

April [15], 2026

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

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

Dear Ms. Countryman:

We are pleased to submit this letter in response to the invitation from Chairman Paul Atkins to provide our perspective on how the U.S. Securities and Exchange Commission (the “Commission” or the “SEC”) can amend Regulation S-K “with the goal of revising the requirements to focus on eliciting disclosure of material information and avoid compelling the disclosure of immaterial information.”¹ We support the Commission’s initiative to review Regulation S-K.

As counsel to public companies and investors, we regularly advise on disclosure obligations under the Securities Exchange Act of 1934, as amended (the “Exchange Act”) and Regulation S-K. We have drawn on this work and the discussions we have had with our clients, both in connection with this initiative undertaken by the SEC and more generally, to provide our perspective on the current disclosure framework set forth in the Exchange Act.

While we believe many of the existing disclosure requirements provide important and material information to investors, we also believe that a comprehensive review of the disclosure requirements applicable to public companies can streamline and reduce the growing burden on public companies while improving the clarity and utility of public disclosure for investors. We believe that several themes underscore our consideration of the numerous disclosure requirements applicable to public companies, including the following:

- *Materiality Standard.* We support the Commission’s and Division of Corporation Finance’s efforts to ground its review on materiality, including a renewed focus on directing companies to provide investors with information that is material to the company’s business and operations, which would also be the material information that an investor requires to make an investment and voting decision.
- *Principles-Based Requirements.* Where the Commission imposes direct disclosure requirements, those requirements should be principles-based rather than prescriptive,

¹ See Statement on Reforming Regulation S-K, Chairman Paul S. Atkins (Jan. 13, 2026), available at <https://www.sec.gov/newsroom/speeches-statements/atkins-statement-reforming-regulation-s-k-011326>.

affording companies the flexibility to tailor their disclosures to their particular circumstances and, in certain cases, de-emphasize or even eliminate disclosures where they are not material.

- *Impact of Technology.* The Commission certainly recognizes the many ways in which technology has fundamentally transformed the information landscape for investors. Technology has dramatically increased availability of company-specific information and the speed by which information is now disseminated to the market. More importantly, technology has changed the way investors consume and analyze information about the companies in which they invest, such as the use of artificial intelligence tools and third-party services that aggregate and synthesize public disclosures.

We have focused our recommendations on specific areas where we believe that revisions to public company disclosure requirements would be of greatest utility to public companies and their shareholders. We have also reflected on Director of the Division of Corporation Finance Jim Moloney’s direction to provide “targeted, concrete recommendations to reduce immaterial disclosure”² and have proposed specific recommendations for possible changes. On August 5, 2025, in response to the invitation from Chairman Atkins to provide our perspective on the current executive compensation disclosure rules following the Executive Compensation Roundtable held by the SEC, we submitted a letter outlining our recommendations for the simplification and clarification of Item 402 under Regulation S-K and Item 5.02 of Form 8-K. We refer you to that letter for our recommendations on executive compensation disclosures.³

Items 101 and 102 of Regulation S-K

Current Requirements

Item 101 of Regulation S-K requires registrants to provide a description of the general development of their business and a narrative description of the business conducted by the registrant and its subsidiaries. The required narrative encompasses a range of specified sub-topics, including the company’s principal products and services, sources and availability of raw materials, patents, trademarks, licenses and franchises, seasonality, dependence on key customers, competitive conditions, human capital resources (including the number of employees) and the material effects of compliance with environmental laws and regulations.

Item 102 of Regulation S-K separately requires registrants to identify and describe the location and general character of the principal plants, mines and other materially important physical properties of the registrant and its subsidiaries, including identification of the segments that use such properties. Although registrants may combine their Item 102 disclosure with their Item 101 business description, the requirement itself operates as a distinct line item, directing

² See Jim Moloney, Director, Division of Corporation Finance, Statement on Coming Attractions From the Division of Corporation Finance (Feb. 13, 2026), available at <https://www.sec.gov/newsroom/speeches-statements/moloney-statement-coming-attractions-021326-coming-attractions-division-corporation-finance>.

³ See Letter from Allen Overy Shearman Sterling US LLP to Ms. Vanessa Countryman, Secretary, U.S. Securities and Exchange Commission, Re: Comment Letter on Executive Compensation Disclosure Requirements (File No. 4-855) (Aug. 6, 2025), available at <https://www.sec.gov/comments/4-855/4855-636607-1893054.pdf>.

companies to list their physical properties and map them to reportable segments irrespective of whether doing so provides meaningful insight into the company's operations or strategy.

Recommendation

We recommend that the Commission amend Items 101 and 102 into a unified, principles-based disclosure requirement that directs registrants to describe, from management's perspective, the material aspects of their business. The current prescriptive enumeration of sub-topics has varying relevance across industries and company types and sizes. The result is often a fragmented, checklist-driven disclosure rather than a coherent portrait of how the company creates value, where it competes and what differentiates it.

We also recommend that the Commission review the segment reporting requirements in Item 101(c) considering the financial statement segment disclosures already required under the Financial Accounting Standards Board's ("FASB") Accounting Standards Codification ("ASC") 280, *Segment Reporting*. Item 101(c) requires disclosure of each reportable segment about which financial information is presented in the financial statements, which substantially overlaps with the operating segment disclosures mandated by ASC 280. In our view, this overlap creates compliance complexity and, in some cases, produces a narrative that merely recites figures available in the audited financial statements without adding analytical value. A similar consideration should be made of Item 102's requirement to identify the segments that use physical properties to avoid requiring registrants to recreate, in narrative form, segment-level operational descriptions that are already conveyed through the segment footnote and related financial statement disclosures.

A revised "Description of the Business" requirement could provide a non-exclusive framework identifying categories of information that registrants should consider and address to the extent they are material to an understanding of the company's business, providing a management-driven narrative without rigid sub-topic mandates. While the Commission adopted amendments to the "business description" requirements that represented a step toward greater flexibility in its 2020 rulemaking, Modernization of Regulation S-K Items 101, 103, and 105,⁴ further amendments could enhance this approach by more clearly emphasizing the non-exclusive and principles-based nature of the disclosure requirements. The categories of information a registrant should consider addressing, to the extent material, include the following:

- *Business Overview*. A principles-based description of the company's overall strategy and business model, how it generates revenue and how it creates and sustains value for its shareholders, including how management organizes, evaluates and allocates resources across the business. Quantitative or qualitative segment information, including those related to physical properties, should not duplicate the segment disclosures required under ASC 280. If physical property, human capital, intellectual property and technology are important considerations for the company and its shareholders, those areas can be addressed in this section.

⁴ See Modernization of Regulation S-K Items 101, 103, and 105, Release No. 33-10825 (Aug. 26, 2020) [85 FR 63726 (Oct. 8, 2020)] (the "2020 Regulation S-K Rulemaking").

- *Key Customer and Supplier Relationships.* A description of the company’s material relationships with key customers, suppliers and distribution partners, where such relationships are significant to the company’s operations or financial performance.
- *Competitive Environment and Industry Dynamics.* A discussion of the competitive landscape and broader industry dynamics that are material to the company.
- *Regulatory Environment and Compliance Considerations.* A description of the material regulatory requirements, if any, applicable to the company’s business and any compliance considerations that are specific to the company or its industry.

This approach would replace the current prescriptive enumeration with a flexible, non-exclusive list of topics to be considered and addressed to the extent material. Each company would tailor its business description to its actual operations and the information most useful to its investors.

Finally, while a comprehensive review of Regulation S-K Item 1300, which is the mining property disclosure framework governing how registrants disclose mineral resources and mineral reserves and related technical and economic information for material mining properties, is beyond the scope of this letter, we strongly encourage the Commission and the Division to continue pursuing further convergence of the U.S. mining disclosure framework with widely used international industry standards, including those promulgated by the Committee for Mineral Reserves International Reporting Standards (“CRIRSCO”), to improve comparability for investors and reduce duplicative, multi-jurisdiction compliance burdens for registrants.

Item 103 of Regulation S-K

Current Requirements

Item 103 of Regulation S-K requires registrants to describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, and to provide updates in later periodic reports when there are material developments. Item 103 also extends to certain matters that are not yet pending but are known to be contemplated by governmental authorities. In its 2020 Regulation S-K Rulemaking, the Commission clarified that Item 103 disclosure may be provided by hyperlink or cross-reference to discussion elsewhere in the same document, including MD&A or a note to the financial statements. That rulemaking, however, did not address that those other disclosures may not contain the specific elements Item 103 calls for, such that cross-referencing alone may not ensure compliance.

Item 103 further contains a prescriptive, environmentally focused disclosure regime for administrative or judicial proceedings arising under federal, state, or local environmental laws where a governmental authority is a party. In that context, Item 103 uses a quantitative monetary screen that is not tied to the registrant’s overall size, permitting disclosure to turn on a static \$300,000 default threshold, with the ability for a registrant to elect an alternative threshold that it determines is reasonably designed to capture material proceedings, provided that the threshold must be disclosed in periodic reports and that cannot exceed \$1 million.

Recommendation

We recommend that the Commission revise Item 103 to reduce prescriptiveness and focus disclosure on legal proceedings that are material, quantitatively or qualitatively, to the registrant’s business taken as a whole. In particular, we recommend eliminating the separate environmental proceeding framework and its dollar-based presumption of materiality, and instead requiring a single, unified legal proceedings section disclosure standard for all proceedings—environmental and non-environmental and including matters involving governmental authorities—grounded in materiality and expressed without any dollar thresholds. We also recommend eliminating the requirement to include each of the elements outlined in Item 103 for each legal proceeding, as registrants should be able to determine the information necessary for shareholders to understand the materiality of the proceeding. Under this approach, registrants could provide a materiality-filtered discussion of legal proceedings that could impact the company’s business, financial condition or operating results.

Item 105 of Regulation S-K

Current Requirements

Item 105 of Regulation S-K requires registrants to disclose the material factors that make an investment in the registrant or an offering speculative or risky, and to organize those risk factors under relevant headings. The Commission has also sought to curb “information overload” by encouraging registrants to avoid disclosure of risks that could apply generically to any registrant and to focus instead on risks that are specific to the registrant or its industry.

In practice, however, risk factor disclosure has expanded significantly over time and is now frequently one of the longest sections of the Annual Report on Form 10-K. Risk factors are widely understood to serve not only as investor disclosure, but also as a litigation-defense tool through which issuers describe an expansive set of contingencies to mitigate hindsight claims. Item 105 further includes a requirement to provide a two-page risk factor summary (limited to two pages) when the risk factor section exceeds 15 pages.⁵

Recommendation

We recommend that the Commission build on the amendments to Item 105 in the 2020 Regulation S-K Rulemaking, which emphasized disclosure of “material” risks, required registrants to group risks that could apply generically to any issuer at the end of the section under a separate caption and added a risk factor summary requirement, by adopting reforms that go beyond organization and directly address the liability-driven incentives that have caused risk factor disclosures to grow longer over time. Market practice, rulemaking and staff comments, over the years, have meaningfully influenced how registrants organize and label risk factors, but have not materially changed the prevailing pattern of risk factor disclosures.

More fundamentally, we believe meaningful reform to Item 105 requires acknowledging that many registrants will be reluctant to reduce the volume of risk factor disclosure, particularly by deleting risks that are arguably “common” across companies, absent reforms that reduce exposure to frivolous securities class action claims premised on alleged omissions or insufficient cautionary language. Chairman Atkins has proposed, as one potential reform, a liability safe

⁵ See Modernization of Regulation S-K Items 101, 103, and 105, Release No. 33-10825 (Aug. 26, 2020) [85 FR 63726 (Oct. 8, 2020)].

harbor under which failure to disclose impacts from publicized events that are reasonably likely to affect most companies would not, standing alone, constitute a material omission for purposes of the federal securities laws' anti-fraud rules.⁶ While we do not believe a safe harbor alone is likely to produce meaningful change in entrenched risk factor drafting practices, we support this idea.

We believe the Commission should consider three changes. First, the Commission should consider revising the Item 105 rule text to reinforce that Item 105 is intended to require disclosure of only future or forward-looking risks that are material and that meaningfully differentiate the registrant or its industry, and that registrants are not expected to catalogue broadly applicable macroeconomic, market-wide, or otherwise generic risks. This would go beyond the amendments to Item 105 in the 2020 Regulation S-K Rulemaking.

Second, if the Commission moves forward with Chairman Atkins' proposal to create a liability safe harbor as described above, it should ensure that this omission-based safe harbor is carefully crafted so that it does not create an unintended incentive for registrants to say less about widely publicized events that could affect their business out of concern that speaking (or partial disclosure) could be argued to forfeit the protection of an omission safe harbor.

Third, the Commission should consider an amendment to Rule 10b-5 and, if appropriate, Item 105 and Item 303, to state explicitly that forward-looking risk factor disclosures are not actionable as a misrepresentation under the federal securities laws. Forward-looking risk factor disclosure describing potential future impacts would not be actionable, even if the risk factor does not address whether the risk has already materialized. For example, a risk factor that is describing a future risk of a cybersecurity attack would not be considered to be misleading or omitting material information if it did not identify the other cybersecurity incidents the company faced in the past. This approach would give registrants meaningful confidence that they can provide forward-looking cautionary disclosure without converting risk factors into a litigation target.⁷

Finally, the Commission should eliminate the Item 105 risk factor summary requirement for risk factor sections exceeding 15 pages. In our experience, the two-page summary does not meaningfully improve investor understanding where the underlying risk factor section is already lengthy and largely defensive, and it may encourage duplicative drafting rather than genuine prioritization of the most important risks. If a registrant believes a risk factor summary would

⁶ See Chairman Paul S. Atkins, Remarks at the 53rd Annual Securities Regulation Institute (Feb. 17, 2026) (proposing that "[t]he Commission could adopt a rule stating that failure to disclose impacts from publicized events that are reasonably likely to affect most companies will not constitute material omissions for purposes of some or all of the federal securities laws' anti-fraud rules"), available at: <https://corpgov.law.harvard.edu/2026/02/18/remarks-by-chair-atkins-on-revitalizing-u-s-capital-markets-and-state-competition-in-corporate-law/>.

⁷ The litigation risk that contributes to over-disclosure is compounded by the fact that case law is diverging on how forward-looking risk factor statements are treated when a plaintiff alleges that the risk had already materialized. Decisions such as the Sixth Circuit's *Kolominsky v. Root Inc.* and the Fourth Circuit's *In re Marriott International Inc.* reflect a more protective view of expressly forward-looking risk factor disclosures, while the Ninth Circuit's *In re Facebook Inc. Securities Litigation* reflects a more plaintiff-friendly approach; the resulting uncertainty encourages conservative drafting that catalogues nearly every conceivable contingency. See *One Idea To Fix The SEC's Risk Factor Disclosure Rules*, Law360 (Mar. 24, 2026), available at: <https://www.law360.com/articles/2451676/one-idea-to-fix-the-sec-s-risk-factor-disclosure-rules>.

assist shareholders in understanding the risks the company is facing, a registrant could always choose to include one.

Item 106 of Regulation S-K

Current Requirements

Item 106 of Regulation S-K establishes a standalone cybersecurity disclosure framework that is intended to elicit information about a registrant’s cybersecurity risk management and governance. The rule requires registrants to describe, among other matters, their processes for assessing, identifying and managing material risks from cybersecurity threats, and the extent to which cybersecurity risks have materially affected or are reasonably likely to materially affect the registrant, including its business strategy, results of operations or financial condition. Item 106 also includes detailed governance-focused disclosures regarding the board’s oversight of cybersecurity risks and management’s role and relevant expertise in assessing and managing those risks.

Recommendation

While we recognize that Item 106 was only recently adopted in 2023⁸, and reflects the Commission’s effort to address cybersecurity risks through more standardized reporting, we nonetheless recommend that the Commission consider eliminating Item 106 as a standalone disclosure requirement and instead rely on existing disclosure requirements that require registrants to disclose information on material cybersecurity risks and incidents.

In our view, Item 106’s enumerated line items —particularly those focused on the roles and expertise of specific individuals involved in cybersecurity oversight —function in practice as indirect governance regulation and invite standardized disclosure, benchmarking and “comply or explain” disclosure dynamics that are not well suited to cybersecurity, where risk profiles and governance structures vary significantly across registrants.

Item 106 unnecessarily singles out cybersecurity for detailed, prescriptive treatment not separately required for other material business risks, such as supply chain management, customer retention/acquisition, product development, the impact of technology, or regulatory matters.

Cybersecurity risk and its material effects can be addressed through the core existing disclosure framework without a dedicated disclosure requirement, including in risk factors (Item 105) and MD&A (Item 303) when material to the registrant’s business and through existing proxy statement governance disclosures (Item 407(h)) when cybersecurity risk oversight is material to the board’s governance practices. Where cybersecurity risk and risk management are particularly important to a company’s investors, the company can amplify its disclosures and even include information in its “Business Overview” section. An integrated, principles-based approach would avoid duplicative discussion and reduce incentives to provide annual negative assurance-like statements regarding the absence of material cybersecurity impacts that have resulted from the Item 106 disclosure requirement. It would also mitigate the risk some have

⁸ See *Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure*, Release No. 33-11216 (July 26, 2023) [88 FR 51896 (Aug. 4, 2023)], available at: <https://www.sec.gov/files/rules/final/2023/33-11216.pdf>.

observed⁹ that disclosures about cybersecurity strategy, personnel, processes and governance have the potential to reveal details that could be used to probe for vulnerabilities and tailor attacks. More broadly, removing the governance-specific line items would reduce the likelihood that disclosure requirements create, in practice, minimum standards that influence substantive cybersecurity program design, constrain management flexibility and drive registrants toward homogenized, boilerplate disclosures that reflect what companies think they have to be able to show rather than decision-useful disclosure tailored to the registrant's actual risk profile.

While Form 8-K is outside the scope of the Commission's Regulation S-K modernization effort, we believe that as part of the Commission's consideration of Item 1.06 of Regulation S-K, the Commission should consider revisiting the requirement under Item 1.05 of Form 8-K to disclose the occurrence of a material cybersecurity incident within four business days of determining its materiality. Just as Item 1.06 of Regulation S-K singles out cybersecurity for detailed, prescriptive treatment not separately required for other material business risks, Item 1.05 of Form 8-K similarly singles out cybersecurity incidents for expedited disclosure, which is not required for other material events. For example, a registrant that determines it will not meet its previously announced earnings targets, which would be an event of significance to shareholders, is not required to file a Form 8-K within four business days of that determination.

The four-business-day timeline imposed by Item 1.05 unnecessarily constricts the time in which registrants can investigate and assess the threat, contain the incident and coordinate with law enforcement before threat actors are alerted, often requiring disclosure while the incident is still ongoing and facts remain incomplete. In practice, Item 1.05 has resulted in over-reporting.

Item 201(b), Item 201(d) and Item 201(e) of Regulation S-K

Current Requirements

Item 201(b)(1) requires a registrant to disclose the approximate number of holders of each class of common equity as of the latest practicable date, which today typically results in outdated disclosure regarding record holder ownership of limited utility given shares are often held in "street name" as detailed below.

Item 201(d) requires tabular disclosure regarding equity compensation plans, disaggregated between plans approved by security holders and plans not approved by security holders. The table requires disclosure of (a) the number of securities to be issued upon exercise of outstanding options, warrants and rights, (b) the weighted-average exercise price of those outstanding instruments and (c) the number of securities remaining available for future issuance under equity compensation plans. It also includes instructions that call for additional information in certain circumstances, including with respect to awards assumed in business combinations and disclosure of formulas used to calculate the number of securities available for issuance.

⁹ See, e.g., Commissioner Hester M. Peirce, dissenting statement re. Harming Investors and Helping Hackers: Statement on Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure (July 26, 2023) (expressing concern that detailed, standardized disclosure about cybersecurity strategy, processes, and governance could provide a roadmap for threat actors to identify perceived weaknesses in registrants' cybersecurity programs), available at: <https://www.sec.gov/newsroom/speeches-statements/peirce-statement-cybersecurity-072623>.

Item 201(e) requires a stock performance comparison graph that presents the registrant's cumulative total shareholder return over a five-year period against both (a) a broad market index and (b) a published industry index or a peer group selected by the registrant.

Recommendation

We recommend that the Commission eliminate the Item 201(b)(1) requirement to disclose the approximate number of holders. The requirement dates to 1938, when the Commission adopted a requirement that registrants furnish the approximate number of record holders in connection with proxy solicitation. At that time, most securities were registered directly in the name of the individual investor.¹⁰ Today, however, the vast majority of shareholders of public companies¹¹ hold their securities in “street name” through broker-dealers, banks or other custodians. As a result, the number of record holders dramatically understates the actual number of beneficial owners, rendering the disclosure of limited informational value. To the extent the objective is to inform investors about ownership concentration and the presence of significant holders, Item 403 already requires disclosure of beneficial owners of more than five percent of a class of voting securities, which provides the information investors actually use to assess concentrated ownership.

We recognize that the Commission has previously acknowledged concerns regarding the continued utility of record holder disclosure in light of street-name holding, including in the Commission's Business and Financial Disclosure Required by Regulation S-K concept release in April 2016¹², and that commenters have urged elimination or a shift to beneficial holder counts. While beneficial holder counts could, in theory, be more informative than record holder counts, they are not straightforward to calculate consistently across intermediaries and would raise their own methodological issues. In our view, the better approach is to eliminate Item 201(b)(1) rather than attempt to modernize a metric that remains, at best, an imprecise proxy.

¹⁰ See Business and Financial Disclosure Required by Regulation S-K, Release No. 33-10064; 34-77599; File No. S7-06-16 (Apr. 13, 2016) [81 FR 23916 (Apr. 22, 2016)], at 23978-79 (discussing the history of the record holder disclosure requirement and noting that “[t]he Commission first adopted a requirement to disclose the number of record holders of a class of securities in 1938, when it adopted the requirement that registrants submit proxy statements to each shareholder whose proxy is being solicited”), available at: <https://www.sec.gov/files/rules/concept/2016/33-10064.pdf>.

¹¹ See, e.g., U.S. Chamber of Commerce, Center for Capital Markets Competitiveness, Letter to Mr. Brent J. Fields, Secretary, U.S. Securities and Exchange Commission, at p. 13 (July 20, 2016) (noting that “[b]ecause most investors now hold equity securities in street name through nominees or other intermediaries, providing the number of holders of a class of common equity does not provide meaningful information to investors”); Investment Company Institute, Recommendations of the ICI OBO/NOBO Working Group (Sept. 2021), available at <https://www.ici.org/system/files/2021-09/obonobowg.pdf> (discussing the infrastructure of beneficial ownership through intermediaries and the classification of beneficial owners as objecting beneficial owners and non-objecting beneficial owners); and Continental Stock Transfer & Trust Company, Annual Meeting Guide, available at https://www.cstproxy.com/annualmeetingguide/PDF/cst-annual_meeting_guide_0034.pdf (describing the proxy voting and shareholder communication process through the intermediary holding system).

¹² See Business and Financial Disclosure Required by Regulation S-K, Release No. 33-10064; 34-77599; File No. S7-06-16 (Apr. 13, 2016) [81 FR 23916 (Apr. 22, 2016)], at 23978-79 (stating that “[w]hen Congress enacted Section 12(g) in 1964, most security holders in the United States owned their securities as record holders” and that “[t]oday, the vast majority of investors own their securities as a beneficial owner through a securities intermediary, such as a broker-dealer or bank. This is often referred to as holding securities in nominee or ‘street name’”), available at: <https://www.sec.gov/files/rules/concept/2016/33-10064.pdf>.

We also recommend that the Commission consider eliminating the equity compensation plan table in Item 201(d) as a standalone requirement because it substantially overlaps with disclosures already required in the financial statements under ASC 718, *Compensation – Stock Compensation*. A requirement in Item 201(d) is to separately present information for plans approved and not approved by shareholders; however, for NYSE- and Nasdaq-listed registrants, listing standards generally require shareholder approval of equity compensation plans and material amendments, such that the “not approved” category is often empty.

We recognize that the Commission has considered this overlap in prior rulemakings. When the Commission adopted the equity compensation plan table requirement in December 2001¹³, it considered overlap with then-applicable U.S. GAAP requirements and noted concerns of commenters about duplication. In 2016, in the Commission’s Disclosure Update and Simplification rulemaking proposal¹⁴, the Commission proposed eliminating Item 201(d) on the basis that ASC 718 would result in reasonably similar financial statement disclosures and that the shareholder-approval distinction was no longer meaningful. In 2018, the Commission ultimately retained Item 201(d) in the adopted FAST Act Modernization and Simplification of Regulation S-K¹⁵, and the Commission referred the issue to the FASB for potential incorporation into GAAP.

In light of that history, we recommend eliminating Item 201(d) and, to the extent the Commission continues to believe that certain incremental information is material for investors, particularly where shareholders are being asked to vote on a new or amendments to an equity plan, addressing that information through a more tailored, principles-based requirement integrated into existing executive compensation and financial statement disclosure frameworks rather than maintaining a duplicative, prescriptive table in Form 10-K. At minimum, the Commission should permit registrants to satisfy Item 201(d) through cross-reference to ASC 718 disclosures, supplemented only by incremental narrative where specific plan mechanics not captured by GAAP are material to understanding dilution and the scope of the issuer’s equity compensation program.

We also recommend that the Commission revisit whether the Item 201(e) performance graph continues to provide incremental decision-useful information. The performance graph was originally adopted in 1992 as part of executive compensation disclosure reforms¹⁶ to provide a standardized visual comparison of shareholder returns, and in 2006 the Commission proposed

¹³ See Disclosure of Equity Compensation Plan Information, Release No. 33-8048 (Dec. 21, 2001) [67 FR 231 (Jan. 2, 2002)], available at: <https://www.sec.gov/rules-regulations/2001/12/disclosure-equity-compensation-plan-information>.

¹⁴ See Disclosure Update and Simplification, Release No. 33-10110 (July 13, 2016) [81 FR 51607 (Aug. 4, 2016)], at 51625 (proposing to eliminate Item 201(d) on the basis that ASC 718 would result in reasonably similar financial statement disclosures and that the shareholder-approval distinction was no longer meaningful given exchange listing standards), available at: <https://www.sec.gov/files/rules/proposed/2016/33-10110.pdf>.

¹⁵ See FAST Act Modernization and Simplification of Regulation S-K, Release No. 33-10532 (Aug. 17, 2018) [83 FR 50148 (Oct. 4, 2018)], p. 55 (noting that “[a]fter further consideration, we are retaining the equity compensation plans disclosure requirements and are referring them to the FASB for potential incorporation into U.S. GAAP”), available at: <https://www.sec.gov/files/rules/final/2018/33-10532.pdf>.

¹⁶ See Executive Compensation Disclosure, Release No. 33-6962 (Oct. 16, 1992) [57 FR 48126 (Oct. 21, 1992)] (adopting, among other things, the requirement for a stock performance comparison graph in connection with the expansion of executive compensation disclosure), available at: https://archives.federalregister.gov/issue_slice/1992/10/21/48122-48159.pdf.

eliminating it on the grounds that stock performance information was widely available and that the newly adopted Compensation Discussion and Analysis disclosures in Item 402(b) would provide a more meaningful discussion of performance considerations, but the Commission retained the disclosure but relocated it to Item 201(e)¹⁷. Since that time, market access to stock price and index data has only increased, and the Commission has adopted other compensation-performance disclosures, including pay-versus-performance under Item 402(v), that require comparable total shareholder return calculations and peer comparisons. In our view, these developments warrant reconsideration of whether Item 201(e) remains necessary as a standalone disclosure requirement or whether it should be eliminated, or at minimum permitted to be satisfied through cross-reference to the pay-versus-performance disclosure.

Quarterly Reporting - Item 303 and Item 305 of Regulation S-K

Current Requirements

Item 303 of Regulation S-K requires registrants to provide MD&A disclosures, including discussion of material information relevant to an assessment of the registrant's financial condition, changes in financial condition and results of operations. The MD&A is intended to provide shareholders with management's perspective on the registrant's financial results and the quality and potential variability of earnings and cash flows, including known trends, events and uncertainties that are reasonably likely to have a material impact.

In a Quarterly Report on Form 10-Q, registrants provide an interim MD&A update that, in practice, often tracks the same overall structure and level of detail as the annual MD&A included in a Form 10-K. In particular, the "Results of Operations" discussion frequently proceeds through a discussion of changes in the income statement, line item by line item, even where changes are not material, notwithstanding the direction in Instruction 2 to Item 303(b) to focus on material changes and avoid unnecessary repetition.

Item 305 requires quantitative and qualitative market risk disclosure that describes the potential impact of changes in market conditions, such as interest rates, foreign currency exchange rates and commodity prices, on a registrant's financial position and results of operations. The disclosure is intended to help shareholders understand the registrant's exposures to market-sensitive instruments and positions through a combination of narrative explanation and sensitivity analyses. Item 305(c) limits quarterly period updates to material changes from the disclosures included in the Form 10-K, and the staff has stated in Corporation Finance Interpretation ("CFI") 112.01¹⁸ that registrants need not include Item 305 in a Form 10-Q absent a material change to the Item 305 disclosure in the most recently filed Form 10-K. The overwhelming practice is for registrants to include the disclosure in each quarterly report.

¹⁷ See Executive Compensation and Related Person Disclosure, Release No. 33-8732A (Aug. 29, 2006) [71 FR 53158 (Sept. 8, 2006)], available at <http://www.sec.gov/rules/final/2006/33-8732a.pdf> (relocating the stock performance graph from Item 402 to Item 201(e) and noting the Commission proposed eliminating it given the widespread availability of stock price information, but retained it in the final rule due to commenter support).

¹⁸ See Consolidated Corporation Finance Interpretations, Regulation S-K, Questions and Answers of General Applicability, Section 112. Item 305 — Quantitative and Qualitative Disclosures about Market Risk. Question 112.01. [July 3, 2008], available at: <https://www.sec.gov/rules-regulations/staff-guidance/corporation-finance-interpretations-cfis/consolidated-corporation-finance-interpretations>

Recommendation

We understand that the Commission and the Division of Corporation Finance are considering a rulemaking that would provide companies with an option to adopt a semiannual reporting cadence as a means of reducing compliance burdens for public companies.¹⁹ While we support the Commission's efforts to explore this burden-reducing alternative, we are skeptical that a significant number of companies will elect a semiannual reporting model in practice, given investor and analyst expectations, market convention, liability considerations and the risk that departing from quarterly reporting could be perceived as reducing transparency. As a result, we expect many registrants are likely to continue reporting on a quarterly cadence through Form 10-Q even if an opt-out alternative is available.

For that reason, we recommend that the Commission not limit its reforms to providing an option to eliminate two quarterly filings, but instead directly reassess the disclosure requirements that drive the cost and length of quarterly reporting in the first place. In particular, we believe the Commission should revisit whether quarterly MD&A should continue to require the same level of detailed narrative disclosures that has become standard, by recalibrating interim MD&A to focus only on material developments since the immediately preceding quarter.

Quarterly MD&A – Item 303. We recommend that the Commission consider revisiting Item 303(c) with the objective of changing entrenched quarterly MD&A drafting practices, particularly the routine income statement line-item-by-line-item narrative and the duplicative year-to-date discussion. Under a principles-based approach, quarterly MD&A could be expressly framed as a material change update that highlights only material developments since the most recent Annual Report on Form 10-K or Quarterly Report on Form 10-Q, as the case may be. Quarterly MD&A could be framed as a focused update that (a) highlights the material drivers of changes since the immediately preceding quarter, (b) discusses material known trends and uncertainties that have emerged or changed since the last MD&A and (c) provides a material update on liquidity and capital resources, without restating baseline explanations that are disclosed in the Form 10-K. A quarterly MD&A would not require a line item-by-line item review of the income statement.

Market Risk Disclosures – Item 305. We recommend that the Commission build on Item 305(c) and CFI 112.01 by eliminating the requirement to include Item 305 market risk disclosures in a Quarterly Report on Form 10-Q. A registrant's quarterly MD&A should already address material market-risk-related trends and uncertainties under Item 303 and requirements under ASC 815, *Derivatives and Hedging*, ASC 820, *Fair Value Measurement* and ASC 825, *Financial Instruments* applicable to interim financial statements already update many of the same derivatives and financial instrument disclosures. Certain financial services companies may require supplemental disclosures of market risk, which may extend beyond the disclosure already provided in the financial statements.

¹⁹ See Jim Moloney, Director, Division of Corporation Finance, Statement, Coming Attractions From the Division of Corporation Finance (Feb. 13, 2026).

These changes together could be coupled with others to modernize the quarterly reporting framework by reducing repetition and encouraging concise, material, investor-focused disclosures.

XBRL and Inline XBRL Tagging Requirements

Current Requirements

The Commission's structured data rules require registrants to submit specified financial statement information in machine-readable format using XBRL, typically through Inline XBRL, which embeds the tags in the HTML filing set forth in Regulation S-T Rules 405 and 406 and Regulation S-K Item 601(b)(101). These requirements generally apply to the primary financial statements and, for many filers, related footnote and schedule disclosures.

In addition, the Commission has increasingly required Inline XBRL tagging for a growing set of non-financial-statement disclosures through specific item requirements and related structured data instructions, including, for example, cybersecurity disclosures under Item 106, pay-versus-performance disclosures under Item 402(v), clawback disclosures under Item 402(w) and insider trading arrangements and policies under Item 408. In these contexts, tagging frequently takes the form of detailed tagging for structured data points and "block tagging" for narrative text, which requires registrants to map narrative disclosure to taxonomy elements even when the underlying text is inherently non-standardized.

Recommendation

While we recognize the costs associated with compliance with XBRL requirements, we are not recommending the elimination of the use of XBRL and Inline XBRL for financial statements, where the case for structured, comparable data is strongest and where taxonomy standardization is most developed. We do, however, recommend that the Commission consider a review of mandatory XBRL tagging (including block tagging) for narrative disclosures outside the financial statements.

Extending mandatory tagging into narrative sections adds compliance costs and complexity to the reporting process and increases data-quality risk, including inconsistent or inaccurate tagging, particularly where taxonomies are new or evolving. Unlike the structured numerical fields for which XBRL was originally designed, narrative disclosures involve qualitative, context-dependent language that resists the kind of uniform classification on which XBRL's benefits depend.

The Commission should consider whether advances in modern artificial intelligence and natural language processing tools, which can review untagged filings and may be able to perform many of the functions that block tagging is intended to facilitate, including topic identification, extraction of relevant passages, comparison of disclosure language across issuers and time periods and detection of changes in tone or emphasis, are able to replace narrative XBRL tagging.

Item 601(a)(4) of Regulation S-K

Current Requirements

Item 601(a)(4) of Regulation S-K requires that any amendment or modification to a previously filed exhibit to a Form 10-K or Form 10-Q be filed as an exhibit to a subsequent Form 10-K or Form 10-Q. Critically, Item 601(a)(4) contains no materiality qualifier with respect to the amendments themselves, which means any amendment or modification to a previously filed exhibit must be filed regardless of whether the amendment is material to investors.

The absence of a materiality standard for amendments means that registrants are required to file every amendment to a previously filed material agreement, including purely administrative, technical or otherwise immaterial amendments, even when those amendments provide no meaningful information to investors. The SEC noted in its Business and Financial Disclosure Required by Regulation S-K Concept Release²⁰ in 2016 that registrants “frequently amend agreements, such as credit facilities, licensing agreements, manufacturing agreements and supply agreements, to extend their duration” or “to increase the amount available for borrowing,” and that such amendments are “not necessarily material to investors.” In the concept release, the Commission specifically asked whether the Commission should amend Item 601(a)(4) to exclude immaterial amendments and, if so, what standard would be appropriate. Neither the Commission’s “Report on Modernization and Simplification of Regulation S-K”²¹ required under the Fixing America’s Surface Transportation Act (the “FAST Act” and the “FAST Act Report”) nor the FAST Act Modernization and Simplification of Regulation S-K final rule²² implementing rulemaking mandated by the FAST Act and identified in the FAST Act Report addressed this issue. This left the ‘all-amendments’ filing requirement intact even as other aspects of Item 601, including allowing for the omission of immaterial schedules from material agreements, were changed.

Recommendation

We recommend that the Commission amend Item 601(a)(4) to eliminate the requirement to file immaterial amendments to previously filed material agreements. Registrants would only be required to assess whether an amendment to a material agreement is itself material, and if the amendment is material, it would continue to be required to be filed as an exhibit.

Allowing registrants to make an assessment as to whether shareholders should have access to an amendment to a material agreement as an exhibit is consistent with the principles-based approach that we think should characterize Regulation S-K modernization, as registrants already exercise materiality judgments in determining which contracts are material under Item 601(b)(10), which information may be redacted under the simplified confidential treatment process and which schedules may be omitted.

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²⁰ Business and Financial Disclosure Required by Regulation S-K, Release No. 33-10064, 81 Fed. Reg. 23,916 (Apr. 22, 2016), <https://www.sec.gov/files/rules/concept/2016/33-10064.pdf>.

²¹ Report on Modernization and Simplification of Regulation S-K (Nov. 23, 2016), available at: <https://www.sec.gov/files/sec-fast-act-report-2016.pdf>.

²² FAST Act Modernization and Simplification of Regulation S-K, Release No. 33-10618, 84 Fed. Reg. 12,674 (Apr. 2, 2019), available at: <https://www.sec.gov/files/rules/final/2019/33-10618.pdf>.

We appreciate the opportunity to provide our views as part of the Commission's comprehensive review of Regulation S-K. We believe the recommendations in this letter would represent a significant shift toward materiality-driven, principles-based disclosure that would be welcomed by public companies and their shareholders. We would be pleased to discuss these recommendations with you at your request. Questions may be directed to Richard Alsop, Erika Kent, Taylor Landry, Lona Nallengara, Bill Nelson or Ryan Robski, in each case, at (212) 848-4000.

Very truly yours,

Allen Overy Shearman Sterling US LLP

cc: Division of Corporation Finance, U.S. Securities and Exchange Commission