision-useful for investors. For many companies, the content of this section is ultimately within the purview of the HR department, and in some cases of outside human resources consultants. Because the content originates outside the finance and legal functions, it does not always pass through the internal control over financial reporting and disclosure controls and procedures that govern the rest of the document. A requirement that routinely elicits immaterial content prepared outside the registrant's ordinary disclosure control processes is difficult to justify on investor protection grounds. Moreover, oftentimes substantially all of the information this Item elicits is already published on the registrant's careers pages, where it is directed to prospective employees and is accessible to anyone, including investors, without charge and without reference to a periodic report. Repeating it in the Form 10-K adds length without adding information.

We therefore recommend that the Commission revise the Item to either (i) return to its historical focus on the number of persons employed or (ii) fold a principles-based approach into Item 101(c)(1)(iii)'s discussion of "[r]esources material to a registrant's business," as the Society proposes.[18] Either approach would help guide registrants in crafting thoughtful, decision-useful disclosures with improved year-over-year comparability.

Item 102 (Property). Information about physical properties provided in response to Item 102 varies widely across registrants and industries, and can often be immaterial, particularly for companies with remote workforces or that hold leasehold or other temporary interests that can readily be replaced (e.g., technology service providers, asset-light franchisors that license a brand rather than own the underlying properties, and firms that outsource manufacturing entirely). Even where physical properties are material, as in asset-intensive industries, the required detail on location and character tends to result in lengthy recitations that are immaterial to investors. Registrants surveyed by the Society report that Item 102 commonly yields immaterial disclosure of non-material properties (68%) and boilerplate (68%). One client indicated to us that even for a property-intensive issuer, the current property-level detail, often

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Disclosure-Client-Alert-1225-v7-003.pdf; Gibson, Dunn & Crutcher LLP, Four Years of Evolving Form 10-K Human Capital Disclosures (Dec. 16, 2024), available at https://www.gibsondunn.com/four-years-of-evolving-form-10-k-human-capital-disclosures/. The ABA's Federal Regulation of Securities Committee relies on this survey for the same conclusion. *See* ABA Letter at 11 and n.15 (citing the survey and observing that the decline in disclosure length over the last two years suggests that some registrants initially provided immaterial information in response to the requirement).

[16] Business Roundtable Letter at 10 and n.6 (recommending elimination of the requirement); April U.S. Chamber Letter at 6 (recommending elimination of the requirement or, at a minimum, limiting it to a principles-based discussion of material aspects of human capital without suggesting that any particular metric or objective is material). *See also* ABA Letter at 11 (recommending that the Item retain the requirement to disclose the number of employees and add a principles-based discussion of the significance of human capital to the business, including the role of technological alternatives such as robotics and artificial intelligence).

[17] Five Years of Evolving Form 10-K Human Capital Disclosures (Jan. 22, 2026) at 6.

[18] Society Letter at B-1.

presented as a lengthy table of property counts, investment amounts, and revenues broken down by state and segment, does little to show how the properties fit the company's business strategy and is of limited use to investors.

We support the recommendation offered in the Society Letter, April U.S. Chamber Letter, and Business Roundtable Letter to eliminate Item 102 as a standalone requirement and instead incorporate a discussion of physical properties that are material to an understanding of a company's business in the Item 101(c)(1)(iii) discussion of "[r]esources material to a registrant's business."[19] For asset-intensive registrants, properties are already discussed in the business section; for asset-light registrants, a standalone requirement can overstate the importance of real estate. Incorporating material property disclosure into Item 101(c)(1)(iii) is consistent with the purpose of that Item and would allow registrants to present their properties in a narrative format that shows how the properties relate to the business, rather than as a standalone recitation.

Item 103 (Legal proceedings). Item 103 applies three different, and in some respects vague, standards to different categories of proceedings: material proceedings other than ordinary routine litigation, proceedings "known to be contemplated" by governmental authorities, and environmental proceedings measured against a fixed-dollar threshold ($300,000 or a threshold up to the lesser of $1 million or 1% of current assets if elected by the company). As a result, registrants spend considerable time determining what must be disclosed, often disclose matters prematurely even though many never progress or are resolved for immaterial amounts, and produce repetitive, boilerplate detail. In our experience, deciding whether a single regulatory inquiry has crossed the "known to be contemplated" threshold can easily occupy in-house and outside counsel across multiple calls and dozens of emails in a quarter, and not infrequently ends in a judgment that the matter need not be disclosed at all.

We believe three changes could markedly improve the quality of the disclosure regarding material pending legal proceedings.

- Replace the "known to be contemplated" trigger for governmental proceedings with an objective, event-based standard tied to whether a matter is pending before a court or agency as a result of the governmental authority filing a charging instrument (e.g., a matter the government has initiated by filing a civil complaint, returning an indictment, or issuing an order instituting administrative proceedings), which also aligns with the Item's existing reference to "the name of the court or agency in which the proceedings are pending."[20][21]

- Eliminate the separate fixed-dollar threshold for environmental proceedings and apply the same materiality standard that governs other proceedings; the current threshold can

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[19] Society Letter at 20 and B-1 (recommending elimination of requirement and incorporation of physical property disclosure into Item 101(c)(1)(iii)); April U.S. Chamber Letter at 5 (recommending a more principles-based requirement or, alternatively, folding the requirement into Item 101(c)(1)(iii)); Business Roundtable Letter at 10 (recommending integration of the requirement into the overall business description).

[20] This approach also draws a workable line between adjudicative matters, which would be disclosable, and investigative activity (e.g., informal inquiries and voluntary requests, formal orders of investigation, subpoenas and civil investigative demands, document productions and investigative testimony, and Wells notices and staff recommendations), which would not.

[21] Society Letter at 12 (recommending elimination of the 'known to be contemplated' standard); Business Roundtable Letter at 5 (same); April U.S. Chamber Letter at 6 (same).

fall well below what a registrant, particularly a larger one, would consider material, skewing Item 103 disclosure disproportionately toward environmental matters.[22]

- Extend the ability in Item 103(c)(3)(iii)(C) to group and describe similar proceedings generically to all matters, so that a registrant facing many similar suits, such as intellectual-property litigation in certain industries, need not recite the procedural posture and relief sought for each.[23]

Item 105 (Risk factors). Risk-factor disclosure is the clearest example of defensive over-disclosure. Surveyed registrants report that they include immaterial risk factors principally out of liability concern: 84% cite fear of litigation if risk-factor language is reduced, 82% cite a desire to match peer disclosure, and 79% cite concern that an omission will be second-guessed in hindsight.[24] Those concerns are well founded, as courts have allowed securities claims to proceed where a risk factor framed as hypothetical was alleged to be misleading because the risk had already materialized.[25] A registrant that pares a risk another company discloses, or that declines to catalog every conceivable contingency, reasonably fears hindsight liability, and the result is longer filings that obscure the registrant's genuinely material risks.

The prospect of omission liability also drives process cost that the length of the disclosure does not reveal. In our experience, it is not unusual for a large public company to spend hundreds of hours each year comparing its risk factors against those of its peers to confirm that it has addressed everything the peers address. That exercise tends to make the disclosure both longer and more generic.

Many commenters have converged on the view that the way to shorten risk-factor disclosure is to address the liability dynamic that drives its length, through clear limiting principles and an appropriately designed safe harbor, rather than through prescriptive presentation formats or page limits.[26] We support three changes.

- Add an introductory instruction to Item 105 confirming that risk factors are illustrative rather than an exhaustive catalog; that they are forward-looking statements of opinion that do not imply any assertion about current or past facts; that any past examples provided are illustrative and not required; that risk factors need not duplicate disclosure required elsewhere; and that widely known national or global events generally need not be addressed.[27]

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22 Business Roundtable Letter at 5 (recommending deletion of Item 103(c)(3)(iii)); April U.S. Chamber Letter at 5-6 (same); ABA Letter at 14 (recommending elimination of Item 103(c) in its entirety or, in the alternative, elimination of the disclosure thresholds in Items 103(c)(3)(ii) and (iii)); Society Letter at 12-13 (same).

23 April U.S. Chamber Letter at 5 (recommending that aggregation of legal proceedings be permitted).

24 Society Letter at 7.

25 *See* supra note 12.

26 Society Letter at 7-8 (recommending an introductory note to Item 105 with clear limiting principles and adoption of a liability safe harbor in Item 105); Business Roundtable Letter at 4-5 (recommending adoption of a liability safe harbor at Item 105); April U.S. Chamber Letter at 8-9 (recommending adoption of a safe harbor for non-disclosure of generic events); NAM Letter at 5-6 (recommending a safe harbor for generic risks); ABA Letter at 14-16 (recommending expanded safe-harbor protection for failure to disclose impacts from publicized events).

27 Society Letter at 7 (recommending an introductory note to Item 105 establishing the illustrative, forward-looking nature of risk factors); April U.S. Chamber Letter at 9 (recommending clarification that risk factors assert no current or past fact and that examples are illustrative); Business Roundtable Letter at 4-5 (recommending clarification that disclosure of past events and widely available background risks is not required); ABA Letter at 14 (recommending that Item 105 focus on the material risks to which the board and management give specific

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- Adopt a safe harbor, modeled on the existing Item 305(d) safe harbor, for risk-factor disclosure that satisfies those standards, while preserving liability for affirmative material misstatements.[28]

- Eliminate the risk-factor summary, which lengthens filings with duplicative content and adds little for investors.[29]

These changes would reduce volume without reducing material information. More than two-thirds of surveyed registrants report that their risk factors would shorten under a safe harbor, and 84% report that they would shorten if it were clear that risk factors need only identify examples rather than comprehensively describe every risk and its potential impact.[30] We agree with those commenters that oppose strict page limits, which the Commission has twice declined to adopt and which 87% of surveyed registrants oppose.[31]

If the Commission concludes that a structural change would do more than the liability-focused changes described above, two alternatives merit consideration. The first is to invert the present structure rather than simply eliminate the summary: require a concise statement of the material risks and eliminate the extended narrative that now follows it. The model is the meaningful cautionary language that accompanies forward-looking statements under the Private Securities Litigation Reform Act.[32] In our experience, ten to twenty well-drafted bullets identify the matters that could cause a registrant's results to differ from expectations at least as effectively as twenty pages of narrative that follow. The second is for the Commission to identify in the Item itself a set of generic risks that registrants need not disclose, such as general economic conditions, war and natural disasters, stock price volatility, competition and the development of competing products and services, protection of intellectual property, inflation, changes in law, the risks of international operations, and the anti-takeover effects of governance arrangements.[33]

The cost of the current approach is significant and recurring. Based on our experience across a large number of public company engagements, we estimate that a registrant whose risk factors run fifteen pages spends in excess of $100,000 each year preparing and reviewing that section alone. That figure reflects in-house counsel time, outside securities and litigation counsel review, and quarterly updating, and it does not include the time of management or the board.

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attention). But cf. ABA Letter at 15-16 (recommending guidance confirming that registrants should describe risk events that have materialized and had a material impact on the business, while clarifying that such disclosure may cease once the event no longer affects the business).

28 Society Letter at 7 and n.18 (recommending a safe harbor modeled on Item 305(d)); Business Roundtable Letter at 4-5 (recommending a safe harbor permitting a focus on company- and industry-specific risks); April U.S. Chamber Letter at 8-9 (recommending a safe harbor for generic events affecting most companies); NAM Letter at 6 (recommending a safe harbor for generic risks applicable to most issuers or an industry); ABA Letter at 14-16 (recommending expanded safe-harbor protection for failure to disclose impacts from publicized events).

29 Society Letter at 8 (recommending elimination of requirement as duplicative); Business Roundtable Letter at 5 (recommending elimination of requirement and noting that it has encouraged longer disclosure); ABA Letter at 14-16 (recommending elimination of requirement as ineffective).

30 Society Letter at 7.

31 Society Letter at 8 (opposing strict page limits); ABA Letter at 14-16 (recommending elimination of the 15-page constraint).

32 *See* 15 U.S.C. §§ 77z-2(c), 78u-5(c) (conditioning the statutory safe harbor for forward-looking statements on identification of the statement as forward-looking and accompaniment by meaningful cautionary statements identifying important factors that could cause actual results to differ materially).

33 NAM Letter at 5-6 (recommending a safe harbor for generic risks applicable to most issuers or to companies within a specific industry, and publication by the Commission of an updated list of such risks that registrants would know they need not include).

Item 106 (Cybersecurity). We support refocusing Item 106 on material information and eliminating its most prescriptive elements, an approach on which the Society and other commenters agree and which several would achieve by eliminating Item 106 outright.[34] Where cybersecurity is material to a registrant, it is already captured by Items 101, 105, 303, and 407, and 89% of surveyed registrants report that disclosing it in those Items when material would reduce disclosure volume without any loss of material information. In our experience, Item 106 disclosures tend to be very similar across issuers and provide little information that one would reasonably expect to inform an investment or voting decision.

Short of elimination, we recommend the following targeted changes:

- Remove the non-exclusive disclosure lists in Item 106(b) and (c). In practice these operate as checklists that produce lengthy, boilerplate responses, do not meaningfully differentiate registrants for investors, and can obscure material information through overdisclosure. The related requirement to describe the cybersecurity expertise of the responsible member of management is unusually granular, functions as indirect hiring criteria, and displaces the registrant's own judgment about how best to structure and staff its cybersecurity function. Of the registrants surveyed by the Society, 65% report that investors rarely or never engage on this topic and an additional 27% report only occasional engagement.[35]

- Reduce the level of detail Item 106(b) requires regarding a registrant's cybersecurity processes. Requiring a description of those processes "in sufficient detail for a reasonable investor to understand" them yields limited value to investors, can reveal sensitive operational information that serves as a roadmap for threat actors, and can pressure registrants to conform their governance to peer practice even where a different approach is better suited to their business.[36]

- Eliminate the Item 106(b)(2) requirement to state whether cybersecurity risks are "reasonably likely to materially affect" the registrant, a characterization that is speculative, is not required for any other category of risk, and is largely duplicative of the risk factors.[37]

Item 201 (Market price of and dividends on the registrant's common equity and related stockholder matters). We support eliminating substantially all of Item 201, which largely calls for information investors can now obtain in real time from market-data providers and other public sources. Two provisions illustrate the point. Because most shares are now held in street name, the record-holder count in Item 201(b) no longer reflects a registrant's shareholder base and is largely irrelevant to assessing ownership concentration. And the stock performance graph in Item 201(e) is duplicative of information widely available in real time online. The Society, the

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[34] Society Letter at 20-22 (recommending elimination of Item 106); Business Roundtable Letter at 5-6 (same); ABA Letter at 16 (same).

[35] Society Letter at 21 and nn.33-34 (noting that the non-exclusive lists operate as checklists in practice and that the expertise requirement elicits immaterial detail); NAM Letter at 6 (recommending elimination of immaterial granularity, such as the degrees or certifications held by cybersecurity personnel).

[36] Society Letter at 21 (noting that the required level of detail can provide a roadmap to threat actors and that Item 106 leads registrants to alter business practices); April U.S. Chamber Letter at 10-11 (noting that premature incident disclosure could empower bad actors).

[37] Business Roundtable Letter at 6 (recommending removal of the non-exclusive lists in Items 106(b)(1) and (c)(2)); ABA Letter at 16 (recommending deletion of the non-exclusive list in Item 106(b)(1) and of Item 106(b)(2)).

U.S. Chamber of Commerce, and the Business Roundtable each recommend eliminating or substantially paring back Item 201 on these grounds.[38]

Item 303(b)(3) (Critical accounting estimates). We support the recommendation from commenters to eliminate the critical accounting estimates in Item 303(b)(3), or, in the alternative, to expressly permit cross-reference to the financial statements.[39] In our experience, Instruction 3 to this Item causes confusion and adds costs to companies because they must both (i) parse the difference between two substantially similar disclosure frameworks and (ii) maintain and update two parallel discussions of the same accounting estimates, creating a risk of inadvertent internal inconsistency. Because this disclosure imposes real preparation and review costs without meaningfully adding to the information already available in the financial statements, we believe that its elimination is the kind of low-cost, low-risk simplification the Commission should prioritize.

Item 303(c) (Interim MD&A). For many registrants, the year-to-date comparison Item 303(c) requires adds little beyond the quarterly period-to-period discussion of the same factors. We recommend that the Commission give registrants flexibility to present interim MD&A in the way that best reflects their business rather than prescribing a single comparison. Some registrants find a year-to-date comparison most informative, others a sequential quarter-over-quarter comparison or a focus on material developments since the most recent annual report. The rule should permit any of these and should let a registrant focus interim MD&A on material updates since the most recent annual report while incorporating unchanged baseline discussion by reference. Consistent with our third theme, this added flexibility should make the year-to-date and background discussion optional without suggesting that material interim changes need not be discussed.[40]

Item 305 (Quantitative and qualitative disclosures about market risk). We support eliminating Item 305 as a standalone item and requiring its substance within Item 303 where market risk is material, while retaining the Item 305(d) safe harbor, consistent with the Society and the Business Roundtable. For most registrants outside financial services, the prescribed quantitative disclosures duplicate information already presented in the risk factors, MD&A, and/or the financial statements; 90% of registrants surveyed by the Society report that their Item 305 disclosure would shrink, without loss of material information, if it were folded into another section.[41]

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[38] Society Letter at 22-23 (recommending elimination of substantially all of Item 201); April U.S. Chamber Letter at 4 (recommending rescission of Items 201(a) through (e)); Business Roundtable Letter at 10 (recommending reconsideration of Item 201 as outdated and duplicative). *See also* ABA Letter at 17-21 and n.41 (recommending removal of the Item 201(d) table and the Item 201(e) performance graph, with a conforming amendment to Item 402(v)(2)(iv)); NAM Letter at 9 (recommending removal of the peer group return comparison as duplicative of Item 201(e)).

[39] Society Letter at 10 (recommending elimination of Item 303(b)(3) or, in the alternative, cross-reference to the financial statements); Business Roundtable Letter at 9 (same); April U.S. Chamber Letter at 6 (recommending that the requirement be incorporated into the financial statement footnotes).

[40] Society Letter at 11 (recommending that the year-to-date discussion be made expressly optional and that interim MD&A be permitted to focus on material updates since the last annual report); Business Roundtable Letter at 9 (recommending flexibility to present results in the manner most consistent with how management evaluates the business); April U.S. Chamber Letter at 6 (recommending elimination of year-to-date reporting in favor of materiality assessments of interim periods).

[41] Society Letter at 19 (recommending elimination of Item 305 as a standalone item, with its substance moved to Item 303 and the Item 305(d) safe harbor retained); Business Roundtable Letter at 9-10 (recommending

(Cont'd on next page)

Item 404 (Transactions with related persons). Item 404(a) requires disclosure of transactions between the registrant and its insiders because those transactions can raise questions of special treatment or enrichment, and the disclosure allows investors to assess whether the transactions are fair. As calibrated, however, it requires registrants to identify, analyze, and often disclose transactions that are immaterial to investors. More than 94% of surveyed registrants report that the $120,000 threshold produces immaterial disclosure, and 57% report that the "related person" definition is overbroad.[42]

In our experience, the burden of Item 404 lies less in drafting the disclosure than in the quarterly diligence required to determine whether there is anything to disclose. Each quarter, a list of related persons drawn from director and officer questionnaires is circulated to functions across the company, from accounts payable and procurement to charitable giving and the operating units. The responses are then aggregated and analyzed, often twice: once by legal or the corporate secretary under Item 404 and the registrant's related person transaction policy, and again by financial reporting under ASC 850 and Regulation S-X. Both analyses may move through internal audit, the external auditors, the disclosure committee, and the audit committee. We are aware of public company employees who devote a substantial amount of their working hours solely to reviewing transactions that could potentially involve related persons.

The definition of "immediate family member" compounds this work. It reaches siblings-in-law and step relatives in separate households whose affairs the insider has no reason to follow, so questionnaire responses can be incomplete and a transaction may surface long after it occurred. A director may never connect the company's retention of local counsel with the fact that a partner at the firm is her brother-in-law, particularly where a business unit arranged the engagement.

A theme among many of those who commented on this requirement is that the Item should be reoriented to focus on transactions that present a genuine conflict of interest, narrowing the disclosure to information that a reasonable investor would consider important to an investment or voting decision.[43] We recommend the following, each reflected in the leading comment letters.

- Eliminate or recalibrate the threshold. The Commission should replace the fixed $120,000 threshold, unchanged since 2006, with a materiality standard, with Commission guidance as to how to apply this standard in the context of a transaction between the registrant and an individual, or, if a quantitative trigger is retained, substantially increase it, index it for inflation, and scale it to registrant size. Commenters' proposals span a pure materiality trigger, a fixed increase (for example, $500,000,

elimination or, at a minimum, greater flexibility); February U.S. Chamber Letter at 19-20 (identifying Item 305 as redundant with financial reporting obligations); April U.S. Chamber Letter at 5 (recommending a more principles-based requirement). *But see* ABA Letter at 25-27 (recommending, rather than elimination, that registrants be permitted to use the market risk frameworks they apply internally).

42 Society Letter at 23-24.

43 Society Letter at 23-26 (recommending that Item 404 be recalibrated to capture transactions presenting genuine conflicts); Business Roundtable Letter at 7 (same); ABA Letter at 30-31 (same); February U.S. Chamber Letter at 13-14 (same); NAM Letter at 10 (same); April U.S. Chamber Letter at 7 (recommending disclosure only where a transaction is material to both the registrant and the related person).

indexed), and a scaled threshold keyed to a percentage of revenue, any of which would be an improvement over the current requirement.[44]

- Measure the trigger by the related person's interest, over a defined period. Under the current formulation, the "amount involved" is measured by the full value of the transaction, so a transaction can exceed the threshold even when the related person's interest in it is incidental. That requires registrants to devote substantial resources to reviewing transactions that yield little decision-useful information. Measuring the amount involved by the related person's economic interest would instead focus the rule on the potential conflict it is intended to address. The amount involved should also be tied to a defined measurement period, such as the registrant's last completed fiscal year. The current approach can require registrants to aggregate values under ongoing arrangements across multiple years and to estimate potential future activity, which in our experience produces inconsistent results and avoidable uncertainty, and it requires registrants to keep tabulating amounts through the date the proxy statement is filed, a taxing exercise that yields little incremental information. A defined period would improve comparability and remove that burden.[45]

- Clarify the "material interest" standard. If the Commission does not recalibrate the threshold as described above, it should clarify how registrants are to determine whether a related person has a "direct or indirect material interest" in a transaction. That judgment is difficult to apply consistently, particularly where the interest is indirect, contingent, non-economic, shared with other persons, or held through an entity in which the related person has only a limited or passive role. The Commission should provide examples and relevant factors registrants may consider, such as how the materiality of amounts should be evaluated with respect to both the related person and the registrant.[46]

- Add an ordinary-course exception. The Commission should add an express exception for commercial transactions in the ordinary course of business on arm's-length terms comparable to those available to third parties, a sensible extension of Item 404(a)'s existing exclusions for competitive bids, regulated rates, pro rata equity benefits, and usual-trade-terms indebtedness.[47]

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[44] Business Roundtable Letter at 7 (recommending a materiality-based disclosure trigger); April U.S. Chamber Letter at 7 (recommending a substantial increase in the threshold or a principles-based materiality standard); NAM Letter at 10 (recommending an inflation adjustment or a threshold tied to a percentage of revenue); ABA Letter at 30 (recommending an increase to $500,000, indexed, or a scaled threshold); Society Letter at 25 (recommending a safe harbor of $250,000 for an individual's interest and the greater of $1 million or 2% of revenue for the registrant's interest).

[45] ABA Letter at 30-31 (recommending that the amount involved be measured by the related person's material interest and calculated over the prior fiscal year); Society Letter at 25-26 (same); April U.S. Chamber Letter at 7 (identifying the focus on transaction value rather than the related person's interest as a defect of Item 404(a)).

[46] Society Letter at 25-26 (recommending guidance on what does and does not constitute a direct or indirect material interest).

[47] Society Letter at 24 (recommending a safe harbor for ordinary-course, arm's-length transactions); April U.S. Chamber Letter at 8 (recommending an ordinary-course exception under Instruction 7 to Item 404(a)); Business Roundtable Letter at 7 (recommending an ordinary-course exception or, at a minimum, a higher threshold for such transactions); NAM Letter at 10 n.21 (same).

- Exclude passive shareholders. The definition of a "related person" should exclude holders that certify passive or institutional status on Schedule 13G under Rule 13d-1(b) or (c), which do not present the conflict concerns the Item is meant to address.[48]

- Narrow "immediate family member" and permit anonymized disclosure. The definition should be narrowed to a spouse, parents, children, and household members, and registrants should be permitted to describe a family-member transaction by identifying the basis of the relationship without naming the individual, who is not a company insider and has not consented to be named.[49]

- Exempt transactions approved in advance by an independent committee of the board. The Commission should provide that a transaction reviewed and approved in advance by a committee of independent directors under the registrant's related person transaction policy need not be disclosed. Item 404 exists to bring potential conflicts before disinterested decision-makers. Where independent directors have already performed that function, the disclosure adds process cost without adding protection.

As with risk factors, the recurring cost here is substantial. We estimate that a typical large registrant spends in excess of $100,000 each year on Item 404 compliance, comprising the preparation, distribution, and review of director and officer questionnaires, the quarterly canvass described above, and the associated internal audit, legal, and board and committee time. In most years that expenditure produces little or no disclosure.

Item 407 (Corporate governance). Several Item 407 requirements produce disclosure that has become formulaic and that duplicates information already available on registrants' investor relations websites or in prior filings, and several operate as "comply or explain" requirements that appear designed to influence governance practices already addressed by state corporate law and exchange listing standards rather than to inform investment or voting decisions. Surveyed registrants identify website duplication (97%), board- and committee-meeting counts (74%), and committee composition (56%) as the most common sources of immaterial Item 407 disclosure. We recommend that the Commission reevaluate Item 407 under a materiality standard and eliminate or streamline requirements that are duplicative or lack a clear nexus to investment decisions.[50] In particular, the Commission should:

- Eliminate the board- and committee-meeting counts in Item 407(b)(1) and (3), which offer little insight into the effectiveness of board oversight and can invite unwarranted

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[48] Society Letter at 24-25 (recommending exclusion of holders that certify passive or institutional status on Schedule 13G, and a good faith safe harbor for disclosure regarding significant investors); April U.S. Chamber Letter at 8 (recommending exclusion of passive holders of more than five percent).

[49] Society Letter at 24 (recommending that "immediate family member" be limited to spouse, parents, children, and household members); NAM Letter at 10 (recommending a narrower definition); April U.S. Chamber Letter at 7-8 (recommending that the definition be limited to spouses, parents, siblings, children, and household members); ABA Letter at 30-31 (recommending a narrower definition and disclosure of the basis of the relationship in lieu of the individual's name).

[50] Society Letter at 15-16 (recommending that Item 407 be reevaluated to reduce volume and redundancy); Business Roundtable Letter at 8 (recommending reevaluation under a materiality standard, with requirements lacking a clear investment nexus removed); ABA Letter at 34 (recommending a materiality qualifier for the director-independence disclosure in Item 407(a)(3)); April U.S. Chamber Letter at 1 (describing requirements directed at corporate behavior rather than investor decision-making).

inferences about internal developments.[51] In practice, the meeting-count requirement generates questions out of proportion to its value: how formal a gathering must be to count, and whether an unusual number will be misinterpreted by readers.

- Eliminate the "comply or explain" disclosures in Items 407(c)(1), (c)(2)(i)-(iii), (d)(1), (d)(4), and (e)(1)-(2), which seek to influence governance practices already governed by state law and listing standards rather than to inform investment decisions.[52]

- Eliminate the leadership-structure and risk-oversight rationale disclosure in Item 407(h), which reflects a policy preference about board leadership rather than an informational need and, following the 2022 staff comment letters on the subject, has produced defensive, formulaic disclosure emphasizing technical compliance over substance.[53]

- With respect to Item 407(c)(2)(vi), permit registrants to describe, in a principles-based manner, whether and how the nominating committee or board considers diversity in identifying director nominees, while eliminating the separate requirement to describe a formal diversity policy, its implementation, and its effectiveness, which duplicates the underlying discussion and invites formalistic drafting.[54]

- Permit registrants to satisfy Items 407(c) through (e) by cross-reference or hyperlink to committee charters and other governance materials posted on their websites or included in prior filings, with incremental disclosure limited to material changes.[55]

Item 408 (Insider trading arrangements and policies). We support eliminating Item 408. Its objectives are largely served by the existing federal prohibitions on insider trading and by the corresponding Form 4 disclosure, which already reflects whether a reported trade was made under a Rule 10b5-1 plan, and the work required to prepare it is disproportionate to its value to investors.[56] If Item 408(b) is retained, we support permitting registrants to comply by including a summary of its material provisions in the Form 10-K or proxy statement, filing an exhibit, or posting the policy on the registrant's website.[57]

Item 601 (Exhibits). We support recalibrating Item 601 by eliminating or streamlining those requirements that unnecessarily burden registrants without providing investors information that

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[51] Society Letter at 15 (identifying meeting counts as a leading source of immaterial Item 407 disclosure); ABA Letter at 34 (recommending that Item 407(b)(3) be integrated into the committee-specific requirements of Items 407(c) through (e)).

[52] ABA Letter at 35 (recommending elimination of the "basis for the view" disclosures in Items 407(c)(1), (e)(1), and (f)(1), and of the nomination-procedure description in Item 407(c)(2)); Business Roundtable Letter at 8 (recommending removal of Item 407 requirements lacking a clear investment nexus); April U.S. Chamber Letter at 8 (recommending elimination of governance requirements under Items 405, 407, and 408).

[53] Business Roundtable Letter at 8 (recommending elimination of disclosure motivated by public-policy objectives, such as disclosure regarding a combined chief executive officer and board chair).

[54] Society Letter at 16 (recommending elimination of the formal diversity policy disclosure while retaining the description of whether and how diversity is considered).

[55] Society Letter at 15-16 and 16 n.29 (recommending that Items 407(c) through (e) be satisfiable by cross-reference or hyperlink without formal incorporation by reference); Business Roundtable Letter at 8 (recommending consolidation of duplicative independence and committee information).

[56] Society Letter at 26-27 (recommending elimination of Item 408); Business Roundtable Letter at 8, 11 (same, and recommending elimination of the Item 601(b)(19) exhibit); NAM Letter at 10 (same); April U.S. Chamber Letter at 8 (same).

[57] Society Letter at 27 (recommending that, if Item 408(b) is retained, registrants be permitted to comply by including a summary of material provisions in the Form 10-K or proxy statement, filing an exhibit, or posting the policy on the registrant's website).

is important to their voting and investment decisions. Ninety-two percent of surveyed registrants report that investors rarely or never engage with Item 601 materials. In our experience, the expected audience for filed exhibits is primarily competitors and counterparties rather than investors.

We support clarifying the ordinary-course exception in Item 601(b)(10) and removing the presumption that executive and director compensation contracts are material; codifying that a previously filed exhibit that is no longer material need not be re-included in a later filing; and eliminating, or conditioning on materiality, exhibits that duplicate information available elsewhere or are otherwise unnecessary, including the description-of-securities exhibit (Item 601(b)(4)(vi)), the subsidiary list (Item 601(b)(21)), and the insider-trading-policy exhibit (Item 601(b)(19)). We also support amending Form S-3 so that the inadvertent late filing of a compensatory-plan exhibit under Item 601(b)(10)(iii) does not cost a registrant its short-form eligibility.[58]

Two further changes would align Item 601 with the themes above. First, the Commission should require registrants to file amendments to a material agreement only where the amendment is itself material. Under current practice any amendment must be filed, however minor, which produces exhibit filings that no investor consults and is at odds with a materiality-based regime.[59] Second, where an exhibit is identified as having been omitted, the registrant should be permitted to file it under Item 9.01 of Form 8-K rather than by amending the periodic report. Amending a Form 10-K or Form 10-Q to add a single exhibit requires a complete refiling accompanied by new certifications under Sections 302 and 906 of the Sarbanes-Oxley Act, which is a disproportionate response to a clerical omission and which, in our experience, registrants reasonably worry will be read by the market as signaling a problem with the report itself. Amended periodic reports should be reserved for corrections that matter.

Item 701 (Recent sales of unregistered securities). We support eliminating the Item 701(a)-(e) disclosure from Forms 10-K and 10-Q. The three-year lookback, which carries no minimum threshold, requires significant preparation effort yet yields untimely, immaterial disclosure that is not additive to information already available: unregistered equity sales of any significance are captured on a timelier basis, and subject to a threshold, by Item 3.02 of Form 8-K, and any material sales are in any event disclosed in MD&A and the financial statement footnotes. Ninety-two percent of surveyed registrants report that investors rarely or never engage with this disclosure, and 62% report that the three-year lookback most often produces immaterial disclosure.[60]

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[58] Society Letter at 17-19 (recommending clarification of the ordinary-course exception, removal of the presumption that executive and director compensation contracts are material, elimination of the description-of-securities and subsidiary-list exhibits, and amendment of Instruction I.A.3(b) to Form S-3); April U.S. Chamber Letter at 4, 12-13 (recommending removal of the presumption of materiality for management contracts and elimination or modification of Items 601(b)(4)(vi), (17) through (19), (95), (97), and the filing fee exhibit); Business Roundtable Letter at 11-12 (recommending elimination or materiality-conditioning of Items 601(b)(21) and 601(b)(19)); NAM Letter at 10-11 (recommending that Item 601(b)(10)(iii) be aligned with the materiality analysis under Item 5.02 of Form 8-K); ABA Letter at 41-43 (recommending an instruction codifying that a previously filed exhibit need not be re-included once it is no longer material).

[59] ABA Letter at 42-43 (recommending that registrants be required to file amendments to material agreements only where the amendment is itself material, and that the Commission adopt a safe harbor for good faith determinations that an omitted amendment is not material).

[60] Society Letter at 27-28 (recommending that Forms 10-K and 10-Q be amended to eliminate the mandatory Item 701(a)-(e) disclosures); ABA Letter at 43 (same); April U.S. Chamber Letter at 6-7 (recommending elimination of Item 701 as repetitive of other Regulation S-K disclosures); February U.S. Chamber Letter at 15 (same); Business Roundtable Letter at 10 (recommending a shorter lookback period or limitation to material transactions).

Item 703 (Purchases of equity securities by the issuer and affiliated purchasers). We recommend that the Commission eliminate Item 703 or, at a minimum, pare it back. Its tabular repurchase disclosure is generally duplicative of information already provided in the issuer's consolidated financial statements and related footnotes, and to the extent share repurchase activity is reasonably likely to affect liquidity, it is addressed in MD&A, where it has a clearer nexus to investment decisions by situating the activity within the issuer's cash flow and financial position. The only information Item 703 adds beyond these sources is disclosure of immaterial repurchase amounts that would not otherwise be reported. If the Commission retains Item 703, it should at least reduce the burden the requirement imposes, for example by replacing monthly disclosure with quarterly or annual disclosure, eliminating the "affiliated purchasers" component, and clarifying that registrants need not separately disclose shares withheld for taxes under equity compensation plans or duplicate the quarterly totals and average prices reported elsewhere.[61]

XBRL tagging. We support significantly paring back XBRL tagging. It is our understanding that investors do not generally rely on XBRL-tagged data, and that the rise of artificial intelligence and its ability to process natural language has rendered XBRL tagging largely obsolete for the investing public. In addition, our clients regularly report that these requirements have become burdensome to administer, and XBRL-tagged documents are generally more difficult to navigate. Recognizing the Commission's obligations under the Financial Data Transparency Act, we recommend that tagging be limited to the financial-statement line items (i.e., not notes to the financials or other disclosures within the 10-K or proxy statement). We would at a minimum eliminate tagging of narrative disclosures and cybersecurity items and support inclusion of a cure period so that a tagging error does not cost a registrant its short-form eligibility.[62]

III. Conclusion

We appreciate the Commission's attention to these issues and would welcome the opportunity to discuss them or to assist the staff as it develops recommendations. Please direct any inquiries to Mike Titera ((949) 451-4365), Tom Kim ((202) 887-3550), or Lori Zyskowski ((212) 351-2309).

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

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[61] Society Letter at 28-29 (recommending elimination of Item 703 or, in the alternative, quarterly rather than monthly disclosure); Business Roundtable Letter at 11 (recommending that the Commission evaluate whether aggregated annual or quarterly disclosure would suffice).

[62] Business Roundtable Letter at 12 (recommending that tagging be limited to primary financial statement line items and eliminated for narrative disclosures); April U.S. Chamber Letter at 13 (recommending that XBRL tagging be substantially scaled back or eliminated); Society Letter at 22 and n.35 (recommending elimination of cybersecurity tagging and a broader review of XBRL requirements); NAM Letter at 4 (identifying XBRL tagging among the burdens the Commission should moderate).