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Pittsburgh, PA 15222-3779

April 16, 2026

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

Re: *Statement on Reforming Regulation S-K (File No. CLL-15)*

Dear Ms. Countryman:

Federated Hermes, Inc. and its subsidiaries ("Federated Hermes")[1] appreciate the opportunity to respond to the Securities and Exchange Commission's ("SEC" or "Commission") request for comments on reforms to Regulation S-K.[2] We believe that modernizing Regulation S-K is essential to ensure that registrants provide clear, decision-useful, and material disclosures while avoiding unnecessary reporting burdens. We also share Chairman Atkins' view that the disclosure requirements of Regulation S-K should be rooted in materiality and must be scaled with a company's size and maturity.[3] Accordingly, we encourage the SEC to consider reducing immaterial, redundant, and overly prescriptive disclosure requirements that obscure rather than illuminate key information for investors.

Federated Hermes also supports several of the recommendations made by the U.S. Chamber of Commerce ("U.S. Chamber") in its letter to the SEC dated June 25, 2025. In particular, Federated Hermes supports the U.S. Chamber's recommendations to: (1) simplify the executive compensation disclosures in Item 402 of Regulation S-K, and focus on a materiality standard for executive compensation disclosures, including by limiting the number of named executive officers for which detailed compensation information must be disclosed, simplifying compensation discussion and analysis (or CD&A) disclosures, and repealing the "pay ratio" disclosure requirements; and (2) increasing the perquisite ("perk") disclosure threshold from the current $10,000 and excluding certain expenses from being considered perks, such as executive security-

[1] Federated Hermes, Inc. (NYSE: FHI) is a global leader in active, responsible investment management, with $902.6 billion in assets under management as of December 31, 2025. We deliver investment solutions that help investors target a broad range of outcomes and provide equity, fixed-income, alternative/private markets, multi-asset and liquidity management strategies to more than 11,000 institutions and intermediaries worldwide. Our clients include corporations, government entities, insurance companies, foundations and endowments, banks and broker-dealers.

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

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

related costs.[4] We also endorse the U.S. Chamber's Center for Capital Markets Competitiveness's ("CCMC's") following recommendations to streamline Item 402 disclosures:

- reduce the number of named executive officers for which executive compensation disclosures are required from five to three named executive officers;
- focus on actual pay decisions and not the process that compensation committees utilize to arrive at those decisions;
- address the disjointed timing requirements between bonus and equity disclosure reported in the summary compensation table; and
- reconsider whether the components of the Item 402 compensation tables are useful to investors.

With the above in mind, we provide below further recommendations that we believe are designed to streamline disclosure obligations, eliminate duplicative or obsolete requirements, and realign Regulation S-K with modern market practices.

Item 103: Limit Immaterial Disclosures and Replace Quantitative Triggers with Principles-Based Standards.

We recommend replacing current quantitative thresholds (including the 10% of current assets threshold and the $300,000 threshold for certain regulatory actions) with a principles-based materiality test aligned with *TSC Industries v. Northway*: whether there is a substantial likelihood that a reasonable investor would view the information as important. Although the Commission adjusted certain thresholds in its 2020 reforms to modernize Regulation S-K, raising a dollar threshold alone does not resolve misalignment with the Supreme Court's materiality standard across issuers of different sizes.[5] A principles-based approach would better reduce boilerplate and focus reporting on outcome-relevant risks. At a minimum, if the SEC is not inclined to replace the current quantitative thresholds with a principles-based materiality test, the current thresholds should be further increased to 15% of current assets and $1,000,000.

[4] *See* Letter from Evan Williams, Vice President, U.S. Chamber of Commerce Center for Capital Markets Competitiveness to Vanessa Countryman, Sec'y, U.S. Sec. & Exch. Comm'n (June 25, 2025), https://www.sec.gov/comments/4-855/4855-622607-1826714.pdf ("CCMC Letter").

[5] Modernization of Regulation S-K Items 101, 103 & 105, Securities Act Release No. 33-10825, Exchange Act Release No. 34-89670, 85 Fed. Reg. 63,726 (Oct. 8, 2020).

Item 105: Remove Summary Risk-Factor Requirement; Establish Safe Harbor and Universal Generic Risks.

Despite the SEC's 2020 reforms, risk-factor disclosures continue to exceed reasonable lengths, and the two-page "summary risk factors" requirement has not reduced volume.[6] It has, instead, resulted in duplicative sections that burden both disclosure preparers and investors. Accordingly, we support the Chairman's following recommendations to remove the summary requirement and adopt:

- a safe harbor to reduce incentives for over-disclosure; and
- a standardized set of generic, economy-wide risks that companies may incorporate by reference, allowing risk-factor sections to be concise, company-specific, and genuinely useful. [7]

Allowing incorporation by reference of generic risks would let companies highlight the most salient, firm-specific risks without overwhelming investors.

Item 106 and Form 8-K Item 1.05: Modernize Cybersecurity Disclosure Requirements and Restore a Principles-Based, Materiality-Driven Framework.

Item 106: Narrow and Align Cybersecurity Definitions; Refocus Disclosure on Material Effects and High-Level Governance.

We recommend that the Commission revise Item 106 to better align cybersecurity disclosure requirements with a materiality-focused, principles-based framework.

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[6] An initial study of 439 S&P 500 companies that filed annual reports as of May 15, 2021 found that 79% of those companies actually increased the number of pages for their risk factor disclosures following the adoption of the 2020 reforms to Item 105. The study also found that, in addition to the number of pages, the average number of risk factors also increased. In 2023, the study was re-visited, finding that risk disclosures increased for the two years following the 2020 amendments and stabilized in 2023. The average number of risk factors and page numbers in all three years studied were greater compared to the disclosures filed prior to the 2020 reforms. *See SEC Risk Factor Disclosure Rules*, Harvard Law School Forum on Corporate Governance, posted by Dean Kingsley and Matt Solomon, Deloitte & Touche LLP, and Kristen Jaconi, University of Southern California (Dec. 22, 2021), https://corpgov.law.harvard.edu/2021/12/22/sec-risk-factor-disclosure-rules/. *See also* SEC Risk Factor Disclosure Analysis, Harvard Law School Forum on Corporate Governance, posted by Dean Kingsley and Matt Solomon, Deloitte & Touche LLP, and Kristen Jaconi, University of Southern California (Dec. 3, 2023) *https://corpgov.law.harvard.edu/2023/12/03/sec-risk-factors-disclosure-analysis/*.

[7] Chairman Paul Atkins, U.S. Sec. & Exch. Comm'n, *Remarks on Revitalizing U.S. Capital Markets and State Competition in Corporate Law* (Feb. 18, 2026), https://corpgov.law.harvard.edu/2026/02/18/remarks-by-chair-atkins-on-revitalizing-u-s-capital-markets-and-state-competition-in-corporate-law/. As noted by Chairman Atkins, many companies choose to include risk factors that exceed 15 pages along with a summary risk section, instead of shortening their risk factor sections.

> Specifically, we endorse the suggestions of various industry groups, including that Item 106 should: (1) adopt narrower, impact-based definitions of "cybersecurity incident" and "information systems" that align with federal standards such as the Cyber Incident Reporting for Critical Infrastructure Act ("CIRCIA"); (2) refocus disclosures on the material effects of cybersecurity risks and on high-level board and management oversight, rather than detailed descriptions of internal processes; and (3) clarify that cybersecurity risks should be evaluated in the same manner as other operational risks, with Item 106 serving primarily as a cross-reference rather than an expansive standalone disclosure regime.[8] These revisions would improve the relevance and clarity of disclosures and avoid elevating cybersecurity above other risk categories.

Federated Hermes recommends that the Commission revise the definitions of "cybersecurity incident" and "information systems" under Item 106 to elicit material, decision-useful information. Specifically, we encourage the SEC to replace the current "jeopardizes" standard with an impact-based formulation consistent with CIRCIA, which focuses on a substantial loss of confidentiality, integrity, or availability, or a serious impact on operational system resiliency. This change would avoid capturing attempted or low-impact events without material effect on registrants. In addition, we recommend clarifying that "information systems" refers only to information-technology resources used for transmitting, processing, or storing electronic data, thereby reducing the risk that the definition unintentionally sweeps in unrelated operational events. These changes would better align Item 106 with federal benchmarks and enhance the clarity and utility of required disclosures.

We also encourage the SEC to clarify that cybersecurity risks, like other operational and strategic risks, should be assessed and disclosed under the same materiality standard that governs Items 101, 103, 105, 303, and 407. In many cases, this means that material cybersecurity matters will be more appropriately disclosed in those existing items, with Item 106 serving principally as a cross-reference or consolidation point rather than as a standalone, prescriptive regime. This approach avoids checklist-style disclosures and supports investor-focused, material information.

Form 8-K Item 1.05: Rescind the Cybersecurity Incident Reporting Requirement.

Federated Hermes recommends that the Commission rescind Form 8-K Item 1.05 reporting requirements.[9] Instead, companies can rely on the pre-existing disclosure frameworks (*e.g.,*

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[8] *See* Letter from Sec. Industry & Fin. Mkts. Ass'n, Am. Bankers Ass'n, Bank Policy Inst., Indep. Cmty. Bankers of Am. & Inst. of Int'l Bankers to Vanessa Countryman, Sec'y, U.S. Sec. & Exch. Comm'n (April 10, 2026), https://www.sec.gov/comments/cll-15/cll15-746027-2311454.pdf ("2026 Industry Group Letter").

[9] *Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure*, SEC Release Nos. 33-11216; 34-97989 (Aug. 4, 2023), https://www.sec.gov/files/rules/final/2023/33-11216.pdf ("Cybersecurity Disclosure Rule").

Regulation S-K Items 101, 103, 105, 303, and 407; Form 8-K Item 8.01; the Commission's 2018 cybersecurity guidance[10]; and Regulation FD) to ensure timely disclosure of material cybersecurity incidents. As industry letters have explained, the Form 8-K Item 1.05 requirement has created significant operational risks and confusion for registrants, including:

- the four-business-day deadline often forces disclosure while an incident is ongoing and before investigation and remediation are complete, undermining coordinated law-enforcement and national-security efforts and risking incomplete disclosures;
- the narrow delay mechanism requiring rapid Attorney General involvement has proven operationally challenging and narrower than many state law-enforcement delay provisions, and companies have also struggled to distinguish when to report under Item 1.05 versus Item 8.01, leading to inconsistent filings and diluted signal value; and
- threat actors have exploited Item 1.05 as extortion leverage, and premature, filed disclosures increase litigation and insurance risk; the fear of such scrutiny may chill candid internal communications and voluntary information sharing.[11]

Rescission would not diminish investor protections, because material cyber risks and incidents would still be disclosed under the existing regime (and Regulation FD would prevent selective disclosure). Eliminating Item 1.05 would allow companies to prioritize containment and coordination with law enforcement before issuing public statements, resulting in fewer but more accurate and useful disclosures grounded in complete information.

If the Commission is not willing to rescind the cybersecurity incident reporting requirement, as an alternative, we recommend the SEC clarify that disclosure must be made only once a company has definitely determined that there has been a material cybersecurity incident, allowing a company time to fully investigate and access a potential cybersecurity incident.

Taken together, we believe that rescinding Item 1.05 and modernizing Item 106 would restore a coherent and effective cybersecurity disclosure regime grounded in materiality, accuracy, and investor usefulness. It would enable companies to focus on remediation and coordinated response during an incident, while providing investors with clearer, more reliable disclosures once the necessary information is available.

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[10] *See Commission Statement and Guidance on Public Company Cybersecurity Disclosures*, Securities Act Release No. 33-10459, Exchange Act Release No. 34-82746, 83 Fed. Reg. 8166 (Feb. 26, 2018), https://www.sec.gov/files/rules/interp/2018/33-10459.pdf.

[11] *See* 2026 Industry Group Letter. *See also* Letter from Sec. Industry & Fin. Mkts. Ass'n, Am. Bankers Ass'n, Bank Policy Inst., Indep. Cmty. Bankers of Am. & Inst. of Int'l Bankers to Vanessa Countryman, Sec'y, U.S. Sec. & Exch. Comm'n (May 22, 2025), https://www.sec.gov/files/rules/petitions/2025/petn4-856.pdf.

Item 303: Simplify MD&A ("Management Discussion and Analysis") Disclosures.

Federated Hermes recommends that the Commission amend Item 303 to simplify MD&A disclosures and eliminate immaterial or redundant disclosures. Consistent with our broader recommendations to streamline Regulation S-K, we believe MD&A should highlight only the information most relevant to investors rather than compel registrants to provide formulaic or repetitive narratives.

In particular, we recommend replacing tabular requirements with a principles-based approach that gives companies flexibility to present information in a format best suited to their business and to highlight changes that truly affect investor decision-making. We believe this approach would provide investors with a more comprehensive analysis rather than rigid tabulations.

Item 402: Streamline Executive Compensation Disclosures.

Like the U.S. Chamber, we believe that the current Item 402 disclosures are overly complex and burdensome, and we recommend that the SEC consider streamlining these disclosures. Compensation discussion and analysis ("CD&A") disclosures can exceed 40 pages. In response to complexity, many companies disclose more rather than clearer information. We encourage the SEC to consider ways to narrow requirements to eliminate immaterial details, simplify tables, and update the presentation and structure to align with today's markets and corporate practices. Isolating technical valuation adjustments affecting long-term compensation for each named executive does not promote clarity for investors—it buries material pay decisions in excessive detail.

Focusing Item 402 on material pay decisions will better help investors understand how and why executives are paid while also alleviating excessive compliance burdens on registrants. Similar to the U.S. Chamber, Federated Hermes also endorses the following specific changes to Item 402 of Regulation S-K.[12]

> Item 402(c)(2)(ix): Increase Perk Reporting Threshold; Clarify Two-Prong Test.
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> The current $10,000 threshold for perks disclosure results in the reporting of minor benefits that are immaterial relative to total executive compensation. We recommend raising this threshold to a more meaningful level. We believe a threshold of at least $100,000, would better align disclosure with materiality and reflect the scale of compensation at modern public companies.

[12] CCMC Letter at 5.

In addition, the two-prong test for identifying reportable benefits is difficult to implement in practice, particularly where benefits (*e.g.,* personal security or mixed-purpose travel) serve both business and personal purposes. Clearer guidance on what constitutes a reportable perk would promote accuracy and consistency.

Item 402(u): Adopt Exclusions and Safe Harbor for Use of Bureau of Labor Statistics ("BLS") Data.

The pay-ratio rule imposes substantial compliance burdens and produces metrics that are often misleading due to workforce demographic variations, which, in addition to confusing investors, can expose companies to activist suits for trying to comply with the rule. Federated Hermes supports a full statutory repeal of the pay ratio disclosure requirements. Absent full statutory repeal, we support:

- excluding seasonal, part-time, and furloughed employees from the calculation,
- clarifying the definition of "independent contractor," and
- adopting a safe harbor permitting companies to use BLS industry-median compensation data.[13]

We believe that clarifying the scope of workforce demographics and standardizing reference data would improve comparability and reduce compliance burdens for companies.

Item 402(v): Reduce Redundancy and Simplify Pay-Versus-Performance Disclosures.

The Pay-Versus-Performance rule requires companies to repackage information already available in existing SEC filings and mandates the calculation of Compensation Actually Paid ("CAP"), a complex, highly technical metric that can confuse investors.

Therefore, we recommend:

- eliminating redundant components of the rule;
- simplifying CAP calculations and required footnotes;
- focusing on the most decision-relevant measures; and
- reassessing whether detailed multi-year tables provide meaningful insight.

[13] *Id.* at 9.

> In the adopting release, the SEC stated that "[t]he required table, along with the required relationship disclosures, should provide investors with clear information from which to determine the relationship between executive compensation actually paid and some basic facets of registrant financial performance".[14] We do not believe that the current requirements accomplish this goal. Calculating CAP is highly technical, creating a significant compliance burden for companies and potentially confusing investors with its complexity.

Item 403: Remove Redundant Security-Ownership Disclosures.

Ownership information for officers and directors is already filed on Form 4 and easily accessible. Requiring disclosure under Item 403 is therefore duplicative and should be removed.

Item 404: Raise Threshold and Narrow Definition of "Related Person".

Requiring disclosure of any transaction over $120,000 involving a "related person" is overly broad and difficult to apply. We encourage the SEC to consider narrowing the definition of "related person" to those most likely to present real conflicts of interest (such as streamlining the definition of immediate family member). By contrast, the rule should exclude routine transactions involving extended family members, passive ownership interests, or arm's-length employment, compensation, or benefit arrangements entered in the ordinary course of business and on market terms.

Additionally, we recommend raising the current dollar threshold to exclude routine, immaterial transactions and pairing any revised threshold with a qualitative materiality screen. We also encourage the SEC to consider a qualitative materiality screen alongside a higher threshold, such as $200,000, which we believe would further filter items of actual investor interest. A combined quantitative and qualitative approach would better ensure that Item 404 disclosures focus on transactions that a reasonable investor would consider important, while reducing compliance burdens and eliminating disclosure of information with limited relevance to investor decision-making.

Items 407(c) and (e): Remove "Comply or Explain" Provisions.

"Comply or explain" requirements function as de facto mandates and pressure issuers into adopting uniform governance structures regardless of their business needs. Under such provisions, if a company does not follow a prescribed governance practice, it must publicly justify that deviation.

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[14] *Pay Versus Performance*, Exchange Act Release No. 34-95607, 87 Fed. Reg. 55,134 (Sept. 8, 2022). https://www.sec.gov/files/rules/final/2022/34-95607.pdf.

For example, companies must explain if they do not maintain a fully independent nominating committee, and they must similarly explain when they lack formal policies governing the consideration of board diversity in director nominations. These requirements pressure companies to create board committees or policies merely to avoid looking deficient. We recommend eliminating these items and tying governance-related disclosures solely to materiality.

Repeal of Section 954 of the Dodd-Frank Act, Including Section 10D of the Securities Exchange Act of 1934 ("1934 Act"), Rule 10D-1 Thereunder, and Item 402(w) of Regulation S-K.

Federated Hermes believes the "clawback rule" required under Section 10D of the 1934 Act and Rule 10D-1 thereunder pursuant to Section 954 raises significant policy and constitutional concerns and should therefore be repealed by Congress in coordination with the Commission's modernization of Regulation S-K. The clawback rule weakens executive performance incentives, undermines board of director discretion and fiduciary judgment and would be disproportionately difficult or burdensome to enforce. Beyond these central concerns, the current framework creates significant distortions in compensation design, financial-reporting behavior, and public disclosure, without evidence that it meaningfully improves financial reporting or investor outcomes. Additionally, we believe the rule likely violates the Administrative Procedure Act by exceeding the authority adopted by Congress.

1. The clawback rule disincentivizes executive performance.

The rule requires issuers to recover incentive-based compensation whenever a restatement occurs, even when executives acted in complete good faith and exercised appropriate oversight. Because recovery is required "without regard to misconduct," executives may lose compensation due to:

- good-faith accounting judgments later superseded by regulatory reinterpretation;
- immaterial or technical errors corrected through normal internal controls; and
- restatements unrelated to the executive's responsibilities or conduct.

By imposing strict liability divorced from individual behavior, the clawback rule weakens the connection between performance and reward, discourages entrepreneurial decision-making, and ultimately undermines long-term value creation for shareholders.

2. The rule undermines board discretion and fiduciary judgment.

Section 10D and Rule 10D-1 remove nearly all discretion traditionally vested in boards of directors. Boards may not consider fault, proportionality, fairness, materiality, or whether the cost of recovery exceeds the benefit to shareholders. The rule's narrow "impracticability" exceptions are difficult to meet and prevent directors from applying informed business judgment, which state corporate law has long treated as central to directors' fiduciary obligations. This mandated, one-size-fits-all approach is inconsistent with well-established governance principles.

3. The rule is disproportionately burdensome and costly to enforce.

Rule 10D-1 requires companies to engage in extensive recalculations of historically awarded compensation, track a three-year rolling lookback period, and pursue recovery from former executives, retirees, or estates. In many cases, the direct and indirect costs of recovery—including legal, accounting, administrative, and reputational costs—exceed the amount potentially recoverable. These costs are ultimately borne by shareholders, even though the rule produces little demonstrable benefit.

4. The clawback regime imposes strict liability untethered to executive conduct.

Unlike other clawback tools, such as Section 304 of the Sarbanes-Oxley Act, the mandatory clawback rule applies regardless of misconduct. Executives may be penalized for events entirely outside their control, in conflict with basic principles of fairness, due process, and incentive alignment. This punitive structure risks deterring highly qualified executives from serving in public-company leadership roles.

5. The rule encourages excessive risk aversion and under-investment.

Executives rationally respond to strict-liability compensation risk by adopting overly conservative financial-reporting judgments, delaying or avoiding innovative strategies, and reducing investment in long-term or higher-variance projects. These behavioral shifts diminish growth opportunities and impair shareholder value, contrary to the rule's stated purpose.

6. The restatement trigger is overly broad and misaligned with modern reporting reality.

Rule 10D-1 applies to both "Big R" restatements (which occur when an error is material to previously issued financial statements and requires the company to retract and formally reissue those prior-period financials) and "little r" restatements (which correct errors that were not material to previously issued financials but must still be revised in the current period's comparative statements because leaving them uncorrected—or correcting them—would be material to the

current period). Because Rule 10D-1 applies to both categories—including restatements that are immaterial to prior-period financial statements, reflect evolving accounting guidance rather than true error, or are undertaken solely to prevent potential future materiality—the trigger is overly broad. This overbreadth equates technical reporting adjustments with significant financial misstatements, producing disproportionate and unjustified consequences.

7. The rule distorts compensation design and weakens pay-for-performance alignment.

Because incentive-based compensation tied to financial metrics is uniquely exposed to clawback risk, boards may shift toward time-based equity or subjective, discretionary pay. This undermines transparency, weakens pay-for-performance discipline, and produces outcomes contrary to longstanding investor preferences.

8. Item 402(w) disclosure requirements operate as punitive and misleading.

Item 402(w) requires detailed, executive-specific disclosures of clawback amounts, outstanding balances, and recovery efforts. These disclosures can function as reputational penalties irrespective of fault and may mislead investors by failing to distinguish between misconduct-based restatements and technical, non-culpable corrections. The resulting harm to executives and issuers is unwarranted and inconsistent with due-process principles.

9. The clawback rule disadvantages U.S. public markets.

The breadth and rigidity of the U.S. clawback regime, which mandates no-fault, three-year, mandatory recovery for *all* U.S.-listed companies, exceed those adopted in many foreign jurisdictions that employ fault-based, board-discretionary, or limited-scope clawback models. For example, Canada generally uses voluntary, misconduct-based clawbacks.[15] Likewise, under the U.K. Corporate Governance Code, public companies must maintain clawback provisions, but the triggers are tied to cases of misconduct, negligence, or breach of duty.[16] In the U.K., companies have broad discretion regarding whether recovery is appropriate. By contrast, U.S. rules require recovery even when the executive acted in good faith and had no role in the underlying accounting error.

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[15] *See* Jason Comerford et al., *Give It Back! Issues for Canadian Companies to Consider Now in Light of Pending U.S. Compensation Clawback Rules to Become Effective Later This Year*, Osler, Hoskin & Harcourt LLP (June 9, 2023), https://www.osler.com/en/insights/updates/give-it-back-issues-for-canadian-companies-to-consider-now-in-light-of-pending-u-s-compensation-cl-en/.

[16] *See* Alice Greenwell et al., *Malus and Clawback – What Should Companies Be Doing to Comply with the Revised UK Corporate Governance Code?*, Freshfields Risk & Compliance Blog (Feb. 7, 2024), https://riskandcompliance.freshfields.com/post/102izf7/malus-and-clawback-what-should-companies-be-doing-to-comply-with-the-revised-uk.

This discrepancy disadvantages U.S. public markets. Because the U.S. clawback regime is uniquely stringent, foreign companies may avoid or delist from U.S. exchanges, and executives—particularly those subject to cross-border enforcement—may demand higher compensation to offset heightened personal risk. These pressures can also drive executive talent toward private companies or non-U.S. markets where clawback frameworks are narrower, more predictable, and typically tied to misconduct.

10. The clawback rule raises substantial constitutional concerns.

In addition to the policy concerns discussed above, Federated Hermes believes that the mandatory clawback regime implemented under Section 10D, Rule 10D-1, and Item 402(w) raises constitutional concerns that warrant careful reconsideration.

We believe the rule exceeds statutory authority adopted by Congress under Section 954 of the Dodd-Frank Act, thereby violating the Administrative Procedures Act.[17] Section 954 unambiguously authorizes mandatory recovery only when an issuer is required to prepare a restatement due to material noncompliance with financial reporting requirements. By extending the mandatory clawback requirements to "little r" restatements and otherwise expanding the scope of recovery beyond what the statutory text contemplates, the Commission adopted an interpretation that is inconsistent with the statute's plain language. Additionally, Rule 10D-1 requires compensation recovery from a broader group of persons than the "executive officers" contemplated by Section 954 and defined under the Exchange Act, further exceeding the statutory authorization granted by Congress. Even if Section 954 was ambiguous, the SEC's interpretation is not entitled to SEC deference.[18]

In addition, Federated Hermes believes that the mandatory clawback regime also raise due-process and Takings Clause concerns under the Fifth Amendment. Rule 10D-1 compels the recovery of previously earned and vested compensation without regard to misconduct, fault, or individualized adjudication, notwithstanding that such compensation may constitute a protected property interest. Requiring forfeiture of vested pay based solely on a later restatement, particularly where the executive had no role in the underlying error, may increase the risk of arbitrary deprivation and raises questions as to whether adequate procedural protections are afforded. Moreover, because the rule mandates forfeiture of lawfully earned compensation and conditions continued exchange

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[17] *See* Joel H. Trotter, *Is the SEC Clawback Rule Unlawful?*, 58 Rev. Sec. & Commodities Reg. 97 (Apr. 23, 2025), https://www.lw.com/en/admin/upload/SiteAttachments/Is-the-SEC-Clawback-Rule-Unlawful.pdf (arguing that Rule 10D-1 exceeds the scope of authority granted by Section 954 by mandating clawbacks following immaterial error corrections and by expanding the universe of covered individuals, rendering the rule vulnerable under the Administrative Procedure Act).

[18] *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 392 (2024) (overruling *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)).

listing on compliance, the regime may operate as a compelled transfer of private property for regulatory purposes, potentially implicating the Takings Clause.[19] These concerns further underscore that the clawback rule extends beyond disclosure into punitive regulation that warrants careful constitutional and legislative reconsideration.

For the above reasons, we believe Congress should repeal the clawback rule as implemented under Section 10D and Rule 10D-1 in coordination with the SEC's broader effort to modernize Regulation S-K. The current regime imposes strict-liability recovery obligations that are disconnected from individual culpability, undermines board governance, creates significant administrative and economic burdens, discourages performance-based compensation, and produces limited demonstrated benefit to investors. A principles-based approach that restores board discretion and aligns recovery with misconduct would better protect shareholders, preserve fairness, and support effective corporate governance.

Conclusion

Federated Hermes believes that the above recommendations will improve investor decision-making and reduce exorbitant compliance burdens by eliminating superfluous and immaterial disclosure requirements. We appreciate the opportunity to comment on reforms to Regulation S-K and the SEC's willingness to consider our recommendations.

Sincerely,

/s/ Peter J. Germain

Peter J. Germain
Chief Legal Officer

/s/ Jane G. Heinrichs

Jane G. Heinrichs
Head of U.S. Regulatory Affairs

cc: Chairman Paul S. Atkins
Commissioner Hester M. Peirce
Commissioner Mark T. Uyeda

[19] *See* Keith Paul Bishop, *SEC's Clawback Proposal Could Be an Unconstitutional Taking*, Nat'l L. Rev. (2022), https://natlawreview.com/article/sec-s-clawback-proposal-unconstitutional-taking.