April 13, 2026

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

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

Dear Ms. Countryman:

The American Securities Association (ASA)[1] submits these comments in response to the request for information initiated by Chairman Atkins to review and modernize Regulation S-K.[2] The ASA supports this long-overdue initiative from the Securities and Exchange Commission (SEC), which will improve the regulatory environment for public companies and their shareholders. Last year, the ASA submitted comments ahead of the SEC's roundtable on executive compensation disclosure, some of which are included below.[3]

I. Overview.

The ASA has been concerned about the multi-decade decline in U.S. public companies for many years. Today, the markets have roughly half the number of public companies that existed in the 1990s. This is a problem not only because public companies have historically been a major contributor to job creation and growth, but also because everyday investors largely rely on strong public markets to fund their retirement, education, and other financial necessities in life.

Rather than take steps that encourage more initial public offerings (IPOs), the SEC has too often layered on new regulation after new regulation with little regard for the cumulative economic costs that are imposed on businesses and investors as a result. As Chairman Atkins recently explained, "decades of accretive rulemakings and regulatory adventurism have made the path to becoming a public company narrower—and the experience of remaining one encumbered with rules that can introduce more friction than benefit."[4]

[1] ASA is a trade association that represents the retail and institutional capital markets interests of regional financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to create and preserve wealth. ASA's mission is to promote trust and confidence among investors, facilitate capital formation, and support efficient and competitively balanced capital markets. This mission advances financial independence, stimulates job creation, and increases prosperity. ASA has a geographically diverse membership base that spans the Heartland, Southwest, Southeast, Atlantic, and Pacific Northwest regions of the United States.
[2] https://www.sec.gov/newsroom/speeches-statements/atkins-statement-reforming-regulation-s-k-011326
[3] https://www.sec.gov/comments/4-855/4855-617227-1810874.pdf

Worse, the SEC has in the past sought to make it easier for special interest groups to use the securities laws to force public companies to adopt their political agendas. Too many businesses ultimately make the decision that the public company environment is too burdensome or too hostile to the interests of their shareholders.

The SEC's own 2016 Concept Release on Business and Financial Disclosure[5] acknowledged that the cumulative effect of incremental rulemaking had produced disclosure documents that had become so lengthy and complex that investors may have difficulty identifying the most important information. Additionally, the bipartisan JOBS Act of 2012[6]and bipartisan FAST Act of 2015,[7] reflect Congress's recognition that disclosure burdens were directly responsible for suppressing IPO activity. The FAST Act's congressional mandate to the SEC was to "eliminate duplicative, outdated, or otherwise unnecessary provisions."[8]

Fortunately, Chairman Atkins and this SEC are working to put an end to the SEC's past mistakes. He has laid out an agenda that will help "Make IPOs Great Again" and return the U.S. capital markets to their historical status as *the* global destination for capital.[9] The Chairman's three-part agenda includes 1) Corporate disclosure reform; 2) De-politicizing proxy season for public companies; and 3) Litigation reform to protect public company shareholders from frivolous lawsuits. These are all worthy and *necessary* efforts on their own.

The ASA welcomes the bold action the SEC has already taken to address underlying problems in the public markets and our views on corporate disclosure and Reg S-K are described in more detail below:

II. Materiality.

Any comprehensive rethinking of Reg S-K must be guided by the longstanding principle of materiality – a standard that was articulated in the landmark 1976 Supreme Court case *TSC Industries v. Northway*[10] that has governed corporate disclosure for decades.

Materiality rests on the premise that information should be disclosed if a *reasonable investor* would believe that it is important to making an investment or voting decision. Without this standard, companies would be forced to disclose an effectively unlimited amount of useless

[5] 81 Fed. Reg. 23916 (Apr. 22, 2016).
[6] Jumpstart Our Business Startups Act, Pub. L. No. 112-106, 126 Stat. 306 (2012).
[7] Fixing America's Surface Transportation Act, Pub. L. No. 114-94, § 72003 (2015).
[8] Id.
[9] https://www.sec.gov/newsroom/speeches-statements/atkins-120225-revitalizing-americas-markets-250
[10] *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976) ("there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available"). The Court's companion case, *Basic Inc. v. Levinson*, 485 U.S. 224 (1988), reinforced this standard in the securities fraud context — worth noting.

information, overloading investors and preventing them from identifying the most important factors about a business.

Chairman Atkins has likewise emphasized that "our disclosure regime is most effective when the SEC provides the minimum effective dose of regulation necessary to elicit the information that is material to investors, and we allow market forces—not the regulator—to drive the disclosure of any additional aspects that may be beneficial," and that "materiality, in short, must reclaim its place as the SEC's north star.[11] We agree.

As an initial step to reforming Reg S-K, the SEC should first identify any outdated, duplicative, or otherwise immaterial mandates currently within Reg S-K and either eliminate those mandates or consolidate them into other areas of Reg S-K. The SEC should use a principles-based approach that would ensure only material information be disclosed.

For example, these could include information about a company's stock and performance included under Items 201 and 202 that is widely available elsewhere.[12] The SEC should also eliminate certain items under Reg S-K that are intended to influence the corporate governance of issuers – such as disclosures under Items 405, 407, and 408 that mandate certain information related to board proceedings.[13]

The SEC should also consider moving away from arbitrary monetary thresholds it has deemed as meeting the test of "materiality" for all issuers. For example, Item 404 (related party transactions) and Item 103 (legal proceedings) both include monetary thresholds that trigger disclosure for all issuers – even if a reasonable investor may not consider such information material in all cases. The Item 103 environmental proceedings threshold ($300,000) adopted in 1979 has never been adjusted for inflation.[14] This is a concrete example of how arbitrary fixed thresholds become increasingly irrational over time.[15]

Finally, when a material event (e.g., a major acquisition, cybersecurity incident, or material contract) is reported on Form 8-K, the same information must be re-disclosed in the next 10-K or 10-Q. There is no meaningful streamlining mechanism that allows companies to incorporate 8-K disclosures by reference into 10-Qs without restating the whole 8-K disclosure, we recommend the

[11] https://www.sec.gov/newsroom/speeches-statements/atkins-remarks-boom-belt-040726.
[12] To reinforce this point, we direct the agency to the SEC's own 2018 Disclosure Simplification amendments (Release No. 33-10532), which already eliminated the Selected Financial Data requirement (former Item 301) and the Supplementary Financial Data requirement (former Item 302) because the information was available in EDGAR, financial terminals, and press releases. This same logic applies to Items 201 and 202.
[13] These items "mandate certain information related to board proceedings" rather than inform investors about a company's financial performance and this is well-supported in academic literature — see Roberta Romano, "The Sarbanes-Oxley Act and the Making of Quack Corporate Governance," 114 Yale L.J. 1521 (2005), which argued that many post-SOX governance mandates lacked empirical support as investor protection measures.
[14] SEC Release No. 33-6130 (1979).
[15] *SEC Staff Report on Modernization and Simplification of Regulation S-K* (Nov. 2016) (specifically points out the archaic nature of fixed dollar thresholds).

SEC allow companies to incorporate the substance of 8-K disclosures by reference. The SEC already permits forward incorporation by reference in certain registration statement contexts (e.g., Form S-3 "shelf" registrants can incorporate 8-K filings)[16]. Extending this to 10-Q and 10-K reports would be a logical and administratively simple reform.[17]

III. Risk Factors.

While the SEC adopted a rule in 2020 that was designed to simplify and shorten risk factor disclosure, in practice most companies have maintained – or increased – their volume of risk factor disclosure and added a paragraph to summarize the factors. Empirical research by Deloitte & Touche LLP and the University of Southern California's Leventhal School of Accounting found that following the SEC's 2020 amendments to Item 105, 79% of S&P 500 companies actually increased the length of their risk factor sections, with the average being over 13 pages — directly contrary to the SEC's stated goal of shortening these disclosures.[18]

Risk factors are a prime example of how many parts of Reg S-K today are "written for the lawyers and not the investors." Companies feel they must disclose and describe every perceived risk that could impact their future performance in order to ward off the targeted activism of the plaintiff bar. The ASA supports the ideas espoused by Chairman Atkins recently regarding a 'safe harbor' for forward-looking risk factor disclosure.[19] The safe harbor should extend to *qualitative, forward-looking risk factor disclosure* made in good faith and updated annually (this can mirror the existing PSLRA safe harbor (15 U.S.C. §78u-5) for forward-looking statements).[20] This could prevent the plaintiff bar from continuing to assert in court that boilerplate risk factors are company admissions against their own interest.[21] A codified safe harbor for the risk factor section would address this.

Echoing the third pillar of his plan "to make IPOs great again," Chairman Atkins has explained that the Commission should "allow[] public companies to have litigation alternatives while maintaining an avenue for shareholders to continue to bring forth meritorious claims" so that it can "shield the innovator from the frivolous—and protect the investor from the fraudulent."[22]

The SEC may also want to consider an aggregate page limit for risk factors.

---

[16] Rule 12b-23 under the Exchange Act (17 C.F.R. §240.12b-23) and General Instruction I to Form S-3.
[17] Rule 12b-23 governs incorporation by reference, and it would need to be modified to allow for incorporation in this instance.
[18] Deloitte/USC Risk Management Program, 'SEC Risk Factor Disclosure Rules' (Dec. 2021), Harvard Law School Forum on Corporate Governance available at https://corpgov.law.harvard.edu/2021/12/22/sec-risk-factor-disclosure-rules/
[19] https://www.sec.gov/newsroom/speeches-statements/atkins-02-17-2026-remarks-texas-am-school-law-corporate-law-symposium
[20] While the PSLRA safe harbor covers forward-looking *statements,* it does not expressly protect the risk factor *section*, creating the asymmetry that plaintiff lawyers routinely exploit.
[21] See In re Alphabet, Inc. Securities Litigation where plaintiffs used risk factor language offensively to support their legal position. Also see, Cazier, McMullin & Treu, *"Are Lengthy and Boilerplate Risk Factor Disclosures Inadequate? An Examination of Judicial and Regulatory Assessments of Risk Factor Language,"* 96 The Accounting Review 131 (2021).
[22] Id.

IV. Cybersecurity Disclosure.

The 2023 cybersecurity disclosure rule (Item 106) requires annual disclosure of cybersecurity risk management, strategy, and governance.[23] This substantially overlaps with: (1) Item 105 risk factor disclosure about cyber risks; (2) Item 303 MD&A discussion of material cybersecurity-related costs or trends; and (3) Form 8-K Item 1.05 incident reporting. Companies now maintain three or more separate disclosure vehicles for the same underlying cyber risk narrative. That is confusing to investors and needlessly costly for public companies. And the SEC's own adopting release for Item 106 acknowledged that some information would overlap with existing MD&A and risk factor disclosures but declined to provide a means to consolidate them.[24]

We recommend the SEC adopt one annual cybersecurity disclosure item (replacing Item 106, the Item 105 cyber risk factors, and the Item 303 cyber MD&A discussion) which can be supplemented by Form 8-K disclosures for material incidents.

V. Existing Executive Compensation Disclosure Requirements Should Be Simplified.

The 2006 amendments put in place new mandates under Item 402 of Regulation S-K, including compensation discussion & analysis (CD&A), a narrative disclosure requirement that encourages companies to succinctly explain in their own words how they develop executive compensation packages. CD&A is ostensibly a principles-based requirement intended to help investors understand the unique circumstances within a particular company.

In practice, however, the average CD&A disclosure for companies has increasingly grown lengthier and more complicated over the years. This was not the intent of 2006 adopting release, which said that CD&A was intended to be a "relatively brief" principles-based narrative.[25] The divergence between that intent and current practice, where 50+ page proxy compensation sections are the norm, proves our point on this issue.

Another concern is the comment process used by the SEC. It has allowed staff to effectively "re-write" executive compensation rules on the fly and has led companies to over-disclose information even if it may not be material for investors. This practice also seems to function as an informal rulemaking that usurps the notice and comment requirements the agency must comply with in the Administrative Procedure Act.[26]

Staff comments also appear to receive little oversight from the Commission itself, leaving companies subject to the views of a particular staffer at any given time.

In addition to CD&A, the 2006 amendments also greatly expanded highly technical tabular and

[23] SEC's 2023 Cybersecurity Disclosure Rule (Release No. 33-11216, effective Sept. 5, 2023).
[24] Release No. 33-11216 at pages 51910–11 of the Federal Register.
[25] SEC Release No. 33-8732 (Aug. 11, 2006), 71 Fed. Reg. 53158 (Sept. 8, 2006). See the preamble for exact discussion.
[26] 5 U.S.C. §553 requires notice and comment for legislative rules.

other types of disclosure. The result is that annual proxy disclosures related to executive compensation can be dozens of pages of dense, technical legalese that even the most experienced investors have trouble understanding.

The SEC should conduct a wholesale review of the 2006 amendments – including the entire staff comment process – with a goal of simplifying the current disclosure framework so that it is easier for investors to understand or refer investors to Schedule 14A to make it the sole disclosure vehicle investors can turn to. 10-Ks already incorporate proxy compensation disclosure by reference under Instruction G to Form 10-K, meaning the 10-K essentially just points investors back to the proxy for this information. Because it's already accepted practice, having a duplicative 10-K disclosure requirement provides no new information to the investor and should be eliminated.

VI. Adopt Page Limitations for Executive Compensation Disclosure.

Over the last three decades, Congress and the SEC have made several attempts to modernize corporate disclosure and reduce the regulatory creep of the SEC's current disclosure rules. These attempts have included the "corporate disclosure effectiveness" initiative under previous Chair Mary Jo White along with recent laws passed by Congress to eliminate outdated or duplicative requirements. The ASA supported many of these efforts, although they only scratched the surface in terms of what is necessary to truly make disclosure more effective.

One idea the SEC should explore to simplify executive compensation disclosures is page limits for CD&A and related disclosures. This is not an outlandish or even unprecedented idea. Indeed, the SEC has embraced the concept of page limits before.

For example, in 2020 when the SEC adopted amendments to risk factor disclosure under Regulation S-K, it mandated that if a company's risk factor disclosure exceeded a certain page limit, it must provide a two page or less summary of its risk factors.[27]

Federal courts also acknowledge how limiting the number of pages or words in court filings can help crystallize arguments and assist readers in understanding the position of a party in litigation.[28] Many appellate courts, for example, use page or word limits so that parties cannot overload the docket with extraneous information. This practice has served the courts well; the SEC should give serious consideration to adopting similar limits when it comes to corporate disclosure.

The SEC's experience with the 2006 executive compensation amendments should inform its next steps on executive compensation. When SEC staff is given carte blanche to provide endless "comments" on disclosure, the result is more, less understandable disclosure. Adopting a page

[27] SEC Release No. 33-10825 (Aug. 26, 2020), which amended Item 105 to require a two-page summary when risk factors exceed 15 pages; https://www.sec.gov/newsroom/press-releases/2020-192

[28] See e.g. Appellate Procedure Guide for the U.S. Court of Appeals for the Fourth Circuit (Updated June 2025) https://www.ca4.uscourts.gov/appellateprocedureguide/Motions/APG-motionpractice.html#:~:text=A%20motion%20cannot%20exceed%205%2C200,Fed.

limitation for CD&A and related disclosures may be the simplest yet most effective way for the SEC to improve executive compensation disclosure.

VII. Conclusion.

Consistent with the Chairman's "return to first principles" agenda, the most consequential reforms to Regulation S-K will not be those that add to the compliance burden, but those that—as he put it—"have the courage to lift it" for public companies and their investors.[29] Attached hereto as Exhibit A is a brief table setting forth our recommendations in a very simple way.

Sincerely,

Christopher A. Iacovella

Christopher A. Iacovella
President & Chief Executive Officer
American Securities Association

[29] https://www.sec.gov/newsroom/speeches-statements/atkins-remarks-boom-belt-040726.

EXHIBIT A
Priority Recommendations for Reform

Issue	Duplicative Items	Suggested Reform
Legal Proceedings	Item 103 ↔ GAAP ASC 450	Eliminate Item 103; defer to GAAP + MD&A
Segment/Customer	Item 101 ↔ GAAP ASC 280/606	Eliminate Reg S-K layer; rely on GAAP notes
Director/Officer Bios	Item 401 (10-K) ↔ Schedule 14A	Single disclosure in proxy; incorporate by reference
Exec Comp	Item 402 (10-K) ↔ Schedule 14A	Proxy as sole disclosure vehicle
Security Ownership	Item 403 (10-K) ↔ Schedule 14A	Proxy as sole disclosure vehicle
Cyber Risk	Item 106 ↔ Item 105 ↔ Item 303 ↔ 8-K 1.05	Consolidate into single annual item + 8-K trigger
MD&A (Quarterly)	10-Q Item 303 ↔ 10-K Item 303	Only require updated disclosure in 10-Qs and incorporate any 8-K info by reference.
Business Description	Item 101 ↔ Item 303 ↔ Item 105	Streamline to one integrated narrative