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April 13, 2026

Via E-mail: rule-comments@sec.gov

Securities and Exchange Commission,  
100 F Street, N.E.,  
Washington, DC 20549-1090.

Attention: Vanessa Countryman, Secretary

Re: Comprehensive Reform of Regulation S-K (File No. CLL-15)

Ladies and Gentlemen:

We appreciate the opportunity to comment on reforming Regulation S-K. Since the adoption of the Securities Act of 1933 and the Securities Exchange Act of 1934, the Commission's disclosure regime has evolved into a comprehensive set of prescriptive requirements that in many cases are no longer based on the core principle of materiality. While it has long been noted that "[t]he concept of materiality is the cornerstone of the disclosure system established by the federal securities laws"<sup>1</sup> and the "disclosure requirements, while prescriptive in some respects, are rooted in materiality,"<sup>2</sup> voluminous disclosures continue to "bury the shareholders in an avalanche of trivial information – a result that is hardly conducive to informed decision making."<sup>3</sup> We support Chairman Paul S. Atkins' recent statements emphasizing the need to return to

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<sup>1</sup> *Report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission*, at 302 (Nov. 3, 1977) ("1977 Advisory Committee Report").

<sup>2</sup> *Modernization of Regulation S-K Items 101, 103, and 105*, Release Nos. 33-10825; 34-89670, at 6 (Aug. 26, 2020), <https://www.sec.gov/files/rules/final/2020/33-10825.pdf> ("2020 Release"). See also Division of Corporation Finance, U.S. Securities and Exchange Commission, *Report on Review of Disclosure Requirements in Regulation S-K* (Dec. 2013) ("any recommended revisions should emphasize a principles-based approach as an overarching component of the disclosure framework"), <https://www.sec.gov/files/reg-sk-disclosure-requirements-review.pdf>.

<sup>3</sup> *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 448-49 (1976).

materiality as the guiding principle of Regulation S-K to “enable reasonable investors to separate the wheat from the chaff.”<sup>4</sup>

In this letter, building on letters we submitted in years past,<sup>5</sup> we set forth recommendations we believe would result in more meaningful, principles-based disclosure.

#### Item 10: General

We have long believed that subjecting Regulation S-K to an overarching materiality standard is the most effective way for the Commission to improve the overall quality of disclosures.

To implement this proposal, we recommend amending Item 10 to add a new subsection (g) as follows:

“Registrants may omit narrative disclosure or qualitative or quantitative information called for by a Regulation S-K line item on the ground that such information is not material. If a registrant omits any narrative disclosure or qualitative or quantitative information called for by a Regulation S-K line item in reliance upon this subsection (g), the registrant shall not be required to state such reliance, nor shall the registrant be required to state that the relevant Regulation S-K line item is not applicable. Inclusion of information called for by a Regulation S-K line item shall not be deemed an admission as to the materiality of such information.”<sup>6</sup>

We note a version of the inverse is already prescribed by Rule 12b-20 under the Securities Exchange Act of 1934. Rule 12b-20 provides that companies must

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<sup>4</sup> Paul S. Atkins, *Statement on Reforming Regulation S-K* (Jan. 13, 2026), <https://www.sec.gov/newsroom/speeches-statements/atkins-statement-reforming-regulation-s-k-011326>.

<sup>5</sup> Sullivan & Cromwell LLP, *Comment Letter on Business and Financial Disclosure Required by Regulation S-K* (Aug. 9, 2016), <https://www.sec.gov/comments/s7-06-16/s70616-354.pdf>; Sullivan & Cromwell LLP, *Comment Letter on FAST Act Modernization and Simplification of Regulation S-K* (Jan. 30, 2018), <https://www.sec.gov/comments/s7-08-17/s70817-2865545-161733.pdf>; and Sullivan & Cromwell LLP, *Comment Letter on Executive Compensation Disclosure Requirements* (Sept. 30, 2025), <https://www.sec.gov/comments/4-855/4855-665527-1989614.pdf>.

<sup>6</sup> See Sullivan & Cromwell LLP, *id.*; see also Letter submitted by Catherine T. Dixon, Chair, Federal Regulation of Securities Committee, et al., Business Law Section, American Bar Association (Mar. 6, 2015), [https://www.americanbar.org/content/dam/aba/administrative/business\\_law/comment\\_letters/disclosure-effectiveness-201503.pdf](https://www.americanbar.org/content/dam/aba/administrative/business_law/comment_letters/disclosure-effectiveness-201503.pdf).

disclose, in addition to the disclosures otherwise required, such further 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. The materiality concept operates both as a principle for inclusion and exclusion of information,<sup>7</sup> and as Chairman Atkins has noted, materiality should be the “north star.”<sup>8</sup> In that spirit, the Commission’s rules should go both ways – *i.e.*, they should not only require the addition of material information, but also permit the omission of immaterial information.

We believe that this approach builds on the fundamentally sound foundation of the Commission’s existing disclosure framework and then focuses attention and effort at the individual issuer level, where disclosure judgments are most meaningfully and effectively made.

We would suggest further, as noted in past letters, that the Commission take the opportunity to expressly confirm in the adopting release for its Regulation S-K reforms that, for disclosure purposes, “materiality” is an economic standard,<sup>9</sup> relating solely to matters that could ultimately be thought to bear on firm value and thus the value of the registrant’s securities. We believe this confirmation would be consistent with the Commission’s longstanding views, as well as statutory authority. We also believe, and have reflected elsewhere in this letter, that disclosure requirements that effectively operate as governance mandates are inconsistent with an economic materiality standard. We support the recommendation of the Advisory Committee on Corporate Disclosure from 1977 that “[t]he Commission should not mandate disclosure requirements which result in non-material information, and which have as their principal objective the regulation of corporate conduct.”<sup>10</sup>

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<sup>7</sup> See 1977 Advisory Committee Report, at D-9, 10 (“The materiality concept serves a variety of functions, operating both as a principle for inclusion and exclusion of information in investor and shareholder disclosure documents and as a standard for determining whether a communication omits or misstates a fact of sufficient significance that legal consequences should result.”).

<sup>8</sup> Paul S. Atkins, *Remarks at the Texas Stock Exchange Event* (Apr. 7, 2026) (“Atkins Texas Stock Exchange Speech”), [https://www.sec.gov/newsroom/speeches-statements/atkins-remarks-boombelt-040726?utm\\_medium=email&utm\\_source=govdelivery](https://www.sec.gov/newsroom/speeches-statements/atkins-remarks-boombelt-040726?utm_medium=email&utm_source=govdelivery); Paul S. Atkins, *Remarks at the Texas A&M School of Law Corporate Law Symposium* (Feb. 17, 2026), <https://www.sec.gov/newsroom/speeches-statements/atkins-02-17-2026-remarks-texas-am-school-law-corporate-law-symposium> (“Atkins Texas A&M Speech”).

<sup>9</sup> See also Mark T. Uyeda, *Remarks at the 53rd Annual Securities Regulation Institute* (Jan. 26, 2026) (“Regulatory agencies, however, should strive to adopt standards that are grounded in the statutory authority granted to those agencies and focused on financial materiality”), <https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-securities-regulation-institute-012626> (“Uyeda Securities Regulation Institute Speech”).

<sup>10</sup> 1977 Advisory Committee Report, at D-9.

In addition to adopting an overarching materiality standard, we recommend below a number of specific revisions to Regulation S-K that we believe are consistent with the general principles set forth above.

#### Item 103: Legal Proceedings

We recommend eliminating Item 103. Despite the 2020 amendments to Item 103,<sup>11</sup> registrants contend with two different but largely overlapping standards for disclosing legal proceedings: Item 103's material legal proceedings requirement (which, notably, includes a requirement to include certain environmental proceedings without regard to materiality) and FASB Accounting Standards Codification Topic 450-20 (which governs financial statements disclosure on contingencies, including legal contingencies). As permitted by Item 103, issuers commonly disclose material legal proceedings in the notes to the financial statements and include a cross-reference to satisfy their separate Item 103 disclosure requirement. In our experience, the only incremental disclosures commonly provided in response to Item 103 are those called for by Item 103(c)(2), which we discuss below. This practice demonstrates the lack of incremental value of Item 103. Nevertheless, issuers continue to be required to analyze disclosure obligations under both Item 103 and FASB standards.

If Item 103 is not eliminated, we recommend that Item 103(c)(2) be deleted. In the years following the legislative mandate in the National Environmental Policy Act to consider environmental matters in regulatory action, the Commission introduced and subsequently raised the Item 103(c)(2) disclosure threshold for environmental proceedings to its current amount of \$300,000 or, at the election of the registrant, the lesser of \$1 million or one percent of the current assets of the registrant and its subsidiaries on a consolidated basis.<sup>12</sup> However, for many large companies, this threshold elicits immaterial disclosure as proceedings of such low value have no impact on firm value and therefore the value of the investment. While an overarching materiality standard in Item 10(g) would to some extent deal with this issue, we believe maintaining materiality-qualified numerical thresholds could confuse market participants and be misread as establishing a materiality presumption any time that the threshold is exceeded.

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<sup>11</sup> See 2020 Release, at 59-62.

<sup>12</sup> See *Disclosure with Respect to Compliance with Environmental Requirements and Other Matters*, Release No. 33-5386 (Apr. 20, 1973); *Adoption of Integrated Disclosure System*, Release No. 33-6383 (Mar. 3, 1982) (the "1982 Release"); and the 2020 Release, at 59-62.

Item 106: Cybersecurity

We recommend eliminating Item 106 and refocusing issuers on materiality-based disclosures. As adopted in 2023,<sup>13</sup> Item 106 includes a non-exhaustive list of disclosure items that registrants must address when describing their process for managing cybersecurity risks. In practice, responses to Item 106 have evolved into lengthy and repetitive boilerplate disclosures that do not provide incremental value to investors. As Commissioner Mark T. Uyeda noted, Item 106 may also compel companies to change governance practices rather than eliciting material disclosures as to the company's operations.<sup>14</sup> Eliminating Item 106 would not diminish disclosures concerning material cybersecurity risks or incidents as those would continue to be required under Item 101, 105 or 303, as well as in the financial statements.

Similarly, we encourage the Commission to reconsider the requirement of Item 1.05 of Form 8-K to disclose, on a current reporting basis, the material impact (or reasonably likely material impact) on the registrant of material cybersecurity incidents. We continue to share concerns raised by commenters that this reporting requirement could expose issuers to heightened risks and undermine effective cybersecurity defenses by forcing companies to disclose incident information prior to the mitigation of vulnerabilities.<sup>15</sup> The practice of filing preemptive Item 8.01 Forms 8-K for cybersecurity incidents that the registrant deemed immaterial at the time demonstrates that the current framework encourages disclosure of immaterial information. Furthermore, we share Commissioner Uyeda's concern that premature disclosures could have unintended market impacts, potentially across an entire industry, and could exacerbate the incident.<sup>16</sup>

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<sup>13</sup> *Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure*, Release No. 34-97989 (July 26, 2023), <https://www.sec.gov/files/rules/final/2023/33-11216.pdf>.

<sup>14</sup> *See Uyeda Securities Regulation Institute Speech* ("Our disclosure rules should generally not be the driver for what a company does or does not, but disclosure requirements such as [those enumerated in Item 106] and others are likely shaming or indirectly compelling companies to change practices rather than eliciting material disclosure as to what the company is doing.").

<sup>15</sup> U.S. Chamber of Commerce, et al., *Comment Letter on Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure*, at 1 (June 22, 2022), <https://www.sec.gov/comments/s7-09-22/s70922-20132693-303184.pdf>.

<sup>16</sup> *See id.* and Mark T. Uyeda, *Statement on the Final Rule: Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure* (Jan. 28, 2026) ("Premature public disclosure of a cybersecurity incident at one company could result in uncertainty of vulnerabilities at other companies, especially if it involves a commonly used technology provider, resulting in widespread panic in the market and financial contagion. Early information is often incomplete and not correct. One only need to look at the regional banking crisis to see how speculation can destabilize entire sectors, or even the markets as a whole. In short, investors today care far more about their overall

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

We recommend eliminating Item 201(b), (d)(3), and (e):

With respect to Item 201(b), the number of record holders does not meaningfully reflect a company's investor base or trading activity, particularly given that the vast majority of shares usually are held in street name. More meaningful information such as shares outstanding and ownership concentration is already required to be disclosed pursuant to Item 403 and in Form 10-K.

With respect to Item 201(d)(3), the requirement to describe the material features of each equity compensation plan that was adopted without the approval of security holders is of limited value to investors because most broad-based plans are subject to shareholder approval under stock exchange rules and any dilutive impact is already required to be reflected in the table called for by Item 201(d)(2).

With respect to Item 201(e), the requirement to include a stock performance graph providing comparative data about the yearly percentage change in the registrant's cumulative total shareholder return calls for disclosure that is already outdated by the time the report is filed. Investors can more efficiently and meaningfully track and obtain current stock price performance information from data providers and other publicly available sources that allow investors to compare returns across issuers and benchmarks chosen by them, as suggested recently by Commissioner Uyeda.<sup>17</sup>

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

We recommend revising Item 303(c)(2)(i) to make the requirement to provide six- and nine-month discussions of results of operations optional.<sup>18</sup> We believe this change would be consistent with the Commission's previous elimination of the requirement to provide a discussion of the earliest of the three years covered by the financial statements so long as the discussion has been provided in a prior filing. While we recognize the Commission's statement in 2020 that a discussion of year-to-date changes would complement the annual MD&A and provide important context for the current

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portfolios than any individual company.”), <https://www.sec.gov/newsroom/speeches-statements/uyeda-statement-cybersecurity-072623>.

<sup>17</sup> See Uyeda Securities Regulation Institute Speech.

<sup>18</sup> This recommendation assumes a quarterly, rather than semi-annual, periodic reporting regime, as currently in effect.

quarter,<sup>19</sup> MD&A is intended to permit investors “to view the registrant from management’s perspective”, and management should be permitted to choose whether to provide year-to-date comparisons or focus its discussion on quarterly results.<sup>20</sup> The comparative discussion of quarterly results required by Item 303(c)(2)(ii) in sequential periodic filings, together with disclosure of material events and uncertainties required by Item 303(a), as well as Regulation S-X interim financial statements and corresponding notes, would continue to complement the registrant’s annual disclosures. The Commission could implement this change by revising clause (i) of Item 303(c)(2) as follows:

“(2) *Material Changes in Results of Operations.*

(i) **The registrant may 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.”

#### Item 305: Quantitative and Qualitative Disclosures about Market Risk

We recommend replacing Item 305 with a requirement under Item 303 to include a quantitative and qualitative discussion of market risks to the extent material to an issuer. Item 305 was originally adopted in 1997 in response to a perception that, in the wake of increased use of derivative financial instruments, other financial instruments and derivative commodity instruments, registrants were not adequately disclosing the associated market risks.<sup>21</sup> However, in our experience, the market risk disclosure required under Item 305 is largely immaterial to most industries outside of banking and financial services. Where such disclosure could be material to an investor, the

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<sup>19</sup> *Management’s Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information*, Release Nos. 33-10890; 34-90459, at 81-82 (Nov. 19, 2020), <https://www.sec.gov/files/rules/final/2020/33-10890.pdf>.

<sup>20</sup> See also Letter submitted by Prat Bhatt, Chairman, Committee on Corporate Reporting, Financial Executives International (Apr. 28, 2020) (“Many companies find that their investors are not using the year-to-date comparative information and it is provided simply for compliance”), <https://www.sec.gov/comments/s7-01-20/s70120-7130281-216133.pdf>; Letter submitted by Mary Wilcox, Vice President and Chief Accounting Officer, Medtronic (Apr. 29, 2020) (“Many companies find that investors are not using the year-to-date comparative information as we find investors primary focus of attention is on sequential quarterly results”), <https://www.sec.gov/comments/s7-01-20/s70120-7135318-216171.pdf>.

<sup>21</sup> *Disclosure of Accounting Policies for Derivative Financial Instruments and Derivative Commodity Instruments and Disclosure of Quantitative and Qualitative Information about Market Risk Inherent in Derivative Financial Instruments, Other Financial Instruments and Derivative Commodity Instruments*, Release No. 33-7386, at 5-6 (Jan. 31, 1997), <https://www.sec.gov/files/rules/final/33-7386.txt>.

information typically overlaps with the discussion of liquidity, capital resources and risk management already provided in MD&A. Consolidating Item 305 with existing requirements under Item 303 would align with the Commission's focus on materiality while removing overlapping requirements.

#### Item 401: Directors, Executive Officers, Promoters and Control Persons

We recommend two changes to Item 401.

First, we recommend eliminating Item 401(c). It is not clear who "significant employees" are, and in practice registrants rarely provide disclosure in response to this item.

Second, we recommend conforming the lookback periods under Item 401(e)-(g) to cover three fiscal years. Currently, Item 401(e) requires disclosure of the business experience of each director, executive officer and other specified persons during the preceding five years; Item 401(f) requires disclosure of certain legal proceedings involving directors, nominees and executive officers during the preceding 10 years; and Item 401(g) requires disclosure of certain legal proceedings involving promoters and control persons during the preceding five years. In our view, these lookback periods impose unnecessary burdens on registrants to compile and disclose historical information unlikely to provide material incremental benefit to investors.

#### Item 403: Security Ownership of Certain Beneficial Owners and Management

We recommend two changes to Item 403.

First, we recommend eliminating the requirement under Item 403 to disclose beneficial ownership of named executive officers who were no longer employed as of the end of the last fiscal year. Disclosure of beneficial ownership of former named executive officers would not appear to be material, in the same way as existing Regulation S-K requirements do not call for beneficial ownership disclosure about directors and officers (other than named executive officers) who depart prior to the filing of the proxy statement.

Second, we recommend eliminating the requirement to disclose beneficial ownership information for 5% or greater shareholders. This information is already publicly available (including on the registrant's own EDGAR page) since 5% or greater shareholders are required to report on Schedule 13D or 13G. We believe limited incremental value is provided to investors by requiring registrants to repeat in their annual filings Schedule 13D and 13G information that is readily available and is subject to subsequent updates for material changes pursuant to Section 13 and the rules thereunder.

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

We recommend three changes to Item 404 to refocus related person disclosures on materiality:

First, we recommend revising the dollar threshold requirement in Item 404(a) so that the amount of the related person's interest in the transaction will be *deemed immaterial* if it does not exceed \$250,000. This would shift the focus of the inquiry from the dollar amount involved in the transaction to the materiality of the insider's interest in the transaction, which is the relevant point from an investor's perspective. As revised, the dollar threshold would operate as a safe harbor, and not as a disclosure trigger. We have recommended \$250,000 to adjust the current \$120,000 threshold from its most recent adjustment from \$60,000 to \$120,000 in 2006. When the Commission amended Item 404 in 2006, it stated its "belie[f] that application of the materiality principles under the Item are more consistent with a principles-based approach and will lead to more appropriate disclosure outcomes than application of the instruction that was eliminated."<sup>22</sup> We believe the recommended changes would more clearly focus Item 404 disclosures on materiality. While an overarching materiality standard in Item 10(g) would have a similar effect, establishing a dollar threshold at which a transaction would be presumed to be immaterial would be helpful in providing clarity for issuers.

Second, we recommend that the Commission clarify that the following two "ordinary course" situations would not be related-person transactions, even if the issuer is not in a position to determine that the related person does not otherwise have a material interest in the transaction: (1) the related person is a customer of the registrant and is not given preferential treatment as compared to similarly situated customers that are not related persons; and (2) the related person is not an executive officer of the registrant and the transaction is one between the registrant and a business in which such related person has an interest where such related person receives no direct benefit from the transaction (for example, an outside director of the registrant is an executive officer of a business that does business with the registrant). Although the Commission did not adopt this position 20 years ago in the 404(a) Release, we continue to believe that this exception would be consistent with certain industry-specific instructions to Item 404(a), such as Instruction 4.c. or Instruction 7. We see no reason for limiting these concepts to specific industries. It would also be consistent with the statement in the 404(a) Release that the ordinary course, non-preferential nature of a transaction can be taken into account

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<sup>22</sup> *Executive Compensation and Related Person Disclosure*, Release Nos. 33-8732A; 34-54302A, at 150 (Aug. 29, 2006) ("404(a) Release"), <https://www.sec.gov/files/rules/final/2006/33-8732a.pdf>.

in assessing the materiality of an insider's interest<sup>23</sup> and a Commission staff interpretation of old Items 404(a) and 404(b) prior to their amendment in 2006.<sup>24</sup>

Third, we recommend two revisions to the definition of "related person." First, we recommend excluding all 5% or greater shareholders that are eligible to file on Schedule 13G pursuant to Rule 13d-1(b) of the Securities Exchange Act of 1934. In practice, and consistent with a principles-based approach to disclosure, there is no compelling reason to require disclosure of transactions that may fall under the definitions in the rule because the entity *is passive*, and issuers generally have limited, if any, ability to obtain non-public information regarding these investors. Second, we support Chairman Atkins' recent statement that the requirement to disclose transactions involving an executive's "immediate family members" relies on a definition that does not always reflect the practical realities of modern relationships and can be burdensome for the officer or director to verify. We recommend the definition of "immediate family member" be aligned with the standard for determining indirect pecuniary interests under Section 16 by including immediate family members only if they share "the same household,"<sup>25</sup> thereby providing a more administrable and appropriately tailored standard.

The Commission could implement these recommended changes as follows:

"(a) Transactions With Related Persons. Describe 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~~

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<sup>23</sup> See 404(a) Release at 165-166 ("[W]hether a transaction which was not material to the company or the other entity involved and which was undertaken in the ordinary course of business of the company and on the same terms that the company offers generally in transactions with persons who are not related persons, are factors that could be taken into consideration when performing the materiality analysis for determining whether disclosure is required under the principle for disclosure.").

<sup>24</sup> See SEC Division of Corporation Finance, Telephone Interpretation Manual, Q. I.25 ("A is the President of X Corporation. X Corporation is a supplier of the registrant. A is also on the registrant's board of directors. The registrant purchased supplies from X Corporation in an amount that exceeded the . . . disclosure threshold of Item 404(a), but which did not exceed 5% of either registrant's or X Corporation's consolidated gross revenues, the disclosure threshold of Item 404(b). The registrant was advised that disclosure of such transactions would not be required, as long as the relationship between the corporation was solely a business relationship which did not afford A any special benefits. Under these circumstances, it is the Division staff's position that if a transaction or relationship is permitted to be excluded pursuant to Item 404(b), disclosure under 404(a) is not required.").

<sup>25</sup> See 17 C.F.R. § 240.16a-1(a)(2)(ii)(A).

~~involved exceeds \$120,000~~, and in which any related person had or will have a direct or indirect material interest. Disclose the following information regarding the transaction:

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Instructions to Item 404(a).

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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 sharing the household 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, was a

~~i. A security holder covered by Item 403(a) (§ 229.403(a)) and was not eligible to file a short-form statement on Schedule 13G (§ 240.13d-102); 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.~~

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3. **A transaction is not material for purposes of paragraph (a) of this item if the amount involved does not exceed \$250,000.** The amount involved in the transaction shall be computed by determining the dollar value of the amount involved in the transaction in question, which shall include:

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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:

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c. **The related person is not an executive officer of the registrant and receives no direct benefit from the transaction.**

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

a. The transaction is one where:

**(i) 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; or**

**(ii) the related person is a customer of the registrant and is not given preferential treatment as compared to similarly situated customers that are not related persons.”**

Item 407: Corporate Governance

We recommend four changes to the corporate governance disclosure requirements of Item 407 to eliminate duplicative and/or immaterial disclosures:

First, we recommend removing Instruction 2 to Item 407(a), which requires that issuers must disclose independence determinations for any person who served as a director during any part of the last completed fiscal year. If a director departs prior to the end of the last completed fiscal year, disclosure of whether that director was independent appears to have no meaningful utility to investors.

Second, we recommend removing Item 407(d)(3) and Item 407(e)(5), which require disclosure of audit committee and compensation committee reports. Neither of these reports provides meaningful disclosure to investors. Because the conclusions are mandated by the rules, these reports are often boilerplate with little substantive value. In addition, the reports cover only a very narrow subset of the responsibilities imposed on these committees by stock exchange rules – specifically, the recommendation for the inclusion of the financial statements and the CD&A in the registrant’s filings. The reasons for the audit committee report, in particular, have been superseded by the extensive governance regulation now required by the stock exchanges and the Public Company Accounting Oversight Board rules on auditor communications and audit committee responsibilities.<sup>26</sup> There is no reason for the responsibilities currently covered by these reports to be treated differently than other critical audit committee and compensation committee responsibilities.

Third, we recommend removing Item 407(c)(1), (c)(2)(i)-(iii), (d)(1), (d)(4), and (e)(1)-(2), which include “comply or explain” disclosure requirements. These provisions effectively operate as corporate governance mandates and not as meaningful disclosure provisions. We support Chairman Atkins’ statements that it is not the Commission’s role to enforce evolving notions of “best practice”<sup>27</sup> governance standards or to indirectly establish governance standards that state corporate law and stock exchange listing standards should and can address.<sup>28</sup>

Fourth, Item 407(h) requires disclosure of board leadership structure and role in risk oversight. While this disclosure is generally meaningful, the last clause of 407(h), which requires the registrant to disclose the effect that the board’s role in risk oversight has on the board’s leadership structure, should be eliminated. This requirement

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<sup>26</sup> Public Company Accounting Oversight Board, *AS 1301: Communications with Audit Committees* (2012), <https://pcaobus.org/oversight/standards/auditing-standards/details/AS1301>.

<sup>27</sup> Atkins Texas A&M Speech.

<sup>28</sup> Atkins Texas Stock Exchange Speech.

is unclear and difficult to apply. There is not necessarily a nexus between risk oversight and board leadership structure.

#### Item 408: Insider Trading Arrangements and Policies

We recommend revising Item 408 to eliminate reference to “non-Rule 10b5-1 trading arrangements.” Although the Commission noted in its adopting release that it adopted a definition that “accords with the requirements of the Rule 10b5-1 affirmative defense,”<sup>29</sup> in our experience, the reference to “non-Rule 10b5-1 trading arrangements” raises several interpretative uncertainties. For example, it is unclear whether the definition could be read to cover changes in elections by directors and officers under deferred compensation plans. We believe disclosure of these elections would not further the Commission’s goal in the adoption of Item 408 of reducing opportunities for corporate insiders to misuse Rule 10b5-1 and potentially obfuscates the disclosure of any Rule 10b5-1 trading plans that are the focus of the disclosure requirement.<sup>30</sup>

#### Item 506: Dilution

We recommend eliminating Item 506. For most companies, valuations are not derived from a balance sheet determination. In our experience, the dilution disclosures based on net tangible book value per share is not material to investors, whether for seasoned issuers or in initial public offerings.<sup>31</sup> Although there are some industries for which net tangible book value per share can be a relevant measure, those issuers commonly present that information, where material, as supplemental information in the MD&A. A prescriptive, one-size-fits-all dilution table is unnecessary and the prescribed format of the disclosure is often unwieldy, unavailable prior to the pricing of the offering, and difficult to interpret. Substantially similar information can be derived from the registrant’s balance sheet and capitalization disclosures included elsewhere in the prospectus.

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<sup>29</sup> *Insider Trading Arrangements and Related Disclosures*, Release Nos. 33-11138; 34-96492, at 78 (Dec. 14, 2022), <https://www.sec.gov/files/rules/final/2022/33-11138.pdf>.

<sup>30</sup> *Id.* at 12.

<sup>31</sup> In adopting Item 506 as part of Regulation S-K, the Commission noted that commenters believed in the usefulness of dilution disclosure generally but the requirement was intended to minimize the instances where such disclosure would be required of more seasoned companies whose securities “are selling on the basis of earnings, and where dilution of book value generally is not material to investors.” *See* 1982 Release, at 33.

Item 601: Exhibits

We recommend four changes to Item 601:

First, the second sentence in Item 601(a)(4) should be revised to require registrants to file an amendment or modification to a material contract as exhibit to Form 10-Q or Form 10-K only if such amendment or modification itself is “material”. Requiring registrants to file immaterial amendments or modifications increases compliance costs and requires investors to expend resources to evaluate trivial information that is not relevant for an investment decision.

Second, clause (ii) of Item 601(b)(10) currently provides for a three-step analysis. First, an issuer must decide if a contract “ordinarily accompanies the kind of business conducted by the registrant and its subsidiaries.” If so, the contract need not be filed as a material contract unless it falls into one of four categories. If it falls into one of those four categories, the contract shall be filed as a material contract even if it is not material to the registrant unless it is “immaterial in amount or significance.” We recommend simplifying the analysis by deleting the four categories and the “immaterial in amount or significance” standard. Specifically, we recommend that Item 601(b)(10)(ii) be revised to say: “If the 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 be filed.”

Third, clause (iii) of Item 601(b)(10) requires registrants to file compensatory arrangements with named executive officers and directors and, in certain cases, executive officers more generally. In practice, this requirement results in the filing of a significant number of compensatory agreements that provide little incremental value to investors. We recommend that Item 601(b)(10) be revised to limit the requirement to file compensatory arrangements to those involving named executive officers, which would better align the exhibit requirements with the Commission’s executive compensation disclosure framework under Item 402 and reduce unnecessary disclosure. If an agreement with a director or executive officer who is not a named executive officer is material, it would be required to be filed under clause (i) of Item 601(b)(10).

Fourth, we recommend eliminating Item 601(b)(18), which requires filing a letter from the registrant’s independent accountant if there are certain changes in accounting principles or practices. Regulation S-X and accounting literature already require extensive disclosure covering changes in accounting principles.

Item 701: Recent Sale of Unregistered Securities; Use of Proceeds from Registered Securities

We recommend eliminating the requirement under Item 701 to include certain information in a registrant's Form 10-K and Form 10-Q, including recent sales of unregistered securities and the use of proceeds from registered securities, among other items. A substantial amount of this information is duplicative of disclosure in a registrant's financial statements and MD&A; equity issuances and related dilution effects are captured in the statements of shareholders' equity and earnings per share calculations, while material financing transactions are typically discussed in the MD&A and, if applicable, disclosed on Form 8-K.

Additionally, we recommend eliminating Item 701(f), which requires disclosure of use of proceeds from registered securities in periodic reports. By the time these disclosures are made, registrants would have already provided use of proceeds disclosure in the prospectus for the offering, and ongoing capital allocation, liquidity and financing activities would be addressed in the MD&A and reflected in the financial statements and related footnotes. To the extent there are material deviations from previously disclosed plans, those developments would be discussed in the MD&A.

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If you would like to discuss our letter, please feel free to contact Bob Downes at 212-558-4312, Cathy Clarkin at 212-558-4175 or Mario Schollmeyer at 212-558-3287.

Sincerely,



Sullivan & Cromwell LLP