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Submitted via email to: rule-comments@sec.gov

Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: File No. CLL-15
SEC Request for Comment on Reforming Regulation S-K
January 13, 2026

Dear Ladies and Gentlemen:

This letter is submitted to the Securities and Exchange Commission (the "Commission" or the "SEC") on behalf of the Federal Regulation of Securities Committee (the "Committee") of the Business Law Section (the "Section") of the American Bar Association (the "ABA") in response to the request for comments by Chairman Atkins with respect to reforming Regulation S-K. This letter was prepared by the Committee's Regulation S-K Reform Drafting Committee (the "Drafting Committee").

The comments expressed in this letter represent the views of the Committee only and have not been reviewed or approved by the ABA's House of Delegates or Board of Governors, and should not be construed as representing the official policy of the ABA. In addition, this letter does not represent the official position of the Section, nor does it necessarily reflect the views of all members of the Committee.

As discussed below, the Committee believes that certain modifications and clarifications to the following sections of Regulation S-K would further the SEC's goals. We have provided this indexed list of the letter contents for ease of reference.

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INTRODUCTION

We believe any effort by the SEC to update and revise Regulation S-K will best be achieved by adhering to the history of the adoption of Regulation S-K and the role it plays in the federal securities regulation scheme. In addition, we believe the SEC should be mindful of the basic principles underpinning Regulation S-K, which have withstood the test of time.

Appendix A sets forth a history of Regulation S-K. It demonstrates how Regulation S-K has continued to evolve to reflect the following:

- Establishing a common repository of disclosure items between the Securities Act of 1933, as amended (the "Securities Act") and the Securities Exchange Act of 1934, as amended (the "Exchange Act"), eliminating conflicts and reducing compliance costs for registrants;

- Focusing disclosure requirements on materiality;

- Adopting a disclosure regulation that parallels Regulation S-X;

- Recognizing that periodic reporting was more important than registration statements because daily trading volume in the marketplace dwarfs the volume of transactional offerings; and

- Implementing a disclosure regulation that meets the needs of financial analysts while still providing disclosure that the "reasonable investor" can understand.

Regulation S-K continues to be a dynamic rule that has been revised, studied and considered by the SEC, public companies, investors, institutions and market professionals for 44 years.

While Regulation S-K has continued to evolve, with new items being added and existing items being revised and updated, the basic principles that led the SEC to put theory to practice in adopting Regulation S-K as the foundation of integration have not changed. Regulation S-K has been successful as the foundation for the integrated disclosure system by serving the interests of companies, investors and the marketplace. It has kept pace with changes in investor needs, markets and technology and must continue to do so. Disclosure requirements that are obsolete or no longer provide meaningful information to the investing public should not be retained. Disclosure items that are retained should be updated to meet the current needs for protecting investors. Regulation S-K should continue to be forward-looking so that it provides meaningful disclosure to investors and the marketplace on an ongoing basis as those needs evolve.

BASIC PRINCIPLES

We believe that the following basic principles should guide a revision and updating of Regulation S-K. Many of our specific recommendations that follow reflect these principles. In addition, because we think it will be helpful to the SEC and the Staff in revising Regulation S-K, we have included a number of more technical recommendations based on our experience as practitioners.

Overview. Regulation S-K, the underlying basis for the integrated disclosure system, should be approached with its overall role and purpose in mind. In this connection, it serves (i) to identify the disclosure needed by investors in deciding whether to buy securities in registered offerings, (ii) to inform the trading markets through periodic and current reports to enable investors to make informed investment decisions regarding the purchase, sale or retention of outstanding securities and (iii) to inform security holders in exercising their voting rights as part of corporate governance. Any revision of Regulation S-K should be tested against these purposes.

We concur in Chairman Atkins's statement that the SEC's disclosure regime should "protect the public with the least possible interference with honest business."[1] Therefore, in updating and revising Regulation S-K, the focus should be on (i) eliminating outdated or unnecessary requirements that do not serve the purpose of providing investors and holders with material information necessary to make informed investment and voting decisions, (ii) requiring information that currently reflects what is financially material, and (iii) foreseeing, to the extent possible, what can be expected to be financially material in the future. Each disclosure requirement should pass the test of whether the information solicited by that requirement is now, or can reasonably be expected to be, material to investor decision-making and whether the benefit to investors justifies the costs and burdens imposed on issuers. Our recommendations below reflect the application of this test.

Integrated disclosure. Equivalency of information underpins integration and Regulation S-K: what is material for trading markets is also generally material for registered offerings of securities. On the other hand, consistent with an integrated disclosure system, it is important in revisiting Regulation S-K to recognize that the items serve the multiple purposes referred to above. Therefore, any streamlining should consider each of these purposes, as well as clearly differentiating when disclosure is required in various contexts.

Financial materiality. Financial materiality is at the heart of Regulation S-K's disclosure requirements. As Chairman Atkins noted that the SEC "must root its disclosure requirements, which are contained in Regulation S-K, in the concept of financial materiality."[2] Those requirements should be based upon what is material to investors to make decisions in their economic interest. Thus, financial materiality should be considered as broader than financial measures so as to take into account other factors relevant to economic-driven investment and voting decisions, in all events tethered to that standard set forth in *Basic v. Levinson* and reflected in the definition of "material" in Securities Act Rule 405, supplemented by Securities Act Rule 408. However, for purposes of SEC mandated disclosure, the requirements should not include other objectives apart from economic investment and voting decisions, leaving that to the discretion of issuers and investment community demands, and the fact that issuers today can use their websites to efficiently convey information to the public.

Differential disclosure. Disclosure required by Regulation S-K, whether in connection with a registered offering or for purposes of the trading markets, should be accessible and meet the needs

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1 Chairman Paul S. Atkins, Remarks at the Texas A&M School of Law Corporate Law Symposium (Feb. 17, 2026).

2 *Id.* See also, Commissioner Peirce, Remarks at SEC Speaks, "The Art and Science of Materiality" (Mar. 19, 2026).

of investors in making investment and voting decisions. Any revision of Regulation S-K should recognize that the needs of investors differ based on their circumstances. Thus, retail investors

may benefit from less detailed but more usable information while institutional investors and analysts may seek more detailed information. This differential need can be addressed by considering what information is required, as well as where it is located and the frequency of required information. This type of approach would provide for meaningful basic disclosure to be readily accessible and usable by all investors, with more detailed information being available to those who wish to access it.

Scaled disclosure. We concur with the Chairman's statement that the disclosure requirements should be scaled based on a company's size and maturity. We believe scaled disclosure should differentiate among categories of issuers by applying a benefit versus burden analysis. In doing so, we encourage simplification of the current categories of issuers and expansion of those issuers eligible for the streamlined disclosure requirements. The availability of information through EDGAR and widespread access through the internet of readily available public information and analysis, which can only be expected to become more prevalent, justifies revisiting the basis for categorizing issuers. This should be based on (i) when the opportunity for SEC review of disclosure is important and (ii) when there has been sufficient seasoning of an issuer complying with the disclosure regime to justify alleviating some of the burdens of regulation, with recognition of the appropriateness of reduced burdens for smaller issuers and, as statutorily mandated, emerging growth companies. Applying this framework, an issuer regardless of size that has complied with the disclosure regime for one year, including filing an annual report, should have the benefit of Form S-3 (without offering size limitations) and Rule 415 availability and shelf takedowns using prospectus supplements. Well-known seasoned issuers could continue to have the additional benefit of automatic effectiveness of registration statements, with consideration given to reducing the size at which issuers qualify as WKSIs.

Benefit versus burden test. Any additional item of disclosure should pass the benefit versus burden test. Thus, the benefit of continuing to require an item or adding a new item should be weighed against the burden, i.e., the cost of compliance.[3] This balance can be applied both to what is required generally and to establishing requirements that take into account the size and maturity of issuers, as noted above.

Principles-based versus prescriptive disclosure. An objective of a revision of Regulation S-K should be to recognize when principles-based disclosure is appropriate to elicit meaningful information, both because it permits simplification of the requirements and resulting disclosure and because it recognizes that what is material for some issuers is not material for others. Principles-based disclosure also can be supported by targeted Staff guidance, focused both on different types of issuers and on particular disclosure concerns that arise from time to time. At the same time, it is important to recognize the relevance of comparative information across issuers to assist informed investment decisions. Therefore, in revisiting Regulation S-K, the Commission should be mindful of where comparative information is useful and best achieved through

[3] Rule 13e-3 was adopted in 1979 shortly after the 1977 release that adopted Regulation S-K. Cost of compliance was commonly disclosed as one reason, if not the primary reason, why a company was going private.

prescriptive requirements. In doing so, where there are quantitative thresholds, the Commission should update those thresholds so that they reflect current economic realities.

Differentiating prescribed disclosure from antifraud claims. The Commission should make clear that failure to comply with its disclosure requirements under Regulation S-K does not, in itself, mean that there is a failure to disclose material information sufficient to support a claim of violation of the antifraud rules.[4] For example, information prescribed for disclosure by Regulation S-K for comparability reasons might not be material for a particular issuer. An issuer's failure to disclose the prescribed information might support SEC administrative action but not a claim that the failure violated the antifraud rules.[5] Making this clear, for example, by providing safe harbors from antifraud liability for good faith omissions in Risk Factors and in identification of known trends and uncertainties in Item 303 MD&A, would eliminate uncertainty and enable issuers to focus on what is material, while preserving investor protection.

The specific recommendations that follow embody these basic principles. Even if some of these recommendations may seem – particularly when viewed individually – to be incremental in nature, we believe the overall impact of these recommendations, in the aggregate, will be meaningful to registrants and enhance the quality of disclosure. In recognition that the SEC has already embarked on a standalone initiative to amend Item 402, which we strongly support, we have not proposed any revisions to Item 402 in this comment letter. We will comment further on that rule proposal when it is issued. Finally, we have limited our comments to Regulation S-K as it stands today. We have not proposed or offered thoughts on a fundamental rewrite or rethink of Regulation S-K. For one thing, we appreciate that we and our clients are working within the existing construct every day to draft disclosure to inform the market and to raise capital in registered offerings – whether in shelf take-downs or in IPOs. In other words, we are all living in a Regulation S-K and Regulation S-X world, and it is working relatively well. We should endeavor to improve Regulation S-K as best we can, before any decision is made to pivot to a fundamental rethink of how integrated disclosure should or can work in the 21st century.

SPECIFIC RECOMMENDATIONS

Item 10(b)—Commission Policy on Projections

We recommend the Commission revise Item 10(b) of Regulation S-K on projections to be more principles-based in nature. The current prescriptive expectations in Item 10(b) make it difficult for many registrants to use or follow. We recommend specifically as follows.

Recommendation No. 1: The Commission should eliminate the following language in paragraph (1) of Item 10(b) on the "Basis For Projections":

> Management, however, must have a reasonable basis for such an assessment. Although a history of operations or experience in projecting may be among the factors providing a basis for management's assessment, the Commission does not

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4 See Macquarie Infrastructure Corp. v. Moab Partners, L.P., 601 U.S. 257 (2024).

5 These include Sections 11, 12 and 17 of the Securities Act and Rule 10b-5 under the Securities Exchange Act.

> believe that a registrant always must have had such a history or experience in order to formulate projections with a reasonable basis.

Rationale: The language above does not provide useful guidance as to what constitutes a reasonable basis. A "reasonable basis" can be established by an issuer in a variety of different ways and is dependent on the issuer's specific facts and circumstances and the specifics of the projections. For example, an issuer may use "a history of operations or experience in projecting" to form a reasonable basis as the language above suggests. However, an issuer could also establish a reasonable basis with reliable internal or third-party data or other reliable inputs. An issuer can also disclose key assumptions and then stress-test those assumptions by looking at historical data, market conditions and specific known risks and trends. The point is that there are numerous ways to establish what constitutes a "reasonable basis" for projections, and we encourage the Commission allow issuers to establish a reasonable basis based on the issuer's specific projections and facts and circumstances, instead of by prescribing particular methods.

Recommendation No. 2: The Commission should eliminate the following language in paragraph (1) of Item 10(b) on outside reviewers and consent:

> An outside review of management's projections may furnish additional support for having a reasonable basis for a projection. If management decides to include a report of such a review in a Commission filing, there also should be disclosure of the qualifications of the reviewer, the extent of the review, the relationship between the reviewer and the registrant, and other material factors concerning the process by which any outside review was sought or obtained. Moreover, in the case of a registration statement under the Securities Act, the reviewer would be deemed an expert and an appropriate consent must be filed with the registration statement.

Rationale: The language on outside reviewers is also not needed as issuers may not engage outside reviewers for projections and other rules cover the disclosure elicited here. If an outside reviewer were to be engaged and disclosed by an issuer, then the issuer would likely need to provide additional information on that reviewer under the "additional information" disclosure requirements of Exchange Act Rule 12b-20 and Securities Act Rule 408, as applicable. The language here is not needed to elicit material information. The consent language can also be eliminated as consent would already be required under existing rules, such as Rule 436, if the reviewer is deemed an expert.

Recommendation No. 3: The Commission should eliminate or streamline the following language in paragraph (2) of Item 10(b) on the "Format For Projections":

> Although traditionally projections have been given for three financial items generally considered to be of primary importance to investors (revenues, net income (loss), and earnings (loss) per share), projection information need not necessarily be limited to these three items.
>
> Revenues, net income (loss), and earnings (loss) per share usually are presented together in order to avoid any misleading inferences that may arise when the individual items reflect contradictory trends. There may be instances, however,

> when it is appropriate to present earnings (loss) from continuing operations in addition to or in lieu of net income (loss). It generally would be misleading to present sales or revenue projections without one of the foregoing measures of income (loss).
>
> For certain companies in certain industries, a projection covering a two- or three-year period may be entirely reasonable. Other companies may not have a reasonable basis for projections beyond the current year.
>
> Moreover, several projections based on varying assumptions may be judged by management to be more meaningful than a single number or range and would be permitted.

Rationale: Issuers should have discretion on the appropriate format of projections given the nature of their business and industry. The focus of the requirement should be on providing all material information and ensuring that the disclosures are not misleading, without prescriptive suggestions as to what may be misleading. For example, it may not always be misleading to present sales or revenue projections without one of the foregoing measures of income (loss), and, therefore, that prescriptive prohibition should be removed.

Item 10(c)—Consent of Ratings Agencies

Recommendation: The Commission should consider revising Item 10(c)(1)(i)(B) to remove any requirement to include, in a registration statement filed under the Securities Act, the written consent of a rating organization whose rating is included in such registration statement. Accordingly, we recommend the Commission remove the last two sentences of Item 10(c)(1)(i)(B) such that consents of rating organizations are not required when ratings are included in a registration statement. Corresponding changes should be made to Corporation Finance Interpretations ("CFIs") 233.04-233.08.

If, however, the Commission believes that the requirement to obtain rating organization consents warrants retention, we recommend revising Item 10(c)(1)(i)(B) to (1) remove the obsolete reference to former Rule 436(g) under the Securities Act (repealed by Dodd-Frank § 939G)[6] and (2) clarify that the requirement applies uniformly to credit ratings, whether issued by a nationally recognized statistical ratings organization ("NRSRO") or by another rating organization, to avoid uncertainty and facilitate consistent compliance.

Rationale: This requirement carries with it practical difficulties. Issuances and sales of rated securities often come together on an accelerated timeline, and the requirement to obtain consents from one or more rating organizations can create a bottleneck with such organizations having little incentive to cooperate. In addition, these ratings are also public information from an independent source. The Commission recognized these difficulties when it added paragraph (g) to Rule 436 under the Securities Act, which provided (until it was repealed in 2010) that ratings assigned by NRSROs would not be considered a part of a registration statement and therefore not subject to

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[6] *Dodd-Frank Wall Street Reform and Consumer Protection Act,* Pub. L. No. 111-203, § 939G, 124 Stat. 1376, 1887 (July 21, 2010).

liability under the Securities Act.[7] The Commission also recognized that rating organizations are subject to the antifraud provisions of the federal securities laws, suggesting Section 11 liability is not necessary as an additional deterrent.

Requiring rating organization consent also undermines the Commission's focus on encouraging transparency in the markets and increases issuer costs without a corresponding improvement in investor protection. Issuers of rated securities often will omit ratings from a registration statement and related prospectus, including them only in a free writing prospectus that complies with Rule 433 under the Securities Act and is not incorporated by reference into a registration statement (and therefore does not require consent). This practice creates misalignment between the registration statement and the broader offering disclosure package and introduces incremental cost and complexity without demonstrable investor protection benefits.

Item 10(e)—Use of Non-GAAP Measures in Commission Filings

Recommendation No. 1: We recommend the Commission revise Item 10(e) concerning the use of non-GAAP financial measures in Commission filings to make the requirements more principles-based in nature.

Rationale: A principles-based Item 10(e) would better align with Regulation G and recent CFIs, which emphasize that whether a non-GAAP measure is misleading "depends on a company's individual facts and circumstances."[8] At its core, Item 10(e) is structured to ensure that no presentation of a non-GAAP financial measure, taken together with the information accompanying that measure, contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the presentation of the measure, in light of the circumstances under which it is presented, not misleading.[9] However, the rigid requirements in Item 10(e) extend well beyond what is necessary to ensure transparency and investor protection, and there is no compelling reason for these requirements to be more extensive and detailed than those of Regulation G. Indeed, in the Non-GAAP Release, the only justification provided for the extra rigidity of Item 10(e) was that the approach is generally consistent with the Staff's historical practice in reviewing filings containing non-GAAP financial measures.[10]

As an alternative to revising Item 10(e) to be more principles-based and align with Regulation G, we have provided some specific recommendations as follows.

Recommendation No. 2: In Item 10(e)(1)(i)(A), delete "or greater" and revise to require "at least substantially equal prominence" such that the most directly comparable GAAP financial measure must only be presented with prominence that is effectively equal to the presentation of the non-GAAP financial measure and in order to reduce an unnecessary focus on formatting. A

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7 *See Adoption of Integrated Disclosure System*, Securities Act Release No. 33-6383, 47 FR. 11380 (Mar. 16, 1982).

8 *Non-GAAP Financial Measures*, Question 100.01, Corporation Finance Interpretations (Dec. 13, 2022).

9 *See Conditions for Use of Non-GAAP Financial Measures*, Securities Act Release No. 33-8176, 68 FR 4820 (Jan. 30, 2003) (the "Non-GAAP Release").

10 Id.

corresponding change should be made to CFI 102.10(b) to remove the third bullet regarding forward-looking non-GAAP measures.[11]

Rationale: Requiring "at least substantially]equal prominence" would preserve fair and balanced disclosure, permitting issuers to evaluate presentation on a case-by-case basis without being forced to adhere to prescriptive ordering or formatting rules. Of course, an issuer could choose to present the GAAP measure with greater prominence if it thought that was the appropriate presentation. Regarding forward-looking non-GAAP measures, in addition to reducing focus on rigid prominence requirements, the change to CFI 102.10(b) would acknowledge the difficulty of preparing quantitative reconciliations of forward-looking non-GAAP measures, and that reliance on the exemption is very common.

Recommendation No. 3: Replace Item 10(e)(1)(i)(C) and (D) with a new subsection (C) that requires:

> A statement of whether, and if so how, the registrant's management uses the non-GAAP financial measure to manage its business. A registrant need not include the information required by this paragraph (C) if that information was included in its most recent annual report on Form 10-K or Form 20-F or a more recent filing, provided that the required information is updated to the extent necessary to meet the requirements of this paragraph (C) at the time of the registrant's current filing.

In addition, delete subsection (e)(1)(iii).

Rationale: We expect the first sentence of the proposed formulation will produce more informative disclosure as compared to current subsections (C) and (D), which typically elicit boilerplate responses with little useful information. A statement regarding the reasons a registrant's management believes that presentation of non-GAAP measures provides useful information to investors provides very little helpful information—the rationale almost always is that management believes the non-GAAP measures presented more accurately reflect performance. In addition, the first sentence of the proposed formulation is intended to result in more targeted and meaningful disclosure of any use of non-GAAP financial measures "to manage [a registrant's] business" compared to current subsection (D). The second sentence of the proposed formulation is intended to more clearly alert registrants that they need not provide responsive disclosure more than once annually unless updates are necessary to ensure the disclosure is compliant. Although this is covered in current Item 10(e)(1)(iii), we think the existing statement often is overlooked and would be more useful if presented alongside the applicable disclosure requirement.

Recommendation No. 4: Replace Item 10(e)(1)(ii)(A) and (B) with a new subsection (A) (renumbering subsequent subsections accordingly) stating that registrants must not:

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[11] "When presenting a forward-looking non-GAAP measure, a registrant may exclude the quantitative reconciliation if it is relying on the exception provided by Item 10(e)(1)(i)(B) of Regulation S-K. A measure would be considered more prominent than the comparable GAAP measure if it is presented without disclosing reliance upon the exception, identifying the information that is unavailable, and its probable significance in a location of equal or greater prominence." *Non-GAAP Financial Measures*, Question 102.10(b), Corporation Finance Interpretations (Dec. 13, 2022).

> Adjust a non-GAAP financial measure in a manner that results in the measure being misleading. Whether or not an adjustment results in a misleading non-GAAP measure depends on a company's individual facts and circumstances.

Rationale: Consistent with judgments made by registrants in their other disclosures, registrants should have discretion to determine how to define and calculate non-GAAP financial measures in a manner that reflects their performance in a fair and balanced manner. The focus of the requirement should be on providing all material information and ensuring that the disclosures are not misleading, without prescriptive suggestions as to what may be misleading. We note the suggested language tracks CFI 100.01, further aligning Item 10(e) with Regulation G.

Recommendation No. 5: Revise Item 10(e)(6) to apply the exemption from compliance with Item 10(e) to non-GAAP financial measures in all proxy solicitations and change of control scenarios.

Rationale: There is no principled reason not to extend the exemption beyond how it currently is applied, and CFI 101.04 does not provide any rationale for the limitation. Expansion of the exemption would harmonize treatment across transactional communications where the decision-usefulness of reconciliations may be limited and timing is often compressed.

Item 10(f)—Smaller Reporting Companies

Recommendation No. 1: The Commission should increase thresholds for smaller reporting companies ("SRCs") to better align with current market conditions and index to a standard for future adjustment.

Rationale: The U.S. equity markets have grown substantially since the SEC last set the thresholds for SRCs in 2018.[12] An issuer that does not meet the current market float or revenue thresholds may still be relatively small. Issuers that have market float or revenue thresholds slight above the current SRC thresholds bear higher costs of compliance without corresponding benefits. In line with Chairman Atkins' agenda to make IPOs great again,[13] the Commission should revisit these thresholds to encourage small and growing companies to enter the public markets by providing the accommodations of SRC status to alleviate some of the more burdensome disclosure and reporting requirements applicable to large, seasoned public companies.

Recommendation No. 2: As part of an effort to simplify the number of categories of issuers and their being subject to different requirements, the Commission should revise this requirement so that an issuer cannot be both an SRC and an accelerated filer.

Rationale: While an accelerated filer who is an SRC still benefits from the scaled disclosure requirements, such issuer must provide a SOX 404(b) auditor attestation, which bears significant costs, and has shorter filing deadlines. This anomalous result sends mixed signals to the marketplace, i.e., an SRC is small enough to merit scaled disclosure, but the accelerated filer status makes the company large and mature enough for heightened compliance. Because accelerated filer status is based, in significant part, on public float, issuers may move in or out of accelerated filer

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[12] *See Smaller Reporting Company Definition*, Securities Act Release No. 33-10513, 83 FR 31992 (July 10, 2018).

[13] Chairman Paul S. Atkins, Revitalizing America's Markets at 250 (Dec. 2, 2025).

status due to market fluctuations rather than changes in their underlying business or operational capacity. Aligning SRC and accelerated filer status would reduce these arbitrary outcomes and provide greater regulatory stability and predictability. Although an SRC that is an accelerated filer does enjoy the benefit of scaled disclosure, the cost savings from such scaled disclosure are modest in relation to the cost of providing the SOX 404(b) auditor attestation. In effect, this category of issuer does not receive a significant reduction in total compliance burden. Aligning the definitional categories would make the SRC designation more economically meaningful and more effective in achieving its purpose of reducing the cost burden on smaller issuers, particularly the newer public companies still in a growth phase that are often SRCs. Reducing the disproportionate compliance burdens on SRCs that are also deemed accelerated filers would support the Commission's mandate to facilitate capital formation and help encourage private companies to access the public markets earlier.

Recommendation No. 3: The Commission should conduct a survey/cost-benefit analysis to determine whether the current array of accommodations for SRCs provide meaningful relief and adequate information. We have provided some examples in this letter where current requirements could be revised; see the recommendations for Item 101(h) and Item 408.

Rationale: A fresh analysis of this nature would allow the Commission to determine whether current SRC accommodations reflect today's landscape for issuers and ensure that the accommodations strike the right balance between investor protection and the facilitation of capital formation and reduction of compliance costs. Currently, companies are staying private longer, and many new entrants are larger and more mature at the IPO stage. In order to encourage private companies to access the public markets earlier, it is critical to provide relief to burdensome compliance requirements with a clear and meaningful transition runway to full compliance. It would also provide critical empirical insight into whether the current SRC framework meaningfully reduces compliance burdens while preserving decision-useful information for investors.

Item 101—Description of business

Recommendation: We recommend that Item 101 be modernized on a principles-based basis to reflect current realities and those realities that are reasonably foreseeable. Specifically, the Item should be retitled "Description of the Business and Strategy" and the information called for should be a description of the business, including how the company creates value, and, if applicable, how it plans to create and increase that value in the foreseeable future. We would also eliminate the identified environmental disclosure required by Item 101(d), leaving that to the principles-based disclosure and other specified disclosure requirements.

Rationale: Because of the great variety of businesses operated by reporting companies, this topic is highly suited for a principles-based approach. Its focus should be on what is most material to investors – how the company creates value and plans to do so in the future. Anyone who has been involved in preparing a prospectus knows that the section that typically gets the most attention is the company's business strategy, and we think it would be helpful to recognize that. We suggest eliminating the specific requirement regarding environmental matters, not because those might not be important, but rather because their importance will vary among companies and the topic is just

one of a number of evolving topics that might merit coverage and that are best handled though other disclosure requirements and targeted Staff guidance and comments.

Item 101(c)(2)(ii) Human capital disclosure

Recommendation: We recommend this Item, in addition to a requirement to disclose the number of employees of a company (aligning with former requirements prior to the recent modernization amendments), be revised to call for a broader discussion to the extent applicable of the significance of human capital to the business and the role technological alternatives to human capital play in the business and affect a company's human capital needs.

Rationale: Providing for a principles-based discussion of the role human capital plays in a business and the challenges faced by ever evolving technologies, like robotics and artificial intelligence, would provide meaningful information to investors and anticipate future trends. Since the human capital disclosure requirement was added in 2020,[14] company disclosures have varied widely year over year. In the last two years the length of the disclosures has declined, suggesting that some registrants may have initially provided immaterial information in response to this requirement.[15] In several cases, the disclosures provided were arguably not useful to investors and other market participants when making an investment decision, and the nature of the required disclosure could invite registrants to provide information that may be viewed as a form of greenwashing.[16] Much of the current disclosure consists of describing the company's employment practices and work environment while providing very little information that is decision-useful for investors.

We believe the current state of disclosure is not cost-justified in relation to its potential usefulness. We believe that the long-standing requirement to disclose the number of employees is useful because it provides insight into the size of a registrant's operations and the information is easy to compare across companies within the same or similar industries.[17] We also suggest the Commission consider guidance encouraging companies to discuss the reasons for any material changes to headcount during the period.

Item 101(h) Smaller reporting companies

Recommendation: We recommend the detailed list of disclosures be replaced with a principles-based statement providing for scaled disclosure.

Rationale for recommendation: Generally, scaled disclosure for SRCs allows eligible companies to provide less extensive disclosure than other companies. These disclosure accommodations are

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[14] *Modernization of Regulation S-K Items 101, 103, and 105,* Securities Act Release No. 33-10825, 85 FR 63726 (Oct. 8, 2020).

[15] See Five Years of Evolving Form 10-K Human Capital Disclosures, Client Alert, Gibson Dunn (Jan. 22, 2026).

[16] See Demers et al., Corporate Human Capital Disclosures: Early Evidence from the SEC's Disclosure Mandate, Harvard Law School Forum on Corporate Governance (Aug. 4, 2022).

[17] We agree with the Commission's previous conclusion about the materiality of this information. *See Modernization of Regulation S-K Items 101, 103, and 105,* Securities Act Release No. 33-10825, 85 FR 63726, 63740 (Oct. 8, 2020), "The number of persons employed by the registrant can help investors assess the size and scale of a registrant's operations as well as changes over time."

intended to promote capital formation and reduce compliance costs while maintaining investor protections.[18] The current text of Item 101(h) has remained unchanged since it was carried over, in a somewhat shortened form, to Regulation S-K from former Regulation S-B.[19] Given the objective to reduce the burden on SRCs, it seems counterintuitive that the list of disclosures for SRCs would be more extensive than what is required for other filers under Item 101. Although the list is prefaced with the phrase "to the extent material," our experience has shown that issuers must analyze all the items on the list, and they frequently lean toward inclusion to avoid potential compliance issues. We think it would be more helpful to allow SRCs to determine which items (not limited to the current list) are important to their particular business and provide related disclosures. To the extent the list of disclosure items was thought useful to provide guidance to

SRCs, this objective can better be achieved by providing Staff guidance and sample disclosure documents apart from Regulation S-K.

Item 102—Description of Property

Recommendation: We recommend that the Commission modernize this requirement on a principles-based basis by retitling the item to be "Description of Assets" and calling for a description of principal physical, tangible and intangible assets material to the business. Regarding physical assets, the Commission should amend Item 102 to (1) eliminate the reference to "principal" properties; (2) eliminate requirements to identify segments and disclose other-than-fee ownership; and (3) add language to the instructions encouraging registrants to omit disclosure of properties not material to the business.

Rationale: The assets that are material to a business today vary considerably and physical assets are now of less importance for many businesses than they once were. Broadening the scope of disclosure required will be more meaningful to investors for many, if not most, companies. Also, despite existing materiality qualifiers, registrants continue to disclose information about corporate properties in response to this item, even when the properties are not material to the business. As the Commission has noted, for many registrants, "the only physical properties held may be their headquarters, office space, or ancillary facilities, a description of which is likely to be unimportant to an investor's evaluation of an investment in the company."[20] We acknowledge the Commission's prior efforts to encourage registrants to limit their disclosures to material information, and we believe the improvements to date made to emphasize materiality have been helpful.

Nevertheless, some registrants continue to disclose information about corporate properties that are not material to their business and are not important to investors. One possible reason is the reference to "principal properties," which some registrants may interpret as applying a different disclosure standard. In practice, many registrants disclose their principal locations even if they could be readily replaced, e.g., office buildings. Removing the reference to "principal" properties,

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[18] *See* SEC Filer Status and Reporting Status, updated Aug. 25, 2025.

[19] See Smaller Reporting Company Regulatory Relief and Simplification, Securities Act Release No. 33-8876, 73 FR 933 (Jan. 4, 2008).

[20] *See FAST Act Modernization and Simplification of Regulation S-K,* Securities Act Release No. 33-10618, 84 FR 12674, 12683 (Apr. 2, 2019).

and focusing instead on materiality, could help clarify the intended scope of the disclosure requirement.

In addition, we believe information about properties not held in fee or subject to encumbrance, as well as disclosure about the segments that use the properties, are not material to an investor's understanding of the registrant's business and financial condition. If a registrant is at risk of losing a property that is material to its business (e.g., properties subject to material encumbrances), such risk may disclosed as a material uncertainty under Item 303 of Regulation S-K.

While physical properties are no longer material to many registrants, we believe that there are certain industries where this information is material, e.g., manufacturing, data centers, or research and development facilities. To further clarify the scope of Item 102 and discourage immaterial disclosures, we recommend the Commission add an instruction that makes clear certain properties

need not be disclosed, e.g., properties that do not contribute significantly to enterprise value and properties that could be readily replaced, such as corporate office buildings.

Item 103—Legal Proceedings

Recommendation No. 1: We recommend the Commission streamline this Item to better align with disclosures required by the GAAP ASC 450 on contingencies and explicitly permit registrants to satisfy such disclosures with a cross reference to the financial statement footnotes.

Rationale: Issuers often comply with this requirement by a cross reference to the financial statement disclosures on loss contingencies. While current Item 103 and ASC 450 differ in terms of the disclosures each requires, there is substantial overlap, requiring issuers to consider in each period whether and how they have complied with each requirement. Further, many issuers with multiple and complex legal proceedings repeat such disclosures to ensure they have separately complied with each of Item 103 and ASC 450.

Item 103(a)

Recommendation No. 2: Alternatively, we recommend streamlining Item 103(a) by removing the requirement to disclose the name of the court, the date instituted, and the principal parties to the legal proceedings.

Rationale: Removing the prescribed language allows companies to determine what details are material rather than having to disclose boilerplate information. As noted in our previous comments on Regulation S-K modernization, we continue to believe the level of detail called for by Item 103 "does not serve a useful purpose and often results in just a listing of matters with descriptions that are not important to investors. Instead, an issuer should be required to provide disclosure necessary to identify the nature of the proceeding, its alleged basis and the relief sought."[21] We believe our recommended changes would promote materiality-driven disclosure tailored to the needs of investors.

[21] *See* Letter from the American Bar Association, ABA Business Law Section (Dec. 15, 2017).

Item 103(c)

Recommendation No. 3: We recommend that this Item be eliminated because it identifies a particular subject matter of legal proceedings that, while not unimportant from a public policy perspective, is just one type of such legal proceeding for which disclosure already would be required if the proceeding is material to the business. If the Commission decides not to eliminate this item, we recommend revising paragraph (c)(3) to require disclosure only if such proceeding is material to the business or financial condition of the registrant and eliminate the disclosure thresholds described in subsections (ii) and (iii).

Rationale: We recommend eliminating this item as a matter called out for specific disclosure because it goes beyond what the focus based on financial materiality for investors should be. If the item is retained, we recommend eliminating the referenced subsections in order to replace rigid quantitative triggers with a more principles-based disclosure approach that emphasizes materiality. We appreciate the Commission's prior efforts to address concerns about a one-size-fits-all

threshold and provide disclosure options that allow registrants to tailor disclosure to their circumstances.[22] This recommendation furthers the Commission's goals by replacing the complexity of existing disclosure options in Item 103 with a simple materiality standard.

Alternatively, we recommend the Staff study whether historical legislative mandates, such as the National Environmental Policy Act, would prohibit elimination of this subsection altogether. If there is no prohibition, we would support removing Item 103(c)(3)'s separate requirement to disclose proceedings related to the environment.

Item 105—Risk Factors

Item 105—General and litigation safe harbor

Recommendation: We recommend the Commission revise Item 105 so that the focus is disclosure of material risks to which the issuer's board of directors and management give specific attention, as well as material risks associated with the registered securities and other risks material to an investment decision. In addition, the Commission should consider providing expanded safe harbor protections from liability related to risk factor disclosures.

Rationale: We believe safe harbor protections for risk factor disclosures could encourage registrants to include fewer generic risk factors and focus their disclosures on risks that are the most significant to their businesses. We support Chairman Atkins's recent suggestion that a safe harbor rule could state that failure to disclose impacts from publicized events that are reasonably likely to affect most companies will not constitute material omissions for purposes of the Securities Act and the Exchange Act, and the rules promulgated thereunder.[23] We believe such a safe harbor would be a useful starting point to enable registrants to streamline their risk factor disclosure.

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[22] *See Modernization of Regulation S-K Items 101, 103, and 105*, Securities Act Release No. 33-10825 85 FR 63726, 63742 (Oct. 8, 2020).

[23] *See* Chairman Paul S. Atkins, Remarks at the Texas A&M School of Law Corporate Law Symposium (Feb. 17, 2026).

Item 105(b)

Recommendation: We recommend the Commission remove the constraint on page length.

Rationale: While we acknowledge the Commission's concerns about the length of risk factor disclosures,[24] we believe the 15-page constraint in Item 105 has not been effective in reducing the length of these disclosures. In addition to providing material information to investors, registrants typically view risk factors as a useful means of limiting their legal exposure. Registrants and their counsel are appropriately concerned about mitigating the risk of future litigation and respond to such concerns in part by disclosing numerous risks that may affect the registrants' businesses and financial results. Registrants that wish to manage their risk by disclosing more than 15 pages of risk factors do not appear to be deterred by the requirement to include a risk factor summary.

Additionally, we believe the risk factor summaries have not proven to be useful to investors because the typical summary is simply a list of the registrant's risk factor subheadings. Rather than informing investors, these "summaries" merely add to the length of the disclosure. We support sun-setting this provision and allowing registrants the flexibility to determine which risks are material to their investors and to describe those risks in sufficient detail.

Item 105—Guidance on risks that have materialized

Recommendation: We recommend the Commission provide additional guidance within Item 105 to clarify that (1) registrants should describe risk events that have materialized and resulted in a material impact on the business and (2) registrants do not need to disclose such events that occurred in the past and are no longer affecting the registrant's business.

Rationale: While risk factors are inherently descriptions of hypothetical events, courts and the Commission have at times determined that hypothetical risk factors – without additional disclosure – can become actionable misstatements once the risk has occurred.[25] The expectation to discuss risk events that have materialized may not be fully understood by all registrants. In addition, it can be difficult for registrants to determine whether to disclose the occurrence of a risk event that has materialized and when they can stop providing such disclosure.

Because of this uncertainty, and in an effort to limit a registrant's potential liability, registrants sometimes choose to include disclosure about risk events that have materialized but no longer have an impact on their businesses. Providing disclosure about the occurrence of risk events long after they have had an impact on the registrant's financial condition can contribute to the length and complexity of risk factor disclosures and distract from otherwise meaningful information.

We believe additional guidance within Item 105 could help registrants determine which risk events must be disclosed in addition to the description of hypothetical risks. Focusing on materiality of

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

[25] See, e.g., In re Facebook, Inc. Securities Litigation, 87 F.4th 934 (9th Cir. 2023); City of Hialeah Employees' Retirement System v. Peloton Interactive, Inc., 153 F.4th 288 (2d Cir. 2025); In the Matter of Unisys Corp., Securities Act Release No. 33-11323, Exchange Act Release No. 101401 (Oct. 22, 2024) ("Unisys Order").

the impact on a registrant's business would discourage inclusion of immaterial risk events within the risk factors disclosure.

Similarly, we believe registrants would benefit from clarification about how long these risk events must be included in the risk factor narrative once they have been disclosed. The appropriate time period should be tied to any ongoing impact on the registrant and potentially the reporting periods covered by the financial statements included in the filing.

Item 106—Cybersecurity

Recommendation: We recommend that this Item be deleted in its entirety and that the Commission address cybersecurity disclosure matters through interpretive guidance. If not deleted, we recommend (1) this disclosure requirement should only be applicable to proxy and information statements filed pursuant to 17 CFR §240.14a-101, and (2) revising Item 106 of Regulation S-K so that (i) the non-exclusive list under Item 106(b)(1)(i)-(iii) is deleted and (ii) Item 106(b)(2) of Regulation S-K is deleted altogether.

Rationale: Prescriptive disclosure requirements regarding "topics of the day" do not always result in disclosure of information that is material and helpful to investors. By issuing interpretive guidance and nonexclusive lists of disclosure topic examples, the Commission could continue to encourage registrants to disclose how current topics affect their results of operations.[26]

When the Commission first adopted the disclosure requirements under Item 106 of Regulation S-K, it believed that it would "benefit investors by requiring more consistent disclosure of registrants' strategies and actions to manage cybersecurity risks"[27] and "would be of importance to investors in that it would help investors understand how registrants are planning for cybersecurity risks and inform their decisions on how best to allocate capital."[28] While the anticipated benefits of these disclosure requirements are laudable, in practice the disclosures pursuant to Items 106(b) and (c) do not appear to provide a level of insight that would meaningfully impact an investor's decision to invest in a registrant's securities.

We believe that the more valuable disclosure for investors about cybersecurity risks and incidents are those that inform investors of specific risks, a specific incident that has occurred, what a registrant is doing or has done to address the incident, and what effect the incident had on the registrant's financial condition. These types of disclosure are already prepared in response to other disclosure requirements: for example, under Item 101, to the extent it is relevant to the registrant's business; under Item 105, to the extent one or more cybersecurity risks or incidents are material to the registrant; under Item 303, to the extent any cybersecurity incident had a material impact on the financial condition of the registrant; and under the requirements of Item 1.05 of Form 8-K, which requires reporting of material cybersecurity incidents. Disclosures prepared in response to

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[26] *See, e.g., Modernization of Regulation S-K Items 101, 103, and 105* Securities Act Release No. 33-10825 85 FR 63726, 63727 (Oct. 8, 2020): "Division staff observed that our principles-based disclosure requirements generally elicited detailed discussions of the impact of COVID-19 on registrants' liquidity position, operational constraints, funding sources, supply chain and distribution challenges, the health and safety of workers and customers, and other registrant- and sector-specific matters."

[27] *Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure*, Securities Act Release No. 33-11216, Exchange Act Release No. 34-97989, at 55 (July 26, 2023).

[28] *Id.* at 66.

Items 106(b) and (c) of Regulation S-K have largely been boilerplate and do not provide any deeper insight into how a registrant prepares for, or would respond to, a particular cybersecurity incident.

To the extent the Commission is inclined to retain the disclosure requirements under Item 106, we recommend that the Commission require this disclosure only in proxy and information statements filed pursuant to 17 CFR §240.14a-101, and not on Form 10-K, because the disclosures under Item 106 are focused on cybersecurity governance and risk management which we believe are more appropriate to include in a registrant's annual proxy statement along with other governance-related disclosures.

Notwithstanding the above, we recommend that the Commission remove (i) the prescriptive disclosure requirements under Item 106(b)(1)(i)-(iii), and (ii) the disclosure requirements under Item 106(b)(2). We believe the principles-based disclosure approach set out in the first sentence of in Item 106(b)(1) is sufficient, and the additional requirement to provide the specific disclosures currently required by Item 106(b)(1)(i)-(iii) encourages registrants to provide generic disclosure which is not material to an investor's understanding of a registrant's ability to address a cybersecurity incident. We further believe the requirement to disclose the information required by Item 106(b)(2) is largely duplicative of the disclosure requirements set forth under Item 105. To the extent a registrant faces any material risks from a cybersecurity threat, a registrant would be required to provide such disclosures pursuant to Item 105. We do not believe the requirement should be repeated as a separate requirement under Item 106.

Item 201—Market Price of and Dividends on the Registrant's Common Equity and Related Stockholder Matters

Item 201(d)—Securities Authorized for Issuance under Equity Compensation Plans

Recommendation: We recommend removal of the current requirement for tabular disclosure of specified information (as of the end of most recently completed fiscal year) about compensation plans under which equity securities of registrant are authorized for issuance, aggregated between compensation plans previously approved by shareholders and compensation plans not previously approved by shareholders.

Rationale: The current Regulation S-K equity compensation plan disclosure requirement was adopted by the Commission on December 21, 2001, effective February 1, 2002.[29] The Commission adopted this requirement in recognition of increased use of equity compensation over the previous decade, this development's potential to result in significant reallocation of ownership between a registrant's existing security holders and management and employees, and the possible implementation of equity compensation plans without approval of shareholders.

At time of adoption, no major national securities listing exchange (NYSE, AMEX, or Nasdaq Stock Market) required registrants to obtain the approval of shareholders of their equity compensation plans to maintain their listing status. Subsequently, NYSE, AMEX and Nasdaq have

[29] *Disclosure of Equity Compensation Plan Information*, Securities Act Release No. 33-8048, Exchange Act Release No. 34-45189 (Dec. 21, 2001).

adopted, and the Commission has approved, new rules requiring shareholder approval of most equity compensation plans, including stock option plans, and various other transactions and material plan changes. These shareholder approval requirements have virtually eliminated the use of non-shareholder approved equity compensation plans by listed registrants. In conjunction with the increasingly detailed policy guidelines of the major proxy advisory firms, these exchange-level listing requirements now routinely result in the disclosure of significant information about a listed registrant's use of equity compensation when seeking shareholder approval of a new equity compensation plan or a material change (including an increase in the number of shares available for issuance) to an existing plan. For these reasons, requiring Regulation S-K disclosure of this information is no longer necessary.

In addition, as the Commission acknowledged in 2001,[30] the then current financial accounting literature provided for adequate financial statement disclosure about stock-based compensation. This accounting literature has been further enhanced over the past 20 years. We believe the Commission should continue to strive to minimize redundant disclosure under generally accepted accounting principles and the Commission's rules, where practical.

Should the Commission determine to retain the Section 201(d) disclosure requirements, either in whole or in part, we recommend the following revisions to incorporate subsequent Staff guidance.

1. The requirement should be revised to clarify that the Item 201(d) disclosure should be included in Part III, Item 12 of Form 10-K and that a registrant may rely on General Instruction G.3 to Form 10-K to incorporate by reference the Item 201(d) disclosure from its proxy statement or information statement, even if the issuer did not submit a compensation plan for security holder action at its annual meeting of shareholders. *See* CFI Question No. 106.01.

2. The requirement should be revised to clarify that, once issued, shares of restricted stock that have been granted subject to forfeiture are neither "to be issued upon exercise of outstanding options, warrants and rights" (column (a)) nor "available for future issuance." However, if such shares of restricted stock are later forfeited, they would be reportable in column (c) of the Equity Compensation Plan Information Table until granted again. *See* CFI Question No. 106.02.

3. The requirement should be revised to clarify that shares that may be issued under performance share awards if specified targets are met (i.e., an award denominated in shares has been made, but no shares will be issued until the performance targets are met), and shares credited as phantom shares under a deferred compensation plan that will be issued as actual shares upon termination of employment, must be reported in column (a) of Equity Compensation Plan Information Table. *See* CFI Question No. 106.03.

4. The requirement should be revised to clarify that shares subject to outstanding rights under a Section 423 employee stock purchase plan should be reported in column (c) of the Equity Compensation Plan Information Table, together with other shares remaining issuable under the plan. *See* CFI Question No. 106.04.

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[30] *Id.* at Section II.B.

5. The requirement should be revised to clarify that columns (a) and (b) of the Equity Compensation Plan Information Table should be footnoted to disclose that some of a registrant's outstanding rights can be exercised for no consideration, and therefore their inclusion substantially reduces the weighted-average exercise price. Such footnote should include the weighted-average exercise price of the outstanding instruments excluding those that can be exercised for no consideration. *See* CFI Question No. 106.05.

Item 201(e)—Performance Graph

Recommendation: With respect to Item 201(e), we recommend this disclosure requirement be removed from Regulation S-K.

Rationale: The requirement to provide a performance graph as part of a registrant's executive compensation disclosure was initially adopted in 1992.[31] After noting the importance at that time of shareholder return as a primary benchmark for shareholders and investors in assessing corporate performance, the Commission determined that requiring registrants to provide information comparing their financial performance against the performance of both the stock market as a whole and a tailored industry or peer index over a multi-year period based on total shareholder return ("TSR") (then considered a primary benchmark for shareholders and investors in assessing corporate performance) would provide all investors with useful information upon which to base their investment and voting decisions.[32]

In 2006, as part of a major revision of the then existing executive compensation disclosure requirements, the Commission proposed the performance graph disclosure requirement be eliminated.[33] In light of the proposed adoption of the Compensation Discussion and Analysis ("CD&A") and after acknowledging the widespread availability of stock performance information about companies, industries, and indexes through business-related websites or similar sources, the Commission stated its belief that the disclosure requirement was outdated. Further, the Commission noted that the disclosure as contemplated by the CD&A regarding the elements of corporate performance that a given company's policies might reach was intended to allow broader discussion than just that of the relationship of compensation to a registrant's performance as reflected by the registrant's stock price.

Ultimately, however, in response to significant public comment advocating for its retention, the Commission elected to retain the performance graph, moving the textual disclosure requirement to Item 201 of Regulation S-K and requiring its inclusion only in a registrant's annual report to security holders that accompanies or precedes a proxy or information statement relating to an

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[31] *See Executive Compensation Disclosure*, Securities Act Release No. 33-6962, Exchange Act Release No. 34-31327, Investment Company Act Release No. IC-19032 57 FR 48126 (Oct. 21, 1992), as modified by *Executive Compensation Disclosure: Correction*, Securities Act Release No. 33-6966, Exchange Act Release No. 34-31420, Investment Company Act Release No. IC-19085, 57 FR 53985 (Nov. 16, 1992).

[32] *Id.* at Section II.I.

[33] *See Executive Compensation and Related Party Disclosure*, Securities Act Release No. 33-8655, Exchange Act Release No. 34-53185, Investment Company Act Release No. IC-27218, 71 FR 6542, 6556–57 (Feb. 8, 2006) (Section II.A.4).

annual meeting of security holders at which directors are to be elected.[34] Although continuing to cite the widespread availability of stock performance information about companies, industries, and indexes through business-related websites or similar sources as the basis for its initial proposal to eliminate this disclosure requirement, the Commission acknowledged commenters' belief that the performance graph served as an easily accessible visual comparison of a company's performance relative to its peers and the market, and provided a standardized source for this type of information. Accordingly, in recognition of the significance of this disclosure to a broad spectrum of commenters, the Commission elected to retain the performance graph, albeit outside of the required executive compensation disclosure.

Now two decades later, we echo the Commission's instinct in January 2006 concerning the ongoing utility of the performance graph disclosure requirement. In view of advances in technology and the seamless integration of the Internet into everyday commerce and communication as well as its widespread availability, we believe the "easy access" of a standardized source to compare a registrant's corporate performance against the market and its peers is unnecessary.

Today, there are numerous free and accessible tools with which market participants can compare a registrant's stock price against a range of major indices over various multi-year periods.[35] While some of these tools focus largely on stock price appreciation, others, when combined with readily available dividend data,[36] enable users to produce TSR calculations that substantially mirror the information contained in a performance graph. Further, there are several professional equity research platforms[37] and specialized financial calculators[38] that provide information that is the equivalent of, if not superior to, that available in registrant SEC filings. In addition, market participants (in addition to comparing a registrant's stock price against an index) can create their own custom groups of companies and time-frames for comparison. The SEC could also identify for market participants on its website reliable sources for this market-based information.

Given the availability of these sophisticated tools and others, we believe that the performance graph disclosure requirement presents an unnecessary resource and cost burden to registrants, especially when weighed against the limited materiality of this information to shareholders and investors[39] when compared to the many alternative information sources available today. Accordingly, and consistent with Chairman Atkins' stated objective of revising the requirements of Regulation S-K to focus on eliciting disclosure of material information and avoid compelling

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[34] *See Executive Compensation and Related Person Disclosure*, Securities Act Release No. 33-8732A, Exchange Act Release No. 34-54302A, Investment Company Act Release No. IC-27444A 71 FR 53158 (Sept. 8, 2006) (Section II.B.4).

[35] *See*, for example, yahoo finance.com/trading view.

[36] *See*, for example, dividend.com and dqydj.com.

[37] *See*, for example, alpha-sense.com, professional.bloomberg.com (Bloomberg Terminal), and spglobal.com (S&P Capital IQ Pro).

[38] We note that professionals often use platforms such as AwardTraq.com for real-time tracking of relative TSR, which handles complex corporate events like mergers, spin-offs, and dividends automatically.

[39] In our experience, the performance benchmarks used to design executive compensation packages have expanded well beyond TSR and reflect many varied approaches to incentivizing corporate executives' performance.

the disclosure of immaterial information,[40] we respectfully recommend that Item 201(e) be removed from Regulation S-K.[41]

Item 202—Description of Registrant's Securities

Recommendation: We recommend that Item 202 of Regulation S-K be amended to provide that registrants may satisfy their disclosure obligations with respect to Item 202(a) – (d) and (f) for any class of securities registered under Section 12 of the Exchange Act by incorporating by reference the exhibit most recently filed under Item 601(b)(4)(vi) of Regulation S-K with respect to such class of securities and describing in the applicable registration statement any material changes to the description in such exhibit.

Rationale: Item 202 requires registrants to provide a brief description of their capital stock, debt securities, warrants, rights, American Depositary Receipts, and other securities being registered. Prior to the Fixing America's Surface Transportation ("FAST") Act amendments adopted by the Commission in March 2019,[42] registrants were only required to provide Item 202 disclosure[43] in their registration statements filed under the Securities Act or the Exchange Act. With the adoption of the FAST Act amendments, the Commission introduced new Item 601(b)(4) of Regulation S-K to require registrants to provide the information required by Item 202(a) – (d) and (f) for any class of securities registered under Section 12 of the Exchange Act, as an exhibit to their Annual Report on Form 10-K, rather than limiting this disclosure to registration statements. In proposing this amendment, the Commission recognized that, while the new exhibit would overlap with the disclosure required under Item 202 in registration statements, including this new exhibit in the Form 10-K would "allow investors to easily locate an updated description of their rights as security holders in the most recent annual report rather than require investors to search through prior filings to find this disclosure."[44]

While we support the Commission's purpose of "increas[ing] investors' ease of access to information about the rights and obligations of each class of securities registered,"[45] we recommend that the Commission streamline these disclosure requirements to reduce the burden on registrants to update generally duplicative and static disclosures about the registrants' registered securities. Our proposed amendment to Item 202 to allow registrants to satisfy their disclosure obligations with respect to Item 202(a) – (d) and (f) for any class of securities registered under

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

41 We note that removal of this disclosure requirement will have an indirect impact on Item 402(v)(2)(iv) of Regulation S-K which, for purposes of determining the total shareholder return of a registrant's peer group, requires the registrant to calculate such return using the same index or issuers used by it for purposes of Item 201(e)(1)(ii). Accordingly, corresponding amendments to Item 402(v)(2)(iv) may be required.

42 *See FAST Act Modernization and Simplification of Regulation S-K*, Securities Act Release No. 33-10618, Exchange Act Release No. 34-85381 84 FR 12674 (Apr. 2, 2019) (Section II.B.5).

43 Item 202 requires registrants to provide a brief description of their capital stock, debt securities, warrants, rights, American Depositary Receipts, and other securities being registered.

44 *See FAST Act Modernization and Simplification of Regulation S-K*, Securities Act Release No. 33-10425, Exchange Act Release No. 34-81851, Investment Advisers Act Release No. IA-4791, Investment Company Act Release No. IC-32858, at 59 (Oct. 11, 2017).

45 *Id.* at 58.

Section 12 of the Exchange Act by incorporating by reference the Item 601(b)(4)(vi) exhibit[46] and describing in the applicable registration statement any material changes to the description in such exhibit would both reduce the disclosure burden on registrants and enhance investors' access to material information about the registrants' registered securities.

Our recommended approach would be analogous to the approach taken in Instruction 1 to Item 303(b) of Regulation S-K. This instruction allows registrants providing financial statements covering three years in a filing to omit from their discussion under Item 303(b) the earliest year covered by such financial statements if they identify the location in the prior filing where the omitted discussion of this earliest year may be found. Consistent with the Commission's reasoning for proposing this instruction,[47] we believe that the proposed amendment to Item 202 would allow registrants to reduce duplicative disclosure while continuing to ensure that investors have access to material information regarding the rights and obligations of each class of securities being registered under the applicable registration statement.

Moreover, due to the incorporation by reference of the Item 601(b)(4)(vi) exhibit in the applicable registration statement, the Commission would reduce the number of filings in which the full Item 202 description is being provided by registrants. This exhibit will thereby serve as a central reference point for information about a registrant's registered securities, with material developments identified in relevant registration statements and regular annual updates to the exhibit with each Form 10-K filing.

We believe that the proposed amendment to Item 202 would meaningfully reduce the disclosure burden on registrants by eliminating the need to reproduce largely static and duplicative descriptions of registered securities across multiple filings, while enhancing investors' access to material information about the rights and obligations of registered securities.

Item 303—Management's Discussion and Analysis of Financial Condition and Results of Operations

Recommendation No. 1: With respect to Item 303's requirement to disclose certain forward-looking information, we continue to encourage the Commission to apply the probability/magnitude test for materiality set forth by the U.S. Supreme Court in *Basic v. Levinson* in place of the current two-step formulation that involves analyzing (i) whether a known trend or uncertainty is likely to come to fruition, and (ii) if so, whether such trend or uncertainty would reasonably be likely to have a material effect on the registrant's future results or financial condition.

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46 As addressed under "Instruments Defining the Rights of Security Holders, Including Indentures" below, we are not recommending any amendments to Item 601(b)(4)(vi).

47 The proposing release states that "[b]y allowing registrants to eliminate MD&A disclosure about the earliest year in these situations, our proposals are intended to discourage repetition of disclosure that is no longer material, which we believe would further our mandate under the FAST Act to modernize and simplify Regulation S-K in a manner that reduces costs and burdens on companies while still providing all material information." *FAST Act Modernization and Simplification of Regulation S-K*, Securities Act Release No. 33-10425, Exchange Act Release No. 34-81851, Investment Advisers Act Release No. IA-4791, Investment Company Act Release No. IC-32858, at 19–20 (Oct. 11, 2017).

Rationale: Item 303(a) was amended in November 2020 to codify Commission guidance on forward-looking information to provide:

> The discussion and analysis must focus specifically on material events and uncertainties known to management that are reasonably likely to cause reported financial information not to be necessarily indicative of future operating results or of future financial condition. This includes descriptions and amounts of matters that have had a material impact on reported operations, as well as matters that are reasonably likely based on management's assessment to have a material impact on future operations.

In the 2020 MD&A Release,[48] the Commission described the above amendment to Item 303(a) as consistent with the two-step test for forward-looking information required in MD&A as set forth in the 1989 MD&A Release,[49] namely that the disclosure must include matters that are reasonably likely, based on management's assessment, to have a material impact on future operations.

In explaining how to apply this standard in the 1989 MD&A Release, the Commission articulated:

> Where a trend, demand, commitment, event or uncertainty is known, management shall make two assessments:
>
> (1) Is the known trend, demand, commitment, event or uncertainty likely to come to fruition? If management determines that it is not reasonably likely to occur, no disclosure is required.
>
> (2) If management cannot make that determination, it must evaluate objectively the consequences of the known trend, demand, commitment, event or uncertainty, on the assumption that it will come to fruition. Disclosure is then required unless management determines that a material effect on the registrant's financial condition or results of operations is not reasonably likely to occur.

We acknowledge that the Commission provided substantial guidance in the 2020 MD&A Release to assist registrants in applying this two-step test. However, in our experience, the two-step test remains difficult to apply, which is, in our view, inconsistent with the Commission's goal of simplifying registrants' compliance with Item 303 while modernizing and enhancing MD&A disclosure for investors.

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[48] *Management's Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information*, Securities Act Release No. 33-10890, Exchange Act Release No. 34-90459, Investment Company Act Release No. IC-34100, 86 FR 2080 (Jan. 11, 2021) ("2020 MD&A Release").

[49] *Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures*, Securities Act Release No. 33-6835, Exchange Act Release No. 34-26831, Investment Company Act Release No. IC-16961, 54 FR 22427 (May 24, 1989) ("1989 MD&A Release").

The Committee has previously recommended[50] that the Commission replace the two-step test with the probability/magnitude test adopted by the Supreme Court in *Basic v. Levinson*.[51] We continue to recommend that the Commission reconsider that position. As noted in our previous comment letters, the *Basic v. Levinson* test benefits from its simplicity, understandability and long tradition of judicial and administrative interpretation. As a standard of materiality for forward-looking statements, it is consistent with the materiality standard of *TSC v. Northway*, which is reflected in Rule 12b-2, as well as the test of materiality set forth in Staff Accounting Bulletin No. 99. Registrants, their advisors and accounting firms apply these materiality tests on a regular basis to provide disclosure that is meaningful to investors, and courts rely on those tests as well.

The probability/magnitude test is simpler and more familiar for registrants to understand and apply in drafting MD&A disclosure and we believe it would produce more meaningful disclosure about what management views as the material known trends or uncertainties in its business. It enables management to balance the probability of occurrence with the magnitude of the impact if it were to occur, and based on that analysis, make a decision on whether such trend or uncertainty is material and therefore warrants disclosure to stockholders in the MD&A. Thus, the Committee continues to believe that the probability/magnitude test from *Basic v. Levinson* is the preferred standard to apply to MD&A forward-looking disclosure, just as it applies to other forward-looking disclosure requirements.

Recommendation No. 2: The Commission should clarify under what circumstances drivers of financial results must be quantified, as requested under recent Staff comment letters, resulting in inconsistent disclosures.

Rationale: Item 303 of Regulation S-K requires registrants to explain material changes in financial statement line items, including by describing the underlying drivers of those changes in both qualitative and quantitative terms, where appropriate. While this standard reflects the Commission's broader objective that MD&A provide investors with a view of the company "through the eyes of management,"[52] the rule does not clearly delineate when narrative explanations must be supplemented with quantified impacts.

In practice, this ambiguity has resulted in inconsistent disclosure. Staff has issued comment letters requesting that registrants quantify the relative contribution of identified factors to period-over-period changes, signaling an expectation that numerical attribution is often necessary to satisfy

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50 *See* Letter from the American Bar Association, ABA Business Law Section, re Management's Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information (June 5, 2020); Letter from the American Bar Association, ABA Business Law Section, re Request for Public Comments on the Securities and Exchange Commission's Disclosure Effectiveness Initiative—Recommendations on Regulation S-X and Certain Financial Disclosure Provisions in Regulation S-K (Nov. 14, 2014); Letter from the American Bar Association, ABA Business Law Section, re Business and Financial Disclosure Required by Regulation S-K (Dec. 15, 2017).

51 *Basic, Inc. v. Levinson*, 108 S. Ct. 978 (1988) (Under the materiality requirement of Rule 10b-5, with respect to contingent or speculative information or events, materiality "will depend at any given time upon a balancing of both the indicated probability that the event will occur and the anticipated magnitude of the event in light of the totality of the company activity," at 213, citing *SEC v. Texas Gulf Sulphur Co.*, 401 F. 2d 833, at 849).

52 See Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations, Securities Act Release No. 33-8350, Exchange Act Release No. 34-48960, 68 FR 75056 (Dec. 19, 2003) ("2003 MD&A Release"). See also 1989 MD&A Release.

Item 303.[53] At the same time, many registrants do not provide such quantification absent a direct Staff comment, suggesting that the current principles-based framework leaves substantial room for interpretation. The result is a disclosure regime in which similarly situated companies present different levels of detail regarding the same types of operational drivers.

We also note that it may be very difficult or impossible for companies to accurately quantify certain drivers, particularly those based on outside events or macroeconomic conditions.

Although the Commission has acknowledged that isolating and quantifying individual drivers of financial performance can be difficult—particularly where factors are interrelated[54]—it has not established a consistent standard for when such quantification is required versus when qualitative disclosure alone is sufficient. The absence of clear guidance has effectively shifted the determination to the comment letter process, creating a reactive rather than predictable disclosure regime.

Accordingly, we recommend that the Commission clarify the circumstances under which registrants must quantify drivers of financial performance in MD&A. Establishing clearer expectations would promote comparability across issuers, reduce reliance on post hoc Staff comments, and better align MD&A disclosure with its stated objective of providing investors with a transparent and analytically useful account of operating results. We would be happy to provide more specific recommendations if the Commission requests.

Recommendation No. 3: In addition to any modifications to the text of Item 303, the SEC should consolidate and reduce the amount of extra-textual guidance (prior proposing, adopting, and interpretive releases) so there is clarity about what is required.

Rationale: Compliance with Item 303 has become increasingly complex with numerous amounts of Commission and Staff extra-textual guidance. Consolidating such guidance and superseding prior guidance will reduce the compliance burdens on registrants.

Item 305—Quantitative and Qualitative Disclosures about Market Risk

Recommendation No. 1: The Commission should permit registrants to satisfy Item 305 of Regulation S-K by using risk presentations that are substantially consistent with the frameworks they actually use to monitor market risk internally or to comply with other applicable regulatory requirements.

Rationale: Empirical literature supports retaining a requirement to disclose market risks. For example, one study of oil and gas producers found that first-time sensitivity-analysis and VaR disclosers experienced greater commodity-beta shifts at Form 10-K filing dates than matched non-disclosers, consistent with those disclosures conveying decision-useful information in that

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[53] As an example of such comment, *see, e.g.,* "Throughout your discussion of results of operations, several of the factors you note as contributing to variances between periods are not quantified as to their magnitude. Please revise your disclosure in future filings to include quantitative terms pursuant to Item 303(b) of Regulation S-K." *Talkspace, Inc.* (Aug. 20, 2025). According to the Committee's research, in 2025, a similar comment was issued to 22 companies. In the past three years, a similar comment was issued to 204 companies.

[54] *See* 2020 MD&A Release at 36.

setting.[55] A study of banks' interest rate risk found that the disclosures predict cash flow sensitivity and provide value-relevant information incremental to other regulatory disclosures.[56]

That said, the Commission's current approach is overly prescriptive and may duplicate other required financial disclosures. In addition, the Item's requirements are overly complex, which leads to significant challenges in providing disclosure which is compliant. The Commission has previously recognized that Item 305 may overlap with disclosures already required under GAAP, including derivative and fair-value disclosures, particularly when a registrant uses a tabular presentation.[57] Moreover, many registrants already monitor market risk through internal treasury, asset-liability management, hedging, or trading-risk systems, and many financial institutions are also subject to detailed public disclosure regimes under federal banking regulations.[58] For those registrants, requiring a separate SEC-specific presentation can add cost without producing commensurate informational benefits.

The Commission should therefore revise Item 305 to permit registrants to present disclosures in a format substantially consistent with the risk metrics, stress frameworks, and exposure categories they actually use in managing the business, including formats used to comply with other applicable regulatory requirements. To prevent opportunistic presentation, the rule should require that the chosen framework be one actually used by management, cover the registrant's material market-risk exposures, be applied consistently from period to period absent explanation, and disclose the principal assumptions necessary to interpret the measure presented.

A more principles-based approach may reduce comparability at the margins, but any such reduction is likely to be modest and justified by offsetting benefits. Investors rarely compare all registrants across the market on a one-size-fits-all basis. They typically compare firms within industries, business models, and risk-management profiles. Within those peer groups, risk measurement practices are already constrained by economics, accounting, and regulation. Energy companies generally distinguish commodity-price exposures and hedging positions in recognizable ways; banks with significant trading activity are subject to federal market-risk disclosure requirements; and both U.S. GAAP and IFRS impose structure on the accounting treatment of derivatives and hedging relationships. In practice, then, allowing registrants to use internally meaningful or regulatorily required formats should reduce cost and disclosure clutter while preserving the comparability investors actually use.[59] This approach would reduce disclosure costs and result in disclosures better aligned with how market risk is managed in practice.

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55 *See* Daniel B. Thornton & Michael Welker, *The Effect of Oil and Gas Producers' FRR No. 48 Disclosures on Investors' Risk Assessments*, 19 J. Applied Bus. Rsch. 85 (2004) (reported in available abstracts as finding greater commodity-beta shifts for first-time sensitivity/VaR disclosers than matched nondisclosers).

56 *See*, e.g., Mei Cheng, Leslie D. Hodder & Jessica C. Watkins, *Usefulness of Interest Income Sensitivity Disclosures*, 96 Acct. Rev. 117 (2019) (finding that interest income sensitivity disclosures predict subsequent cash flow sensitivity and that the disclosures provide information incremental to those of other regulatory disclosures).

57 *Business and Financial Disclosure Required by Regulation S-K*, Securities Act Release No. 33-10064, Exchange Act Release No. 34-77599, 81 FR 23916, 23962 n.505 (Apr. 22, 2016) (noting that the degree of overlap between Item 305 and U.S. GAAP depends on the Item 305 presentation selected and whether information is aggregated).

58 2 C.F.R. § 217.201(a); 12 C.F.R. § 217.212; 12 C.F.R. § 324.201(a); 12 C.F.R. § 324.212. These rules apply to banking organizations with significant exposure to market risk and require public market-risk disclosures.

59 *See* 12 C.F.R. § 217.212(b) (requiring a formal disclosure policy approved by the board of directors for covered institutions); *see also* 12 C.F.R. § 217.201(a); 12 C.F.R. § 324.201(a).

At a minimum, the Commission should update the instructions for tabular disclosures to eliminate references to the 1900s.

Recommendation No. 2: The Commission should revise Item 305(a)(2) to eliminate any requirement for a standalone discussion of methodological limitations.

Rationale: Item 305 disclosures are, by design, forward-looking and hypothetical. Sensitivity analyses, stress scenarios, and other model-based measures do not purport to predict with precision how a registrant's exposures will perform under actual future market conditions. Their value lies instead in presenting complex risks in a standardized and intelligible form. That objective is best served by allowing registrants to disclose the selected measure and the assumptions necessary to understand it, without requiring separate discussion of methodological limitations. Any discussion of modeling limitations that is sufficiently detailed to be genuinely informative would risk overwhelming the substance of the disclosure itself. In practice the requirement encourages lengthy, generic, and litigation-oriented caveats rather than clearer presentation of material market risks that do not meaningfully improve investors' understanding of key modelling limitations. If the Commission wishes to reduce requirements that elicit boilerplate disclosures, it should revise 305(a)(2) accordingly.

Item 401—Directors, Executive Officers, Promoters, and Control Persons

Recommendation No. 1: We recommend that the Commission eliminate the requirement in Item 401(c) to disclose information regarding "significant employees," which the Item identifies as "persons such as production managers, sales managers, or research scientists who are not executive officers but who make or are expected to make significant contributions to the business of the registrant."

Rationale: The principal focus of the disclosure requirements specified in Item 401 of Regulation is on a registrant's executive officers and directors, who are the individuals that are serving in positions that have a material impact on the registrant's business and strategy. We recognize that information about the business experience and legal background of such individuals is often material to investors. We do not believe that the same information that is required about the registrant's executive officers should also be provided regarding "significant employees," because such information is not material to securityholders or investors, given the fact that such significant employees do not direct the management of the enterprise. In our experience, registrants rarely provide the information required by Item 401(c) regarding "significant employees," because they have concluded that they have no non-executive officer employees who meet the definition of "significant employees" articulated in Item 401(c). Given that the disclosure requirement rarely elicits any meaningful disclosure, and in light of the overall policy objective of focusing on information that is material to securityholders and investors, we believe that the Commission should eliminate Item 401(c) in its entirety.

Recommendation No. 2: We recommend that the Commission reconsider the scope of the information required pursuant Item 401(e)(2) regarding the other directorships held (or previously held during the past five years) by each director or person nominated or chosen to become a director. Rather than limiting the disclosure requirement to directorships at a company that has a class of securities registered pursuant to Section 12 of the Exchange Act, is subject to the

requirements of Section 15(d) of the Securities Act or is registered as an investment company under the Investment Company Act of 1940, the Commission should require disclosure of directorships at all for-profit companies, and/or any other roles that are determined to be material to understanding a director's qualifications to serve as director.

Rationale: We recognize that a director's or a nominee's service on other boards is relevant information when considering an individual's qualifications to serve as a director of a public company; however, we note that limiting the disclosure to only service on the boards of other public companies and registered investment companies may not provide a complete picture of a director's applicable experience, as well as the scope of that director's current board commitments. As companies tend to stay private longer, directors have opportunities to serve on the boards of private companies, and investors and securityholders should have the benefit of full disclosure concerning a director's experience serving on the boards of for-profit enterprises, as well as any other roles that are determined to be material to understanding a director's qualifications to serve as director.

Recommendation No. 3: We recommend that the Commission consider shortening the time period for disclosure required pursuant to Item 401(f) concerning an individual's involvement in certain legal proceedings from ten years to five years, so that the applicable time frame conforms to the five-year lookback period specified in Item 401(e).

Rationale: We recognize that an individual's involvement in the legal proceedings specified in Item 401(f) may be material to an understanding of an individual's fitness to serve as an executive officer or a director of a public company; however, we believe that the current 10-year lookback period contemplated may be too long and should be shortened to five years to be consistent with the business experience disclosure required by Item 401(e). In this regard, we note that legal proceedings that have occurred over five years ago are not as likely to be as relevant when evaluating the ability or integrity of an executive officer, director or director nominee. Further, the preparation of the disclosure required by Item 401 of Regulation S-K would be less burdensome if a consistent look-back period of five years is applied across all of the applicable disclosure requirements.

Item 403—Security Ownership of Certain Beneficial Owners and Management

Item 403(a)—Security Ownership of Certain Beneficial Owners

Recommendation: With respect to Item 403(a), we recommend this disclosure requirement be revised to remove from the required tabular disclosure the address of an identified beneficial owner of more than five percent of any class of the registrant's voting securities.

Rationale: With today's widespread access to the Internet, we believe the requirement to provide the business, mailing, or residential address of each identified beneficial owner of a registrant's voting securities is superfluous. This information, which almost universally consists of the physical location of the beneficial owner's business or its mailing address (or, in the case of an individual beneficial owner, typically is the registrant's business address), is readily accessible via the Internet. Further, we question whether this information is material to shareholders and investors

generally. Finally, we note that the recommended revision would conform the tabular disclosure requirements of Item 403(a) with those of Item 403(b).

Items 403(b) and (c)—Security Ownership of Management and Changes in Control

Recommendation No. 1: With respect to Item 403(b), we recommend the disclosure requirement to include all named executive officers in the beneficial ownership table be clarified to exclude individuals who were named executive officers for purposes of the disclosure requirements of Item 402(a)(3) of Regulation S-K and who terminated their employment with the registrant either (i) during the last completed fiscal year or (ii) after the end of the last completed fiscal year and before the registrant files its definitive proxy statement.

Rationale: We believe that the current expectation and practice that the voting securities beneficially owned by all of a registrant's named executive officers be disclosed in the beneficial ownership table without regard to their current employment status imposes an undue burden on registrants to gather such information from individuals who no longer have an employment relationship with the registrant. In our experience, the ownership of a registrant's voting securities by such individuals is of little interest to shareholders and investors generally. Further, we believe the time and expense incurred with gathering and disclosing such information outweighs its materiality in virtually every instance.

Recommendation No. 2: With respect to Items 403(b) and (c), we recommend these disclosure requirements be revised (or a new Instruction to Item 403 be added) to provide a threshold for the disclosure of pledged shares.

Rationale: We believe the burden of identifying and disclosing an immaterial amount of shares that have been pledged as security held by each of the directors (including nominees) and executive officers of a registrant outweighs both the informative and probative value of the disclosure of this information. While we agree with Item 403's objective of providing information to shareholders and investors generally about a pledge arrangement that may have meaningful consequences to the applicable individual and the registrant (including, as contemplated by Item 403(c), the potential to result in a change in control of the registrant), in our experience such arrangements are uncommon, particularly in view of the prevalence of registrant policies prohibiting or restricting directors and executive officers from engaging in transactions involving the purchase and pledge of registrant securities on margin or through a margin account, including the use of such securities as collateral to secure a loan. Further, in our experience most instances where a director or executive officer engages in a pledging transaction involve a decision to secure liquidity while continuing to remain heavily invested in the registrant's shares. Requiring registrants and their directors and executive officers to identify, assemble, and disclose such information without regard to the materiality of the arrangement imposes a compliance burden that does not result in the disclosure of information that is material to shareholders and investors generally.

Consequently, we believe the Commission should revise Item 403 as necessary to establish a threshold below which the disclosure of pledged shares is not required. We recommend this threshold be expressed as a percentage (for example, 10%) of a director or executive officer's total beneficial ownership of each class of a registrant's equity securities (as determined in accordance with Exchange Act Rule 13d-3).

Item 404—Transactions with Related Persons, Promoters, and Certain Control Persons

Item 404(a)—Transactions With Related Persons

Recommendation No. 1: We recommend the dollar threshold in 404(a) (currently $120,000) be increased to $500,000 and indexed to a standard for future adjustment.

Rationale: The current threshold has not been updated since 2006 and routinely captures transactions we believe are immaterial in terms of financial significance and importance to investors. Alternatively, we believe the Commission might consider adopting a threshold with a sliding scale tied to a registrant's size, to account for the drastic differences in market capitalizations among public companies.

Recommendation No. 2: We recommend the Commission revise or clarify the concept in Item 404(a) that a registrant be a "participant" in a transaction to require that a registrant have a "material interest" in the transaction.

Rationale: When the Commission revised Item 404 to require that a registrant be a "participant" in a potential related person transaction, it noted that "the purpose of this change is to more accurately connote the company's involvement in a transaction by clarifying that being a "participant" encompasses situations where the company benefits from a transaction but is not technically a contractual "party" to the transaction."

In practice, we believe this standard has caused confusion and has potentially resulted in overly inclusive disclosures where a registrant's involvement in a transaction may be attenuated and/or where a registrant has no material interest in a transaction.

Recommendation No. 3: We recommend revising Item 404(a)(1) to eliminate the requirement to identify the name of a related person in lieu of simply disclosing the basis on which the person is a related person.

Rationale: Identification by name of certain related persons raises potential privacy and security concerns and we do not believe disclosure of a related person's name is material information.

For example, an employment relationship involving an immediate family member of a director or executive officer may require disclosure of that individual's name under current Item 404(a). In the current environment of heightened security concerns for management of public companies, such information presents unnecessary publicity of personal information for members of management and their families. We believe investors would not be disadvantaged if the requirement was limited to requiring only disclosure of the nature of the relationship (i.e., an immediate family member).

Recommendation No. 4: We recommend that the time period for which the "amount involved" is calculated be limited to a registrant's prior fiscal year.

Rationale: We believe that establishing a defined time period over which to track amounts for purposes of assessing disclosure of potential related person transactions will provide much needed clarity. Currently, registrants may need to track transactions that span multiple fiscal years, and

analyze transaction terms to evaluate how to value and aggregate periodic or installment payments. We believe this approach can produce inconsistent results and instead recommend a defined time period over which to calculate amounts involved. In addition, the burden imposed on registrants to track related party payments after fiscal year end exceeds any limited value such disclosures may provide to investors.

Recommendation No. 5: We recommend the definition of "related person" be narrowed to exclude the current persons covered as "immediate family members" in lieu of individuals that are financially dependent on, or who share the same household as, an executive officer, director or director nominee ("insiders").

Rationale: Current instruction 1(a)(iii) to Item 404(a) picks up as related persons numerous categories of relatives of insiders. We do not believe such a categorical approach to the definition of related person is appropriate as it may encompass transactions with technical relatives that are completely immaterial to insiders, yet exclude transactions with other persons that may instead have more relevance to insiders.

Item 404(b)—Review, Approval or Ratification of Transactions With Related Persons

Recommendation: We recommend removal of the requirement to disclose a registrant's policies and procedures regarding related person transactions.

Rationale: Disclosures of registrant policies and procedures regarding related person transactions has become largely standardized disclosure with little to no annual variation. We do not believe repeating the same disclosure in annual disclosure documents provides useful information to investors and instead would be well-suited to being located on a registrant's corporate website.

Item 405—Compliance with Section 16(a) of the Exchange Act

Recommendation: The Commission should consider rescinding Item 405 because the information it calls for is immaterial to investors and not aligned with the purpose of Regulation S-K. Alternatively, if the Commission decides to retain Item 405, it should amend the item to require only information that indicates systemic failures in an issuer's procedures to promote compliance with Section 16(a) of the Exchange Act by its insiders, without identifying individual insiders who do not comply.

Rationale: Item 405 does not fit among Regulation S-K items. While Regulation S-K in general addresses non-financial disclosures concerning an issuer's business and related risks, Item 405 focuses on the issuer's insiders and their failure to comply with their individual reporting obligations under Section 16(a). Specifically, Item 405 requires issuers to disclose in their Form 10-K and proxy statement the names of all insiders who failed to file a required Section 16(a) report on time during the covered fiscal year, the number of reports not timely filed, and the number of transactions not timely reported.

The SEC's adoption of Item 405 was not driven by any notion that disclosure of reporting delinquencies might be material to investors. Instead, the express purpose of the disclosure requirement was to cause issuers to adopt or enhance Section 16(a) compliance procedures so they would not have to admit failures of their own procedures and embarrass their insiders by publicly

disclosing the failures to comply by those insiders. In the release initially proposing Item 405 (as part of a comprehensive overhaul of the Section 16 rules), the Commission expressed "concern[] over the widespread noncompliance" with Section 16(a), noting that more than half of reports filed in 1987 were more than three days late.[60] "To address the problem," the Commission proposed to adopt Item 405 and recommend to Congress that it enact legislation authorizing the Commission to impose fines in administrative proceedings for violations of Section 16(a). Id. Nearly two years later, when the Commission reproposed the amendments, the Commission expressed disappointment that the concerns it had expressed in its initial release had not significantly improved compliance, noting that more than one-third of reports filed in 1988 and 1989 were more than three days late.[61] These findings "reinforced" the Commission's conclusion that "proxy disclosure and fines are necessary."[62]

Timely filings under Section 16(a) are individual obligations of insiders and not of the issuer. While prevailing practice is for issuers to have procedures that seek to ensure such timely filings, they are not required to do so. It is clear that Item 405 was adopted as a way to impose that requirement on issuers through embarrassment by disclosure, effectively imposing on issuers the obligation to undertake compliance with Section 16(a) on behalf of their insiders. The disclosure is not, in contrast, designed to provide information necessary for a reasonable investor to make investment or voting decisions regarding the issuer's securities. The disclosure requirement therefore is not aligned with the purposes of Regulation S-K and should not be a required Regulation S-K item.

The purpose of Item 405–enhancing compliance with Section 16(a) reporting requirements–can and has been appropriately addressed through the Commission's Section 16(a) enforcement program, which involves initiating cease-and-desist proceedings against violators. The fining authority the Commission sought in 1988 was granted as part of the Securities Enforcement Remedies and Penny Stock Reform Act of 1990, and the Commission has utilized that authority effectively and efficiently to sanction filers (including issuers) for systemic failures in their Section 16(a) compliance processes. This authority, which the Commission has utilized in connection with broad investigations that resulted in charges against numerous insiders subject to Section 16(a) and the issuers that undertook to assist insiders with Section 16(a) compliance, provides the same– if not greater–deterrent effect as Item 405 and allows the focus to be on repeat offenders or other bad actors, instead of requiring identification of every late filer regardless of the insider's "fault" or the nature of the delinquency (e.g., a single report filed one day late).

The immateriality of Item 405 disclosures is demonstrated by the fact that delinquency disclosures have become commonplace, with survey data suggesting that every year over 40% of public companies disclose at least one reporting delinquency.[63] The occurrence of occasional late filings is not surprising given the number of Section 16(a) reports filed each year. According to data published by the Commission, 173,024 Section 16(a) reports were filed in fiscal year 2025, 169,532 of which were on Form 4, which must be filed within two business days of the reported

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60 See Ownership Reports and Trading by Officers, Directors and Principal Stockholders, Exchange Act Release No. 34-26333, 53 FR 49,997 (Dec. 13, 1988).

61 See Ownership Reports and Trading by Officers, Directors and Principal Security Holders, Exchange Act Release No. 34-27148, 54 FR 35,667 (Aug. 29, 1989).

62 Id.

63 See Peter J. Romeo & Alan L. Dye, XV Section 16 Updates 12 (June 2005).

transaction. (When Item 405 was adopted in 1991, the deadline for filing Form 4 was ten days after the end of the month in which reportable transactions occurred, making compliance much easier.) Requiring disclosure of each instance of a late filing has become less indicative of a flawed Section 16(a) compliance program and more indicative of the sheer volume of filings required.

In addition, Item 405 disclosures are no longer necessary to allow the Commission to detect reporting violations. When Item 405 was adopted, Section 16(a) reports were filed in paper and usually transmitted to the Commission by U.S. mail. Paper filings were difficult for the Commission to track, so the Section 16 rules were amended to require insiders to submit a copy of their reports to the issuer, which in turn enabled the issuer to monitor compliance and disclose late filings under Item 405.[64] The disclosure of late filings, together with a since-rescinded requirement that issuers check a box on the cover of Form 10-K to indicate whether the issuer would disclose late filings, was designed to facilitate the Commission's enforcement program. That purpose is no longer served, since Section 16(a) reports have been filed electronically since 2003, and insiders are no longer required to submit copies of their reports to the issuer. The Commission now relies on data analytics using the EDGAR system to monitor compliance with Section 16(a).

We recognize that Item 405 had a significant impact on reporting compliance. In the three years following the adoption of Item 405, the delinquency rate dropped to five percent.[65] However, as set forth above, we do not believe Item 405 continues to be the deterrent it was adopted to be, and furthermore do not believe a deterrent effect serves the purpose of Regulation S-K. Accordingly, we recommend the Commission rescind Item 405 in its entirety.

If, however, the Commission believes that Item 405 continues to play an important role in Section 16(a) compliance, such that it warrants retention, we recommend revising the disclosure requirement to focus on the effectiveness of the issuer's compliance processes. Specifically, any disclosure should not be required to include the names of the individuals whose reports happened to be filed late because (1) most issuers undertake to file Section 16(a) reports on behalf of their insiders, and (2) most late filings result from a minor operational or procedural oversight or delay, for example, a delay in the issuer receiving the details of a reportable transaction from a third-party (e.g., broker, equity compensation department, or plan administrator) or a delay in obtaining access to the EDGAR system on behalf of the insider. Accordingly, it seems unnecessarily punitive to call out the individual insider as "delinquent" in their Section 16 filing obligations when often other parties contribute to the delinquency. Item 405 could effectively incentivize compliance by issuers, and reveal serious reporting deficiencies, by requiring aggregated, tabular disclosure of reporting delinquencies, including the number of reports filed late and the extent to which they were late (e.g., a range of days, or the number of reports filed more than one week late), without naming–and "shaming"–individual insiders.

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[64] See Ownership Reports and Trading by Officers, Directors and Principal Security Holders, Exchange Act Release No. 34-28869, 56 FR 7,242 (Feb. 21, 1991).

[65] See Ownership Reports and Trading by Officers, Directors and Principal Security Holders, Exchange Act Release No. 34-34514, 59 FR 42,449 (Aug. 17, 1994).

Item 406—Code of Ethics

Recommendation: We recommend removal of the requirement in Item 406(a) for registrants to disclose the reasons why if they have not adopted a code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions.

Rationale: We believe registrants should simply be required to disclose the location of their code of ethics if one has been adopted. If a registrant has not adopted a code of ethics, we do not believe there should be any requirement to disclose why not. We do not believe the existing disclosure requirement is necessary or meaningful to investors and, at worst, could be considered a disclosure item that is designed to encourage behavior as opposed to requiring disclosure of material information.

Item 407—Corporate Governance

Recommendation No. 1: The Commission should reconsider the scope of the disclosure required by Item 407(a)(3) when describing the transactions, relationships or arrangements considered when determining a director's independence, by adding a materiality qualifier to the disclosure requirement.

Rationale: Item 407(a)(3) requires a description, by specific category or type, of any transactions, relationships or arrangements that are not disclosed pursuant to Item 404(a) (or Item 22(b) of Schedule 14A for investment companies), that were considered by the board of directors when determining that a director is independent under applicable independence definitions. In light of the overall policy objective of focusing on information that is material to securityholders and investors, we believe that the Commission should revise Item 407(a)(3) to require a description of any material transactions, relationships or arrangements considered when determining a director's independence. This change would allow registrants to determine what material transactions, relationships or arrangements were considered in making the independence determination, and avoid having to describe transactions, relationships or arrangements that were considered but are not material to an understanding the director's independence.

Recommendation No. 2: We recommend that the Commission integrate the disclosure requirements specified in Item 407(b)(3) into the committee-specific disclosure requirements set forth in Item 407(c) through (e).

Rationale: Item 407(b)(3) requires, with respect to each of the registrant's standing audit, nominating and compensation committees, information regarding the names of the committee members, the number of meetings held by the committee during the fiscal year and a brief description of the functions performed by the committee. We believe that it would be more appropriate to integrate the relevant portions of these disclosure requirements into each of Item 407(c) (nominating committee), Item 407(d) (audit committee) and Item 407(e) (compensation committee), so that each of those subparagraphs includes the entirety of the disclosure requirements applicable to the committee.

Recommendation No. 3: We recommend that the Commission eliminate the requirement specified in Item 407(c)(1), (e)(1) and (f)(1) that a registrant describe the "basis for the view of the board of

directors" that it is appropriate for the registrant to not have the applicable committee or process for securityholders to send communications to the board of directors.

Rationale: We do not believe that requiring disclosure of the "basis for the view of the board of directors" in Item 407(c)(1), (e)(1) and (f)(1) provides material information to securityholders or investors concerning the registrant's governance practices, and is instead intended to "shame" companies into taking action to establish a committee or process for securityholders to send communications to the board. We assert that the material information that is most relevant to securityholders and investors is the overall structure of the board and its committees, as well as any process to established to facilitate communication with securityholders. A description of the "basis for the view" of the board with respect to particular matters within the board's discretion is not typically the subject of disclosure requirements under the federal securities laws, and provides no material information to investors regarding the board's governance practices.

Recommendation No. 4: The Commission should consider any significant overlap or duplication occurring with the disclosure required by Item 407(e) regarding a registrant's compensation committee and the executive compensation disclosure required by Item 402(b)(1)(v) and Item 402(b)(2)(iv), (xiv), and (xv).

Rationale: Item 407(e) requires extensive disclosure concerning the role of the compensation committee in determining executive and director compensation, as well as the role of compensation consultants in this process. As the Commission considers potential changes to the executive compensation disclosure requirements specified in Item 402, we encourage the Commission to consider reducing or eliminating overlapping and duplicative disclosure that is required by the relevant provisions of Item 407(e).

Recommendation No. 5: We recommend that the Commission eliminate the requirement to describe the registrant's director nomination procedures specified in Item 407(c)(2), and instead require that such procedures, if any, be posted on the registrant's website and the location of such information be disclosed in the proxy statement.

Rationale: Item 407(c)(2) requires extensive disclosure concerning the details of a registrant's director nomination process. We believe that this detailed disclosure is not necessary in a registrant's proxy statement and could instead be provided by posting such information on the company's website. This approach would be analogous to the approach taken with respect to disclosure regarding the process for shareholder communications specified in Item 407(f)(2), where Instruction 1 to that Item states: "In lieu of providing the information required by paragraph (f)(2) of this Item in the proxy statement, the registrant may instead provide the registrant's website address where such information appears."

Item 408—Insider Trading Arrangements and Policies

Item 408(a)(1)—Disclosure of insider trading arrangements

Recommendation: With respect to Item 408(a)(1), we recommend this disclosure requirement be revised to clarify that the introductory text is not intended to require disclosure when no director

or officer has adopted or terminated[66] an insider trading arrangement during the applicable reporting period.

Rationale: Based on previous informal discussions with the Staff of the Division of Corporation Finance, we understand that the Staff is of the view that, notwithstanding the "whether" language in Item 408(a)(1)'s introductory text, negative disclosure is not required. We further understand the Staff has reserved the right to further consider this interpretation and to issue definitive guidance at a later date. In view of this continuing uncertainty, we request confirmation that, either in Item 408 itself or any adopting release published in connection with proposed changes to Item 408, the Staff's position remains in effect.

Item 408(a)(1)(ii)—Disclosure of non-Rule 10b5-1 trading arrangements

Recommendation: With respect to Item 408(a)(1)(ii), we recommend this disclosure requirement be removed.

Rationale: In our experience, significant confusion followed the adoption of this disclosure requirement, primarily stemming from the challenges arising from determining the attributes differentiating such arrangements from arrangements complying with the revised version of Rule 10b5-1. Given the minimal differences between a "Rule 10b5-1 trading arrangement" and a "non-Rule 10b5-1 trading arrangement,"[67] the increased disclosure obligations and the potential litigation risk dramatically increased registrant responsibilities in monitoring their insider trading policies.

As noted at the time the disclosure requirement was proposed,[68] these transactions, by definition, cannot benefit from the affirmative defense contemplated by Rule 10b5-1(c)(1). Further, the scope of the term "non-Rule 10b5-1 trading arrangements" remains elusive and registrants continue to puzzle as to the practical scope of its application. In our experience, the disclosure requirement continues to raise interpretive issues as, depending upon the particular facts and circumstances, it potentially encompasses a wide range of transactions, as evidenced by the issues about its scope in the initial years following its adoption.

For these reasons, we question whether or not transactions made pursuant to such a plan provide valuable information to shareholders, the Commission, or other market participants. Moreover, much of the information about any transactions pursuant to such plans is subject to disclosure in reports required by Section 16(a) of the Exchange Act. Consequently, we believe this increased compliance burden outweighs any meaningful benefit to shareholders and investors generally from this mandatory disclosure and that this disclosure requirement should be removed.

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66 For this purpose, we note that any modification or change to a Rule 10b5-1 plan by a director or officer that falls within the meaning of Rule 10b5-1(c)(1)(iv) is also required to be disclosed under Item 408(a) as it constitutes the termination of an existing plan and the adoption of a new contract, instruction, or written plan.

67 These differences appear to be limited to the "cooling off" period required by Rule 10b5-1(c)(1)(ii)(B)(1) and the certification requirement of Rule 10b5-1(c)(1)(ii)(C).

68 *See*, for example, the comment letters of Cleary Gottlieb Stein & Hamilton LLP (Mar. 23, 2022), Davis Polk Wardwell LLP (Mar. 26, 2022), and Sullivan & Cromwell LLP (Apr. 1, 2022).

Item 408(a)(2)—Disclosure of materials terms of trading arrangements

Recommendation No. 1: With respect to Item 408(a)(2), we recommend this disclosure requirement be revised to limit the items that may need to be described when disclosing the material terms of a trading arrangement that is intended to satisfy the affirmative defense of Rule 10b5-1(c) to (i) the name and title of the director or officer, (ii) the date on which the director or officer adopted or terminated the trading arrangement, and (iii) the duration of the trading arrangement.

Rationale: Based on our experience advising registrants on complying with the requirements of Item 408(a)(2), we believe the Commission should reevaluate its decision to include the aggregate number of securities to be purchased or sold pursuant to a trading arrangement as one of its potentially material terms.[69] This belief is predicated on the evolving sophistication of market participants and the tools available to analyzing trading patterns.

In response to the Commission's initial proposal to require disclosure of insider trading arrangements, we note commenters were decidedly mixed as to the information about trading arrangements that should be disclosed.[70] These concerns led the Commission to remove pricing information as a potentially disclosable item from the list included in Item 408(a)(2). While other items, including the number of shares covered by a trading arrangement, were cited as problematic, ultimately the Commission decided to solely exclude pricing terms and retain the remaining proposed items.[71]

We believe the concern that prompted the Commission to remove pricing terms from the Item 408(a)(2) list (that is, the disclosure of pricing terms could facilitate the "front-running" of transactions by other persons) are equally applicable to the disclosure of the number of securities subject to a Rule 10b5-1 trading plan. Our experience validates similar concerns to those raised about pricing terms. While we recognize the Commission's view that this information may offer context for a trading arrangement, we believe that, in today's markets in which algorithmically enabled high-speed trading has become the norm, information relating to trading volume could lead to outcomes potentially adversely affecting a registrant's directors and officers.

If, for example, once a registrant discloses that a senior executive has adopted a Rule 10b5-1 trading plan involving a large aggregate number of shares along with the duration of the arrangement, market participants may opportunistically sell shares (or enter into short sale transactions) due to mere speculation that the executive's future sales might trigger a stock price decline, when, in fact, the sales were planned to take place as part of a series of small transactions over the course of a few years. In addition, because the disclosure could be required before the end of the mandatory "cooling-off" period, it may lead to trading of the registrant's shares based on hypotheses regarding an insiders' trading plans, rather than financial fundamentals, to the detriment of market participants generally.

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69 *See* Item 408(a)(2)(D).

70 *See Insider Trading Arrangements and Related Disclosures*, Securities Act Release No. 33-11138, Exchange Act Release No. 34-96492, 87 FR 80362 (Dec. 29, 2022) ("Adopting Release") (Section II.B.1.b.).

71 *See* Item 408(a)(2).

We believe that a disclosure requirement intended to promote transparency and reinforce the deterrent impact of insider trading laws should not also potentially penalize directors and officers economically. Faced with this possibility, we are concerned that directors and officers who would otherwise use the Rule 10b5-1 exemption may be incented not to use it.

Recommendation No. 2: With respect to Item 408(a)(1), we recommend this disclosure requirement be revised (or a new Instruction to Item 408 be added) to expressly clarify that the expiration or completion of any contract, instruction, or plan that is otherwise subject to disclosure under Item 408(a)(1) is not considered a "plan termination" and, therefore, is not required to be disclosed.[72]

Rationale: While the Staff's CFIs are generally available on the Commission's website, in our experience not all registrants are aware of this guidance. We believe this interpretation addressing the intent and scope of Item 408(a), which we understand to be consistent with the Commission's intent, should be reflected in the Item itself rather than available only upon a search of the Commission's website.

Item 408—Application to smaller reporting companies.

Recommendation: With respect to Item 408(b), we recommend that this disclosure requirement be revised to exclude SRCs from its application.

Rationale: When Item 408 was first proposed, a number of commenters requested that SRCs be exempted from this disclosure requirement, asserting that SRCs and their insiders were less likely to engage in the kinds of trading in registrant securities that would cause concern and that the reporting burden could disproportionately impact these issuers. Acknowledging the potential for a disproportionate impact on SRCs, the Commission chose not to provide such an exemption as it believed doing so would "deprive investors in those issuers of material information about the use, and potential abuse, of Rule 10b5-1 plans and non-Rule 10b5-1 trading arrangements by an SRC's officers or directors."

Given Chairman Atkins' recent remarks about scaling the disclosure requirements to fit a registrant's size and maturity as a public company,[73] we believe that a rebalancing of the compliance burdens and investor benefits of this disclosure requirement would be both timely and beneficial.

Item 408(b)—Disclosure of insider trading policies and procedures

Recommendation: With respect to Item 408(b)(1), we recommend the disclosure requirement that a registrant that has not adopted insider trading policies and procedures governing the purchase, sale, and/or other dispositions of its securities by directors, officers and employees explain why it has not done so be removed.

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[72] *See Exchange Act Section 16 and Related Rules and Forms*, Question 133A.01, Corporation Finance Interpretations (Aug. 25, 2023).

[73] *See* Chairman Paul S. Atkins, Revitalizing America's Markets at 250 (Dec. 2, 2025).

Rationale: We note that, in recent remarks on the Commission's reassessment of the disclosure requirements of Regulation S-K, Chairman Atkins expressed concerns about the propriety and efficacy of disclose requirements that indirectly compel registrants to comply with specific governance practices by forcing them into awkward disclosures if they don't (so-called "comply or disclose" requirements). We believe this observation has merit as it has the potential to threaten compliance more broadly when registrants view such requirements as attempts to indirectly regulate corporate governance matters. We believe that this disclosure requirement should be limited to "affirmative" disclosure. Registrants concerned about the conclusions that shareholders and investors generally may draw from the absence of the required disclosure will be sufficiently motivated to either take steps to address this practice or explain why they have decided not to adopt an insider trading policy and related procedures.

Item 506—Dilution

Recommendation: The Commission should consider revising Item 506 to remove the requirement to provide the prescribed disclosure regarding dilution.

Rationale: As currently drafted, Item 506 characterizes dilution as the disparity between offering price and effective cash cost to insiders, which does not provide investors with meaningful information. In this respect, we do not believe that the current disclosure mandated by the item requirement is grounded in the market's views of dilution, which is focused on new issuances of securities that increase the total number of shares outstanding and, thus, reduce existing holders' ownership percentage and earnings per share. For offerings that may have a dilutive impact, registrants typically include qualitative disclosure of the risk in their prospectus and include, as relevant, additional narrative disclosure regarding the potential sources of future dilution for investors of a similar nature.[74]

The prescriptive, quantitative disclosure currently required by Item 506 is costly and burdensome to prepare. For example, Item 506 requires registrants to calculate net tangible book value per share before and after the distribution. Although the federal securities laws do not provide a definition of net tangible book value, it is understood that the measure is intended to approximate the liquidation value. As a result, registrants must perform burdensome analysis to identify what intangible assets, deferred costs and other illiquid assets must be excluded from net tangible book value. Given that the market does not generally view net tangible book value as a meaningful disclosure regarding the dilutive impact of a proposed offering, we do not believe that such information should be required.

Item 507—Selling Security Holders

Recommendation: The Commission should revise Item 507 to incorporate and expand the position articulated in CFI 240.01 to permit the required disclosure concerning each selling shareholder for whose account the securities being registered are to be offered be made on a group basis, as opposed to an individual basis, where the aggregate holding of the group is less than the 5% of the class prior to the offering.

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[74] We note that SPAC IPOs and deSPAC business combination transactions are subject to separate disclosure requirements regarding dilution, which we do not address herein.

Rationale: While it is important to identify selling shareholders in a registration statement, there are instances wherein the numerous individual shareholders who hold de minimis amounts results in voluminous disclosure in the prospectus that may obscure other material information regarding the nature of certain shareholders, such as insiders or other large holders. Expanding the accommodation provided in CFI 240.01 to permit disclosure on a group basis if the aggregate holding of the group is less than 5% will alleviate the administrative burden of providing disclosure for de minimis selling shareholders in the prospectus and reduce the overall length of the prospectus while maintaining the material information regarding the nature of the selling shareholders. In addition, aggregating holders with less than 5% uses a threshold that is consistent with the beneficial ownership reporting requirements related to greater than 5% holders.

We also encourage the Commission to consider such revisions in light of the utility and purpose of the selling shareholder information, including when that information may be used to determine statutory underwriter status. As part of the Commission's review of Regulation S-K, we urge that the Commission consider whether additional, related rules and guidance warrant revision, particularly with respect to those that create significant conflicts with established interpretations and practical application of the Securities Act. For example, as part of the Commission's 2024 adoption of rules intended to enhance investor protections in initial public offerings by special purpose acquisition companies ("SPACs") and in subsequent business combination transactions between SPACs and private operating companies, the Commission articulated novel and expansive interpretative positions regarding the statutory terms "distribution" and "underwriter."[75] In this respect, the Commission identified a deSPAC business combination transaction as a "distribution" of securities even if the target company is not selling or distributing any securities and, thus, a statutory underwriter could exist in such transaction. These views are conceptually flawed and at odds with longstanding interpretations and market practice. We encourage the Commission to reconsider such guidance as part of its comprehensive review.

Item 509—Interests of Named Experts and Counsel

Recommendation: We recommend that the Commission revise Instruction 1 to Item 509 to increase the current $50,000 threshold to a higher amount.

Rationale: In this respect, $50,000 appears to be an arbitrary amount that does not correlate to other disclosures that seek to elicit disclosure that would allow investors to evaluate potential conflicts of interest, such as related party transaction disclosures. We recommend that, consistent with our recommendation to increase the dollar threshold in Item 404(a) of Regulation S-K, the Commission should similarly increase the threshold dollar among triggering Item 509 disclosure to $500,000 and indexed to a standard for future adjustment.

Item 510—Disclosure of Commission Position on Indemnification for Securities Act Liabilities

Recommendation: We recommend that the Commission remove Item 510.

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[75] *See* Special Purpose Acquisition Companies, Shell Companies, and Projections, Release Nos. 33-11265, 34-99418 (Jan. 24 2024).

Rationale: This item is duplicative of comparable disclosure required to be included in the undertakings by Item 512(h) and does not provide additional meaningful information to investors.

Item 511—Other Expenses of Issuance and Distribution

Recommendation: We recommend that the Commission remove Item 511.

Rationale: This item does not provide meaningful information to investors. Currently, the disclosure required by Item 511 is predominantly estimated expenses that are not quantifiable with reasonable certainty by the registrant at the time of effectiveness, such as the legal expenses associated with the offering. The gross and net offering proceeds of the offering, which is currently disclosed on the cover page of the prospectus and in the "Plan of Distribution" or "Underwriting" section, provides investors with sufficient information necessary to make an informed investment decision related to potential participation in the offering in light of net proceeds to be received by the registrant.

Item 601—Exhibits

Item 601(a)—Exhibits and Index Required

Recommendation No. 1*:* We recommend that the Commission add a new instruction to Item 601 to codify that a previously filed exhibit need not be included in the exhibit index of a subsequent filing where:

(i) all material performance obligations of the registrant and its counterparties under the agreement have been completed or terminated; and

(ii) the agreement is no longer material to investors as of the filing date.

We further recommend that the Commission include explicit language clarifying that the survival of customary provisions—such as indemnification, confidentiality, dispute resolution, governing law, or similar residual clauses—should not, standing alone, require continued inclusion of an agreement in the exhibit index, provided that no ongoing material operational or economic obligations remain.

Rationale: This approach would better align exhibit requirements with the core principle that disclosure should reflect information that is material at the time of filing, rather than requiring continued inclusion of agreements that no longer have operative significance. It would further serve to focus investor attention on agreements that are material at the time of filing without the continued inclusion of exhibits that may obscure or dilute the significance of material agreements.

Absent clarification regarding survival of customary provisions, registrants may continue to include agreements solely due to the technical survival of standard boilerplate provisions, which does not advance the informational needs of investors.

Additionally, to further facilitate registrants' analysis of when to include and when to omit exhibits, we recommend clarifying or giving examples of the categories of ongoing legal obligations that should lead to continued inclusion of an agreement in the exhibit index, such as:

- continuing material payment obligations,
- material contingent liabilities that are reasonably likely to have a material impact, or
- material exclusivity or restrictive covenants that remain operative.

This distinction would provide registrants with clearer guidance while preserving disclosure of agreements that continue to have substantive economic or operational significance.

Recommendation No. 2*:* We recommend that the Commission adopt a safe harbor for the omission of schedules from exhibits on the basis of good faith determinations that omitted schedules are not material.

Rationale: This clarification would align Item 601 with existing disclosure principles grounded in materiality, while reducing unnecessary defensive over-inclusion of schedules that do not meaningfully inform investors. In our view, such a safe harbor would promote more focused disclosure without diminishing investor protection.

Item 601(b)(3)—Articles of Incorporation and Bylaws

Recommendation: We recommend that the Commission clarify that exhibits required under Item 601(b)(3)—Articles of Incorporation and Bylaws—need not be filed with a Form 10-Q if they remain unchanged from the versions filed with the registrant's most recent Form 10-K.

Rationale: This clarification would eliminate duplicative disclosure without reducing the availability of relevant information to investors, as such documents would remain accessible through prior filings.

Item 601(b)(4)—Instruments Defining the Rights of Security Holders, Including Indentures

Recommendation: With respect to specimen stock certificates, we recommend that the Commission clarify that such exhibits need only be filed where they contain material information that is not otherwise disclosed, such as in the registrant's description of securities.

Rationale: In practice, specimen certificates rarely include incremental material information beyond what is already disclosed. Clarifying this point would reduce unnecessary exhibit filings while maintaining appropriate disclosure standards.

Item 601(b)(10)—Material Contracts

Recommendation No. 1: We recommend eliminating the existing two-year lookback requirement and replacing it with a principles-based standard providing that contracts must be included only if they involve ongoing material performance obligations, consistent with the standards recommended above in Recommendation 1 of this subsection.

Rationale: A performance-based standard would better reflect the continuing relevance of a contract to investors and avoid requiring disclosure of agreements that are no longer operative or material, solely due to timing.

Recommendation No. 2: We recommend amending Item 601(b)(10) to state that registrants are only required to file amendments to material agreements where such amendments themselves are deemed material and to state explicitly that amendments deemed immaterial are not required to be filed. Additionally, we recommend that the Commission adopt a safe harbor for the omission of amendments that are not deemed material on the basis of good faith determinations that such amendments are not material.

Rationale: Eliminating the requirement to file immaterial amendments to material agreements would better align exhibit filing standards with materiality standards, reduce administrative burden on companies, and focus investor disclosures on material disclosures. Additionally, creating a safe harbor for such omissions will reduce unnecessary defensive over-inclusion of amendments that do not meaningfully inform investors. In our view, such a safe harbor would promote more focused disclosure without diminishing investor protection.

Item 601(b)(21)—Subsidiaries of the Registrant

Recommendation: We recommend that the Commission revise Item 601(b)(21) to require disclosure only of:

- "significant subsidiaries" as defined in Rule 1-02(w) of Regulation S-X, and
- subsidiaries that are material to a disclosed segment or risk factor.

Rationale: This approach would better align subsidiary disclosure with financial reporting materiality thresholds and the registrant's own narrative disclosures, while reducing the inclusion of immaterial entities that do not meaningfully inform investors.

Item 701—Recent Sales of Unregistered Securities; Use of Proceeds from Registered Securities

Items 701(a)-(e)

Recommendation: The Commission should consider removing the disclosure requirements of Item 701(a)-(e) from Forms 10-K and 10-Q.[76] To the extent disclosure of securities sales remains important, the Commission could add a reference to sales of securities (whether registered or unregistered) to the text of Item 303, clarifying that such discussion is expected in MD&A to the extent material.

Alternatively, if Item 701(a)–(e) is retained, the Commission should consider revising the lead-in paragraph to require disclosure only for the past two years, instead of three years. Limiting disclosure to this timeframe would be consistent with the 2020 amendments to Regulation S-K that allow registrants to omit discussion about the earliest of the three years if such discussion was

[76] Although Item 701's requirement to disclose recent sales of unregistered securities dates to Schedule A of the Securities Act, Schedule A addresses only information that must be disclosed in a registration statement and prospectus, not on periodic reports such as Forms 10-K or 10-Q. Therefore, our proposals do not require any revisions to Schedule A.

already included in prior filings.[77] If the look-back period is reduced, the Commission could include an instruction similar to Instruction 1 to paragraph (b) of Item 303, directing registrants to identify the location in the prior filing where the omitted discussion may be found.

Rationale: The Commission amended Forms 10-K and 10-Q in 1996 to require Item 701 information to address concerns that unregistered offerings were frequently undisclosed and could materially affect the financial condition of registrants or result in significant dilution to existing shareholders.[78] In 2004, the Commission adopted Item 3.02 to Form 8-K, which requires disclosure of the information in paragraphs (a) and (c) through (e) of Item 701 when equity securities sold equal or exceed one percent of the outstanding shares of the class, subject to certain adjustments for SRCs.

Much, if not all, of the disclosure required by Item 701(a)–(e) is typically addressed elsewhere in a Form 10-K or 10-Q. For example, information about the securities sold, consideration received, and terms of conversion or exercise is frequently disclosed in MD&A as part of the registrant's liquidity discussion and in the notes to the financial statements. As such, existing MD&A disclosures already address the concerns the Commission raised when it amended Forms 10-K and 10-Q to require Item 701 information.

Meanwhile, information about the underwriters and other purchasers is typically disclosed in a Form 8-K (under Item 1.01 or 8.01) and is not germane to an understanding of the issuer's liquidity in the MD&A context. While some redundancy exists between disclosures in response to Item 701 on Forms 10-K and 10-Q and Item 3.02 of Form 8-K, the timing difference in disclosure can still be of value to investors.

Item 701(f)

Recommendation: The Commission should consider eliminating all requirements in Item 701(f), except for subparagraphs (3) and (4)(viii). In addition, to the extent that any portion of Item 701(f) is retained, the Commission should consider amending Form 10-Q to move this disclosure out of Item 2 of Part II (Unregistered Sales of Equity Securities and Use of Proceeds) and require it in the context of financial information in Part I. We believe Part I is a more appropriate context, alongside other financial information.

Rationale: Most of the information currently required by Item 701(f) is captured in other Regulation S-K items.[79] The Commission adopted Rule 463 under the Securities Act, the precursor to Item 701(f), so it could monitor whether a registrant was required to file and use an updated Section 10(a)(3) prospectus and whether dealers effecting transactions in the registered security were required to furnish a copy of the prospectus to purchasers.[80]

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77 *See Management's Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information*, Securities Act Release No. 33-10890, Exchange Act Release No. 34-90459, Investment Company Act Release No. IC-34100, 86 FR 2080 (Jan. 11, 2021).

78 *See Business and Financial Disclosure Required by Regulation S-K*, Securities Act Release No. 33-10064, Exchange Act Release No. 34-77599, 81 FR 23916, 23968 n.582 and accompanying text (Apr. 22, 2016).

79 *Id*. at footnote 605 and accompanying text.

80 *Id*. at footnote 598 and accompanying text.

Subparagraph (3) of Item 701(f), which requires disclosure when an offering terminates before any securities are sold (along with an explanation), addresses information that is likely material to investors and is not burdensome to provide, even though the subparagraph rarely applies. Subparagraph (4)(viii), which requires disclosure of a *material* change in the use of proceeds from that described in the prospectus, provides information that is valuable to investors and consistent with the current administration's focus on financial materiality, and is likewise not burdensome. The remaining information required in subparagraph (4) is already disclosed elsewhere, including in the registration statement that triggered Item 701(f).

Changes to the disclosure requirements under Item 701(f) may require corresponding changes to Rule 463.

Item 702—Indemnification of Directors and Officers

Recommendation: The Commission should consider eliminating this disclosure requirement in its entirety. Alternatively, if the Commission decides to retain Item 702, the requirement could be limited to providing a reference to where the full text of the indemnification arrangements can be found.

Rationale: Disclosure in response to Item 702 tends to be boilerplate and typically includes references to the full text of the indemnification arrangements filed with a registrant's SEC filings and/or relevant state law provisions. As a result, the current disclosure is of little practical use to investors.

Item 703—Purchases of Equity Securities by the Issuer and Affiliated Purchasers

Recommendation: The Commission should amend Item 703 to clarify that the average price paid per share required in column (b) should be the *weighted* average price per share. In addition, the Commission should consider incorporating the guidance from Regulation S-K CFI Question 249.01 into Item 703.

Rationale: Clarifying that column (b) requires the weighted average price per share reflects what the vast majority of registrants already provide and is more useful to investors than a simple average. This approach is also consistent with market practice for reporting multiple transactions under Form 4, where filers report the weighted average price for the transactions being reported.

Incorporating the guidance from Regulation S-K CFI Question 249.01 directly into Item 703 would facilitate compliance with the Item by making the applicable guidance readily accessible in a single location.

Regulation S-X—Rule 11-01(d)

Recommendation: Align the definition of a "business" in Rule 11-01(d) of Regulation S-X for SEC reporting purposes with the definition in ASC 805-10 for U.S. GAAP accounting purposes.

Rationale: Separate financial statements under Rule 3-05 of Regulation S-X are required only if the acquiree meets the definition of a business for SEC reporting purposes. A company is currently required to carefully evaluate the requirements in Rule 11-01(d) of Regulation S-X to determine

whether an acquisition represents a business for SEC reporting purposes, and if an acquisition of a group of assets and liabilities does not meet the definition of a business for SEC reporting purposes, it does not have to file financial statements for that group. However, the definition of a business for SEC reporting purposes is not the same as the definition in ASC 805-10 for U.S. GAAP accounting purposes, and financial statements under Rule 3-05 may still be required even if the acquisition does not meet the U.S. GAAP definition of a business under ASC 805.

We urge the Commission to consider whether updates to ASC 805 that have occurred since the time Rule 11-01(d) was adopted have created greater-than-expected discrepancies between the U.S. GAAP definition of a business and the definition of a business for SEC reporting purposes.

If the definitions of a business are aligned for SEC reporting purposes and U.S. GAAP accounting purposes, it will significantly simplify and reduce the time, effort and costs for public companies, particularly SRCs, when analyzing asset acquisition transactions.

* * *

We greatly appreciate the opportunity to provide comments with respect to this important initiative and thank the Staff for its efforts and thoughtful approach. Members of the Drafting Committee are available to meet and discuss these matters with the SEC and the Staff and to respond to any questions.

Very truly yours,

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Appendix A – History of Regulation S-K

Regulation S-K is the foundation for the SEC's integrated disclosure system. Adopted over a multi-year period, "integration" harmonized and combined disclosure requirements under the Securities Act with requirements under the Exchange Act through a series of interrelated rulemaking proceedings.[81]

The theoretical underpinnings of integration – and ultimately Regulation S-K – can be traced to Milton H. Cohen's 1966 article, "Truth in Securities Revisited,"[82] which argued that the Securities Act and the Exchange Act were enacted in the wrong order, and there should be an integrated disclosure system based on the Exchange Act's continuous reporting rather than the Securities Act's transaction-oriented model. Under this view, periodic, market-oriented disclosures would serve as the primary source of corporate information, while Securities Act filings would draw upon that existing body of disclosure.

Cohen's article was followed by the SEC's Disclosure Policy Study, published in 1969 and widely known as the Wheat Report.[83] The Wheat Report was "an attempt to discover what could be done within the existing statutory framework" to "enhance the degree of coordination between the disclosures required under the Securities Act of 1933 and the Exchange Act of 1934."[84] The Wheat Report emphasized "the trading markets in outstanding securities involve much more money and far more people than does the distribution of securities being offered to the public for the first time. Thus the [Wheat] Report's emphasis is on continuous disclosure under the Securities Exchange Act."[85] The Wheat Report also recognized that in its present form, "continuous disclosure under the Securities Exchange Act is an inadequate substitute for the occasional but comprehensive disclosures under the traditional Securities Act practice."[86] Rather than focus on the "new issue market" the Wheat Report opined that "greater attention must be paid to those continuing disclosures which benefit the trading markets in securities."[87] Among its 61 recommendations, the Wheat Report proposed adoption of a quarterly report, Form 10-Q.[88] These recommendations reflected a broader shift toward a disclosure system centered on ongoing reporting, rather than episodic transactional filings.

In response to the Wheat Report, in 1972, the SEC issued a release regarding the "Hot Issues" of the market and proposed amendments to registration statements and Form 10-K "to provide for further integration of the disclosure requirements of the [Securities] Act and the Exchange Act by

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81 Integration was implemented under the SEC's then existing rulemaking authority, rather than a new statute. Thus, integration proved that the American Law Institute's Code drafted by Louis Loss was unnecessary. For a discussion of the Code, see, e.g., Loss, History of SEC Legislative Programs and Suggestions for a Code, 22 Bus. Law 795,799 (Apr. 1967); Louis Loss, *The Federal Securities Code*, 33 U. Mia. L. Rev. 1431 (1979).

82 79 Harv. L. Rev. 1240 (1966).

83 Officially designated as Disclosure to Investors – A Reappraisal of Federal Administrative Policies under the '33 and '34 Acts, Securities Act Release No 4963 (Apr. 14, 1969).

84 Wheat Report at 10. SEC 35th Annual Report to Congress for the Fiscal Year Ended June 30, 1969 (the "1969 Annual Report") at 19.

85 *Id.* at 19.

86 *Id.* at 22.

87 Wheat Report at 11.

88 *Id.* at 40 and 1969 Annual Report at 22.

providing for increased uniformity in their disclosure requirements and to rectify certain anomalies in these forms."[89]

The Wheat Report was followed by the Report of the Advisory Committee on Corporate Disclosure in 1977.[90] In discussing the role of the SEC, the Advisory Committee expressed its "belief that the Commission's present statutory mandate extends only to information material to informed investment and corporate suffrage decision making."[91] To "maximize" integration, the Advisory Committee recommended "the development of a single coordinated disclosure form -- Form CD ('Coordinated Disclosure')."[92] Form CD was intended to prescribe uniform disclosure requirements across registration statements, periodic reports, and proxy statements. Form CD classified reporting companies into three levels for purposes of filing registration statements, based on reporting history, assets, and earnings.[93] Certain companies, known as Level 1, could incorporate by reference the disclosure from Exchange Act reports into short form registration statements.[94] Thus, the Advisory Committee Report contemplated a single repository of non-financial information that would be used for all filings under the Securities Act and the Exchange Act through the use of incorporation by reference to link disclosure from the Exchange Act to public offerings under the Securities Act. In this manner, the same disclosure that would be publicly provided to trading markets under the Exchange Act would be incorporated by reference and therefore legally in registration statements under the Securities Act.

Even before the Advisory Committee Report was submitted to Congress, the SEC began rulemaking that resulted in the adoption of Regulation S-K. Implementation of segment reporting[95] required the SEC to amend portions of periodic reports and registration statements as well as the proxy rules in 1977. Given "the extensive nature of the revisions," the SEC took the opportunity to propose the development of Form S-K, which would be "an integrated disclosure form."[96] While

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89 *Hot Issues, Meaningful Disclosure*, Securities Act Release No. 33-5274, 37 FR 16005, 16008 (Aug. 9, 1972). The release stated that the "Federal securities statues created a continuous disclosure system designed to protect investors and to assure the maintenance of fair and honest securities markets. The Commission in administering and implementing the objectives of these statutes has sought to coordinate and integrate this disclosure system." Id. at 16005,

90 Report of the Advisory Committee on Corporate Disclosure To The Securities and Exchange Commission, Committee Print 85-29, House Committee on Interstate and Foreign Commerce, 90th Cong., 1st Sess. (1977) (the "Advisory Committee Report").

91 *Id.* at D-8. In discussing this belief, the Advisory Committee Report stated that information oriented to audiences other than investors or shareholders would hamper "investment and corporate suffrage decision making" by lowering the materiality threshold and "bury the shareholders in an avalanche of trivial information." *Id.* citing *TSC Industries Inc. v. Northway Inc.*, 4A24 U.S. 438, 448-449 (1976). Reporting companies should only have to provide "firm oriented information" and "not be held responsible for information that is not within their expertise" except for "disclosure of macro-economic factors to the extent that they have a special or unique impact on the company." *Id.* at 9.

92 *Id.* at D-24.

93 Level 3 applied to companies that had been reporting for less than three years and would be required to filed Form S-1s. Level 2 applied to companies that were neither Level 1 nor Level 3 and were required to file registration statements on Form S-7. *Id.* at D-25.

94 *Id.* at D-26. "An effect of incorporation by reference is the subjection of 1934 Act filings to the liability standards of the 1933 Act." *Id.*

95 Statement of Financial Accounting Standards No. 14, "Financial Reporting for Segments of a Business Enterprise," adopted by the Financial Accounting Statements Board in December 1976.

96 *Industry and Homogeneous Geographic Segment Reporting*, Securities Act Release No. 33-5826, 42 FR 26009, 26010 (May 20, 1977).

the proposing release noted the "tentative recommendations" in the Advisory Committee Report,[97] it did not mention Form CD. In addition to implementing Statement of Financial Accounting Standard No. 14, the proposal discussed "the development of a new integrated disclosure form, Form S-K," which was intended to "improve and simplify significantly the disclosure process by eliminating immaterial differences among the disclosure requirements in various registration and reporting forms. If the proposed Form S-K is adopted, future amendments affecting many disclosure forms would be reflected in the new form with appropriate revisions and cross-references added to the disclosure forms."[98] This release established the template for future additions to Regulation S-K: a disclosure item to Regulation S-K would be proposed and contemporaneously with that proposal the SEC would propose to amend each form under both the Securities Act and report under the Exchange Act that would be impacted by adoption of that item. Once the item was adopted, it would result in the same disclosure requirement in each of the forms and reports that had been proposed to be amended. Not only was uniformity of disclosure between the two statutes established, but the rulemaking process was simplified and drafting conflicts between various forms and reports was minimized or eliminated. Some commenters "argued that the form was really not a form at all and should be called" a regulation.[99] As a result Form S-K was adopted as Regulation S-K (17 CFR 229).[100] Thus, a proposal to implement a new accounting standard by revising Business and Property disclosure requirements, resulted in the adoption of Regulation S-K, which established the linkage between Regulation S-K and the forms under both statutes and laid the foundation for integration.

Following its initial adoption, amendments to Regulation S-K further integrated the disclosure requirements of the Securities Act and the Exchange Act. Four additional items were added to Regulation S-K in 1978.[101] The favorable comments received on the proposals resulted in the SEC stating that "eventually all general disclosure requirements under the securities acts would be contained therein."[102] In 1980, Regulation S-K was amended to include Exhibits[103] as well as four other items.[104] The first of two 1981 releases announcing a number of integration proposals recognized that "the implementation of the Advisory Committee's recommendations commenced with the promulgation of Regulation S-K as the source of uniform disclosure items. . . . The Commission recognized that the multiplication of disclosure Item requirements in Regulation S-

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97 Id.

98 *Id.* at 26011.

99 Release No. 33-5893, Industry Segment Reporting, 42 FR 65554 (Dec. 30, 1977).

100 *Id.* The change in "nomenclature" resulted in inclusion of "the new, integrated disclosure regulation" in the Code of Federal Regulations ("CFR"). "As a result, the regulation will be revised when CFR is updated to reflect any amendments adopted during the year and registrants will be able to obtain a current copy of the disclosure provisions more easily."

101 *Uniform and Integrated Reporting Requirements: Directors and Executive Officers, Securities Act* Release No. 33-5949, 43 FR 34402 (July 28, 1978). The four items were: Item 3, Directors and Executive Officers; Item 4, Management Remuneration (currently Item 402 Executive Compensation) and Transactions (currently Item 404, Transactions With Related Persons, Promoters and Certain Control Persons); Item 5, Legal Proceedings; and Item 6, Security Ownership of Certain Beneficial Owners and Management.

102 Id.

103 *Amendment Regarding Exhibit Requirements*, Securities Act Release No. 33-6230, 45 FR 58822 (Aug. 27, 1980).

104 *Integration of Securities Acts Disclosure Systems*, Securities Act Release No. 33-6231, 45 FR 63630 (Item 9, Market Price of the Registrant's Common Stock and Related Security Holder Matters, Item 10, Selected Financial Data and Item 11, Management's Discussion and Analysis of Financial Condition and Results of Operations); and *General Revision of Regulation S-X*, Securities Act Release No. 33-6233, 45 FR 63660 (Sept. 2, 1980 (Item 12, Supplementary Financial Information)).

K is a recognized prerequisite to the full integration of the registrant and reporting requirements under the two statutes."[105] The second 1981 release, which re-proposed the classification of Regulation S-K items by subject matter, stated that "Regulation S-K would be the repository of uniform content requirements relating to substantially all of the information to be set forth in registration statements and annual and other periodic reports required pursuant to the Securities Act and the Exchange Act."[106] The SEC made clear that the basis for integration is equivalency of information between transactional and periodic reporting. "If a subject matter constitutes material information (other than a description of the transaction itself), then generally it will be material both in the distribution of securities and to the trading markets."[107] Equivalency also involves compliance with the 27 items in Schedule A of the Securities Act which are required by Section 7 of the Securities Act to be in registration statements. Integration requires the disclosure in the periodic and current reports that are incorporated by reference into registration statements to satisfy the requirements of Section 7.

The 1982 release adopting the integrated disclosure system discussed the "Operation and Philosophy of Regulation S-K".[108] "Since its initial adoption, Regulation S-K has evolved beyond a source of certain standardized registrant-related disclosure provisions to become a more complete compendium of disclosure requirements applicable to Securities Act and Exchange Act filings. [. . .] The adopted revisions represent a major step in the consolidation of disclosure requirements into Regulation S-K. The Commission intends to continue this consolidation of disclosure requirements in Regulation S-K."[109] Since Regulation S-K is not self-executing, disclosure in an item is only required "to the extent a form or schedule governing a document specifically directs inclusion of the information prescribed by"[110] that Item, except for the General Section (including projections and security ratings) and Industry Guides. The Industry Guides "are applicable whether or not the applicable form or schedule refers to Regulation S-K or to the Industry Guide."[111] Thus, Regulation S-K implements the goal of integration: "to eliminate overlapping or unnecessary disclosure and dissemination requirements wherever possible, thereby reducing burdens on registrants while at the same time ensuring that security holders, investors and the marketplace have been provided with meaningful, nonduplicative information upon which to base investment decisions."[112]

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105 *Proposed Revision of Regulation S-K and Guides for the Preparation and Filing of Registration Statements and Reports*, Securities Act Release No. 33-6276, 46 FR. 78, 79 (Jan. 2, 1981). The release stated that "Regulation S-K was adopted on December 23, 1977 in response to the recommendation of the Advisory Committee on Corporate Disclosure that the disclosure systems under the Securities Act and under Exchange Act be integrated further." *Id.* at 80.

106 Reproposal of Comprehensive Revision to System for Registration of Securities Offerings, Securities Act Release No. 33-6331, 46 FR 41902 (Aug. 18, 1981).

107 Id.

108 *Adoption of Integrated Disclosure System*, Securities Act Release No. 33-6383, 47 FR 11380, 11387 (Mar. 16, 1982).

109 Id.

110 Id.

111 Id.

112 *Id.* at 11382.