



April 13, 2026

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street N.E.
Washington, D.C. 20549-1090

Submitted Electronically

Re: Statement on Reforming Regulation S-K (File Number CLL-15)

Dear Ms. Countryman:

The Society for Corporate Governance (“Society”) appreciates the opportunity to share our views with the Securities and Exchange Commission (“SEC” or “Commission”) in response to its solicitation of comments on Regulation S-K (other than executive compensation disclosure under Item 402 of Regulation S-K).¹

Founded in 1946, the Society is a professional membership association of approximately 3,700 corporate and assistant secretaries, chief legal officers, in-house counsel, outside counsel, and other governance professionals who serve approximately 1,600 entities, including 1,000 public, private, and nonprofit organizations of almost every size and industry. Our organization has nearly 80 years of experience empowering professionals to shape and advance corporate governance within their organizations, in part through providing the knowledge and tools they need to advise their boards and executive management on corporate governance, regulatory and legal developments, and public company reporting requirements. Our members are uniquely positioned to understand the practical burden imposed by Regulation S-K as well as the materiality of the information presented and the frequency with which investors engage with registrants on particular disclosures.

The Society commends the Commission for requesting input on how to implement reforms to Regulation S-K, the Commission’s “central repository” for filer disclosure requirements outside of the financial statements. Society members have firsthand experience with the practical application and challenges of Regulation S-K requirements, which have become increasingly complex, burdensome, and costly over time. As the Society has indicated in prior comment letters, certain current Regulation S-K disclosure requirements are unmoored from the fundamental principles of materiality or fail to account for

¹ The Society previously provided a comprehensive comment letter on Item 402 of Regulation S-K in connection with the Commission’s Executive Compensation Roundtable. See Letter from Society for Corporate Governance to Vanessa Countryman, Secretary, SEC, re: Executive Compensation Roundtable (File No. 4-855) (Aug. 27, 2025), available at https://higherlogicdownload.s3.amazonaws.com/GOVERNANCEPROFESSIONALS/5d47927b-105a-4bc7-9aef-821536f3505b/UploadedImages/2025_08_27-Society_Comment_Letter_on_SEC_Executive_Compensation_Disclosure_Rules-FINAL_.pdf.

distinctions in the disclosure requirements that should apply to registrants of different sizes and at different stages of development.²

The Society's recommendations are based on real-world experience and data gathered through multiple working group meetings and sub-group meetings engaging more than 70 Society members, as well as surveys of the Society's public company registrant and law firm members.³

While grounded in empirical information, given the regulatory timeline the Society's recommendations are necessarily preliminary, and we welcome the opportunity to refine them in response to any proposed rulemaking. Except as otherwise noted, the recommendations in this letter exclude executive compensation disclosures, on which the Society previously commented. Our recommendations do not address potential overlap with other concurrent SEC rulemaking initiatives.⁴ Nor has the Society included comprehensive recommendations pertaining to Regulation S-X, but we note that harmonization of Regulations S-K and S-X would better achieve the Commission's stated goal of "revising the requirements to focus on eliciting disclosure of material information and avoid compelling the disclosure of immaterial information."⁵

Our recommendations reflect a principles-based approach to disclosure requirements that affords flexibility to registrants while providing clear, coherent, and material information to the marketplace. Our recommendations focus on: (i) reorienting disclosure requirements based on principles of materiality; (ii) eliminating boilerplate, duplicative, or otherwise low-value disclosure; and (iii) lowering the cost and burden of compliance while safeguarding investor protection. Across multiple disclosure requirements, the Society recommends the Commission expressly permit broader use of cross-referencing across Regulation S-K to reduce duplication while preserving the accessibility of material information. The Commission should also consider proposing appropriately designed safe harbors and reaffirming applicable materiality-based standards to reduce defensive over-disclosure while preserving investor protection.⁶

We include a summary of our recommendations in Appendix A, along with proposed redlined changes to regulatory text for certain Regulation S-K items in Appendix B.⁷ Each recommendation incorporates the

² See generally Letter from Society for Corporate Governance to Chairman Atkins (May 1, 2025), available at https://higherlogicdownload.s3.amazonaws.com/GOVERNANCEPROFESSIONALS/5d47927b-105a-4bc7-9aef-821536f3505b/UploadedImages/Society_for_Corporate_Governance_Letter_to_SEC_Chairman_Atkins_.pdf; Letter from Society for Corporate Governance re Suggestions on Modifying and Scaling the Disclosure Obligations of Small- and Mid-Cap Public Companies (Aug. 27, 2025), available at https://higherlogicdownload.s3.amazonaws.com/GOVERNANCEPROFESSIONALS/5d47927b-105a-4bc7-9aef-821536f3505b/UploadedImages/SMCC_Reporting_Thresholds_Scaled_Disclosure_Letter_June_20_2025_final_signed_.pdf; Letter from Society for Corporate Governance re Executive Compensation Roundtable (June 20, 2025), available at https://higherlogicdownload.s3.amazonaws.com/GOVERNANCEPROFESSIONALS/5d47927b-105a-4bc7-9aef-821536f3505b/UploadedImages/2025_08_27-Society_Comment_Letter_on_SEC_Executive_Compensation_Disclosure_Rules-FINAL_.pdf.

³ The Society deployed a total of three surveys with responses from 80 registrants, 85 registrants, and 20 law firms, respectively.

⁴ The SEC's current rulemaking agenda and projects that may overlap with the Regulation S-K reform project include the proposals examining the elimination of quarterly reporting, simplification of filer status, and rationalization of disclosure rulemaking agenda items. The Society looks forward to separate engagement on such proposals.

⁵ Paul S. Atkins, Chairman, U.S. Sec. & Exch. Comm'n, Statement on Reforming Regulation S-K (Jan. 13, 2026), <https://www.sec.gov/newsroom/speeches-statements/atkins-statement-reforming-regulation-s-k-011326>

⁶ For the avoidance of doubt, in each instance that the Society calls for "materiality-based" disclosure, we mean materiality as traditionally determined under the federal securities laws, not a novel, expanded, or item-specific formulation.

⁷ In circumstances in which the Society has recommended elimination of an Item entirely, we have not included a redline of that Item.

Society's views, based on surveys and involvement of our members, of the relative costs and benefits associated with the corresponding disclosure item. While we encourage the Commission to include all the recommendations that we provide in any notice-and-comment rulemaking proposal, we believe action on any of the recommendations could provide meaningful improvement.

I. Regulation S-K Cost and Benefit Assessment

As a threshold matter, we encourage the SEC throughout this process to consider the full extent of the costs and benefits of existing disclosure requirements and any proposed changes to Regulation S-K.

A. Scope of Disclosure Costs

Disclosure costs extend well beyond outside legal and accounting fees. Each disclosure requirement creates a broad compliance burden across an organization, requiring repeated fact-gathering, drafting, verification, and internal review by personnel in the business operations, accounting, financial reporting, legal/corporate secretary, risk, compliance, internal audit, and investor relations functions. These processes require significant management time, extensive coordination, and multiple internal reviews. Disclosures are then typically reviewed by outside counsel, external auditors, disclosure committees, senior management, and boards of directors. For example, some Society members report that it is not unusual for a full related party transaction reporting cycle to engage more than 50 people, with manual processes repeated each quarter.

Current Regulation S-K also imposes significant opportunity costs for all involved, including senior management and boards of directors. Resources devoted to producing, validating, and reviewing disclosure necessarily displace time spent on capital allocation, strategy, risk oversight, operating performance, and direct engagement with investors on more significant matters.

Moreover, disclosure-related costs are not borne solely by registrants. Investors, analysts, and other intermediaries also incur opportunity costs in allocating time to review and process filings. When material information is embedded in dense, repetitive, or immaterial disclosure provided solely to satisfy a Regulation S-K item, users incur higher search, comparison, and processing costs, and material information becomes more difficult to identify and evaluate.

These costs are systemic and contribute to a disclosure framework that is less usable and less decision-useful than it should be. The Supreme Court recognized the risk of information overload in *TSC Industries*, cautioning against burying investors in an “avalanche of trivial information.”⁸ That concern is directly implicated where Regulation S-K drives the inclusion of immaterial or repetitive information. At some point, additional mandated disclosure does not enhance transparency—it obscures it.

Further, disclosure costs and burdens disproportionately impact smaller reporting companies and emerging growth companies, which have fewer specialized personnel and less ability to absorb recurring compliance costs.⁹ Disclosure requirements that result in low-value or immaterial disclosure can therefore operate as a disproportionate cost of becoming or remaining a public company.¹⁰ In addition,

⁸ *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 448-49 (1976).

⁹ In addition, as the Commission has previously articulated, many smaller companies choose not to go public because the costs of being a public company are too high relative to the benefits. The ongoing expense of current compliance regimes can consume capital and management time that smaller companies need to grow their business.

¹⁰ Mark T. Uyeda, Comm’r, U.S. Sec. & Exch. Comm’n, Capital, Choice, and the Pursuit of Happiness: Remarks at The SEC Speaks in 2026 (Mar. 19, 2026), <https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-sec-speaks-031926> (“For too long, the disclosure framework for public companies was built around a one-size-fits-all model that imposed the same disclosure burdens on smaller companies as on large, seasoned conglomerates. Recalibrating the EGC and SRC thresholds is not

when investors and analysts must work harder to extract material information from disclosure, market efficiency is adversely affected.¹¹

The Society notes that there has been commentary suggesting that disclosure cost concerns may be less relevant in the age of artificial intelligence (“AI”). The Society does not believe that AI will meaningfully reduce the burdens associated with public company disclosure. While AI tools may assist in drafting, organizing, and synthesizing information, registrants must still devote substantial human time and judgment throughout the disclosure process, including in drafting and organizing content, identifying relevant information, evaluating materiality, confirming accuracy, coordinating across functions, and making disclosure decisions. Boards, auditors, and advisors must likewise continue to apply human judgment in reviewing, interpreting, and assessing disclosures, and investors and analysts remain responsible for exercising independent judgment to satisfy their fiduciary duties.

Moreover, advances in AI do not mitigate the legal and liability considerations that contribute to defensive over-disclosure. AI tools are equally available to the plaintiffs’ bar and make it faster and easier than ever to quickly review and collate corporate disclosures in support of demand letters and litigation for securities law claims. Importantly, the availability of such tools also does not alter the Commission’s materiality-based disclosure framework or justify the inclusion of immaterial or duplicative information, nor does it support expanding disclosure beyond what is material. AI may change the mechanics of preparing and processing disclosure, but it does not eliminate the underlying human, legal, and compliance costs associated with exercising judgment, nor does it reduce the negative effects of excessive or overly prescriptive disclosure requirements.

B. Quantification of Disclosure Costs

Importantly, the Commission does not need precise disclosure costs for each Regulation S-K Item to effect appropriate reforms. Its economic analysis guidance expressly contemplates both qualitative and quantitative costs and benefits, requires identifying a baseline and reasonable alternatives, and recognizes that certain effects may be difficult to quantify. The D.C. Circuit’s decisions in *Chamber of Commerce* and *Business Roundtable* underscore that, while the Commission must assess economic consequences and alternatives in a reasoned manner, it is not required to quantify every effect or demonstrate precise net benefits before adopting a better-tailored approach.¹² The relevant question is whether the Commission can reasonably conclude, based on available information and experience, that a more modernized Regulation S-K would preserve material information while reducing unnecessary burdens and associated costs. The Society believes the answer is yes.

To assist the Commission in its analysis of future Regulation S-K reform, the Society’s assessment of the current rules and our recommendations focus on whether a particular disclosure requirement elicits material information, protects investors, promotes fair, efficient, and orderly markets, and facilitates capital formation. We relied on surveys to inform our qualitative and quantitative analysis and collected data reflecting the time demands, burdens, and costs Regulation S-K imposes on registrants. We also drew on our members’ subject matter expertise regarding materiality and investor engagement regarding

a matter of lowering standards. It is a matter of ensuring that regulatory burdens correspond to the size, sophistication, and regulatory risk profile of each company, and that smaller issuers are not driven out of the public markets before they ever have an opportunity to grow into them.”).

¹¹ See Letter from Society for Corporate Governance to Paul Atkins, Chairman, SEC, re: Suggestions on Modifying and Scaling the Disclosure Obligations of Small- and Mid-Cap Public Companies (June 20, 2025), available at https://higherlogicdownload.s3.amazonaws.com/GOVERNANCEPROFESSIONALS/5d47927b-105a-4bc7-9aef-821536f3505b/UploadedImages/SMCC_Reporting_Thresholds_Scaled_Disclosure_Letter_June_20_2025_final_signed_.pdf.

¹² *Chamber of Commerce v. SEC*, 412 F.3d 133, 143-45 (D.C. Cir. 2005); *Business Roundtable v. SEC*, 647 F.3d 1144, 1148-56 (D.C. Cir. 2011); SEC, *Current Guidance on Economic Analysis in SEC Rulemakings* 2, 8-12 (Mar. 16, 2012).

specific disclosures. While there are inherent challenges to fully capturing all the tangible and intangible costs and benefits associated with particular Regulation S-K disclosure requirements and their reform,¹³ we believe the data we have collected provide meaningful insight into the overall costs and benefits of certain Regulation S-K disclosures. Regulation S-K should be evaluated not by the volume of disclosure it generates, but by whether it produces decision-useful information at a cost that is justified in the public company reporting system.

II. Executive Summary of Recommendations

Based on our assessment of the costs and utility of disclosures, the Society has prepared a number of recommendations to support reforms of Regulation S-K that better serve the Commission's goals of investor protection, efficiency, competition, and capital formation. The Society offers the following specific recommendations to modernize Regulation S-K, which we have categorized as follows:

1. Items for which the information disclosed generally *is* considered by survey respondents to be financially material and engaged with by investors, but for which disclosure compliance is somewhat or substantially burdensome to registrants. This category includes Items 101, 105, and 303. For these Items, the Society proposes retaining the Items with refinements to better serve investors' and registrants' interests.
2. Items for which the information disclosed generally *may be* considered by survey respondents to be financially material and engaged with by investors, but for which disclosure compliance is burdensome to registrants. This category includes Items 103, 403, 407, 601, and for some registrants, 305.¹⁴ For these Items, the Society proposes retaining the Items with more significant revisions that better serve investors' and registrants' interests.
3. Items for which the information disclosed generally *is not* considered by survey respondents to be financially material or engaged with by investors, and for which disclosure compliance is significantly burdensome to registrants. This category includes Items 102, 106, 201, 404, 405, 408, 701, 703 and specialized disclosure on conflict minerals, resource extraction, and mine safety. For these Items, the Society proposes substantially revising, eliminating, or consolidating certain components into other Regulation S-K Items to better serve investors' and registrants' interests.

III. Recommendations for Refinements of Items Considered by Survey Respondents to be Material:

A. Item 101 – Description of Business

Investors and registrants broadly consider Item 101 disclosures to be material. Among Society registrants surveyed,¹⁵ 42% rank Item 101(a) among the top four most financially material Regulation S-K disclosures, and 63% report engaging with investors frequently or occasionally on those disclosures. While Item 101 elicits disclosure that is material to an investor's understanding of a registrant's business and other disclosures, the Society recommends several refinements to clarify that immaterial disclosures are not required and to facilitate providing material information to investors.

¹³ SEC, *Current Guidance on Economic Analysis in SEC Rulemakings* 9-12 (Mar. 16, 2012).

¹⁴ Society members report that Item 305 may contain material information for certain industries, such as financial services and banking.

¹⁵ Society "registrants surveyed" refers to the number of Society member registrants who responded to the survey and answered the applicable question.

Focus disclosure on material aspects of the business. The Society recommends revising Item 101(c)(1) to be more expressly principles-based by clarifying that disclosure regarding the registrant’s business is required to include information only to the extent material to an understanding of the registrant’s business taken as a whole. At the same time, the Commission should make clear that registrants retain discretion to provide additional information that, while not material, may help an investor better understand the business.

Remove disclosure on discrete topics that are not material to all registrants. The Society recommends revising Item 101(c) to remove the emphasis placed on certain discrete topics that are not material to all registrants, including the lists of examples and qualifiers in the rule that steer disclosure toward particular topics. In its current form, Item 101(c)(2) effectively emphasizes certain aspects of business-government regulation and human capital management. The practical impact of including these topics is that a greater number of registrants provide responsive disclosures even when they are not material to their business, clouding investors’ ability to determine the registrants for which these topics are material. We recommend revising Item 101(c) to be more expressly principles-based, calling on all registrants to consider what is material to an understanding of their business. Finally, we also recommend revising Item 101(c) to incorporate the disclosure currently in Item 102 to the extent it provides information material to understanding the business. See Section V.A.

Eliminate emphasis on segment disclosure when immaterial. The Society recommends revising Item 101(c)(1) to eliminate its undue emphasis on segment-level disclosure as the organizing principle of the business section. As currently drafted, the rule directs registrants to describe their business “focusing upon the registrant’s dominant segment or each reportable segment,” which elevates segment structure above a more holistic understanding of the business. This formulation can obscure rather than clarify the registrant’s overall operations in Item 101. The rule would be better served by a principles-based approach that calls for segment disclosure *only* to the extent material to an understanding of the registrant’s business taken as a whole. In that regard, we recommend that the Commission reconsider the continued inclusion of Instructions 1 and 2 to Item 101(c). These provisions are complex and difficult to apply consistently, contributing to overreporting of segment information when describing the business. The Society notes that a more meaningful and appropriate discussion of segments to the extent material to understanding the business occurs in Item 303, Management’s Discussion and Analysis of Financial Condition and Results of Operations (“MD&A”).

Eliminate antiquated “available information” language. Item 101(e)’s “available information” requirements should be eliminated. SEC filings are now universally available through EDGAR, and most registrants also make them readily accessible through the investor relations sections of their websites, both of which are accessible by a quick internet search.

B. Item 105 – Risk Factors

Surveyed Society registrants almost universally report that they need to include risk factor disclosure that is adequate to protect their company from liability. Their liability concerns are twofold: (1) that the failure to identify a particular risk or to comprehensively describe its potential consequences will result in the risk factors failing to shield the registrant from liability under the Private Securities Litigation Reform Act, and (2) that alleged misstatements or omissions in the risk factors will themselves become a source of liability.¹⁶ Society registrants surveyed report that the strongest drivers for including immaterial

¹⁶ See, e.g., *Construction Laborers Pension Trust of Greater St. Louis, et al. v. Funko Inc., et al.*, No. 24-4909 (9th Cir. Feb. 4, 2026) (permitting claims to proceed with regard to risk factors that disclosed the future risks of failing to manage inventory when its business had already been adversely impacted by a failure to manage inventory); *In re Facebook, Inc. Sec. Litig.*, 87 F.4th 934, 949-50 (9th Cir. 2023) (holding that risk disclosure is materially misleading if it fails to disclose past instances of a risk

disclosure in Item 105 are: fear of litigation if risk factor language is reduced or eliminated (84%), desire to align with peer practices (82%), and concerns about omissions being second-guessed in hindsight (79%). Registrants fear liability if they omit risks disclosed by other registrants or if they fail to comprehensively catalog all past, present, and reasonably foreseeable risks and their potential impacts, even if such risks are not unique to their company or are less likely to materialize. The SEC has previously acknowledged that these concerns are common.¹⁷

To address these concerns, the Society recommends that the SEC focus on addressing registrants' legitimate concerns about litigation and enforcement actions by providing clear limiting principles on what risk factors are (and are not) required to address and/or a safe harbor from liability for reasonably tailored risk factor disclosures, which should have the effect of streamlining disclosures, rather than mandating predetermined prescriptive presentation formats or page limits.

Clarify risk factor disclosure requirements and adopt a safe harbor from liability for risk factor disclosures that satisfy those requirements. The Society recommends that the SEC clarify the standards for risk factor disclosures under Item 105 through an introductory note or instruction, and adopt a safe harbor for registrants from liability for risk factor disclosures that satisfy those standards (similar to the safe harbor set forth in Item 305(d) of Regulation S-K).¹⁸ The note or instruction should confirm that:

- Risk factors are illustrative examples, not an exhaustive list of all possible risks.
- Risk factor disclosures are forward-looking opinions and do not constitute express or implied assertions concerning any current or past fact (e.g., the use of the conditional tense in a risk factor does not imply any fact about the past).
- Any past risk examples provided are not required, are illustrative, and are not a complete record or prediction of future likelihood.
- Risk factors do not need to duplicate disclosures required under other regulatory rules.
- Widely known national or global events generally do not require specific disclosure.

These changes would facilitate registrants' tailoring Item 105 disclosure to their material risks, as Chairman Atkins recently noted¹⁹ and our survey results support—more than two-thirds of respondents

materializing, even if the past events present no known risk of harm).

¹⁷ See Modernization of Regulation S-K Items 101, 103, and 105, available at <https://www.sec.gov/files/rules/final/2020/33-10825.pdf> (noting “[c]ommenters on the Concept Release attributed the growing length of risk factor disclosure to the fear of litigation for failing to disclose risks if events turn negative”); Commissioner Hester M. Peirce, Speech, Statement at Open Meeting on Modernization of Regulation S-K 101, 103, and 105 (Aug. 26, 2020), available at <https://www.sec.gov/newsroom/speeches-statements/peirce-reg-s-k-2020-08-26> (describing the risk factor summary as “a bit of an experiment” and questioning whether the “penalty of having to prepare a summary [will] be sufficient to overcome the fear of litigation that pushes companies to disclose many pages of risks”); Commissioners Hester M. Peirce & Mark T. Uyeda, Statement, Statement Regarding Administrative Proceedings Against SolarWinds Customers (Oct. 22, 2024), available at <https://www.sec.gov/newsroom/speeches-statements/peirce-uyeda-statement-solarwinds-102224> (“Whether risk factors need to be updated because certain hypothetical risks have materialized is not always a straightforward matter, and the Commission should be judicious in bringing charges in this area. If the Commission does not exercise restraint, it could find a violation in every company’s risk disclosure because risk factors cover a wide range of topics and are inherently disclosure of hypothetical events. Aggressive enforcement by the Commission may cause companies to fill their risk disclosures with occurrences of immaterial events, for fear of being second-guessed by the Commission. Such a result would frustrate the Commission’s goal of preventing a lengthy risk factor section filled with immaterial disclosure.”).

¹⁸ This instruction or safe harbor would explicitly exclude protections from affirmative material misrepresentations.

¹⁹ Chairman Paul S. Atkins, Speech, Remarks at the Texas A&M School of Law Corporate Law Symposium (Feb. 17, 2026), available at <https://www.sec.gov/newsroom/speeches-statements/atkins-02-17-2026-remarks-texas-am-school-law-corporate->

report that their risk factors would shorten in length without affecting material information if a safe harbor were adopted. Additionally, 84% of Society members indicate their risk factors' length would be reduced if it were clear that risk factors only need to identify examples of risks and not set forth a comprehensive description of all potential risks and the ways in which they could impact the registrant. Further, by clarifying the purpose and scope of Item 105 disclosures, registrants and investors could more easily focus on other required disclosures to understand other material aspects of a registrant's operations and financial results. For example, material events and uncertainties known to a registrant's management that are reasonably likely to cause reported financial information not to be necessarily indicative of future operating results or of future financial condition would continue to be reported pursuant to Item 303 (MD&A), and registrants would not be required to also amend their risk factor disclosures to address those same events or uncertainties.²⁰

To supplement these changes, the following revisions are also recommended to further encourage registrants to tailor the risk factor discussion to their unique, material risks:

Reinforce concise risk effect descriptions. Item 105 should include an instruction encouraging registrants to avoid duplicative risk impact disclosure and to assume that reasonable investors will understand how disclosed risks could affect them. For example, the instruction could encourage registrants to provide a description at the beginning of their risk factors that lists in one place the ways any of the disclosed risks could negatively affect the registrant or its securities. This approach would reduce overall length by eliminating the need to restate the same potential consequences of each risk identified within each individual risk factor.

Eliminate the risk factor summary. In practice, the risk factor summary adds to registrants' reporting burdens and lengthens Item 105 disclosure with duplicative information that provides limited additional information to investors.

Encourage reasonable disclosure lengths. While the Society does not support strict page limits, the Commission could include non-binding guidance that most registrants should be able to describe their most material risks concisely and without unnecessary duplication. Most Society registrants surveyed (87%) do not support the adoption of strict page limits, and the Commission has rejected a page-limit proposal at least twice (in 2019 and 1997).²¹ A page limit could also curtail a registrant's ability to include disclosure that is informative for investors and protective for the registrant, and therefore would be inconsistent with the Commission's principles-based approach and the best interests of registrants and their investors.

Clarify general risk factors. Society registrants surveyed indicate that if the SEC adopted and maintained a list of general risk factors, nearly 76% of respondents are very or somewhat likely to utilize

[law-symposium](#) ("The Commission could adopt a rule stating that failure to disclose impacts from publicized events that are reasonably likely to affect most companies will not constitute material omissions for purposes of some or all of the federal securities laws' anti-fraud rules. Such a safe harbor could incentivize companies to include fewer generic risk factors by shielding them from liability for events related to those generic risks. After all, if companies are not compelled to catalogue nearly every conceivable contingency to guard against hindsight litigation, then they can focus on risks that are more distinctive to their business.").

²⁰ Commissioners Hester M. Peirce & Mark T. Uyeda, Statement, Statement Regarding Administrative Proceedings Against SolarWinds Customers (Oct. 22, 2024), available at <https://www.sec.gov/newsroom/speeches-statements/peirce-uyeda-statement-solarwinds-102224> ("To the extent that an event has occurred and has materially affected the company, it is generally required to be disclosed in another part of a filing [other than the risk factors]"); Brief of the Society for Corporate Governance as *Amicus Curiae* in Support of Petitioners at Section II (Aug. 2024), *Facebook, Inc. v. Amalgamated Bank*, 604 U.S. 4 (2024) (describing the areas of the Form 10-K beyond the risk factors "that require companies to describe the recent activities and condition of the company, including materialized risks" as Items 101, 103, 303, and 106 of Reg. S-K).

²¹ Modernization of Regulation S-K Items 101, 103, and 105, available at <https://www.sec.gov/files/rules/final/2020/33-10825.pdf> (discussing the SEC's rejection of a strict page limit in both 1997 and 2020).

it. To avoid the need for constant updating, Item 105 could provide a relatively high-level list of examples of the types of risks that typically impact most or all registrants. Examples could include the risks from: failures in internal controls or disclosure procedures; stock market volatility; global or national economic events, such as recessions or financial crises; global public health events; and geopolitical events, such as wars and armed conflicts. Outlining these risk categories could make it more feasible for registrants to pare back disclosure on those topics and instead focus only on the ways those events present materially different or significant risks for that registrant (e.g., it has: a history of material weaknesses in its internal controls; a low level of trading that makes it particularly susceptible to significant market swings; a business highly dependent on imported goods, and so tariffs have outsized impacts; or a majority of its business operates in or relies on the particular region(s) in conflict).²²

C. Item 303 – Management’s Discussion and Analysis of Financial Condition and Results of Operations

Society members recognize Item 303 as the single most financially material and investor-useful narrative disclosure in a registrant’s SEC reports. Ninety-three percent of responding registrants and 85% of responding law firms rank MD&A as a top four financially material item. Of Society registrants surveyed, 78% indicate they frequently or occasionally engage with investors regarding MD&A. At the same time, nearly 60% of Society registrants surveyed believe the resources required to gather, review, and approve MD&A disclosures are disproportionately burdensome to the level of financial materiality and investor interest. It is precisely because MD&A is so important that the following targeted refinements beyond those made in the 2020 amendments could meaningfully improve both the quality of material information conveyed to investors and the efficiency with which registrants prepare these disclosures. The Society’s recommendations seek to reduce duplication, focus disclosure on material trends and performance drivers, and give registrants greater flexibility to present their business narratives in a manner that is genuinely useful and informative.

Reinforce that MD&A disclosure is principles-based. The Society recommends that the Commission solidify the traditional, principles-based approach to MD&A that empowers registrants to focus their narrative on the matters most material to their business. While the 2020 amendments sought to address this with targeted changes, frequent staff comments asking for granular detail on the drivers of individual changes have led to MD&A disclosures that frequently give a dry line-by-line recitation of changes in each financial statement line item rather than providing an insightful look into management’s views. The Society recommends explicit guidance that discussing immaterial line items is not required.

The core principle underlying MD&A—providing investors with management’s perspective on the company’s financial condition, results of operations, and known trends and uncertainties, as articulated in the objectives section added by the 2020 amendments—should remain the organizing framework. However, remaining prescriptive sub-items that require disclosing information that is not material to the registrant’s business and are duplicative of information disclosed elsewhere in the filing should be made expressly subject to a materiality qualifier. If the Commission retains a list of suggested discussion topics, it should make clear that registrants need only address those topics that are material to their particular business.

²² We acknowledge that the SEC chose not to take this approach when adopting the 2020 amendments to Item 105. Modernization of Regulation S-K Items 101, 103, and 105, *available at* <https://www.sec.gov/files/rules/final/2020/33-10825.pdf> (“[W]e do not believe that additional clarification is necessary regarding the types of risks that would constitute a general risk factor, as suggested by some commenters. Because the existing rule requires registrants to explain how a risk affects them, we believe registrants should be well-positioned to determine the particular nature of a risk.”). The many generic, boilerplate risk factor disclosures made by companies since those amendments were adopted suggest that such a clarification could have been helpful.

Eliminate duplication within the periodic report. Society members consistently identify duplication across sections of the periodic report as one of the most burdensome aspects of MD&A preparation. Despite the 2020 amendments eliminating certain duplicative requirements (such as the contractual obligations table), substantially similar information continues to appear across multiple sections of the periodic reports, including the business description (Item 101), legal proceedings (Item 103), risk factors (Item 105), the financial statements and related footnotes, and MD&A itself.

While the Society's members recognize that each of these sections serves a distinct purpose, coordinating substantially overlapping disclosure across these sections is among the most time-consuming aspects of annual and quarterly report preparation. This requires extensive involvement from internal disclosure teams, financial reporting staff, business unit leaders, and outside counsel, and the risk of inadvertent inconsistencies across sections adds an additional layer of review and compliance cost.

Similarly, Item 303(b)(3) requires disclosure of critical accounting estimates—an area that substantially overlaps with the financial statement footnote disclosures required by U.S. generally accepted accounting principles. Society members report that this disclosure is often a near repetition of footnote content, repackaged in narrative form to satisfy the Item 303 requirement. Eliminating this Item or permitting cross-reference to the financial statements would reduce preparation burdens and avoid the interpretive tension that arises from presenting what is essentially the same information under two different frameworks.

The Society recommends that the Commission take three complementary steps to address the pervasive duplication described above:

- First, expressly permit registrants to use cross-references across sections of the periodic report to avoid repeating substantially similar disclosure. Some cross-referencing is currently permitted, and the 2020 amendments added Instruction 3 to Item 303(b) to emphasize that MD&A should supplement rather than duplicate disclosure already provided in the filing. However, an express, broad permission would give registrants the confidence to streamline their filings without concern that omitting information in one section will be treated as a material omission even when the information is clearly presented elsewhere.
- Second, work to allocate specific disclosure topics to specific sections of the periodic report, thereby reducing the instances in which multiple Items require disclosure of the same or similar information. The Society recognizes that this is a broader, long-term undertaking, but believes it is essential to the Commission's stated goal of streamlining Regulation S-K. In the interim, expressly permitting cross-references would provide meaningful near-term relief. The Society also encourages the Commission to coordinate with accounting standard setters to align the requirements of MD&A with the financial statement footnote requirements, further reducing unnecessary duplication.
- Third, synchronize revisions to Regulation S-K with a review of Regulation S-X to reduce inconsistent or misaligned disclosure requirements, eliminate unnecessary duplication, and enhance usability of disclosures²³.

²³ The Society recommends that there be a more general harmonization of the Regulation S-K and Regulation S-X requirements.

Require year-to-date interim reporting requirements only when they provide additive material information. Item 303(c) requires management to discuss material changes in results of operations with respect to year-to-date periods. For registrants filing quarterly reports, this often produces a second, substantially overlapping discussion of the same trends and variances already covered in the quarterly comparison. While year-to-date analysis may be material for certain businesses with significant seasonality, for many registrants it adds length to an already extensive section without adding meaningfully new or material information.

The Society recommends that the year-to-date discussion in interim reports be expressly optional, permitting registrants to include year-to-date analysis when it provides material information not already conveyed in the quarterly discussion (e.g., for businesses with significant seasonality), but not requiring it as a default. This revision would reduce registrant burden for the many registrants for which the year-to-date discussion is largely repetitive of the quarterly discussion, while preserving the ability of registrants to provide year-to-date information when it is material to their business.

Expressly allow registrants to focus on material updates since the last periodic report. Without express permission to omit background information provided in the Form 10-K or to remove prior interim period disclosures since the Form 10-K was filed, MD&A sections tend to grow in length from period to period as registrants add new discussion without removing prior period content that is not relevant to the current quarter.

The Society recommends revising Item 303 to make clear that, in interim period filings, registrants may provide MD&A disclosure in the form of material updates relevant to that quarter without repeating background discussion already included in the most current Form 10-K. Where the prior annual report has described the underlying business, known trends, key drivers, liquidity framework, and other baseline matters, requiring registrants to restate that same information in quarterly filings drives duplicative, long, and boilerplate disclosure. Registrants should be expressly empowered to focus interim MD&A on material changes since the last annual report or prior interim disclosure, including developments in results of operations, liquidity, capital resources, and known trends and uncertainties, while incorporating prior background or foundational disclosure by reference or assuming that investors have access to registrants' prior periodic reports through EDGAR or the registrant's website. This approach would better align interim MD&A with its core purpose of explaining what has changed and why it matters, reduce repetitive disclosure that obscures genuinely important developments, and improve readability for investors without depriving them of material information.

Consider reforms so that fear of litigation does not hamper good faith, informative disclosures. One of the most significant challenges Society members identify is that fear of litigation risk shapes disclosure decisions. MD&A expressly calls for forward-looking discussion of known trends and uncertainties.²⁴ The concept of "known uncertainties" can be difficult to apply in practice, particularly when assessing forward-looking developments, and these statements can form the basis of securities fraud claims if subsequent events develop differently than anticipated, whether due to a failure to identify a known trend or uncertainty, or because disclosed trends do not materialize as anticipated.

²⁴ Item 303(a) states that MD&A "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." Item 303(b) contains requirements to identify "known trends or any known demands, commitments, events or uncertainties that will result in or that are reasonably likely to result in the registrant's liquidity increasing or decreasing in any material way" and "[d]escribe any known material trends, favorable or unfavorable, in the registrant's capital resources."

The Society encourages the Commission to consider structural reforms that could reduce the chilling effect of litigation risk on MD&A disclosure. For example, the Commission could provide clearer guidance on the application of the Private Securities Litigation Reform Act's safe harbor for forward-looking statements in the MD&A context. Alternatively, the Commission could revise Item 303 to suggest, rather than mandate, forward-looking disclosures.

IV. Recommendations for More Significant Revisions to Items that May Be Considered Material by Survey Respondents:

A. Item 103 – Legal Proceedings

The Society recognizes that information regarding certain legal proceedings can be financially material and a point of investor engagement. Of Society registrants surveyed, 29% report occasional investor engagement and 2% report frequent investor engagement on litigation matters, while 69% report engaging with investors on litigation rarely or never. However, current Item 103 disclosure is frequently duplicative of other disclosures, forces disclosure that is premature and therefore potentially confusing or misleading and overemphasizes certain categories of legal proceedings such as environmental litigation that may be immaterial to registrants. Society members report that the current framework requires significant internal and external resources, particularly in assessing early-stage matters and applying separate, immaterial standards for environmental proceedings. Expressly codifying a simplified, principles-based materiality standard across litigation matters would reduce registrants' burden, improve consistency, and provide more predictable disclosure obligations, while reducing the risk that the disclosure itself confuses investors or becomes a catalyst for litigation. This approach would also better highlight material information for investors. The Society offers the following specific recommendations.

Require disclosures when proceedings have been filed or are known to be formally commenced.

Item 103(a)'s requirement to disclose legal proceedings that are "pending" or "known to be contemplated" by governmental authorities requires registrants to speculate about whether potential litigants will follow through with suits they have threatened verbally or in a demand letter or whether preliminary governmental inquiries will advance to a formal investigation. This speculation can result in premature disclosure of matters that may never advance or become material. In fact, 59% of Society registrants surveyed report disclosing immaterial matters under Item 103 due to fear of being second-guessed. Society members also report that some plaintiffs (or their attorneys) are aware of this disclosure threshold and opportunistically attempt to use it to force settling meritless claims. The Society recommends revising Item 103 to only require disclosing material legal proceedings that have actually been filed or are known to be formally commenced and eliminate the "known to be contemplated" standard in Item 103(a). This formulation would provide investors with information at a stage where meaningful assessment is possible, while reducing speculative and potentially confusing or misleading disclosure regarding matters that may never materialize.

Eliminate the separate, fixed threshold for environmental matters. The separate disclosure threshold for environmental proceedings under Item 103(c)(3) is difficult to apply and can inappropriately emphasize environmental litigation when that category of proceedings may otherwise be immaterial to a registrant's business. Of Society registrants surveyed, 57% report that they have been required to include immaterial disclosures under this Item. The Society recommends eliminating the separate disclosure thresholds under Item 103(c)(3)(ii)-(iii) for environmental proceedings in favor of the same principles-based materiality standard that governs disclosure of all other legal proceedings. A unified standard would better align disclosure with investor needs by focusing attention on proceedings that are material to an understanding of the registrant's financial condition and operations regardless of the cause of litigation.

Revise Item 103 to not give rise, itself, to litigation risk. Society members have expressed significant concern about requirements to include legal demand amounts, settlement amounts, or other uncertain quantitative exposure data. This information is inherently speculative and potentially misleading as it pertains to a registrant's potential liability, especially early in legal proceedings. Additionally, Society members note that such disclosures can give current litigants leverage and attract additional litigation, including strike suits.

The Society recommends the Commission revise Item 103 to clarify that a registrant is not required to disclose a legal proceeding at its inception where, based on the facts then known and a good-faith application of the traditional federal securities law materiality standard, the registrant reasonably concludes that the matter is not material. At the outset of a proceeding, the operative facts, legal theories, potential exposure, procedural posture, and likelihood of adverse outcome are often uncertain, and a rule that effectively compels early disclosure in the face of that uncertainty encourages protective over-disclosure rather than decision-useful information. The Item should further clarify that a registrant may determine, as developments occur, that a previously undisclosed matter has become material, and may commence disclosure at that time without implying that the earlier omission was improper. Express clarification of this kind would better align Item 103 with core materiality principles, reduce immaterial and potentially misleading disclosure, and promote candid, ongoing reassessment as a proceeding evolves.²⁵

B. Item 403 – Security Ownership of Certain Beneficial Owners and Management

Of Society registrants surveyed, 85% report that the effort to gather, review, and approve Item 403 disclosures is burdensome given the level of investor engagement and financial materiality of the disclosures.²⁶ The Society recommends the following revisions to modernize beneficial ownership disclosure and realign it with how investors actually access and use ownership information today.

Revise Item 403(a) to identify significant shareholders by name only or eliminate significant shareholder reporting altogether. Requiring registrants to identify and quantify 5% beneficial owners is duplicative of the Section 13 reporting regime, which provides ongoing, event-driven beneficial ownership reporting, including distinctions between active and passive investors and, where applicable, disclosure of investment intent. These filings are publicly available to investors and registrants simultaneously on EDGAR. In addition, transactional disclosure requirements, such as those applicable to mergers, tender offers, and significant equity issuances, provide enhanced ownership and control information at moments when investor decision-making risk is highest. Having registrants repeat this information under Item 403 adds little and requires registrants to assume unnecessary risk for inaccurate information derived from third-party filings. That is especially true today, when ownership of public companies is concentrated to a significant degree in large institutional investors holding passive index or other broadly diversified funds.

The rule's usefulness is also impacted by a timing mismatch: Item 403 requires disclosure as of the most recent practicable date known to the registrant, but Schedule 13G amendments to initial ownership reporting are now due 45 days after the calendar quarter in which the beneficial owner *determines a material change in ownership has occurred* rather than 45 days after the calendar year in which any

²⁵ The Society additionally notes that Accounting Standards Codification 450 provides guidance regarding litigation disclosures, including when litigation, and what related amounts, must be disclosed in the commitments and contingencies note in a registrant's periodic reports on Form 10-K. Similarly, Rule 10-01 of Regulation S-X governs when material litigation contingencies and related amounts must be disclosed in interim financial statements included in a Form 10-Q.

²⁶ Item 403 requires a public company to disclose in tabular form information about the beneficial ownership of its equity securities by directors, executive officers, director nominees, significant stockholders (generally those owning more than 5%), and management as a group, using the SEC's beneficial ownership standard set forth in Rule 13d-3.

change occurred. This formulation presents two issues for registrants. First, because Schedule 13G filers are required to amend only after the end of a calendar quarter in which a material change occurred, registrants do not have the ability to rely on the most recent annual 13G filing. Instead, registrants are not likely to have public information that a large institutional investor's position has changed until after the investor determines that the change was material and the investor's quarter closes, which can leave registrants including known stale institutional ownership information in their own filing. Second, even in those circumstances in which investors do file a 13G, the due date is 45 days after the investors' quarter-end, which may be incongruous with the registrants' filing schedules. This practically results in registrants being compelled to file information that they know is either from a stale 13G filing (which may now be more than a year old), or more current information from the registrants' shareholder services department that may be inaccurate or incomplete.

To remedy these issues, the Society recommends modifying Item 403(a) to (i) identify significant shareholders by name only, or (ii) eliminate significant shareholders (who are not insiders) from Item 403(a) altogether, given that the information is accessible to investors and the registrant at the same time – when the Form 13G is filed by the reporting holder. If the Commission determines to keep this requirement, the Society recommends the rule include a safe harbor for information registrants derive in good faith from the most recent Form 13G or 13D filings or from registrants' more recent records.

Revise Item 403(b) to permit registrants to provide information in a tabular format as of the end of the last fiscal year rather than “the most recent practicable date” for disclosures in the annual report and proxy statement. “The most recent practicable date” is ambiguous, and registrants have historically received comment letters suggesting it may mean something more current than the end of the prior fiscal year. Society members report that gathering, compiling, and drafting information required by 403(b) is a time-consuming and lengthy process, requiring interdependencies with third parties and multiple departments across a registrant. For example, to gather an officer's current security ownership, it is common to engage with *separate* administrators for all of the accounts in which the officer may hold stock or stock interests, including 401(k) plans, individual retirement accounts, deferred compensation plans, the registrant's captive broker, private brokerage accounts, employee stock purchase plans, equity compensation plans, and shareholder services, particularly when those accounts are enrolled in a dividend reinvestment program or are in 401(k) accounts with auto-investment. Practically, there are time intervals between sending requests for information to separate administrators, receiving reports back, validating those reports, compiling those reports into a unified ownership number, drafting the disclosure, and completing a multi-party disclosure review process. Often these inquiries are done in conjunction with year-end inquiries of these parties in connection with preparing the registrant's Form 10-K. Given that context and the lengthy timelines required for preparing the disclosure, the Commission should clarify that the end of the prior fiscal year is sufficiently “recent” for providing 403(b) disclosures in the annual report or a proxy statement for a regularly scheduled shareholder meeting. This approach preserves the relevance of the information provided to investors while accounting for the practicalities of producing the disclosures.²⁷

Revise Item 403(b) to give registrants the flexibility to include information relevant to an insider's total stock holdings in supplemental columns of the table to more closely align this table with the Section 16 reporting regime. Society registrants note that current Item 403(b) disclosure requirements result in unnecessary burdens, the inclusion of immaterial information, and the underreporting of beneficial owners' true economic interests by relying on the beneficial ownership test in Rule 13d-1. Of Society registrants surveyed, 81% report immaterial disclosures are generated by narrative footnotes describing indirect ownership or attribution that add complexity without investor value. Society members

²⁷ The Society further notes that real-time disclosures regarding volitional changes in director and named executive officer ownership changes are transparently available to investors in Section 16 filings.

also report that the tabular presentation is confusing to investors because it is inconsistent with ownership information available to investors in Section 16 filings and often omits a significant number of shares owned but not exercisable within 60 days (such as those located in deferred compensation plans or other retirement accounts). Giving registrants the flexibility to include in the table information relevant to insiders' total holdings such as all direct and indirect holdings, or synchronizing the presentation of information in this table with the registrants' Section 16 filings, rather than relying on the 13d-1 beneficial ownership test, would provide investors with a more accurate picture of insiders' economic interest in the registrant.

Revise Item 403(b) to eliminate group director and executive officer disclosure. Item 403(b)'s requirement to disclose the total number of shares owned by all current directors, nominees, and executive officers as a group is time-consuming for registrants to prepare, does not add material information, and does not meaningfully improve investor understanding. If the Commission determines to keep Item 403(b), the Society recommends that this group presentation be included only if the directors and officers as a group own 5% or more of the registrant.

Revise Item 403(b) to permit omitting information for directors and executive officers who are no longer in their role on the date of the filing. Insiders' cooperation is necessary for registrants to accurately obtain information regarding their security ownership, both in the form of completing questionnaires and obtaining permission to speak with certain stock account administrators that may be controlled by the insider. Registrants should not be burdened by pursuing security ownership information from directors and officers who have departed prior to the date of the relevant filing containing the information, as those individuals have no obligation to cooperate and their share ownership does not provide meaningful information to investors. If the Commission determines to keep this requirement, the Society recommends providing registrants with a safe harbor for registrants relying in good faith on the latest Section 16 filing or the registrant's latest internal records.

Integrate interpretive guidance regarding certain matters into Item 403. Reliance on interpretive guidance creates significant uncertainty and inefficiency under Item 403, particularly Corporate Finance Interpretations that are not reflected in the rule itself. As a result, registrants frequently provide extensive footnotes to address expectations relating to attribution, shared voting or dispositive power, or the treatment of indirect ownership interests. Revising Item 403 to expressly incorporate key interpretive concepts into the rule and tabular disclosure framework would reduce ambiguity, promote consistency across filings, and improve comparability for investors.

C. Item 407 – Corporate Governance

Both registrants and investors view certain corporate governance matters as material. Of Society registrants surveyed, 63% report frequent or occasional investor engagement. However, 76% of Society registrants surveyed report that efforts associated with gathering, reviewing, and approving disclosures required by Item 407 are unduly burdensome given the level of financial materiality and investor interest. Aspects of Item 407 cited as most often resulting in immaterial disclosures include duplication of materials available on the registrant's website (97%), number of meetings held by the Board and committees (74%), and committee composition (56%). While Item 407 elicits disclosure that is material to investors, the Society recommends several refinements to reduce disclosure volume, eliminate redundancy, and provide investors with the most current relevant information.

Eliminate the requirement to apply committee-specific independence standards to the full board when the registrant does not maintain separately designated audit, nominating, or compensation committees. Where the board performs audit, nominating, or compensation committee functions as a full board, director independence under the applicable exchange standards should be sufficient. Requiring

registrants to apply committee standards to a governance structure that does not exist is confusing, redundant, and a recurring source of interpretive difficulty. Society members and their outside counsel further note this particular requirement creates meaningful interpretive difficulty in practice, as it compels them to mechanically apply a regulatory framework that was designed for a governance structure their boards do not use.

Eliminate the formal diversity policy disclosure requirement. The Society supports retaining the requirement to describe whether, and if so how, the nominating committee or board considers diversity (as defined by the registrant) in identifying director nominees, but eliminating the separate requirement to disclose whether the registrant has a formal diversity policy, how that policy is implemented, and how its effectiveness is assessed in Item 407(c)(2)(vi). The second layer often duplicates the underlying discussion of how diversity is considered, can lead to formalistic “policy” and process descriptions, and encourage defensive drafting.

Limit the role of executive officers in executive compensation to the CD&A. Item 407(e)(3)(ii) disclosure regarding the role of executive officers in determining or recommending executive compensation should be eliminated because it substantially overlaps with the Compensation Discussion and Analysis required by Item 402(b)(2)(xv). Investors already look to the CD&A as the principal explanation of compensation decision-making and the source for useful context. Requiring the same information to appear again elsewhere in the same filing adds repetition, not clarity.²⁸

Permit Items 407(c)-(e) to be satisfied by cross-reference or hyperlink for the most current information. The Society recommends the Commission permit registrants to comply with Item 407(c) through (e) by providing a clear cross-reference or hyperlink to applicable committee charters or other publicly available governance documents, without formal incorporation by reference.²⁹ These narrative disclosures were cited by 96% of Society registrants surveyed as most often resulting in immaterial disclosures. A streamlined cross-reference mechanism would direct investors to the most current authoritative source while reducing duplication and disclosure volume.

Reassess scaled disclosures under Item 407(g). The Society recommends reassessing Item 407(g) to determine whether additional scaled disclosure or exemptions are appropriate for smaller reporting companies and emerging growth companies. The current accommodations are limited. Additional scaling in appropriate areas would better reflect the differences in size, complexity, and resources between those registrants and larger registrants and would align Item 407 more closely with the broader

²⁸ This recommendation is consistent with the original design of the CD&A framework. When the Commission adopted the current executive compensation disclosure regime in its 2006 rulemaking, the CD&A was conceived as the comprehensive, integrated narrative for understanding all material aspects of compensation decision-making, including the role of management in that process. See Proposed Rule: Executive Compensation and Related Party Disclosure, Release No. 33-8655; File No. S7-03-06 (Jan. 27, 2006), available at <https://www.sec.gov/files/rules/proposed/33-8655.pdf>; see also Final Rule: Executive Compensation and Related Party Disclosure, Release No. 33-8732A; File No. S7-03-06 (Sep. 8, 2006), available at <https://www.sec.gov/files/rules/final/2006/33-8732afr.pdf>. The Society notes that it previously recommended that this information be moved from the CD&A to Item 407(e)(3)(ii) in its comment letter on Item 402. Given the ability to comment on potential revisions of Regulation S-K as a whole, on further reflection, the Society believes the proper location for this disclosure is in the CD&A.

²⁹ The Society does not propose that this mechanism constitute formal “incorporation by reference” within the technical meaning of that term under the Securities Act of 1933, as amended (the “Securities Act”) or the Securities Exchange Act of 1934, as amended (the “Exchange Act”) rules, which carries distinct legal consequences including with respect to liability. Rather, the Society recommends a streamlined cross-reference or hyperlink mechanism that satisfies the informational purpose of the Item 407 narrative requirements without importing the legal consequences of formal incorporation by reference—which would better align with the Commission’s treatment of hyperlinked disclosures under, for example, Item 406(c)(2) and Item 407(b)(2).

scaling approach in Regulation S-K.³⁰ This approach would reduce disproportionate compliance costs and allow smaller registrants to allocate resources more efficiently.

D. Item 601 – Exhibits

Item 601 currently requires registrants to disclose exhibits in a manner that meaningfully increases the costs of preparing filings and add unnecessary length to periodic reports, while providing little material information to investors. Of Society registrants surveyed, 92% report rarely or never engaging with investors on Item 601 materials.

In addition to tangible costs, preparing exhibits requires substantial internal and external stakeholder time and resources: over 80% of Society registrants surveyed report that accounting/finance and internal legal must review, prepare, or sign off on exhibits, 77% report outside counsel must review exhibits, and approximately 70% report the process requires full board and/or disclosure committee review. Approximately 10% of registrants surveyed consider exhibits' preparation time to be reasonable compared to the exhibits' financial materiality or investor interest, while over 90% reported that the processes and practices to support exhibit filings were burdensome to the business. Outside counsel confirm this burden, with 77% reporting that they frequently advise clients on exhibit disclosures, and 78% perceiving the process to be a frequent or occasional burden for clients.

To decrease the burden and costs to registrants and limit exhibits to only those that provide material information, the Society recommends the following reforms.

Clarify “ordinary course” exception to material contract exhibit filing requirements. Of Society registrants surveyed, 94% report that prescriptive rule requirements or categories most often drove immaterial exhibit filings, and 52% and 40%, respectively, considered ordinary course contracts and non-substantive agreements to frequently be immaterial. We therefore recommend the Commission revise Item 601(b)(10) to better ensure that registrants do not need to file ordinary course contracts.

Similarly, we recommend the Commission remove the presumption that executive officer or director compensation contracts or arrangements are material under Items 601(b)(10)(iii)(A) and (B). Of Society registrants surveyed, 73% report executive compensation agreements are often immaterial and 52% report executive compensation plan exhibits are unnecessary because their terms are described narratively elsewhere. Other areas of Regulation S-K already require that registrants provide certain key details about their director and executive compensation programs. The granular details of every compensation contract or arrangement do not meaningfully add to the total mix of information. Instead, registrants should be permitted to apply the same materiality standard applicable to other exhibits and to assess on a case-by-case basis which agreements would provide material information to investors. A full 94% of Society registrants surveyed report that eliminating executive compensation agreements and plans—the material terms of which are otherwise described in narrative disclosure—would reduce exhibits without reducing material information.

Eliminate certain exhibit requirements. We recommend removing the following exhibit requirements:

- Description of Securities Exhibit – Item 601(b)(4)(vi). This exhibit is unnecessary, as it duplicates information that is readily available to investors in a number of other documents, including the certificate of incorporation and bylaws, registration statements, periodic reports, and proxy statements.

³⁰ See Items 101, 303, 305, 402 and 404.

- Clawback Policy Exhibit – Item 601(b)(97). This exhibit’s contents are established by applicable stock exchange standards, resulting in substantially similar content across public companies’ policies and no additional material disclosures to investors. The Society additionally notes that, to the extent relevant to registrants compensation programs, registrants describe their approach to clawback of executive compensation in their CD&As.
- Subsidiary Structure Exhibit – Item 601(b)(21). This exhibit does not provide investors with meaningful or material information and requires a disproportionate amount of time to prepare.
- Mine Safety Disclosure Exhibit – Item 601(b)(95). This highly specialized exhibit applies to a small group of public companies and should be removed and replaced with a standalone Form SD filing requirement.
- Insider Trading Policy Exhibit – Item 601(b)(19). See our detailed discussion in Section V.F.

In addition, we recommend that the Commission simplify or eliminate the fee calculation table in Item 601(b)(107). This exhibit can be complex to prepare and is, based on the experience of members, prone to errors and filing rejections and delays due to that complexity.

Eliminate or shorten exhibit lookback for newly reporting registrants. We recommend eliminating the two-year lookback period for newly reporting registrants in Item 601(b)(10)(i)(A). This change would reduce the reporting burden associated with public company registration and enable registrants to focus on the exhibits material to the business as of filing. In the alternative, the lookback should go back only one year rather than two years.

Clarify when legacy transaction agreements can be removed. The Society recommends clarifying that agreements included in a Form 10-K under Item 601(b)(2) relating to a plan of acquisition, reorganization, arrangement, liquidation, or succession can be removed from the exhibit list after a reasonable period of time. The Item does not currently address when such agreements can be removed. As a result, registrants have retained legacy merger agreements for years after the transaction is completed, adding outdated information to an already lengthy exhibit list. Of Society registrants surveyed, 70% of members report inoperative or legacy agreements to be among the most commonly immaterial in exhibit lists.

No Form S-3 eligibility loss due to untimely filed agreements under Item 601(b)(10)(iii). Instruction I.A.3(b) to Form S-3 should be amended to include Item 601(b)(10)(iii) among the enumerated exceptions, such that a registrant’s failure to timely file management contracts or compensatory plans, contracts, or arrangements during the preceding twelve calendar months would not result in disqualification from the use of Form S-3. Under this approach, registrants would remain subject to liability under the Securities Act of 1933 (“Securities Act”) for noncompliance with applicable disclosure requirements but would not incur the additional consequence of losing short-form registration eligibility solely as a result of such an omission, which can easily be due to administrative error. This change would align the treatment of Item 601(b)(10)(iii) with other disclosure items already excepted under Instruction I.A.3(b), reflecting a more calibrated approach to Form S-3 eligibility.

Modify treatment of supplemental materials. In connection with Items 601(b)(2)(ii) and 601(b)(10)(iv), the Commission should revise its policy under Rule 418 of the Securities Act and Rule 12b-4 of the Exchange Act regarding the treatment of supplemental materials submitted to the Staff. Specifically, rather than requiring the registrant to submit a request for such materials to be returned to the registrant, we suggest that the default treatment be that the materials are destroyed, or if requested by the registrant, returned to the registrant. This modification would better align how supplemental materials are

handled with modern information management practices and the confidential nature of the materials typically submitted under these provisions.

Permit post-filing redaction of inadvertently disclosed confidential information. Some Society members have shared informally that it can take significant time to determine and apply confidentiality redactions.³¹ Item 601 should be amended to permit post-filing redaction of confidential information that is inadvertently disclosed in filed exhibits if such information could have been redacted pursuant to Item 601(a)(6), Item 601(b)(2)(ii), or Item 601(b)(10)(iv). Additionally, we suggest that parallel provisions be incorporated into Item 601 to allow registrants, in limited circumstances, to delete from EDGAR any exhibits that were filed mistakenly or without the registrant's authorization. This approach would be consistent with the principles set forth in Rule 15(a) of Regulation S-T, which grant the Commission authority to prevent unauthorized EDGAR submissions and to take appropriate steps to promote the reliability and integrity of EDGAR submissions. It would also reduce the burden on smaller or newly reporting companies who may, as early filers, be more likely to experience these mistakes. The Commission may set clear boundaries around this process, such as requiring the registrant provide a certification that the disclosure was inadvertent or unauthorized, limiting the number of times a registrant can use the process annually, and requiring the request for redaction be made promptly and in any event within a limited number of business days after the exhibit was filed.

E. Item 305 – Quantitative and Qualitative Disclosures About Market Risk

Item 305 requires registrants, regardless of industry or risk profile, to provide detailed quantitative information about material market risk using one of three prescribed methods, along with qualitative disclosure about market risk exposures and how they are managed. Although General Instruction 5.A includes a materiality threshold, registrants often feel under pressure to provide Item 305 disclosures every year regardless of whether it is material. Such pressure is the result of a variety of factors including, for example, peer company disclosure practices and fear of litigation.

The result is disclosures that most registrants view as immaterial and burdensome to prepare, with the exception of certain industries (e.g., the financial services or banking industries) where disclosures related to market risk are more likely significant. According to the Society surveys, approximately 73% of in-house counsel respondents report rarely or never engaging with investors on Item 305. The information is also considered duplicative as much of what Item 305 covers already appears in Item 105 (Risk Factors), Item 303 (MD&A), and the financial statements. Moreover, according to the Society surveys, if Item 305 disclosure were incorporated into another section, 90% of respondents report that their Item 305 disclosure would decline without losing financially material or investor-relevant information.

Rather than maintaining a separate, industry-agnostic and broadly applicable disclosure requirement, the Society recommends the Commission eliminate Item 305 and incorporate certain of its requirements in Item 303 for disclosure when material. Society registrants for whom Item 305 is material emphasize the importance of retaining the Item 305(d) safe harbor, if moved to Item 303. This structure would right-size the disclosure by continuing to require it, but only for those registrants that face material impacts from these risks. Item 303 could include an instruction that refers registrants to industry guidance, if any, to support companies' assessments as to materiality.

³¹ The pressure to quickly prepare redactions for material contracts has also increased following the SEC's guidance that "[r]egistrants are encouraged, as a best practice, to file [material contracts] as an exhibit to the Item 1.01 Form 8-K," noting that waiting for the next periodic report should be unnecessary given advances in electronic filing and the ability to redact documents "without submitting a confidential treatment request." See Exchange Act Form 8-K, Corporation Finance Interpretations, Question 102.05

V. Items Considered Immaterial by Survey Respondents that Require Substantial Revision, Elimination, or Consolidation Into Other Regulation S-K Items

A. Item 102 – Description of Property

Item 102 disclosures vary widely across industries. For some industries and businesses, physical properties, whether owned or leased, are material to an understanding of operations. For others, physical properties have little to no material effect on the business, including registrants that maintain small physical footprints through leasehold or other temporary interests that can easily be replaced, or that are technology-forward with little in the way of real estate holdings or occupancy.

Society registrants surveyed report including immaterial information in Item 102 disclosures due to disclosure of properties that are not material to the business (68%), boilerplate disclosure (68%), and ambiguity in applying the standard for “principal” or “materially important” physical properties (47%). Over 50% of respondents anticipate that their disclosure volume would decrease if the Item was relocated to the general business description required by Item 101(c) if material to the business.

Eliminate Item 102 and incorporate the physical property disclosures to Item 101(c) if material to the business. Including physical properties in the expansive list of topics for registrants to consider in Item 101(c) in the description of the business is consistent with the nature of that list of topics. We believe that for registrants for which physical properties are material, this change would also allow for greater consolidation and logical flow for the narrative discussion in the description of business section of reports, increasing readability for investors. For registrants without material physical properties, applying a clear materiality standard and removing the standalone disclosure requirement also removes a potentially inaccurate overemphasis on the importance of physical properties.

We also recommend revising the rule once it’s relocated to Item 101(c), consistent with the general approach recommended for Item 101(c) above. Rather than calling for disclosure of location and character of property, which can provide information that has very little practical meaning for investors, we recommend that disclosure focus on information regarding physical properties that is material to investors. To accomplish this approach, we recommend removing the list of potential topics of disclosure in the text of the rule, while maintaining the current instructions to Item 102 and relocating those instructions to Item 101.

B. Item 106 – Cybersecurity

Eliminate Item 106 and incorporate material disclosures in other relevant Items. The Society recommends eliminating Item 106 because it unduly burdens registrants without benefit to investors. Where cybersecurity is material, registrants are already required to provide relevant information in Item 101 (Business), Item 105 (Risk Factors), Item 303 (MD&A), and Item 407 (Corporate Governance).³² Each of these sections permits registrants to discuss cybersecurity in a manner directly tied to their business. Requiring registrants to provide prescribed disclosures under Item 106 has paradoxically made

³² As suggested by [CF Disclosure Guidance: Topic No. 2](#) (since withdrawn) and the Commission’s interpretive release issued in February 2018, [Release No. 34-82746](#), this disclosure requirement is duplicative of disclosure already required by Item 101 (under which disclosure of cybersecurity incidents or risks that materially affect a company’s products, services, relationships with customers or suppliers, or competitive conditions is already required), Item 303 (under which disclosure of material effects of cybersecurity threats/incidents on results of operations or financial condition is already required), Item 105 (under which disclosure of risks from cybersecurity threats that have affected or are reasonably likely to materially affect the registrant is already required), and Item 407(h) (under which discussion of the board’s role in overseeing management of cybersecurity risk is already required to the extent cybersecurity risks are material to a company’s business). In fact, in practice, many registrants respond to the disclosure requirement by cross-referring to responsive disclosure elsewhere in their annual reports.

it *more* difficult for investors to identify whether cybersecurity truly is material to a registrant³³ and what aspects of cybersecurity disclosure are material.³⁴

The Society's recommendation is supported by the following survey data:

- Overall, 65% of Society registrants surveyed report that investors rarely or never engage on this topic and an additional 27% report only occasional engagement. Only 8% of registrants surveyed report frequent investor engagement, likely reflecting the materiality of cybersecurity for those registrants.
- Nearly 86% of registrants surveyed report that Item 106 compliance efforts are disproportionately burdensome given the level of financial materiality and investor interest in the disclosure, and 65% report that Item 106 compliance results in modifying business practices, adopting or benchmarking policies, changing internal processes, or altering behavior in ways that the registrant otherwise would not. For example, some Society members report building controls, procedures, and practices to support required disclosures, even though the business does not otherwise benefit from those measures. They may also serve as an internal distraction from matters more material to the registrant's business.
- The majority of registrants surveyed report that on average eight separate groups, not uncommonly involving a total of 40 people or more, engage in the gathering, review, or approval of Item 106 disclosures.
- Nearly 73% of registrants surveyed confirm that Item 106 disclosures often result in duplicative disclosures, and 70% report these disclosures have become boilerplate.
- 89% of registrants surveyed report that if cybersecurity disclosures were incorporated into Item 101 and MD&A when cybersecurity matters are material to registrants, disclosure volume would decline without reducing material information provided to investors.

In addition to providing low value to investors and being burdensome to registrants, Item 106 disclosures can push registrants to disclose information that is either premature and therefore potentially misleading or at a level of detail that could be harmful to registrants. For example, Item 106(b)'s requirement that registrants describe processes for identifying and managing cybersecurity risks "in sufficient detail" and provide detail around previous cybersecurity incidents or risks of cybersecurity incidents and 106(c)(2)(ii)'s requirements regarding processes for monitoring "prevention, detection, mitigation and remediation" of cyber-incidents create concerns about disclosing sensitive information that could compromise businesses' cybersecurity protection and provide a roadmap to the very actors registrants are trying to guard against, and therefore practically often result in high-level boilerplate disclosures that are not investor-useful.

³³ While Item 106(b) and (c) set forth non-exclusive lists of disclosure items that registrants should address, if applicable, in practice most registrants feel compelled to address each item and rarely go beyond the specified items.

³⁴ For example, Item 106(c)(2)(i) requires disclosure of management positions or committees responsible for managing cybersecurity risks and the relevant expertise of such persons or members "in such detail as necessary to fully describe the nature of the expertise[.]" Not only does this result in more disclosure regarding skills and expertise than are required of Chief Executive Officers or Chief Financial Officers, the detail provided is rarely helpful to investors in assessing cybersecurity risks at any given registrant.

To the extent the SEC seeks to retain certain elements of prescribed considerations included in Item 106, the Society recommends including sub-bullets or instructions for Items 101, 103, 303, and 407 that remind registrants to consider whether to include cybersecurity information *if material* to the registrant.

Eliminate cybersecurity XBRL tagging. The Society recommends eliminating XBRL tagging for cybersecurity disclosures regardless of where they are located.³⁵

Eliminate Item 1.05 from Form 8-K. The Society recommends eliminating Item 1.05 from Form 8-K. This separate requirement pressures issuers to make rushed, high-stakes materiality judgments in the immediate aftermath of a cybersecurity incident, before the facts are known. That dynamic can lead to premature, incomplete, or overly cautious disclosures that do little to help investors but can complicate incident response, create litigation risk, and divert management attention at the worst possible time. Cybersecurity incidents can already be addressed under existing disclosure principles in Item 8.01 when they are genuinely material, making Item 1.05 an unnecessarily prescriptive overlay that adds cost, risk, and timing pressure without corresponding investor benefit.

C. Item 201 – Market Price of and Dividends on the Registrant’s Common Equity and Related Stockholder Matters

The Society recommends eliminating substantially all of Item 201, which would modernize disclosures, acknowledge how investor information gathering has fundamentally changed, and better align registrant burden with investor interests.

Eliminate Item 201(a)(1)(i) requirements. The requirements are duplicative of basic cover page requirements and therefore should not be required for Form 10-K, Form S-11, Form S-4, or Form S-1.

Eliminate Item 201(b). This provision requires stating the approximate number of holders of each class of the registrant’s common equity; however, in today’s markets, the vast majority of shares are held in “street name” by broker-dealers or banks, rather than individual investors. Accordingly, this disclosure does not accurately reflect the registrant’s shareholder base and has now become largely irrelevant for assessing ownership concentration.

Eliminate Item 201(c). This provision requires unnecessarily repeating past dividend payment information that is widely available and in practice elicits boilerplate language regarding the board of directors’ discretion to approve future dividends, neither of which provide investors with meaningful insights.

Eliminate or revise Item 201(d). Much of the information required by Item 201(d) is already disclosed elsewhere in a registrant’s public filings, often in greater detail. Substantially similar information regarding outstanding equity awards, dilution, and equity plan mechanics is disclosed in the share-based compensation footnotes to the financial statements, compensation tables in the proxy statement, Form S-8

³⁵ More generally, the Society recommends that the Commission undertake a broader review of eXtensible Business Reporting Language (“XBRL”) requirements. Over time, structured-data mandates have expanded beyond traditional financial statement information into cover-page data, filing-fee data, and a growing set of specialized narrative disclosures. The SEC’s technical guidance has also continued to evolve through separate XBRL guides, taxonomy updates, and EDGAR release changes. The result is a disclosure regime that often imposes significant vendor, legal, finance, and validation burdens without a commensurate showing that investors meaningfully benefit from machine-tagging information that is not genuinely comparable, standardized, or decision-useful. Additionally, in certain instances, failing to tag disclosure using XBRL tagging has significant consequences. It can mean that a registrant is not “current” with its Exchange Act reports and thus not eligible to use Form S-3, Form S-8 and other forms.

registration statements and, from time to time as needed, equity plan proposals in the proxy statement. As a result, Item 201(d) frequently operates as a prescriptive reaggregation of data already publicly available, increasing registrants' burdens without corresponding investor benefit.

If the Commission determines to retain Item 201(d), the Society recommends it be (i) restated to require clear cross-reference to the location(s) where required elements are already presented in substantially similar form (e.g., proxy equity plan table; financial statement note; Form S-8), provided the disclosure is as of the same date, complete, and (potentially) presented in a comparable tabular format, or (ii) required (as revised above) only in the context of a proposal for shareholder approval of an equity compensation plan.

Eliminate Item 201(e). This provision provides little value to investors compared to the real-time resources that are available to them. The graph does not present any proprietary information, but forces registrants to organize public data over which they have no control in a one-size-fits-all graph. This requirement imposes an unnecessary compliance burden and assumption of risk for registrants and fails to provide investors with insights beyond publicly available data.

D. Item 404 – Related Person Transactions

Item 404 is designed to guard against the risk of self-dealing and genuine conflict of interest transactions. Item 404 should focus on transactions that present meaningful conflicts of interest, governance concerns, or the potential for significant financial detriment. In practice, however, the Item imposes overly broad disclosure obligations on registrants that require extensive internal diligence across multiple departments³⁶ to identify, analyze, monitor, and describe a wide range of transactions that are often routine, immaterial, or otherwise do not present a risk of unfairness or misconduct. The result is a system that can be time-consuming and costly for registrants while yielding immaterial disclosure for investors. Of Society registrants surveyed, 88% report that they rarely or never engage with investors on Item 404. Over 93% of Society registrants surveyed report that the effort required to gather, review, and approve Item 404 disclosures is burdensome as compared to the level of financial materiality and investor engagement. Indeed, 69% of Society law firms surveyed report advising clients frequently on Item 404 disclosures. All of this points to a rule that addresses a legitimate concern, but is insufficiently calibrated to distinguish between transactions that present real conflict risk and those that do not. The Society recommends the following revisions.

Affirm that transactions arising in the ordinary course of business do not need to be disclosed.

Over 71% of Society registrants surveyed report disclosing immaterial information related to arm's-length, ordinary-course transactions. The Commission should clarify Instruction 4(a) such that transactions involving purchases of goods and services subject to usual trade terms or bona fide arm's-length transactions entered into in the ordinary course of business (as well as for any indebtedness arising

³⁶ It is not uncommon for quarterly related party transaction processes to include initial queries by the accounting or financial reporting group of multiple departments including human resources, accounts payable, accounts receivable, charitable contributions groups, procurement, and other business operations groups with a long list of potential "related parties" that have been identified through director and officer questionnaires. Once information is received, accounting or financial reporting manually compiles all of the sources into total transactions for each related party. That information is then passed to the legal or corporate secretary department to analyze interaction of the information with the registrant's related party transaction policy and Item 404 disclosure rules. Financial reporting/accounting simultaneously assesses that information in connection with ASC 850 and Regulation S-X requirements. Each of the legal/corporate secretary departments and accounting/financial reporting drafts any disclosures required by their respective rules and those are incorporated into the periodic report, which is then reviewed by the full financial reporting team, the internal audit department, external auditors, the full disclosure committee, the full audit committee of the board, and during certain quarters the full board of directors. It is not unusual, start to finish, for more than 50 people to interact with the related party disclosure process.

from such transactions) do not need to be disclosed. A safe harbor for ordinary course transactions would reduce the universe of immaterial transactions that registrants are required to track and report, reducing burden for the full 404 compliance cycle without adversely affecting the registrant's disclosure of material information.

Narrow and refine the “related person” definition. Of Society registrants surveyed, 57% report including immaterial disclosures because of an overly broad definition of “related person.” The definition of “related person” currently encompasses an extended list of family members, reflecting an unfounded presumption that executives and directors are able to identify and assist a company in tracking entities and transactions in which numerous relatives have a financial interest. This burden is particularly acute with respect to siblings, siblings-in-law, and step relatives who are not part of an executive's or director's household. For example, both an executive and her spouse may have numerous siblings who are financially independent and are employed or have financial stakes in numerous entities which may change from time to time, placing a burden on companies and their insiders to track and timely update information on all such relations, all based on a questionable presumption that any transaction between the registrant and those other entities might be relevant to investors. Instead, “immediate family member” in Instruction 1(a)(iii) should be limited, at most, to an individual's spouse, parents, and children, as well as family members residing in the executive's or director's household. For example, we do not believe that disclosure of an employment relationship with a financially independent relative of an executive officer is material information to investors.

In addition, the Society recommends adding an instruction excluding any transaction involving a shareholder that has disclosed and certified its status as an institutional or passive investor under either Rule 13d-1(b) or (c) under the Exchange Act. Transactions with passive investors generally do not create the kind of relationship that can influence the registrant or its officers and directors because those investors typically invest through broad, index-driven strategies rather than through registrant-specific commercial, strategic, or personal arrangements. They ordinarily are not counterparties selected because of a special relationship with management, and they do not engage in the kind of negotiated, conflict-prone dealings that raise concerns about favoritism, reciprocal benefit, or self-dealing. At the same time, these types of investors are large and omnipresent, creating a substantial likelihood that registrants will engage in transactions with them or their affiliates in the ordinary course of business.

Further, because registrants do not control their investors or their willingness or ability to respond to related-party inquiries, the Commission should provide a safe harbor for related person disclosures regarding significant investors where the registrant acts in good faith based on information publicly available or otherwise known to it.

Increase the threshold for de minimis transactions. Originally set almost 20 years ago, the \$120,000 threshold is too low. Over 94% of Society registrants surveyed report that this threshold results in immaterial disclosures. Society members report that a more investor-useful standard would be a two-pronged approach with a defined dollar value as a first filter and disclosure required only when transactions exceed both the defined dollar threshold *and* are determined to be material. The Society proposes an initial filter of \$250,000, indexed for inflation going forward, below which registrants would not be required to track or disclose transactions.

Clearly define “direct and indirect material interest” to serve the disclosure goals of Item 404. Two-thirds of Society registrants report including immaterial Item 404 disclosures because of ambiguity regarding what constitutes a “material” interest. The Society proposes a construct that would better capture the intent of 404 by focusing disclosure on circumstances when a transaction (i) may unduly influence officers, directors, or others with the ability to direct the registrant to act other than in its best interests; or (ii) results in material payments *from* the registrant to a related party that are other than on an

arm's-length basis. To accomplish these goals, once a transaction reaches the initial threshold of \$250,000 (indexed for inflation going forward), registrants would perform a second layer of analysis focused on the transaction's financial relevance *to* the registrant, officer, director, or others with the ability to direct the registrant, as applicable.³⁷

The Society recommends applying the \$250,000 (indexed for inflation) safe harbor to officers', directors', and other individuals' *interest in a transaction* as well, as those in a position to direct registrants (e.g., directors and officers) are generally unlikely to be influenced by lower amounts. For example, a \$275,000 transaction would trigger related party analysis, but if the transaction inures a benefit of only \$100,000 to a director, the transaction would fall within the safe harbor and need not be disclosed. However, if in the same transaction the benefit inuring to the director were \$255,000, the transaction would exceed the safe harbor and a full materiality analysis would need to be conducted.

The second-level safe harbor for a registrant's *interest in a transaction* should be significantly higher than the individual safe harbor level to accomplish the intent of Item 404. To recognize the variability in transaction materiality depending on a registrant's size, the Society recommends that the Commission establish a safe harbor of \$1 million or 2% of the registrant's revenue for amounts involving the registrant directly.

Disclosure should only be required when the amount inuring to the benefit of the registrant, officer, director, or others with the ability to direct the registrant (a) reaches the above-identified amounts (e.g., \$250,000 for an individual and the greater of \$1 million or 2% of the registrant's revenue), *and* (b) is determined to be material *to* the registrant, officer, director, or others with the ability to direct the registrant who are receiving the benefit of the transaction, either directly or through an intermediary person, entity, or arrangement.

The Society additionally recommends the Commission provide guidance on what does and does not constitute an "indirect" interest under Item 404. For example, the Society recommends a construct that finds an indirect interest where there is a payment or benefit that inures to the benefit of the registrant or its officers, directors, or significant shareholders through: (i) a third party or (ii) to an entity in which the registrant, director, officer, or significant shareholder holds, directly or indirectly, a material ownership or investment interest sufficient to give that entity or person a meaningful opportunity to participate in the proceeds, profits, or other economic returns arising from the transaction, in each case *in an amount* of \$250,000 or more for an individual officer, director, or significant shareholder, and the greater of \$1 million or 2% of the registrant's revenue for the registrant. In contrast, small, passive investments in an entity where the registrant or its officers, directors, or others with the ability to direct the registrant have no control, no special economic rights, and no meaningful ability to benefit from the transaction in a manner distinct from other passive investors should not constitute an indirect interest.

Apply the financial threshold on a fiscal year basis. Currently, the financial threshold applies for "any transaction, since the beginning of the registrant's last fiscal year, or any currently proposed transaction, in which the registrant was or is to be a participant and the amount involved exceeds [the specified amount]." This requirement complicates compliance, since most registrants' financial recordkeeping processes are otherwise based on their fiscal years. A common scenario arises in the context of disclosing an at-will employment relationship of executive officers' family members, in which a family member's annual compensation (including a year-end bonus) may be less than the reporting threshold, but tracking, analysis, and disclosure might still be required due to the assessment encompassing all of the prior year's

³⁷ Transactions would not need to be tested as to whether they are material to third parties that cannot direct or substantially influence the registrant. Even if a transaction were material to such third parties, if it is not material to the registrant or its officers, directors, or others with the ability to direct the registrant, that information is not investor-useful.

compensation and all compensation paid to date during part of the current year. The burden could be alleviated by revising Instruction 3 to Item 404(a) to provide that the amount involved in any transaction is to be analyzed on a fiscal year basis.

Harmonize Item 404 requirements with ASC 850, AS 2410 (formerly Auditing Standard No. 18), and Regulation S-X. The requirements of Item 404 somewhat overlap with, but do not mirror, the requirements of ASC 850, AS 2410, and Regulation S-X that call for disclosures of related party transactions in a registrant's financial statements and related footnotes. As a result, registrants must assess different disclosure standards requiring additional time and coordination, sometimes resulting in different disclosures that could be confusing to readers.

Eliminate the requirement of Item 404(b)(1) that registrants describe their policies and procedures for related person transactions. This requirement generates unnecessary and largely boilerplate policies that mirror Item 404 and disclosure describing those policies that is simply repeated year-to-year without any additional information that is meaningful to investors. If the Commission determines to keep the policies and procedures disclosure requirement, the Society recommends flexibility to comply with disclosure by posting the policy on the registrant's website.

E. Item 405 – Compliance with Section 16(a) of the Exchange Act

Eliminate Item 405. Forms 3, 4, and 5 are already publicly available to investors on EDGAR in near real time. Item 405 largely requires registrants to provide information that is already available and highlights circumstances that frequently arise from technical or administrative filing delays rather than substantive governance failures or insider misconduct. As such, Item 405 is not calibrated to investor significance and can potentially overstate the significance of minor lapses.

At the same time, Item 405 imposes continuing burdens on registrants that are disproportionate to any investor benefit. Registrants must maintain tracking systems, conduct annual diligence, and prepare narrative disclosure regarding events that are often immaterial, promptly corrected, and unrelated to financial performance. Those efforts consume management and legal resources that could be better directed to disclosures more relevant to investors.

Item 405 is also misaligned with the Commission's modern disclosure framework. The SEC has already recognized that aspects of the rule are outdated by eliminating the Form 10-K cover-page checkbox and modifying diligence requirements to reflect EDGAR's accessibility. Those changes acknowledge that technology has largely supplanted Item 405's original monitoring function.³⁸

F. Item 408 – Insider Trading Arrangements and Policies

The Society recommends eliminating Item 408 because in practice it has largely not resulted in disclosure of investor-useful information, unnecessarily burdens registrants, results in inconsistent application and

³⁸ As a more general matter, the Society urges the Commission to undertake broader Section 16 reporting reform to simplify a current regime that too often produces duplicative filings, technical traps, and investor confusion rather than clear, relevant insight into insider trading activity. For example, requirements to file both a Form 144 and Form 4 on the same transaction frequently create investor and other stakeholder confusion. While Form 4 already reports actual executed insider transactions under Section 16(a), Form 144 is a notice of a proposed sale under Rule 144 and may never result in a completed trade. In practice, Society members have seen circumstances where investors believe transactions reported on Forms 4 and 144 represent separate and additive transactions. SEC guidance has long recognized that a Form 144 reflects intent at the time of filing and, if the sale never occurs, no amendment is required to report that fact, which means the public record can suggest insider selling that did not actually happen. The Commission should modernize Section 16 reporting to focus on executed transactions, eliminate unnecessary overlap, and make the disclosure regime more accurate, comprehensible, and useful to investors.

disclosures, and requires presenting information that can be confusing or incomplete for investors. Society member surveys found that 94% of registrants report that investors rarely or never engage on Item 408 disclosures, 69% of registrants view Item 408 as disproportionately burdensome compared to the disclosure provided, and 75% of outside counsel surveyed view Item 408 compliance as frequently or occasionally burdensome. The majority of Society members surveyed report that preparing, reviewing, and approving each Item 408 disclosure includes: accounting/finance, legal/corporate secretary, external auditors, outside counsel, disclosure committee, board committee, and the full board.

Eliminate Item 408(a). Item 408(a)'s stated purpose was already accomplished through the corresponding and easily understood amendment to Form 4, requiring disclosure of whether a disclosed trade was pursuant to a 10b5-1 trading plan and, if it was, the date that plan was adopted.³⁹ A full 91% of Society registrants surveyed report that eliminating Item 408(a) requirements would reduce their disclosure burden without compromising information that is material to investors.

Eliminate Item 408(b). Item 408(b) is unnecessary as there are existing federal securities laws that prohibit insider trading, and the existence of a policy does not alter this obligation or add to investor understanding. Over a third of Society registrants surveyed report that required disclosure and exhibit filing drives them to expand insider trading policies beyond business needs due to benchmarking concerns. Society registrants surveyed also report the addition of immaterial disclosure due to fear of second-guessing (41%) and litigation risk (32%).

If, however, the SEC retains Item 408(b), the Society recommends amending it to require that registrants comply by disclosing their insider trading policies and procedures using *one* of the following: (a) including a summary of material provisions in their Form 10-K or proxy statements; (b) filing an exhibit; or (c) posting on the registrant's website.⁴⁰ Society registrants surveyed report disclosure volume could be reduced without compromising material information by: (i) eliminating Item 408(b) entirely (100% of respondents), (ii) permitting compliance via the registrant's website (90% of respondents), or (iii) permitting compliance *either* by an exhibit or narrative description (78% of respondents).

G. Item 701 – Recent Sales of Unregistered Securities; Use of Proceeds from Registered Securities

Item 701 requires registrants to provide information about sales of unregistered securities within the past three years and, as required by Rule 463, to provide information about a registrant's use of proceeds following an initial public offering. Item 701 disclosures in periodic reports require significant effort to prepare yet provide immaterial information to investors that is not additive to information otherwise available. Of Society registrants surveyed, 92% report investors rarely or never engage on information disclosed in Item 701 and 59% view efforts to gather, review, and approve Item 701 disclosures as disproportionately burdensome relative to the level of financial materiality and investor interest in the information disclosed. Those respondents report that preparing, reviewing, and approving Item 701 disclosures span multiple groups, including accounting/finance, legal/corporate secretary, external auditors, outside counsel, disclosure committees, board committees, and the full board. Given the

³⁹ In fact, with respect to the proposed optional checkbox to report non-Rule 10b5-1 trading plan transactions on Form 4 and Form 5, the staff determined not to include the optional checkbox in the final rule after determining it would not provide investors and other market participants with useful information because the details of the transaction will already be disclosed in the form. For the same reason, disclosure of such transactions in a registrant's periodic reports also does not provide any useful information beyond the information already disclosed in the form.

⁴⁰ Permitting website posting, rather than filing, of insider trading policies would also alleviate registrant reluctance to amend insider trading policies and would ensure that investors have access to current versions of registrants' insider trading policies. Similarly, alternatively permitting registrants to provide narrative summaries of the material terms of their insider trading policies would alleviate litigation-risk concerns over amending such policies.

imbalance between registrant burden and investor benefit, the Society recommends eliminating certain Item 701 requirements as described below.

Eliminate the three-year lookback requirement. Approximately 62% of Society registrants surveyed report that Item 701's three-year lookback most often results in providing immaterial disclosures. Item 701's requirement to disclose information for the last three years is narrowed by the specific requirements of Forms 8-K and 10-K.⁴¹ Because Form 8-K requires registrants to disclose sales of unregistered equity securities in excess of 1% of the number of shares outstanding since a registrant's last Item 3.02 Form 8-K or last periodic report, Forms 10-K and 10-Q effectively require registrants to disclose unregistered sales of equity securities that the registrant may consider immaterial (i.e., less than 1% or 5%, as applicable, of the registrant's outstanding shares). If the registrant does consider previously unreported sales of unregistered equity securities to be material, they would likely be disclosed in other sections of Form 10-K or Form 10-Q, such as in the MD&A or notes to the financial statements.

In most cases, the registrant's intended use of proceeds has already been disclosed in offering materials, and any truly important change in the deployment of capital can be addressed through existing MD&A, liquidity, and general materiality-based disclosure obligations. As a result, Item 701(f) often functions less as a meaningful investor protection measure than as a technical compliance requirement that adds information tracking, cost, and drafting burdens without corresponding informational value.

While not an amendment to Item 701, the Society recommends that the Commission consider (i) amending Form 10-K and Form 10-Q to eliminate the requirement that a registrant provide disclosure pursuant to Item 701(a) through (e), and (ii) clarifying that Item 701 disclosure must be provided for sales of unregistered securities within the past three years *unless otherwise provided by the applicable form or schedule*.

H. Item 703 – Purchases of Equity Securities by the Issuer and Affiliated Purchasers

The Society recommends that the SEC eliminate Item 703⁴² because its disclosure requirements are generally duplicative of information in the issuer's consolidated financial statements and related footnotes.⁴³ Additionally, to the extent an issuer's share repurchase activity is reasonably likely to impact liquidity, it would also be addressed in the MD&A, where the discussion would have a clearer nexus to investment decision-making by providing investors with a more holistic understanding of how such activity relates to the issuer's cash flow and financial position. The only information Item 703 adds beyond this redundant information is disclosure related to immaterial share repurchase amounts that would not be reported in these other sections.

⁴¹ Item 3.02 of Form 8-K requires disclosure pursuant to Item 7.01 for sales of unregistered securities that exceed 1% (or 5% for smaller reporting companies) of the number of shares outstanding since the registrant's last Item 3.02 Form 8-K or last periodic report, whichever is more recent. Item 5 of Form 10-K and Part II, Item 2 of Form 10-Q require disclosure pursuant to Item 7.01 for unregistered sales of all equity securities by the registrant during the period covered by the report that were not previously disclosed in a Form 10-Q or Form 8-K.

⁴² Item 703 requires tabular disclosure of issuer repurchases of equity securities, including total number of shares purchased reported on a monthly basis, average price paid per share, the number of shares purchased as part of publicly announced plans or programs, and the remaining dollar value of shares that may be repurchased in the future under any such plans or programs.

⁴³ Under ASC 505-30 (Treasury Stock), issuers must account for and disclose treasury stock transactions, including the cost of shares repurchased and held in treasury, typically presented as a contra-equity balance on the balance sheet as prepared pursuant to ASC 210 (Balance Sheet) and further described in the footnotes to the financial statements under ASC 505-30-50. In addition, ASC 215-10 (Statement of Shareholders' Equity) requires a reconciliation of beginning and ending equity balances, including separate presentation of changes attributable to share repurchases, which may include both the dollar amount and share count of treasury stock activity.

If Item 703 is retained, the Society alternatively recommends that the Commission:

- Replace the requirement to disclose repurchases by month with a requirement to disclose by quarter;
- Clarify that companies are not required to disclose the shares withheld for taxes in connection with equity compensation plans; and
- Clarify that registrants do not need to duplicate information regarding the total shares purchased in the quarter, the quarterly average purchase price, and/or the outstanding authorization if such is being disclosed elsewhere in the same report or was disclosed in a prior report and has not changed.

I. Rule 13p-1 – Conflict Minerals

Of Society registrants surveyed, 85% report that efforts to gather, review, and approve Conflict Minerals Rule disclosures are disproportionately burdensome compared to the materiality of the information. Preparing the required Conflict Minerals Report demands coordination across procurement, operations, compliance, legal, finance, and senior management, frequently involving dozens of personnel and escalating through full disclosure committee and board-level review over a compliance cycle spanning several months. Society members that are required to file Form SD report dedicating more than 30 hours in some cases and over 125 hours in others to complete the process, with some reporting ongoing difficulty obtaining responses from suppliers. Society members largely believe that Form SD provides no meaningful value to investors, a view reinforced by their investor relations teams' reports of little to no investor inquiry regarding conflict minerals disclosures. The burden also falls on a substantial number of non-reporting supply chain companies, cascading compliance costs well beyond companies directly subject to the obligation. The disproportionality of this burden is particularly acute where conflict minerals represent a trivial component of a registrant's products or operations.

The highly granular supply chain information mandated by the Conflict Minerals Rule rarely constitutes material information for investors. To the extent that mineral sourcing risks are material to a registrant's business, that information is more appropriately communicated through risk factors, MD&A, and business disclosures. Many registrants already address this topic in an accessible way through sustainability reports and other voluntary disclosures, and most affected registrants have already built robust responsible sourcing programs through supplier codes of conduct, human rights policies, sanctions screening, and anti-corruption controls.

The Society urges Congress to repeal Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") or, at a minimum, for the Executive Branch to invoke the statutory off-ramps in Section 13(p) permitting the SEC to revise, waive, or terminate the rule. Absent such action, the Society urges the SEC to use all available authority to scale back the Conflict Minerals Rule, including the following measures to reduce the significant cost and operational burdens associated with the rule.

Adopt an exemption where disclosure is duplicative of other regulatory regimes. The Conflict Minerals Rule substantially overlaps with other domestic and international regimes, including sanctions and anti-money laundering laws; the EU Corporate Sustainability Due Diligence Directive, the EU Conflict Minerals Regulation (Regulation (EU) 2017/821); the OECD Due Diligence Guidance for Responsible Supply Chains; and the Responsible Minerals Initiative's Responsible Minerals Assurance Process. Companies subject to these overlapping regimes are largely repackaging substantially similar information across multiple reporting channels at significant additional cost and with no incremental benefit to investors or to the communities the rule was designed to protect.

Permit good faith reliance on supplier representations. Society members believe one option to reduce the significant cost and operational burden of the Conflict Minerals Rule could be permitting registrants to satisfy the reasonable country of origin inquiry (“RCOI”) and due diligence requirements through good faith reliance on binding contractual representations from suppliers that, as of each sale or delivery, relevant products or materials do not originate from covered countries in a manner that would trigger disclosure. This approach would reduce reliance on extensive supplier surveys and iterative validation processes, while appropriately placing the compliance obligation on suppliers, who are best positioned to assess origin. The Society proposes this as a non-exclusive safe harbor; registrants relying on binding contractual representations from suppliers would be deemed to satisfy RCOI and due diligence requirements absent reason to doubt the representations, while remaining free to use traditional diligence processes.

Consider other amendments to alleviate the disclosure burden on registrants. The Society urges the SEC to consider all options to scale back the Conflict Minerals Rule, including (i) converting Form SD from “filed” to “furnished,” (ii) eliminating the Conflict Minerals Report requirement, (iii) narrowing the scope of covered products, and (iv) adopting a *de minimis* threshold related to the amount of conflict minerals used by a registrant in a particular product or in its overall enterprise (e.g., if the cost of the conflict minerals in a registrant’s products make up less than 5% of the registrant’s consolidated total production costs, where the end product derived from conflict minerals reflects less than 5% of the value of the product, etc.).

J. Rule 13q-1 – Resource Extraction

The Society supports repeal of Section 1504 of the Dodd-Frank Act and, in the absence of legislative action, urges the SEC to use its available authority to reduce Rule 13q-1’s compliance burden.

13q-1 mandates highly granular, project-level disclosure that is operational in nature and, in most cases, is not material to a registrant’s financial performance, risk profile, or expected investment returns. Society members report minimal, if any, investor engagement with these disclosures. To the extent that payment-related information is material in a particular context, the Society believes it is more appropriately disclosed through MD&A, risk factors, or financial statement footnotes. Moreover, project-level disclosure can reveal commercially sensitive information—including the terms of confidential extraction agreements, the economics of individual projects, and competitive positioning in specific markets—that can be exploited by competitors.

Permit Rule 13q-1 disclosure by cross-reference to alternative report. Rule 13q-1 was designed in part to align with international resource extraction disclosure frameworks and permits registrants to satisfy U.S. disclosure obligations by submitting reports prepared under certain approved alternative regimes. However, for registrants operating across multiple jurisdictions, the rule nonetheless adds a compliance layer, with its own formatting requirements, XBRL tagging obligations, and SEC filing mechanics, without producing meaningfully different or more useful information.

Consider other targeted amendments to reduce the compliance burden. In the absence of legislative action, the Society urges the SEC to assess ways to reduce the compliance burden of Rule 13q-1, including by (i) expanding the categories of information eligible for exemptive relief, (ii) broadening recognition of alternative reporting regimes to further reduce duplicative compliance obligations for registrants already reporting under international frameworks, and (iii) revisiting the threshold, granularity, and scope of project-level reporting requirements, including the “not *de minimis*” threshold, the definition of “payments” and the definition of “control.”

K. Item 104 – Mine Safety Disclosure

The Society recognizes that mine safety is a matter of significant public importance and believes that targeted amendments would reduce duplicative disclosure and alleviate undue burdens on registrants without affecting investors' receipt of material information.⁴⁴ The Society recommends the following revisions.

Permit Item 104 disclosure by cross-reference. The information required by Item 104 is already generally publicly available through the Mine Safety and Health Administration's ("MSHA") Mine Data Retrieval System, making quarterly disclosure duplicative and unnecessary. Registrants should be permitted to satisfy Item 104 by cross-referencing, without incorporation by reference, MSHA's Mine Data Retrieval System in lieu of restating publicly available information in all periodic reports or, at minimum, in quarterly reports. If the Commission determines not to permit cross-reference to the MSHA's Mine Data Retrieval System, the Society recommends relocating Item 104 disclosure into Form SD and permitting registrants to satisfy Item 104 by cross-referencing to the registrant's most recent Form SD in all periodic reports, to better reflect the supplemental nature and alternative availability of this information.

Permit aggregation. The Society recommends permitting aggregated mine safety information by operating segment or business unit, consistent with how registrants organize and describe their mining operations elsewhere in their periodic reports.

Refine citation and assessment reporting. The Society recommends permitting vacated and dismissed citations to be omitted from the full dollar value of all proposed MSHA assessments and all citations and orders received during the period, or alternatively allowing separate line-item reporting of contested versus uncontested amounts.

Clarify scope and provide scaled disclosures. The Society recommends: (i) clarifying the definitions of "operator" and "subsidiary" under Item 104 and exempting registrants for which mining operations are incidental to their primary business and not material to their operations, such as waste management companies, construction firms, quarry operators, and industrial manufacturers that operate sand or gravel extraction sites; (ii) providing a scaled disclosure framework for smaller reporting companies; and (iii) allowing wholly owned subsidiaries that independently file periodic reports to satisfy Item 104 by cross-referencing the parent's disclosure, without incorporation by reference.

Permit contextual disclosure. The Society recommends permitting, but not requiring, registrants to provide contextual disclosure alongside required mine safety data, including information about mine size, type, and inspection frequency, to enable investors to assess the significance of citations and violations.

* * *

⁴⁴ Section 1503(a) of the Dodd-Frank Act (as defined below) requires SEC reporting companies that operate mines subject to the Federal Mine Safety and Health Act of 1977 to disclose certain mine safety information in their quarterly and annual periodic reports on a mine-by-mine basis, including citations, orders, violations, proposed MSHA assessments, pending legal actions, and mining-related fatalities. The SEC implemented this requirement through Item 104 of Regulation S-K and Exhibit 95 to periodic reports.

The Society is grateful for this opportunity to provide the Commission with recommendations for revising Regulation S-K “to focus on eliciting disclosure of material information and avoid compelling the disclosure of immaterial information.”

Thank you for considering the Society’s views. The Society welcomes the opportunity to continue engaging with the Commission on these recommendations.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "P. Washington", with a stylized, cursive script.

Paul F. Washington
President & Chief Executive Officer
Society for Corporate Governance

Appendix A
Summary of Society Recommendations

Reg. S-K Item No.	Summary of Society Recommendation
101	Revise Item 101 to be more expressly principles-based. Specific recommendations: • Require information under 101(c)(1) only to the extent material to an understanding of the registrant’s business taken as a whole, and permit additional disclosure helpful to an investor’s understanding of the business. • Revise Item 101(c) to require disclosure on discrete topics that are not universally material only when such topics are material to the registrant. • Require Item 101 segment disclosure only to the extent it is material to an understanding of the registrant’s business taken as a whole. • Eliminate 101(e)’s antiquated “available information” language.
102	Eliminate Item 102 and Instructions 1 and 2 thereto, and incorporate the physical property disclosures into Item 101(c) if, and to the extent, material to the business. Retain current instructions to Item 102 (other than 1 and 2) and relocate them to Item 101 instructions.
103	Revise Item 103 to be more expressly principles-based. Specific recommendations: • Require disclosure of material legal proceedings that have actually been filed or are known to be formally commenced and eliminate the “known to be contemplated” standard in Item 103(a). • Eliminate the separate disclosure thresholds under 103(c)(3)(ii)-(iii) in favor of the same principles-based materiality standard and safe harbors that govern disclosure of all other legal proceedings. • Clarify that a registrant is not required to disclose a legal proceeding at its inception if, based on the facts then known and a good-faith application of the traditional materiality standard, the matter is not material, and that disclosure may commence once the matter becomes material without implying that prior non-disclosure was improper.
104	Revise mine safety disclosure requirements due to disproportionate preparation burden relative to low investor utility. Specific recommendations: • Allow cross-referencing to MSHA’s Mine Data Retrieval System in periodic reports to eliminate duplication or relocate disclosure to Form SD. • Simplify disclosure requirements by permitting aggregation, excluding vacated/dismissed citations, narrowing definitions, enabling contextual disclosure, scaling disclosure for SRCs, and allowing subsidiaries to cross-reference to parent reports.
105	Revise Item 105 to limit liability for registrants and clarify risk factors’ purpose. Specific recommendations: • Adopt an introductory note or instruction establishing the illustrative, non-exhaustive, forward-looking nature of risk factors. • Adopt a safe harbor from liability for risk factors that comply with that standard. • Reinforce that risk effect descriptions should be concise. • Eliminate the risk factor summary. • Encourage reasonable disclosure lengths. • Clarify the scope and type of general risk factors with illustrative examples.

106	Specific recommendations: • Eliminate Item 106 and incorporate information if, and to the extent, it is material to a registrant in Items 101, 105, 303, and 407. • Eliminate cybersecurity XBRL tagging, regardless of disclosure location. • Eliminate Item 1.05 from Form 8-K.
201	Eliminate substantially all of Item 201 to modernize disclosures, reduce duplication, and better align registrant burden with investor needs. Specific recommendations: • Eliminate Item 201(a)(1)(i), Item 201(b), and 201(c). • Eliminate or revise Item 201(d). If retained, allow cross-references to existing disclosures, or require only in connection with shareholder approval of equity compensation plans. • Eliminate Item 201(e).
303	Revise Item 303 to reinforce that MD&A disclosure is principles-based. Specific recommendations: • Adopt explicit guidance that discussing immaterial line items is not required. • Eliminate prescriptive sub-bullet items that require disclosure that is immaterial or duplicative or, if such sub-bullets are retained, make clear that registrants need only address topics material to their business. • Eliminate 303(b)(3). • Provide express, broad permission for registrants to cross-reference across sections of their periodic reports. • Revise Regulation S-K as a whole to avoid redundant disclosures and harmonize Regulation S-K with Regulation S-X and other accounting standard setters' rules to reduce unnecessary duplication. • Require year-to-date interim reporting only when it provides additive material information beyond quarter-end results. • Expressly allow registrants to focus Item 303 disclosure on material updates since the last periodic report. • Consider structural reforms that could reduce the chilling effects of litigation risk on MD&A disclosure, provide safe harbor for forward-looking statements in the MD&A, or revise Item 303 to suggest, rather than mandate, forward-looking disclosures.
305	Eliminate Item 305 as a standalone item. Incorporate into Item 303 the requirement to disclose, where material to a registrant, material market or other rate risks, their impacts, and efforts to manage those risks. Retain the Item 305 safe harbor in Item 303.
403	Revise Item 403 to reflect modern ownership reporting, reduce burden, and improve clarity and usefulness. Specific recommendations: • Revise Item 403(a) to identify significant shareholders by name only <i>or</i> eliminate disclosure of non-insider significant shareholders entirely. Alternatively, if this requirement is kept, include safe harbor for registrant's good faith reliance on the most recent Form 13 filing or registrant's more recent records. • Revise Item 403(b) timing standard to permit disclosures as of the end of the last fiscal year rather than "the most recent practicable date." • Revise Item 403(b) table flexibility to allow supplemental columns to reflect insiders' total economic holdings to more closely align the table with the Section 16 reporting regime, rather than just Rule 13d-1 beneficial ownership.

	• Eliminate group director and executive officer ownership disclosure. • Permit omission of former directors and officers to allow exclusion of individuals no longer in the role as of the filing date. If retained, provide a safe harbor when relying in good faith on Section 16 filings or internal records. • Integrate interpretive guidance into the rule text.
404	Revise Item 404 to require disclosure of only transactions that present real conflict risk. Specific recommendations: • Clarify that disclosure is not required for transactions involving purchases of goods or services subject to usual trade terms or for transactions arising in the ordinary course of business and on an arm's-length basis. • Revise the definition of "immediate family member" to include only the executive's or director's spouse, parents, children, and any family members residing in the related person's household. • Exclude from disclosure transactions involving shareholders that have certified their status as an institutional or passive investor under either Rule 13d-1(b) or (c) of the Exchange Act. • Increase the threshold for analysis of related parties from \$120,000 to (i) \$250,000 when analyzing relationships with a director or executive; and (ii) the greater of \$1 million or 2% of the registrant's revenue when analyzing relationships with the registrant. Clarify that these amounts are tested at the point of interest of the director, executive, or registrant, as applicable. • Clarify circumstances that give rise to "indirect" interest under Item 404. • Apply the applicable financial threshold on a fiscal year basis. • Harmonize Item 404 requirements with ASC 850, AS 2410 (formerly Auditing Standard No. 18), and Regulation S-X. • Eliminate the requirement for registrants to describe their policies and procedures for related persons transactions.
405	Eliminate Item 405 in recognition that Forms 3, 4 and 5 are already publicly available to investors on EDGAR in near real time.
407	Revise Item 407 to better reflect modern governance practices, direct investors to the most current information, and reduce redundancy. Specific recommendations: • Revise Item 407(a) to eliminate the requirement to apply committee-specific independence standards to the full board when the registrant does not maintain separately designated audit, nominating or compensation committees. • Revise Item 407(c)(2)(vi) to eliminate the requirement to disclose whether the registrant has a formal diversity policy. • Revise Item 407(e)(3)(ii) to eliminate the requirement to disclose the role of executive officers in determining or recommending executive compensation. • Revise Items 407(c)–(e) to permit registrants to cross-reference or hyperlink to publicly available governance documents without formal incorporation by reference. • Revise Item 407(g) to reassess and expand scaled disclosure accommodations and exemptions for smaller reporting companies and emerging growth companies.
408	Eliminate Item 408. If 408(b) is retained, amend it to permit registrants to comply by one of the following: (a) including a summary of material provisions in their Form 10-K or proxy statements, (b) filing an exhibit, or (c) posting on the corporate website.

601	Revise Item 601 to make disclosures principles-based. Specific recommendations: • Clarify and reinforce the ability to exclude ordinary course contracts. • Eliminate Items 601(b)(10)(ii)(C), 601(b)(4)(vi), 601(b)(97), 601(b)(21), 601(b)(95) and 601(b)(19). • Eliminate presumption that executive officer and director compensation contracts or arrangements are material under Item 601(b)(10)(iii)(A)-(B). • Eliminate or simplify the fee calculation table in Item 601(b)(107) • Eliminate or shorten exhibit lookback for newly reporting registrants in Item 601(b)(10)(i)(A). • Clarify when legacy transaction agreements can be removed under Item 601(b)(2). • Include Item 601(b)(10)(iii) among the enumerated exceptions in Instruction I.A.3(b) to Form S-3 so that failure to timely file management contracts or compensatory arrangements does not result in loss of Form S-3 eligibility. • Permit the post-filing redaction of confidential information that is inadvertently disclosed in filed exhibits where such information would have been eligible for redaction under 601(a)(6), 601(b)(2)(ii) or Item 601(b)(10)(iv). • Permit registrants, in limited circumstances, to delete from EDGAR exhibits that were filed mistakenly or without the registrant’s authorization, subject to appropriate conditions. • For Items 601(b)(2)(ii) and 601(b)(10)(iv), revise the default treatment of supplemental materials submitted to staff under Rule 418 of the Securities Act (§230.418) and Rule 12b-4 of the Exchange Act to provide that such materials are destroyed or, if requested, returned to the registrant, rather than requiring a return request.
701	Eliminate or significantly narrow Item 701 requirements due to disproportionate preparation burden relative to low investor utility. Specific recommendations: • Eliminate the three-year lookback requirement. • Reduce duplicative disclosure of use of proceeds. • Clarify that Item 701 applies only when not otherwise addressed by the applicable form or schedule, and amend Forms 10-K and 10-Q to eliminate mandatory Item 701(a)-(e) disclosures.
703	Eliminate Item 703. In the alternative: • Replace monthly disclosure of repurchases with quarterly disclosure. • Clarify that companies are not required to disclose the shares withheld for taxes in connection with equity compensation plans. • Clarify that registrants do not need to duplicate information regarding the total shares purchased in the quarter, the quarterly average purchase price, and/or the outstanding authorization if such is being disclosed elsewhere in the same report or was disclosed in a prior report and has not changed.
Conflict Minerals	Address the rule’s excessive cost and complexity by eliminating disclosure requirements through repeal or use of the available statutory off-ramps. Alternatively, significantly scale back the rule. Specific recommendations: • Exempt companies subject to overlapping domestic and international regimes. • Permit good faith reliance on supplier contractual representations. • Convert Form SD from “filed” to “furnished.” • Eliminate the Conflict Minerals Report requirement.

	• Narrow the scope of covered products. • Adopt a <i>de minimis</i> threshold (e.g., conflict minerals comprising less than 5% of consolidated production costs).
Resource Extraction	Absent repeal of Section 1504, reduce compliance burdens. Specific recommendations: • Permit disclosure by cross-reference to alternative report, rather than re-submission as an exhibit to Form SD. • Revisit the threshold, granularity, and scope of project-level reporting requirements, including the “not de minimis” threshold, the definition of “payments” and the definition of “control.”

Appendix B
Proposed Redlines of Select Regulation S-K Items

Redline of Item 101(c)(1) of Reg. S-K

(c) Description of business. (1) Describe the business done and intended to be done by the registrant and its subsidiaries, focusing upon the registrant's dominant segment or, to the extent material to an understanding of the business taken as a whole, each reportable segment about which financial information is presented in the financial statements. When describing the business and each segment, as applicable, only information material to an understanding of the business taken as a whole is required. Disclosure may include, but should not be limited to, the information specified in paragraphs (c)(1)(i) through (vi) of this section, in each case to the extent material to an understanding of the business taken as a whole. Disclosure may include supplemental information that contributes to an understanding of the registrant's business taken as a whole, without implying that such information is material when considered individually.

[...]

(iii) Resources material to a registrant's business, such as:

(A) Sources and availability of raw materials; ~~and~~

(B) The duration and effect of all patents, trademarks, licenses, franchises, and concessions held;
and

(C) The registrant's principal physical properties;

(iv) A description of any material portion of the business that may be subject to renegotiation of profits or termination of contracts or subcontracts at the election of the Government;

(v) The material effects that compliance with government regulations and need for government licenses or permits may have upon the business of the registrant; ~~and~~

(vi) The extent to which the business is or may be seasonal; ~~and~~ and

(vii) A description of the registrant's human capital resources, including the number of persons employed by the registrant, and other human capital matters that are material to understanding the registrant's business.

Redline of Item 101(e) of Reg. S-K

(e) Available information. Disclose the information in paragraphs (e)(1), (e)(2) and (e)(3) of this section in any registration statement you file under the Securities Act (15 U.S.C. 77a et seq.), and disclose the information in paragraph (e)(3) of this section in your annual report on Form 10-K (§249.310 of this chapter). ~~Further disclose the information in paragraph (e)(4) of this section if you are an accelerated filer or a large accelerated filer (as defined in §240.12b-2 of this chapter) filing an annual report on Form 10-K (§249.310 of this chapter):~~

[...]

~~(4) (i) Whether you make available free of charge on or through your Internet website, if you have one, your annual report on Form 10-K, quarterly reports on Form 10-Q (§ 249.308a of this chapter), current reports on Form 8-K (§ 249.308 of this chapter), and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) as soon as reasonably practicable after you electronically file such material with, or furnish it to, the SEC;~~

~~(ii) If you do not make your filings available in this manner, the reasons you do not do so (including, where applicable, that you do not have an Internet website); and~~

~~(iii) If you do not make your filings available in this manner, whether you voluntarily will provide electronic or paper copies of your filings free of charge upon request.~~

Redline of Item 102 of Reg. S-K

Instruction **1 to Item 101(c)(1)(iii)(C)** ~~1-to-Item-102:~~

This item requires information that will reasonably inform investors as to the suitability, adequacy, productive capacity, and extent of utilization of the principal physical properties of the registrant and its subsidiaries, to the extent the described properties are material. A registrant should engage in a comprehensive consideration of the materiality of its properties. If appropriate, descriptions may be provided on a collective basis; detailed descriptions of the physical characteristics of individual properties or legal descriptions by metes and bounds are not required and shall not be given.

Instruction **2 to Item 101(c)(1)(iii)(C)** ~~2-to-Item-102:~~

In determining materiality under this Item, the registrant should take into account both quantitative and qualitative factors. See Instruction 1 to Item 101 of Regulation S-K (§ 229.101).

[Remaining instructions to be relocated to Item 101(c)]

Instruction **3 to Item 101(c)(1)(iii)(C)** ~~3-to-Item-102:~~

Registrants engaged in mining operations must refer to and, if required, provide the disclosure under §§229.1300 through 229.1305 (subpart 1300 of Regulation S-K), in addition to any disclosure required by this section.

Instruction **4 to Item 101(c)(1)(iii)(C)** ~~4-to-Item-102:~~

A registrant engaged in oil and gas producing activities shall provide the information required by Subpart 1200 of Regulation S-K.

Instruction **5 to Item 101(c)(1)(iii)(C)** ~~5-to-Item-102:~~

The definitions in § 210.4-10(a) of Regulation S-X [17 CFR 210] shall apply to this Item with respect to oil and gas operations.

Instruction **6 to Item 101(c)(1)(iii)(C)** ~~6-to-Item-102:~~

The attention of certain issuers engaged in oil and gas producing activities is directed to the information called for in Securities Act Industry Guide 4 (referred to in § 229.801(d)).

Instruction **7 to Item 101(c)(1)(iii)(C)** ~~7-to-Item-102:~~

The attention of issuers engaged in real estate activities is directed to the information called for in Guide 5 (§ 229.801(e) of this chapter).

Redline of Item 103 of Reg. S-K

Item 103. Legal Proceedings.

(a) Describe briefly any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the registrant or any of its subsidiaries is a party or of which any of their property is the subject. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought. Include similar information as to any such proceedings ~~known to be contemplated~~ **that have been filed or are known to be commenced** by governmental authorities. Information may be provided by hyperlink or cross-reference to legal proceedings disclosure elsewhere in the document, such as in Management's Discussion & Analysis (MD&A), Risk Factors and notes to the financial statements.

(b) No information need be given under this section for proceedings:

(1) That involve negligence or other claims or actions if the business ordinarily results in such claims or actions, unless the claim or action departs from the normal kind of such claims or actions; or

(2) That involve primarily a claim for damages if the amount involved, exclusive of interest and costs, does not exceed 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis. However, if any proceeding presents in large degree the same legal or factual issues as other proceedings pending or known to be contemplated, the amount involved in such other proceedings shall be included in computing such percentage.

(c) Notwithstanding paragraph (b) of this section, disclosure under this section shall include, but shall not be limited to:

(1) Any material bankruptcy, receivership, or similar proceeding with respect to the registrant or any of its significant subsidiaries;

(2) Any material proceedings to which any director, officer or affiliate of the registrant, any owner of record or beneficially of more than five percent of any class of voting securities of the registrant, or any associate of any such director, officer, affiliate of the registrant, or security holder is a party adverse to the registrant or any of its subsidiaries or has a material interest adverse to the registrant or any of its subsidiaries;

(3) Administrative or judicial proceedings (including proceedings which present in large degree the same issues) arising under any Federal, State, or local provisions that have been enacted or adopted regulating the discharge of materials into the environment or primarily for the purpose of protecting the environment. Such proceedings shall not be deemed "ordinary routine litigation incidental to the business" and shall be described if:

~~(i) S~~ **(i)** such proceeding is material to the business or financial condition of the registrant;

~~(ii) Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or~~

~~(iii) A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than \$300,000 or, at the election of the registrant, such other threshold that (A) the registrant determines is reasonably designed to result in disclosure of any such proceeding that is material to the business or financial condition is disclosed, (B) the registrant discloses (including any change thereto) in each annual and quarterly report, and (C) does not exceed the lesser of \$1 million or one percent of the current assets of the registrant and its subsidiaries on a consolidated basis; provided, however, that such proceedings that are similar in nature may be grouped and described generically.~~

Instructions to Item 103.

1. Item 103(a) requires registrants to provide particular information regarding pending legal proceedings. Registrants are not required to disclose matters in preliminary stages where, based on the facts available, the registrant reasonably concludes that the matter is not material. If a registrant later determines that a previously undisclosed matter has become material it may commence disclosure at that time. Such disclosure shall not be deemed an admission or implication that the prior omission was improper.

2. Item 103(b)(2) states that disclosure is not required for proceedings that involve primarily a claim for damages if the amount involved, exclusive of interest and costs, does not exceed 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis. This requirement does not create a presumption in any way that a claim exceeding 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis is material.

Redline of Item 105 of Reg. S-K

Preliminary Note:

Certain basic principles are essential to understanding registrants' responsibilities when preparing, and investors' ability to rely on, the information required by this Item.

1. Risk factors are intended to identify examples of material factors that could make an investment in the registrant or the offering speculative or risky. A registrant is not required to identify every risk or to describe every aspect, manifestation, or potential consequence of a risk, or all circumstances under which a risk could arise or all potential impacts of such risk.
2. Information disclosed in response to this Item is forward-looking, and reflects the registrant's opinions about the material risks that could affect the registrant in the future. No such disclosure shall be deemed to constitute an express or implied assertion concerning any current or past fact.
3. If a registrant discloses examples of risk factors that have materialized in the past in response to this Item, such disclosures should be understood as illustrative examples only. Such disclosures should not be interpreted as a complete listing of every instance where a risk has materialized or a representation as to the likelihood of the risk materializing in the future.
4. A registrant is not required, solely for purposes of this Item, to disclose whether a risk factor has occurred in the past, is currently occurring, or may occur in the future. Disclosure of such information may be required pursuant to other applicable provisions of this subpart, including Item 303 (§ 229.303).
5. A reasonable investor is presumed to understand that broadly publicized national or global events are reasonably likely to affect most companies, and a registrant need not provide disclosure under this Item regarding such events. Disclosure of such information may be required pursuant to other applicable provisions of this subpart, including Item 303 (§ 229.303).

(a) Where appropriate, provide under the caption "Risk Factors" a discussion of ~~the~~ material factors that could make an investment in the registrant or offering speculative or risky. This discussion must be organized logically with relevant headings and each risk factor should be set forth under a subcaption that adequately describes the risk.

(b) The presentation of risks that could apply generically to any registrant or any offering is discouraged. Generic risk factors can include failures in internal controls or disclosure procedures; stock market volatility; global or national economic events, such as recessions or financial crises; global public health events; and geopolitical events, such as wars and armed conflicts. ~~, but to the extent generic risk factors are presented, disclose them at the end of the risk factor section under the caption "General Risk Factors."~~

~~(b)(c)~~ Provide concise examples of ~~Concisely explain~~ how each risk ~~affects~~ could materially affect [or is reasonably likely to materially affect] the registrant or the securities being offered. To the extent generic risk factors are presented, explain why the generic risks identified are material to the

~~registrant. If the discussion is longer than 15 pages, include in the forepart of the prospectus or annual report, as applicable, a series of concise, bulleted or numbered statements that is no more than two pages summarizing the principal factors that make an investment in the registrant or offering speculative or risky.~~

(d) If the risk factor discussion is included in a registration statement, it must immediately follow the summary section required by § 229.503 (Item 503 of Regulation S-K). If you do not include a summary section, the risk factor section must immediately follow the cover page of the prospectus or the pricing information section that immediately follows the cover page. Pricing information means price and price-related information that you may omit from the prospectus in an effective registration statement based on Rule 430A (§ 230.430A of this chapter). The registrant must furnish this information in plain English. See § 230.421(d) of Regulation C of this chapter.

(e) Safe Harbor.

(1) The safe harbor provided in Section 27A of the Securities Act of 1933 (15 U.S.C. 77z-2) and Section 21E of the Securities Exchange Act of 1934 (15 U.S.C. 78u-5) (“statutory safe harbors”) shall apply, with respect to all types of issuers and transactions, to information provided pursuant to paragraphs (a) and (b) of this Item 105, provided that the disclosure is made by: an issuer; a person acting on behalf of the issuer; an outside reviewer retained by the issuer making a statement on behalf of the issuer; or an underwriter, with respect to information provided by the issuer or information derived from information provided by the issuer.

(2) For purposes of paragraph (e)(1) of this Item 105 only:

(i) All information required by paragraphs (a) and (b) of this Item 105 is considered forward looking statements for purposes of the statutory safe harbors, except for historical facts such as examples of past events demonstrating the nature of risk events that could occur; and

(ii) With respect to information required by paragraphs (a) and (b) of this Item 105, the meaningful cautionary statements prong of the statutory safe harbors will be satisfied if a registrant satisfies the requirements of paragraph (c) of this Item 105.

(3) Information provided in response to this Item 105 should not be deemed false or misleading based on the omission of a current or past fact. Notwithstanding the foregoing, if a registrant makes an affirmative factual representation about a current or past fact in response to this Item 105, then the registrant could violate the federal securities laws if that representation is false or misleading.

Instructions to Item 105.

1. The registrant need not provide and is discouraged from providing an exhaustive list of all possible risks or effects the registrant may face or has faced.

2. Registrants are encouraged to avoid duplicative risk impact disclosure. Registrants may instead include a description of the potential impacts posed by a risk materializing only one time at the forefront of their risk factor discussion. Registrants that include risk impact disclosure in this manner will be deemed to have satisfied the disclosure requirements under paragraph [(c)] of this Item.

Redline of Item 303 of Reg. S-K

(Item 303) Management's discussion and analysis of financial condition and results of operations.

(b)

(2) Results of operations.

(i) Describe any unusual or infrequent events or transactions or any significant economic changes that materially affected the amount of reported income from continuing operations and, in each case, indicate the extent to which income was so affected. In addition, describe any other significant components of revenues or expenses that, in the registrant's judgment, would be material to an understanding of the registrant's results of operations.

(ii) Describe any known trends or uncertainties that have had or that are reasonably likely to have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations. If the registrant knows of events that are reasonably likely to cause a material change in the relationship between costs and revenues (such as known or reasonably likely future increases in costs of labor or materials or price increases or inventory adjustments), the change in the relationship must be disclosed.

(iii) If the statement of comprehensive income presents material changes from period to period in net sales or revenue, if applicable, describe the extent to which such changes are attributable to changes in prices or to changes in the volume or amount of goods or services being sold or to the introduction of new products or services.

(iv) To the extent material to an understanding of the registrant's financial condition and results of operations, describe (A) (1) the registrant's primary market risk exposures and (2) how such risk exposures are managed and (B) the actual or potential changes in interest rates, foreign currency exchange rates, commodity prices, equity price risk or other relevant market rates or prices that have had or that are reasonably likely to have a material favorable or unfavorable impact on earnings, fair values, or cash flows from market risk-sensitive instruments. To the extent material, describe any changes to the registrant's primary market risk exposures or how such risk exposures are managed, including any changes to models, assumptions and parameters or instruments, positions and transactions that had, or that are reasonably likely to have, a material impact on the sensitivity of the registrant's earnings, fair values, or cash flows from market risk-sensitive instruments.

[Safe Harbor for Item 305 to be relocated to a new Item 303(d)]

(d) Safe harbor.

(1) The safe harbor provided in Section 27A of the Securities Act of 1933 (15 U.S.C. 77z-2) and Section 21E of the Securities Exchange Act of 1934 (15 U.S.C. 78u-5) ("statutory safe harbors") shall apply, with respect to all types of issuers and transactions, to information provided pursuant to paragraphs (b)(2)(iva), (b), and (c) of this Item 303305, provided that the disclosure is made by: an issuer; a person acting on behalf of the issuer; an outside reviewer retained by the issuer making a statement on behalf of the issuer; or an underwriter, with respect to information provided by the issuer or information derived from information provided by the issuer.

(2) For purposes of paragraph (d) of this Item 305 only: (i) All information required by paragraphs (b)(2)(iv)(A)(1) and (B) (a), (b)(1)(i), (b)(1)(iii), and (c) of this Item 303305 is considered forward looking statements for purposes of the statutory safe harbors, except for historical facts such as the terms of particular contracts and the number of market risk sensitive instruments held during or at the end of the reporting period; and

(ii) With respect to paragraph (a) of this Item 305, the meaningful cautionary statements prong of the statutory safe harbors will be satisfied if a registrant satisfies all requirements of that same paragraph (a) of this Item 305.

~~(3) **Critical accounting estimates.** Critical accounting estimates are those estimates made in accordance with generally accepted accounting principles that involve a significant level of estimation uncertainty and have had or are reasonably likely to have a material impact on the financial condition or results of operations of the registrant. Provide qualitative and quantitative information necessary to understand the estimation uncertainty and the impact the critical accounting estimate has had or is reasonably likely to have on financial condition or results of operations to the extent the information is material and reasonably available. This information should include why each critical accounting estimate is subject to uncertainty and, to the extent the information is material and reasonably available, how much each estimate and/or assumption has changed over a relevant period, and the sensitivity of the reported amount to the methods, assumptions and estimates underlying its calculation.~~

[Note to centralize critical accounting estimate discussion in financial statements.]

Instructions to paragraph (b):

2. If the reasons underlying a **material** change in one line item in the financial statements also relate to other line items, no repetition of such reasons in the discussion is required and a line-by-line analysis of the financial statements as a whole is neither required nor generally appropriate. **Discussion of immaterial line items, in particular, is not required.** Registrants need not recite the amounts of changes from period to period if they are readily computable from the financial statements. The discussion must not merely repeat numerical data contained in the financial statements.

3. Provide the analysis in a format that facilitates easy understanding and that supplements, and does not duplicate, disclosure already provided in the filing. ~~For critical accounting estimates, this disclosure must supplement, but not duplicate, the description of accounting policies or other disclosures in the notes to the financial statements.~~

12. Information may be provided by hyperlink or cross-reference to disclosure elsewhere in the document, such as in Item 101 (Description of Business), Item 103 (Legal Proceedings), Item 105 (Risk Factors) notes to the financial statements, and other portions of Item 303 (MD&A).

(c) *Interim periods.* If interim period financial statements are included or are required to be included by 17 CFR 210.3 [Article 3 of Regulation S-X], a management's discussion and analysis of the financial condition and results of operations must be provided so as to enable the reader to assess **material** changes in financial condition and results of operations between the periods specified in paragraphs (c)(1) and (2) of this section. The discussion and analysis must include a discussion of **material** changes in those items specifically listed in **paragraph (b)** of this section.

(1) *Material changes in financial condition.* ~~Discuss any material changes in financial condition from the end of the preceding fiscal year to the date of the most recent interim balance sheet provided.~~ If the interim financial statements include an interim balance sheet as of the corresponding interim date of the preceding fiscal year, **discuss** any **material** changes in financial condition from that date to the date of the most recent interim balance sheet provided ~~also must be discussed.~~ **If material to an understanding of the interim period, discuss any material changes in financial condition from the end of the preceding fiscal year to the date of the most recent interim balance sheet provided.** If discussions of changes from both the end and the corresponding interim date of the preceding fiscal year are required, the discussions may be combined at the discretion of the **registrant**.

(2) Material changes in results of operations.

- (i) ~~Discuss any material changes in the registrant's results of operations with respect to the most recent fiscal year-to-date period for which a statement of comprehensive income is provided and the corresponding year-to-date period of the preceding fiscal year.~~ Discuss any material changes in the registrant's results of operations with respect to either the most recent quarter for which a statement of comprehensive income is provided and the corresponding quarter for the preceding fiscal year or, in the alternative, the most recent quarter for which a statement of comprehensive income is provided and the immediately preceding sequential quarter. If the latter immediately preceding sequential quarter is discussed, then provide in summary form the financial information for that immediately preceding sequential quarter that is subject of the discussion or identify the registrant's prior filings on EDGAR that present such information. If there is a change in the form of presentation from period to period that forms the basis of comparison from previous periods provided pursuant to this paragraph, the registrant must discuss the reasons for changing the basis of comparison and provide both comparisons in the first filing in which the change is made.
- (ii) If material to an understanding of the interim period, discuss any material changes in the registrant's results of operations with respect to the most recent fiscal year-to-date period for which a statement of comprehensive income is provided and the corresponding year-to-date period of the preceding fiscal year.

Instructions to paragraph (c):

3. Registrants are expressly permitted to focus discussion on material changes since the last annual report or prior interim disclosure, including developments in results of operations, liquidity, capital resources, and known trends and uncertainties, while incorporating prior background or foundational disclosure by reference.

Redline of 403 of Reg. S-K

(a) *Security ownership of certain beneficial owners.*⁴⁵ Furnish the following information, as of the most recent practicable date, substantially in the tabular form indicated, with respect to any person (including any “group” as that term is used in section 13(d)(3) of the Exchange Act) who is known to the registrant to be the beneficial owner of more than five percent of any class of the registrant’s voting securities. ~~The address given in column (2) may be a business, mailing or residence address. Show in column (3) the total number of shares beneficially owned and in column (4) the percentage of class so owned. Of the number of shares shown in column (3), indicate by footnote or otherwise the amount known to be shares with respect to which such listed beneficial owner has the right to acquire beneficial ownership, as specified in Rule 13d-3(d)(1) under the Exchange Act (§ 240.13d-3(d)(1) of this chapter).~~

(1) Title of class	(2) Name and address of beneficial owner	(3) Amount and nature of beneficial ownership*	(4) Percent of class*

(b) *Security ownership of management.* Furnish the following information, as of the end of the registrant’s most recently completed fiscal year end~~most recent practicable date~~, in substantially the tabular form indicated, as to each class of equity securities of the registrant or any of its parents or subsidiaries, including directors’ qualifying shares, beneficially owned by all directors and director nominees, naming them, each of the named executive officers as defined in Item 402(a)(3) (§ 229.402(a)(3)), ~~and directors and executive officers of the registrant as a group, without naming them.~~ Show in column (3) the total number of shares beneficially owned, and in column (4) the percent of the class so owned. Of the number of shares shown in column (3), indicate, by footnote or otherwise, the amount of shares that are pledged as security and the amount of shares with respect to which such persons have the right to acquire beneficial ownership as specified in § 240.13d-3(d)(1) of this chapter.

(1) Title of class	(2) Name of beneficial owner	(3) Amount and nature of beneficial ownership	(4) Percent of class

(c) *Changes in control.* Describe any arrangements, known to the registrant, including any pledge by any person of securities of the registrant or any of its parents, the operation of which may at a subsequent date result in a change in control of the registrant.

Instructions to Item 403: 1. The percentages are to be calculated on the basis of the amount of outstanding securities, excluding securities held by or for the account of the registrant or its subsidiaries, plus securities deemed outstanding pursuant to Rule 13d-3(d)(1) under the Exchange Act 17 (CFR 240.13d-3(d)(1)). For purposes of paragraph (b), if the percentage of shares beneficially owned by any director or nominee, ~~or by all directors and officers of the registrant as a group~~, does not exceed one percent of the class so owned, the registrant may, in lieu of furnishing a precise percentage, indicate this fact by means of an asterisk and explanatory footnote or other similar means.

⁴⁵ Alternatively, delete Item 403(a) in its entirety.

2. For the purposes of this Item, beneficial ownership shall be determined in accordance with Rule 13d-3 under the Exchange Act (§ 240.13d-3 of this chapter). Include such additional subcolumns or other appropriate explanation of column (3) necessary to reflect amounts as to which the beneficial owner has (A) sole voting power, (B) shared voting power, (C) sole investment power, or (D) shared investment power. At its election, the registrant may include additional information as to a beneficial owner's holdings determined without regard to the standard of beneficial ownership provided in § 240.13d-3(d)(1) of this chapter in one or more supplemental columns to the table.

3. The information required by Item 403(a)(1) will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference. ~~The registrant shall be deemed to know the contents of any statements filed with the Commission pursuant to section 13(d) or 13(g) of the Exchange Act. When applicable, a registrant may rely upon information set forth in such statements unless the registrant knows or has reason to believe that such information is not complete or accurate or that a statement or amendment should have been filed and was not.~~

~~4. For purposes of furnishing information pursuant to paragraph (a) of this Item, the registrant may indicate the source and date of such information.~~

~~4.5.~~ Where more than one beneficial owner is known to be listed for the same securities, appropriate disclosure should be made to avoid confusion. ~~For purposes of paragraph (b), in computing the aggregate number of shares owned by directors and officers of the registrant as a group, the same shares shall not be counted more than once.~~

5. Information need not be furnished pursuant to paragraph (b) of this Item for any director, named executive officer, or officer who is no longer serving in such capacity as of the date the registrant files the applicable report or proxy statement containing the disclosure required by this Item.

6. Paragraph (c) of this Item does not require a description of ordinary default provisions contained in the charter, trust indentures or other governing instruments relating to securities of the registrant.

7. Where the holder(s) of voting securities reported pursuant to paragraph (a) hold more than five percent of any class of voting securities of the registrant pursuant to any voting trust or similar agreement, state the title of such securities, the amount held or to be held pursuant to the trust or agreement (if not clear from the table) and the duration of the agreement. Give the names and addresses of the voting trustees and outline briefly their voting rights and other powers under the trust or agreement.

Redline of Item 404(a) of Reg S-K.

Transactions with related persons. Describe any transaction, since the beginning of the registrant's last fiscal year, or any currently proposed transaction, in which (i) the registrant was or is to be a participant, and (ii) the amount involved exceeds \$250,000, (iii) the registrant's interest in the transaction exceeds the greater of \$1,000,000 or 2% of the registrant's consolidated revenues as of the end of the most recently completed fiscal year, and in which and (iv) any related person had or will have a direct or indirect material interest that exceeds \$250,000. Disclose the following information regarding the transaction:

- (1) The name of the related person and the basis on which the person is a related person.
- (2) The related person's interest in the transaction with the registrant, including the related person's position(s) or relationship(s) with, or ownership in, a firm, corporation, or other entity that is a party to, or has an interest in, the transaction.
- (3) The approximate dollar value of the amount involved in the transaction.
- (4) The approximate dollar value of the amount of the related person's interest in the transaction, which shall be computed without regard to the amount of profit or loss.
- (5) In the case of indebtedness, disclosure of the amount involved in the transaction shall include the largest aggregate amount of principal outstanding during the period for which disclosure is provided, ~~the amount thereof outstanding as of the latest practicable date,~~ the amount of principal paid during the periods for which disclosure is provided, the amount of interest paid during the period for which disclosure is provided, and the rate or amount of interest payable on the indebtedness.
- (6) Any other information regarding the transaction or the related person in the context of the transaction that is material to investors in light of the circumstances of the particular transaction.

Instructions to Item 404(a). 1. For the purposes of paragraph (a) of this Item, the term related person means:

- a. Any person who was in any of the following categories at any time during the specified period for which disclosure under paragraph (a) of this Item is required:
 - i. Any director or executive officer of the registrant;
 - ii. Any nominee for director, when the information called for by paragraph (a) of this Item is being presented in a proxy or information statement relating to the election of that nominee for director; or
 - iii. Any immediate family member of a director or executive officer of the registrant, or of any nominee for director when the information called for by paragraph (a) of this Item is being presented in a proxy or information statement relating to the election of that nominee for director, which means any child, stepchild, parent, stepparent, spouse, ~~sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law~~ of such director, executive officer or nominee for director, and any person (other than a tenant or employee) sharing the household of such director, executive officer or nominee for director; and
- b. Any person who was in any of the following categories when a transaction in which such person had a direct or indirect material interest occurred or existed:

i. A security holder covered by Item 403(a) (§ 229.403(a)), provided that a security holder covered by Item 403(a) will not be deemed a related person if it discloses its ownership on Schedule 13G pursuant to section 13(g) of the Exchange Act and Rules 13d-1(b) or (c) (§ 240.13d-3(b) and (c) of this chapter) thereunder; or

ii. Any immediate family member of any such security holder, which means any child, stepchild, parent, stepparent, spouse, ~~sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law~~ of such security holder, and any person (other than a tenant or employee) sharing the household of such security holder.

2. For purposes of paragraph (a) of this Item, a transaction includes, but is not limited to, any financial transaction, arrangement or relationship (including any indebtedness or guarantee of indebtedness) or any series of similar transactions, arrangements or relationships.

3. The amount involved in the transaction shall be computed by determining the dollar value of the amount involved in the transaction in question. For an ongoing or completed transaction such amounts shall be computed based on the amount involved during the registrant's most recently completed fiscal year, which shall include:

a. In the case of any lease or other transaction providing for periodic payments or installments, the aggregate amount of all periodic payments or installments due ~~on or after the beginning of the registrant's last~~ during the fiscal year with respect to which disclosure is required, including any required or optional payments due during or at the conclusion of the lease or other transaction providing for periodic payments or installments during the fiscal year with respect to which disclosure is required; and

b. In the case of indebtedness, the largest aggregate amount of all indebtedness outstanding at any time during ~~since the beginning of~~ the registrant's last fiscal year and all amounts of interest payable on it during the last fiscal year.

4.a. ~~In the case of a transaction involving indebtedness~~ Disclosure need not be provided of:

i. ordinary-course purchases or sales of goods or services subject to usual trade terms; or

ii. arm's-length transactions in the ordinary course of business (as well as for any indebtedness arising from such transaction).

~~The following items of indebtedness may be excluded from the calculation of the amount of indebtedness and need not be disclosed: Amounts due from the related person for purchases of goods and services subject to usual trade terms, for ordinary business travel and expense payments and for other transactions in the ordinary course of business;~~

b. Disclosure need not be provided of any indebtedness transaction for the related persons specified in Instruction 1.b. to paragraph (a) of this Item; and

c. If the lender is a bank, savings and loan association, or broker-dealer extending credit under Federal Reserve Regulation T (12 CFR part 220) and the loans are not disclosed as past due, nonaccrual or troubled debt restructurings in the consolidated financial statements, disclosure under paragraph (a) of this Item may consist of a statement, if such is the case, that the loans to such persons:

i. Were made in the ordinary course of business;

ii. Were made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable loans with persons not related to the lender; and

iii. Did not involve more than the normal risk of collectibility or present other unfavorable features.

5.a. Disclosure of an employment relationship or transaction involving an executive officer and any related compensation solely resulting from that employment relationship or transaction need not be provided pursuant to paragraph (a) of this Item if:

i. The compensation arising from the relationship or transaction is reported pursuant to Item 402 (§ 229.402);

ii. The executive officer is not an immediate family member (as specified in Instruction 1 to paragraph (a) of this Item) and such compensation would have been reported under Item 402 (§ 229.402) as compensation earned for services to the registrant if the executive officer was a named executive officer as that term is defined in Item 402(a)(3) (§ 229.402(a)(3)), and such compensation had been approved, or recommended to the board of directors of the registrant for approval, by the compensation committee of the board of directors (or group of independent directors performing a similar function) of the registrant; or

iii. The transaction involves the recovery of erroneously awarded compensation computed as provided in 17 CFR 240.10D-1(b)(1)(iii) and the applicable listing standards for the registrant's securities, that is disclosed pursuant to Item 402(w) (§ 229.402(w)).

b. Disclosure of compensation to a director need not be provided pursuant to paragraph (a) of this Item if the compensation is reported pursuant to Item 402(k) (§ 229.402(k)).

6. A person who has a position or relationship with a firm, corporation, or other entity that engages in a transaction with the registrant shall not be deemed to have an indirect material interest within the meaning of paragraph (a) of this Item where:

a. The interest arises only:

i. From such person's position as a director of another corporation or organization that is a party to the transaction; or

ii. From the direct or indirect ownership by such person and all other persons specified in Instruction 1 to paragraph (a) of this Item, in the aggregate, of less than a ten percent equity interest in another person (other than a partnership) which is a party to the transaction; or

iii. From both such position and ownership; or

b. The interest arises only from such person's position as a limited partner in a partnership in which the person and all other persons specified in Instruction 1 to paragraph (a) of this Item, have an interest of less than ten percent, and the person is not a general partner of and does not hold another position in the partnership.

7. Disclosure need not be provided pursuant to paragraph (a) of this Item if:

a. The transaction is one where the rates or charges involved in the transaction are determined by

competitive bids, or the transaction involves the rendering of services as a common or contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority;

b. The transaction involves services as a bank depository of funds, transfer agent, registrar, trustee under a trust indenture, or similar services; or

c. The interest of the related person arises solely from the ownership of a class of equity securities of the registrant and all holders of that class of equity securities of the registrant received the same benefit on a pro rata basis.

8. A registrant will be deemed to have complied with this Item if it relies in good faith upon publicly available information or information otherwise known to it in determining whether a transaction exists with a related person that requires disclosure.

Redline of 407(a) of Reg. S-K

(a) *Director independence.* Identify each director and, when the disclosure called for by this paragraph is being presented in a proxy or information statement relating to the election of directors, each nominee for director, that is independent under the independence standards applicable to the registrant under paragraph (a)(1) of this Item. In addition, if such independence standards contain independence requirements for committees of the board of directors, identify each director that is a member of the compensation, nominating or audit committee that is not independent under such committee independence standards. ~~If the registrant does not have a separately designated audit, nominating or compensation committee or committee performing similar functions, the registrant must provide the disclosure of directors that are not independent with respect to all members of the board of directors applying such committee independence standards.~~

~~[Instruction] 3. The description of the specific categories or types of transactions, relationships or arrangements required by paragraph (a)(3) of this Item must be provided in such detail as is necessary to fully describe the nature of the transactions, relationships or arrangements.~~

Redline of 407(b)(2) of Reg. S-K

(b) *Board meetings and committees; annual meeting attendance.* [...]

~~Instruction to Item 407(b)(2). In lieu of providing the information required by paragraph (b)(2) of this Item in the proxy statement, the registrant may instead provide the registrant's Web site address where such information appears.~~

Redline of 407(c)(2)(vi) of Reg. S-K

(c) *Nominating committee.* [...]

(2) Provide the following information regarding the registrant's director nomination process: [...]

(vi) Describe the nominating committee's process for identifying and evaluating nominees for director, including nominees recommended by security holders, and any differences in the manner in which the nominating committee evaluates nominees for director based on whether the nominee is recommended by a security holder, and whether, and if so how, the nominating committee (or the board) considers diversity in identifying nominees for director. ~~If the nominating committee (or the board) has a policy with regard to the consideration of diversity in identifying director nominees, describe how this policy is implemented, as well as how the nominating committee (or the board) assesses the effectiveness of its policy;~~

Redline of 407(e)(3)(ii) of Reg. S-K

~~(ii) Any role of executive officers in determining or recommending the amount or form of executive and director compensation;~~

Redline of 407(c)-(e) of Reg. S-K

[Add new instruction:] "A registrant may satisfy any narrative description required by paragraphs (c), (d) or (e) of this Item by providing a clear cross-reference or hyperlink to the applicable committee charter or other publicly available governance document, provided that the referenced document clearly sets forth the information required by the applicable paragraph. A cross-reference or hyperlink provided

pursuant to this Instruction shall satisfy the disclosure requirement of the applicable paragraph and shall not, solely by reason of such cross-reference or hyperlink, be deemed incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent the registrant specifically incorporates the document by reference.”

Redline of Item 601(b) of Reg. S-K

(b) *Description of exhibits.* Set forth below is a description of each document listed in the exhibit tables.
[...]

(2) *Plan of acquisition, reorganization, arrangement, liquidation, or succession.*

(i) Any material plan of acquisition, disposition, reorganization, readjustment, succession, liquidation, or arrangement and any amendments thereto described in the statement or report.

(ii) The registrant may redact specific provisions or terms of exhibits required to be filed by paragraph (b)(2) of this section if the registrant customarily and actually treats that information as private or confidential and if the omitted information is not material. If it does so, the registrant should mark the exhibit index to indicate that portions of the exhibit or exhibits have been omitted and include a prominent statement on the first page of the redacted exhibit that certain identified information has been excluded from the exhibit because it is both not material and is the type that the registrant treats as private or confidential. The registrant also must include brackets indicating where the information is omitted from the filed version of the exhibit. If requested by the Commission or its staff, the registrant must promptly provide on a supplemental basis an unredacted copy of the exhibit and its materiality and privacy or confidentiality analyses. Upon evaluation of the registrant's supplemental materials, the Commission or its staff may require the registrant to amend its filing to include in the exhibit any previously redacted information that is not adequately supported by the registrant's analyses. The registrant may request confidential treatment of the supplemental material submitted under this paragraph (b)(2)(ii) pursuant to § 200.83 of this chapter while it is in the possession of the Commission or its staff. After completing its review of the supplemental information, the Commission or its staff will return or destroy it if the registrant complies with the procedures outlined in § 230.418 or 240.12b-4 of this chapter.

(ii) The registrant may omit the exhibits otherwise required to be filed by paragraph (b)(2) of this section if the relevant acquisition, disposition, reorganization, readjustment, succession, liquidation, or arrangement was completed more than two full fiscal years prior to the statement or report being filed.

(4) *Instruments defining the rights of security holders, including indentures.*

~~(vi) For each class of securities that is registered under Section 12 of the Exchange Act, provide the information required by Item 202(a) through (d) and (f) of Regulation S-K (§ 229.202 of this chapter).~~

~~Instruction 1 to paragraph (b)(4)(vi). A registrant is only required to provide the information called for by Item 601(b)(4)(vi) if it is filing an annual report under Exchange Act Section 13(a) or 15(d).~~

~~Instruction 2 to paragraph (b)(4)(vi). For purposes of Item 601(b)(4)(vi), all references in Item 202 to securities to be or being registered, offered, or sold will mean securities that are registered as of the end of the period covered by the report with which the exhibit is filed. In addition, for purposes of this Item, the disclosure will be required for classes of securities that have not been retired by the end of the period covered by the report.~~

~~Instruction 3 to paragraph (b)(4)(vi). The registrant may incorporate by reference to an exhibit previously filed in satisfaction of Item 601(b)(4)(vi) of Regulation S-K, as applicable, so long as there has not been any change to the information called for by Item 202 (§ 229.202 of this chapter) since the filing date of the linked filing. Such hyperlink will be deemed to satisfy the requirements of Item 601(b)(4)(vi) for the current filing.~~

(10) *Material contracts.*

(i)

(A) Every contract not made in the ordinary course of business that is material to the registrant and is to be performed in whole or in part at or after the filing of the registration statement or report. ~~In addition, for newly reporting registrants, every contract not made in the ordinary course of business that is material to the registrant and that was entered into not more than two years before the date on which such registrant:~~

~~(1) First files a registration statement or report; or~~

~~(2) Completes a transaction that had the effect of causing it to cease being a public shell company~~

(B) The only contracts that need to be filed are those to which the registrant or a subsidiary of the registrant is a party or has succeeded to a party by assumption or assignment or in which the registrant or such subsidiary has a beneficial interest.

(ii) ~~If the~~ A contract ~~is such as ordinarily accompanies the kind of business conducted by the registrant and its subsidiaries, it will be deemed to have been made in the ordinary course of business and need not~~ must be filed ~~unless~~ if it falls within one or more of the following categories, ~~in which case it shall be filed~~ except where immaterial in amount or significance or made in the ordinary course of the business: [...]

(B) Any contract upon which the registrant's business is substantially dependent, as in the case of continuing contracts to sell the major part of registrant's products or services or to purchase the major part of registrant's requirements of goods, services or raw materials or any franchise or license or other agreement to use a patent, formula, trade secret, process or trade name upon which registrant's business depends to a material extent; [...]; or

~~(C) Any contract calling for the acquisition or sale of any property, plant or equipment for a consideration exceeding 15 percent of such fixed assets of the registrant on a consolidated basis; or~~

~~(C)~~ Any material lease under which a part of the property described in the registration statement or report is held by the registrant.

(iii)

~~(A) Any management contract or any compensatory plan, contract or arrangement, including but not limited to plans relating to options, warrants or~~

~~rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing (or if not set forth in any formal document, a written description thereof) in which any director or any of the named executive officers of the registrant, as defined by Item 402(a)(3) (§ 229.402(a)(3)), participates shall be deemed material and shall be filed; and any other management contract or any other compensatory plan, contract, or arrangement in which any other executive officer of the registrant participates shall be filed unless immaterial in amount or significance.~~

~~(B) Any compensatory plan, contract or arrangement adopted without the approval of security holders pursuant to which equity may be awarded, including, but not limited to, options, warrants or rights (or if not set forth in any formal document, a written description thereof), in which any employee (whether or not an executive officer of the registrant) participates shall be filed unless immaterial in amount or significance. A compensation plan assumed by a registrant in connection with a merger, consolidation or other acquisition transaction pursuant to which the registrant may make further grants or awards of its equity securities shall be considered a compensation plan of the registrant for purposes of the preceding sentence.~~

~~(A)~~ ~~Notwithstanding paragraph (b)(10)(iii)(A) above, the~~ The following management contracts or compensatory plans, contracts or arrangements need not be filed:

- (1) Ordinary purchase and sales agency agreements.
- (2) Agreements with managers of stores in a chain organization or similar organization.
- (3) Contracts providing for labor or salesmen's bonuses or payments to a class of security holders, as such.
- (4) Any compensatory plan, contract or arrangement which pursuant to its terms is available to employees, officers or directors generally and which in operation provides for the same method of allocation of benefits between management and nonmanagement participants.
- (5) Any compensatory plan, contract or arrangement if the registrant is a foreign private issuer that furnishes compensatory information under Item 402(a)(1) (§ 229.402(a)(1)) and the public filing of the plan, contract or arrangement, or portion thereof, is not required in the registrant's home country and is not otherwise publicly disclosed by the registrant.
- (6) Any compensatory plan, contract, or arrangement if the registrant is a wholly owned subsidiary of a company that has a class of securities registered pursuant to section 12 or files reports pursuant to section 15(d) of the Exchange Act and is filing a report on Form 10-K or registering debt instruments or preferred stock that are not voting securities on Form S-1.

~~(19) Insider trading policies and procedures.~~ Any insider trading policies and procedures, or amendments thereto, that are the subject of the disclosure required by § 229.408(b) (Item 408(b) of Regulation S-K).

~~(21) Subsidiaries of the registrant.~~

~~(i) List all subsidiaries of the registrant, the state or other jurisdiction of incorporation or organization of each, and the names under which such subsidiaries do business. This list may be incorporated by reference from a document which includes a complete and accurate list.~~

~~(ii) The names of particular subsidiaries may be omitted if the unnamed subsidiaries, considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary as of the end of the year covered by this report. (See the definition of “significant subsidiary” in Rule 1-02(w) (17 CFR 210.1-02(w)) of Regulation S-X.) The names of consolidated wholly owned multiple subsidiaries carrying on the same line of business, such as chain stores or small loan companies, may be omitted, provided the name of the immediate parent, the line of business, the number of omitted subsidiaries operating in the United States and the number operating in foreign countries are given. This instruction shall not apply, however, to banks, insurance companies, savings and loan associations or to any subsidiary subject to regulation by another Federal agency.~~

~~(95) Mine Safety Disclosure Exhibit.~~ A registrant that is an operator, or that has a subsidiary that is an operator, of a coal or other mine must provide the information required by Item 104 of Regulation S-K (§ 229.104 of this chapter) in an exhibit to its Exchange Act annual or quarterly report. For purposes of this Item:

~~(1) Paragraph tools not available for sections that do not have unique paragraph numbers.~~ The term coal or other mine means a coal or other mine, as defined in section 3 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 802), that is subject to the provisions of such Act (30 U.S.C. 801 et seq).

~~(2) The term operator has the meaning given the term in section 3 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 802).~~

~~(3) The term subsidiary has the meaning given the term in Exchange Act Rule 12b-2 (17 CFR 240.12b-2).~~

~~(97) Policy relating to recovery of erroneously awarded compensation.~~ A registrant that at any time during its last completed fiscal year had a class of securities listed on a national securities exchange registered pursuant to section 6 of the Exchange Act (15 U.S.C. 78f) or a national securities association registered pursuant to section 15A of the Exchange Act (15 U.S.C. 78o-3) must file as an exhibit to its annual report the compensation recovery policy required by the applicable listing standards adopted pursuant to 17 CFR 240.10D-1.

~~(107) Filing fee table.~~ The filing fee table and related disclosure required by Item 16.(c) of Form S-1 (§ 239.11 of this chapter), Item 16.(b) of Form S-3 (§ 239.13 of this chapter), Item 8.(b) of Form S-8 (§ 239.16b of this chapter), Item 36.(c) of Form S-11 (§ 239.18 of this chapter), Item 21.(d) of Form S-4 (§ 239.25 of this chapter), Item 8.c of Form F-1 (§ 239.31 of this chapter), Item 9.(b) of Form F-3 (§ 239.33 of this chapter), Item 21.(d) of Form F-4 (§ 239.34 of this chapter), Item 14.(b) of Form SF-1 (§ 239.44 of this chapter), and Item 14.(b) of Form SF-3 (§

~~239.45 of this chapter). This exhibit must be submitted as required by § 232.408 of this chapter (Rule 408 of Regulation S-T), provided, however, that if the exhibit is submitted pursuant to Item 14(b) of Form SF-1 (§ 239.44 of this chapter) or Item 14(b) of Form SF-3 (§ 239.45 of this chapter), it is permitted but not required to be submitted as otherwise required by Rule 408.~~

[Add new instruction:] If a registrant could have redacted confidential information from an exhibit pursuant to Items 601(a)(6), 601(b)(2)(ii), or (b)(10)(iv), but inadvertently failed to do so prior to filing that exhibit, the registrant may seek post-filing redaction of such confidential information pursuant to [insert process to be determined by the Commission].

[Add new instruction:] A registrant may seek to delete any exhibits that were filed mistakenly or without the registrant's authorization pursuant to [insert process to be determined by the Commission].

Redline of Item 701 of Regulation S-K

Recent sales of unregistered securities; use of proceeds from registered securities.

Furnish the following information as to all securities of the registrant sold by the registrant within the past three years, unless another time period is specified by the applicable form or schedule, which were not registered under the Securities Act. Include sales of reacquired securities, as well as new issues, securities issued in exchange for property, services, or other securities, and new securities resulting from the modification of outstanding securities.

Redline of Instruction I.A.3(b) to Form S-3

I. Eligibility Requirements for Use of Form S-3 [...]

A. Registrant Requirements. Registrants must meet the following conditions in order to use this Form S-3 for registration under the Securities Act of securities offered in the transactions specified in I. B. below: [...]

3. The registrant: [...]

(b) has filed in a timely manner all reports required to be filed during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement, other than a report that is required solely pursuant to Item 1.01, 1.02, 1.04, 1.05, 2.03, 2.04, 2.05, 2.06, 4.02(a) or 5.02(e) of Form 8-K (§249.308 of this chapter) or an exhibit required to be filed pursuant to Item 601(b)(10)(iii) of Regulation S-K (§229.601 of this chapter). If the registrant has used (during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement) Rule 12b-25(b) (§240.12b-25(b) of this chapter) under the Exchange Act with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by that rule.

Redline of Rule 418(b) of the General Rules and Regulations, Securities Act of 1933

§ 230.418 Supplemental information. [...]

(b) Supplemental information described in paragraph (a) of this section shall not be required to be filed with or deemed part of and included in the registration statement, unless otherwise required. The information shall be destroyed, or, if requested, returned to the registrant ~~upon request,~~ provided that ~~the~~ destruction or return of such information is consistent with the provisions of the Freedom of Information Act [5 U.S.C. 552].²

- ~~(1) Such request is made at the time such information is furnished to the staff;~~
- ~~(2) The return of such information is consistent with the protection of investors;~~
- ~~(3) The return of such information is consistent with the provisions of the Freedom of Information Act [5 U.S.C. 552]; and~~
- ~~(4) The information was not filed in electronic format.~~

Redline of Rule 12b-4 of the General Rules and Regulations, Securities Exchange Act of 1934

§ 240.12b-4 Supplemental information.

The Commission or its staff may, where it is deemed appropriate, request supplemental information concerning the registrant, a registration statement or a periodic or other report under the Act. This information shall not be required to be filed with or deemed part of the registration statement or report. The information shall be destroyed, or, if requested, returned to the registrant ~~upon request~~, provided that ~~the~~ destruction or return of such information is consistent with the provisions of the Freedom of Information Act [5 U.S.C. 552].²

~~(a) Such request is made at the time such information is furnished to the staff;~~

~~(b) The return of such information is consistent with the protection of investors; and~~

~~(c) The return of such information is consistent with the provisions of the Freedom of Information Act (5 U.S.C. 552).~~