April 13, 2026

Regulation S-K Reform
File No. CLL-15

Ladies and Gentlemen:

We write in response to the request by Chairman Paul Atkins for comments on Regulation S-K, issued in File No. CLL-15, *Statement on Reforming Regulation S-K*.

We commend the Securities and Exchange Commission (the "Commission") for its recent rulemaking efforts and its leadership's focus on reforming Regulation S-K. As Chairman Atkins has observed, disclosure requirements under Regulation S-K have in some cases drifted from the foundational standard of materiality, resulting in a proliferation of required disclosures that may obscure important information for investors while unduly burdening registrants.[1] We support efforts to revise Regulation S-K to ensure it remains focused on principles-based disclosure requirements rooted in financial materiality.

Part I of our letter discusses the guiding role of materiality under the federal securities laws. Part II offers examples of the types of Regulation S-K reform we suggest the Commission consider to ensure Regulation S-K remains focused on principles-based disclosure requirements rooted in materiality. We also include in Annex A additional recommendations for potential regulatory change that we believe warrant consideration.

I. Materiality as the Guiding Principle for Regulation S-K Disclosure

Described as "the cornerstone" of the disclosure system, the concept of materiality has long been used throughout the federal securities laws as the standard for what must be disclosed.[2] Justice Thurgood Marshall, writing for the U.S. Supreme Court in *TSC Industries v. Northway*, issued the landmark judicial definition of "material" in 1976. Specifically, the Court held that a fact is "material" if "there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote," or "a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered

[1] Chairman Paul S. Atkins, Prepared Remarks Before SEC Speaks (Mar. 19, 2026).

[2] *See* Business and Financial Disclosure Required by Regulation S-K, Release No. 33-10064 (Apr. 13, 2016) [81 FR 23915 (Apr. 22, 2016)] ("Concept Release") at 23924-25.

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the ‘total mix’ of information made available.”[3] In 1982, the Commission adopted the Supreme Court definition and has used it ever since.[4]

Over the years, the Commission has added a number of new disclosure requirements to Regulation S-K, or amended existing Regulation S-K items, and in doing so has sometimes strayed from principles-based requirements rooted in materiality in favor of prescriptive line item requirements. As a result, disclosure documents are much lengthier,[5] and contain duplicative or financially unimportant (*i.e.*, immaterial) information. Reviewing Regulation S-K to remove requirements that are not rooted in materiality will allow the preparation by registrants of disclosure documents that enable investors to more easily focus on key information, better protecting investors and facilitating capital formation.

With respect to investor protection, we believe principles-based disclosure requirements rooted in materiality enhance disclosure quality by limiting disclosure to decision-useful information. In *TSC*, the Supreme Court in articulating the materiality standard warned that burying shareholders “in an avalanche of trivial information” would be “hardly conducive to informed decision-making.”[6] In contrast, principles-based requirements rooted in materiality:

- help to elicit information that a reasonable investor would consider important in making an informed investment or voting decision;

- unlike one-size-fits-all prescriptive standards, enable registrants to tailor their disclosures to their specific and evolving circumstances;

- take into account management’s views about what disclosures are most likely to be significant to the registrant; and

- are flexible, facilitating the disclosure of significant, emerging issues (*e.g.*, artificial intelligence, geopolitical developments) more quickly and organically than if the Commission had to engage in time-consuming, item-specific rulemaking on specific topics.

Revising Regulation S-K to focus on principles-based disclosure requirements rooted in materiality would also facilitate capital formation, by focusing disclosure on decision-useful information for investors and therefore reducing compliance costs. We believe such costs have discouraged private companies from going public while also contributing to existing registrants

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[3] *TSC Industries, Inc. v. Northway*, 426 U.S. 438, 449 (1976).

[4] Concept Release, *supra* note 2, at 23925-26.

[5] *See* James A. Deeken, *More is Better?: Concerns on the Growing Amount of Securities Disclosure in Offering Documents and Public Filings*, 50(2) Sec. Regul. L.J. 107, 108 (2022); Travis Dyer et al., *The Evolution of 10-K Textual Disclosure: Evidence from Latent Dirichlet Allocation*, 64 J. Acct. Econ. 221, 241 (2017); Commissioner Troy A. Paredes, Remarks at The SEC Speaks in 2013 (Feb. 22, 2013) (“My concern is ‘information overload,’ a risk of mandatory disclosure that has been present for some time and that is exacerbated as disclosures become more complex…disclosures have continued to pile up, with some of them being of questionable value.”).

[6] *TSC Industries*, 426 U.S. at 448-49.

going private.[7] The number of publicly traded companies in the U.S. has fallen from a high of about 8,100 in 1996 to little more than 4,000 in 2024.[8] Streamlining Regulation S-K to eliminate unnecessary and costly disclosures would be a meaningful step in reducing disincentives to go and remain public.

In light of these considerations, we recommend the following principal reforms to Regulation S-K.

II. Discussion of Principal Proposed Materiality-Driven Amendments

A. Threshold Materiality Standard (Item 10)

In the event Regulation S-K continues to contain prescriptive, line item disclosure requirements, we are supportive of prior suggestions to amend Regulation S-K to provide an overarching materiality qualifier that would permit registrants to omit information otherwise called for by a line item under Regulation S-K if such information is immaterial.[9]

For example, as other commenters have noted, Item 10 of Regulation S-K could be amended to include the following as a new subsection (g):

> (g) In addition to the information expressly required to be disclosed, the registrant shall disclose such additional material information, if any, as may be necessary to make the required statements in the light of the circumstances under which they are made not misleading. Issuers may omit information otherwise called for by a line item if such information is not material, as long as the effect of omitting the information would not be materially misleading. It shall be presumed, in the absence of facts to the contrary, that the omission of any disclosure called for by a Regulation S-K line item was an intentional omission by the registrant in reliance upon this sub-section (g) and not a failure to provide the disclosure called for by such line item.[10]

B. Removal of Quantitative Disclosure Thresholds

We recommend that the Commission consider replacing quantitative disclosure thresholds contained in Regulation S-K with principles-based requirements rooted in materiality, to the extent such item requirements are not otherwise revised or removed. Quantitative thresholds such as $120,000 or $300,000 (under current Items 404 and 103, respectively) are not a useful proxy for materiality, especially for many large registrants.[11] Mandating disclosure of

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[7] *See* Paul R. La Monica, *The Incredibly Shrinking Pool of Publicly Traded Companies*, Barron's (Oct. 1, 2025), https://www.barrons.com/articles/public-companies-ipos-go-private-b0b1bbd0?reflink=desktopwebshare_permalink.

[8] World Bank Group, https://data.worldbank.org/indicator/CM.MKT.LDOM.NO?locations=US (last visited Mar. 29, 2026).

[9] *See* A.B.A., Comment Letter on Concept Release on Business and Financial Disclosure Required by Regulation S-K (Dec. 15, 2017), https://www.sec.gov/comments/s7-06-16/s70616-2812973-161696.pdf.

[10] *See id.* We have proposed to modify the American Bar Association's draft language to remove carveouts for Items 402 and 404, which we believe should also be subject to an overarching materiality qualifier.

[11] While Item 103(c)(3)(iii) provides for an alternative materiality threshold for certain environmental proceedings, such alternative threshold remains subject to required disclosure of all proceedings where the potential monetary sanctions exceed the lesser of $1 million or one percent of consolidated current assets.

information tied to quantitative thresholds that may not be indicative of materiality in turn obscures other, more meaningful information for investors while increasing registrant compliance costs. In contrast, rooting disclosure requirements in materiality better tailors such disclosures to a registrant's facts and circumstances.

Additionally, we do not believe that eliminating the existing quantitative thresholds would meaningfully reduce disclosure comparability. In our view, the comparability of existing disclosures is already limited. For example, disclosure of a $120,000 related person transaction for a registrant with $100 million in revenue is not equivalent to a $120,000 related person transaction for a registrant with $10 billion in revenue. If the Commission is concerned about potential inconsistent application of a materiality standard, the Commission could include, where it believes necessary, a non-exhaustive list of qualitative factors designed to inform registrants' materiality determinations for a given line item. For example, the Commission's interpretive guidance on materiality in Staff Accounting Bulletin No. 99 provides a non-exhaustive list of qualitative factors for assessing the materiality of quantitatively small misstatements of financial statement items.

C. Removal of Overlapping or Duplicative Disclosure Requirements

In addition to considering the removal of quantitative thresholds from Regulation S-K, we recommend the Commission review, and consider eliminating, disclosure requirements that elicit duplicative or overlapping disclosure with information provided in response to U.S. Generally Accepted Accounting Principles ("U.S. GAAP") or other disclosure requirements.

For example, there is significant overlap between the disclosure provided in response to Item 103 of Regulation S-K (Legal Proceedings) and the disclosure provided in response to Accounting Standards Codification ("ASC") 450 (*Contingencies*). Although, as noted by the Commission, there are differences between the two standards, we believe that the disclosure required by Item 103 that is not provided in response to ASC 450 or disclosed in response to other line items is unlikely to be material.[12] Furthermore, disclosure relating to risks or uncertainties relating to legal proceedings, if material, must be included under Item 105 (Risk Factors) and Item 303 (Management's Discussion and Analysis ("MD&A")), where registrants usually provide information about the relevant impacts of the proceedings on their business that is more useful to an investment decision than is currently mandated by Item 103. Additionally, Item 101 (Description of Business) requires disclosure of the nature and effects of any material bankruptcy, receivership, or any similar proceeding. In our view, the coverage provided by existing Items 101, 105, and 303 and ASC 450 render the Item 103 requirements superfluous.[13]

In addition to the quantitative disclosure thresholds contained in Items 103 and 404, other examples of prescriptive thresholds include those in Item 402(c)(2)(ix) (requires disclosure of perquisites and other personal benefits, or property, unless the aggregate amount of such compensation is less than $10,000) and Item 509 (provides that interest of certain experts or counsel will not be deemed substantial and need not be disclosed if the interest does not exceed $50,000).

[12] *See* Disclosure Update and Simplification, Release No. 33-10110 (proposed July 13, 2016) [81 FR 51608 (Aug. 4, 2016)] at Section III.E.15.a for a discussion of the differences between Item 103 and ASC 450 requirements.

[13] We note that the Commission staff previously recommended that the Commission review risk-related disclosure requirements, stating "[t]he review could consider, for example, whether to consolidate requirements relating to risk factors, legal proceedings and other quantitative and qualitative information about risk and risk management." *Report on Review of Disclosure Requirements in Regulation S-K*, Dec. 2013, available at https://www.sec.gov/files/reg-sk-disclosure-requirements-review.pdf (the "Staff Report") at 99. If the Commission is concerned that material legal proceedings-related disclosure will not be covered by existing Items 101, 105, and 303

Finally, although in our experience many registrants now utilize cross references to satisfy Item 103 disclosure obligations, which might reduce their compliance burden, registrants regularly review and supplement financial statement disclosures to ensure that disclosure responsive to Item 103 (even if not material) is included in the disclosure document, which takes additional time and registrant resources, including involving auditors in immaterial matters.

As another example, with respect to *non-financial institutions only*, we similarly recommend the Commission consider eliminating quantitative and qualitative disclosures about market risk under Item 305. Since Item 305 became effective in 1997, accounting disclosure requirements have notably expanded, ultimately duplicating many Item 305 disclosures. This includes requirements under ASC 815 (*Derivatives and Hedging*), ASC 820 (*Fair Value Measurement*), and ASC 825 (*Financial Instruments*), particularly with respect to quantitative disclosures for market risk-sensitive instruments.[14] Such duplicative information obscures material information and confuses investors, who must reconcile disclosures with differing presentations under Item 305 and the corresponding accounting requirements. We note that the purposes of Item 305 and its comparable U.S. GAAP requirements differ to some extent. For example, in addition to requiring disclosure of market risk-sensitive instruments comparable to disclosure required under U.S. GAAP, Item 305 also focuses on disclosure of overall market risk exposures.[15] However, the additional disclosures under Item 305, including those arising from such differences in purpose, offer little incremental value in the context of non-financial institutions. The information required by Item 305 is not as relevant to such registrants who primarily utilize derivative trading to hedge underlying business risks. This hedging activity is distinct from the market risk exposure experienced by financial institutions and sophisticated commodity businesses, which engage in such trading as part of their business activities. Reflecting this, Item 305 disclosures by non-financial institutions have become formulaic, employing standardized methods to provide quantitative and qualitative disclosures that are unhelpful to investors. Eliminating Item 305 disclosures for non-financial institutions would thus further refocus Regulation S-K on meaningful, material disclosure.[16]

D. Additional Flexibility in the Presentation of MD&A (Item 303) Disclosure

We recommend that the Commission consider revising Item 303(c) to make year-to-date ("YTD") disclosures in the Q2 and Q3 10-Q MD&As optional. Specifically, Item 303(c) currently requires registrants to discuss any material changes in their results of operations with respect to the most recent fiscal YTD period for which a statement of comprehensive income is provided and the corresponding YTD period of the preceding fiscal year. We note that the Commission

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and ASC 450, the Commission could consider clarifying that material impacts and uncertainties associated with legal proceedings should be discussed in the MD&A.

[14] *See* Concept Release, *supra* note 2, at 23957-59. As the Commission observes in the Concept Release, the exact degree of overlap between Item 305 and U.S. GAAP disclosures depends on which of Item 305's presentations is chosen and on whether optional disclosures under U.S. GAAP are provided.

[15] *See id.* This difference is reflected in Item 305's and ASC 815's treatment of qualitative disclosures. While Item 305 requires qualitative disclosures of a registrant's primary market risk exposures, including those not managed by financial instruments, ASC 815 only encourages, but does not require, disclosure about a registrant's objectives and strategies for using derivative instruments in the context of the registrant's overall risk exposures.

[16] As noted above, the Commission staff previously recommended in the Staff Report that the Commission review whether to consolidate risk-related requirements. This included requirements under Item 305 ("[a]s part of this review, the staff could revisit the requirements for quantitative and qualitative market risk in Item 305."). Staff Report, *supra* note 13, at 99.

had previously decided to retain mandatory YTD disclosures in its 2020 amendments to MD&A disclosures, noting that such disclosures were a valuable complement to the MD&A provided in reports.[17] We respectfully believe that current experience shows the opposite, however, with such YTD disclosures being both duplicative and of limited value to investors.

First, YTD disclosures in interim filings (*i.e.*, 6-month and 9-month discussion in Q2 and Q3 10-Qs) offer little additional information beyond what is already disclosed in prior quarterly filings and the current quarter analysis. Furthermore, the YTD and current quarter analyses often reference the same drivers for material changes. In our experience, investors and management frequently devote considerably more attention to current quarter disclosures as such disclosures focus on the quarter for which the market has not yet analyzed registrant performance and are more salient with respect to recent registrant performance. Additionally, to the extent forward-looking trends and uncertainties are discussed, they normally fit within current quarter disclosures. As a result, making YTD disclosures optional would reduce largely duplicative disclosures and lower compliance costs for registrants that opt not to provide YTD analyses.

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We would welcome the opportunity to discuss any of the above matters further with the Commission. Please direct any inquiries to John W. White (jwhite@cravath.com; 212-474-1732), Elad Roisman (eroisman@cravath.com; 202-869-7720), or Andrew J. Pitts (apitts@cravath.com; 212-474-1620).

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[17] Management's Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information, Release No. 33-10890 (Nov. 19, 2020) [86 FR 2080 (Jan. 11, 2021)] at 2103.

Annex A: Other Recommendations

Disclosure Requirement	Revision Suggestions
Regulation S-K	
Item 105 – Risk Factors	**Summary: Eliminate requirement to provide a summary for risk factors exceeding 15 pages.** **Commentary:** Registrants have generally not shortened their risk factor disclosures, resulting in the summary only adding more length to these disclosures. Topic sentences in bold, and grouping of risk factors by topic, can be used as tools to, in effect, provide summaries to the reader.
Item 106 – Cybersecurity	**Summary: Allow registrants to omit detailed disclosures of risk management and strategy (Item 106(b)) and governance (Item 106(c)).** **Commentary:** Detailed disclosures under Items 106(b) and 106(c) risk creating a roadmap for threat actors with limited decision-making value for investors.
Item 201 – Market Price of and Dividends on the Registrant's Common Equity and Related Stockholder Matters	**Summary: Eliminate requirements to disclose market information, holders, and the performance graph.** **Commentary:** Information produced as part of market information, holders, and performance graph disclosures is outdated by the time the report is publicly filed. Existing tools outside of public filings already provide superior real-time data.
Item 401 – Directors, Executive Officers, Promoters and Control Persons	**Summary: Limit disclosure of positions with the registrant to only significant roles, as opposed to all positions.** **Commentary:** Disclosure of the entire employment history of an individual with the registrant, including entry-level positions, is of limited use for investors.

Item 402 – Executive Compensation	**Summary: Amend Item 402 and the applicable forms under the Securities Act of 1933, to provide that executive compensation information need only be provided to the extent the financial statements for the most recently completed fiscal year have been filed, as opposed to being required in registration statements immediately following the end of a fiscal year (*e.g.*, for the prior year in a January 2 filing).** **Commentary:** To reflect the reality of when and how compensation determinations are made, namely the practical difficulty issuers face in making compensation determinations when financial performance for the year has not been determined, and to allow capital formation to move forward despite this practical limitation.
Item 506 – Dilution	**Summary: Eliminate use of accounting book value.** **Commentary:** Registrants rarely use accounting book value to calculate dilution in practice. Such disclosures thus are of limited use for investors.
Item 601 – Exhibits	**Summary: Make the following changes:** • **Item 601(a)(4): Require only material amendments or modifications of agreements to be filed.** • **Item 601(b)(10): Extend confidential treatment request procedure to additional forms and exhibits, such as those in Item 1016 of Regulation M-A.** • **Item 601(b)(10): Limit scope of executive compensation-related documents that must be filed to named executive officer level; add materiality qualifier to filing requirements for named executive officer compensatory arrangements.** • **Item 601(b)(21): Limit required disclosures under Exhibit 21 to operating subsidiaries only.** **Commentary:** To limit disclosure to decision-useful information for investors, including by rooting such filing requirements in materiality.

Item 701 – Recent Sales of Unregistered Securities; Use of Proceeds from Registered Securities	**Summary: Remove disclosure requirements for recent sales of unregistered securities.** **Commentary:** Substantially the same disclosure appears elsewhere in registrants' public filings (*e.g.*, in Item 303(b)(1) MD&A liquidity and capital resources disclosures, Item 3.02 of Form 8-K).
Other Requirements	
Private Securities Litigation Reform Act ("PSLRA")	**Summary: Support adoption of PSLRA exemptive relief to shield registrants from liability.** **Commentary:** We support Chairman Atkins' statements on risk factor reform. Given that risk factor disclosure is driven in part by litigation risk, we would advise against prescriptive rules to mandate shorter risk factor disclosures (*e.g.*, imposing page limits) until appropriate reforms to the litigation landscape are implemented.
Form 8-K – Item 1.05	**Summary: Eliminate Item 1.05 requirements for disclosure of material cybersecurity incidents.** **Commentary:** Subject-specific event triggers result in unnecessary overlap with other items of Form 8-K. Registrants can also disclose cybersecurity events under the more broadly applicable Items 7.01 and 8.01.
Rule 10D-1	**Summary: Remove check boxes from cover pages relating to recovery of erroneously awarded compensation.** **Commentary:** Limited use for investors. Unnecessarily complicated for registrants, generating unwarranted compliance costs, as evidenced by the fact that there are 9 Corporation Finance Interpretations relating to these check boxes (flowing from endless, confused registrant inquiries and discussions at legal and accounting conferences). In our experience, if changes in previously reported information are material, registrants regularly highlight those changes to avoid investor confusion in any event.
XBRL Requirements	**Summary: Consider reassessing whether XBRL tagging requirements should be retained.** **Commentary:** Ripe for re-assessment, 18 years after adoption, in light of technological advances, including the emergence of artificial intelligence, as well as relative costs of preparation versus benefits to users.