April 13, 2026

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

Re: File Number CLL-15, Request for Information about Reforming Regulation S-K

Dear Ms. Countryman:

Better Markets[1] appreciates the opportunity to provide its views on Regulation S-K. On January 13, 2026, Chair Atkins announced that he had instructed the Commission's staff to engage in a comprehensive review of Regulation S-K with the goal of revising its requirements.[2] According to Chair Atkins, Regulation S-K "currently elicits both material and a plethora of undisputably immaterial information."[3] Chair Atkins wants to reform Regulation S-K so that it elicits the disclosure of material information and avoids compelling the disclosure of immaterial information.[4] We urge the Commission to retain the disclosures that Regulation S-K currently requires, which ensure that public companies provide investors with material information.

Regulation S-K has long focused on providing investors with only material information. In 1982, the Commission said that the purpose of Regulation S-K was "to identify the information which is material to security holders and investors in both the distribution process and the trading markets."[5] So the Commission does not require the disclosure of information pursuant to Regulation S-K unless it has determined that the information is material.[6]

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1 Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans' jobs, savings, retirements, and more.

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

3 *Id.*

4 *Id.*

5 *Adoption of Integrated Disclosure System*, Exchange Act Release No. 18524, 1982 WL 90370, at *4 (Mar. 3, 1982).

6 *See, e.g.*, Amanda M. Rose, *The "Reasonable Investor" of Federal Securities Law: Insights from Tort Law's "Reasonable Person" & Suggested Reforms*, 43 J. Corp. L. 77, 101 (2017) ("As explained at the outset of Part III, mandatory disclosure obligations under the federal securities laws are often by their terms limited to 'material' information. For example, Item 303(a)(1) of Regulation S-K requires disclosure of known trends, demands, commitments, events or uncertainties likely to result in a company's liquidity changing 'in any material way.'") (quoting 17 C.F.R. §229.303(a)(1) (2017)).

For this reason, it is unclear why Chair Atkins believes Regulation S-K currently elicits "a plethora of undisputably immaterial information." Indeed, the key to the disclosure obligations under Regulation S-K "is whether the information is 'material.'"[7] And contrary to Chair Atkins's apparent view, Regulation S-K does not provide investors with too much information. Under Regulation S-K today, it is not the case that "all material information has to be disclosed."[8] It is the case that "the information must only be disclosed if it is material."[9]

> Although Regulation S-K covers a broad array of subject matter, disclosure is limited to material information – information that a reasonable investor is substantially likely to consider important in determining whether to purchase or sell the registered security.[10]

So under Regulation S-K, the SEC "has made a number of ex ante decisions about what information is important to investors," and it is only this information that must be disclosed.[11]

Chair Atkins did not identify any specific disclosures under Regulation S-K that he views as immaterial to investors. This is not that surprising, as the Commission has "adopted line-item requirements in Regulation S-K and its predecessors to provide investors with specific disclosure within broad categories of *material* information."[12] Chair Atkins identifies no disclosure under Regulation S-K that the Commission determined to be immaterial at the time it was adopted.

Nonetheless, it appears that Chair Atkins believes some of the information the Commission has determined should be disclosed as material under Regulation S-K is actually immaterial. But it should require overwhelming evidence for the Commission to now conclude that a disclosure obligation it previously considered to be material is not actually material. It should not matter that subsequent Commissioners think that it is not worthwhile for investors to have the information or that the costs of the disclosure outweigh the benefits. The standard is whether the information would be important to a reasonable investor. What should matter is that the Commission believed the information was important enough to a reasonable investor to require it to be disclosed pursuant to Regulation S-K. By including it in Regulation S-K, the Commission "determined that investors will find the required information relevant most of the

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7 Amy Deen Westbrook, *What's In Your Porfolio? U.S. Investors are Unknowingly Financing State Sponsors of Terrorism*, 59 DePaul L. Rev. 1151, 1185 (2010).

8 *Id.* at 1185 n.228.

9 *Id.* at 1186.

10 Rebecca Rabinowitz, *From Securities to Cybersecurity: The SEC Zeroes in on Cybersecurity*, 61 B.C. L. Rev. 1535, 1550 (2020) (citing Roberta S. Karmel, *Disclosure Reform—The SEC is Riding Off in Two Directions at Once*, 71 Bus. Law. 781, 785 (2016)); *see also* Kevin S. Haeberle and M. Todd Henderson, *Making a Market for Corporate Disclosure*, 35 Yale J. on Reg. 383, 428 (2018) (stating that "what must be disclosed is of course limited by materiality); Lauren M. Mastronardi, *Shining the Light a Little Brighter: Should Item 303 Serve as a Basis for Liability under Rule 10b-5?*, 85 Fordham L. Rev. 335, 342 (2016).

11 Westbrook, 59 DePaul L. Rev. at 1183.

12 *Business and Financial Disclosure Required by Regulation S-K*, Exchange Act Release No. 10064, 2016 WL 1458170, at *14 (Apr. 13, 2016) (emphasis added).

time."[13] Just as companies "must disclose the items listed in Regulation S-K whether or not the information is believed to be important to investors in any particular instance,"[14] unless a subsequent Commission can establish that no reasonable investor would consider the information relevant to their investment decisions, companies should be required to disclose the items listed in Regulation S-K regardless of the subjective views of the individual Commissioners.

A high bar for eliminating required disclosures makes sense, because disclosure "has long been at the bedrock of the modern securities regulation framework."[15] Mandatory disclosure improves efficiency in the market because increasing the market's supply of accurate information ensures that investors are best situated to make informed decisions about investment opportunities.[16] That is why "the "registration and disclosure requirements that form the bulk of the securities laws . . . were all aimed primarily toward ensuring those involved in the securities markets had full and accurate information at their disposal."[17] Disclosure obligations therefore protect investors.[18] The disclosures in Regulation S-K are "fundamental components of the SEC's policy of fully informing the public about liabilities which could affect its interests."[19]

The SEC must not lose sight of the need for investors to be fully informed about the public companies in which they invest. Chair Atkins characterizes disclosure obligations as burdens for public companies.[20] But public companies issuing securities are asking for the public's money. The basic bargain of our securities laws is that companies can access the public's money in return for providing the public with information to keep them informed about their investments. The fundamental purpose of the federal securities laws is to "substitute a philosophy of full disclosure for the philosophy of *caveat emptor*."[21] So the primary purpose of mandatory disclosure is to provide investors in a public company "with "access to the company's most important information."[22] Disclosure obligations are not burdens to be alleviated; they are what investors are entitled to when they invest their hard-earned money in any one company.

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13 Westbrook, 59 DePaul L. Rev. at 1183.

14 *Id.*

15 Tom C.W. Lin, *Reasonable Investor(s)*, 95 B.U. L. Rev. 461, 508 (2015).

16 Rabinowitz, 61 B.C. L. Rev. at 1537 n.10 (citing Frank H. Easterbrook & Daniel. R. Fischel, *Mandatory Disclosure and the Protection of Investors*, 70 Va. L. Rev. 669, 673 (1984)).

17 Jayme Herschkopf, *Morality and Securities Fraud*, 101 Marq. L. Rev. 453, 476-77 (2017).

18 *Federal Regulation of Municipal Securities: Disclosure Requirements and Dual Sovereignty*, 86 Yale L.J. 919, 921-22 (1977).

19 John W. Bagby, Paula C. Murray, and Eric T. Andrews, *How Green was My Balance Sheet?: Corporate Liability and Environmental Disclosure*, 14 Va. Envtl. L.J. 225, 313-14 (1995).

20 *See, e.g., Remarks by Chair Atkins on Disclosure Reform and Financial Innovation*, Harvard Law School Forum on Corporate Governance (Mar. 13, 2016), https://corpgov.law.harvard.edu/2026/03/13/remarks-by-chair-atkins-on-disclosure-reform-and-financial-innovation/.

21 *SEC v. Cap. Gains Res. Bureau*, 375 U.S. 180, 186 (1963).

22 James J. Park, *Insider Trading and the Integrity of Mandatory Disclosure*, 2018 Wis. L. Rev. 1133, 1136 (2018).

In this regard, Justice Marshall's opinion about materiality in *TSC Industries, Inc. v. Northway, Inc.*,[23] provides no support for reducing the disclosure obligations in Regulation S-K. Although Chair Atkins suggests that revising Regulation S-K is consistent with Justice Marshall's concern about "burying shareholders in an avalanche of immaterial information,"[24] what Justice Marshall said was that materiality should not be defined so broadly as to "bury the shareholders in an avalanche of *trivial* information."[25] It is unclear what information that Regulation S-K requires to be disclosed could possibly be considered by investors to be trivial.

To the contrary, Justice Marshall's definition of materiality shows why Regulation S-K should not be revised to provide investors with less disclosure. He defined information as material "if there is a substantial likelihood that a reasonable shareholder would consider it important."[26] Material information is information that would assume "actual significance in the deliberations of the reasonable shareholder."[27] The information need not cause an investor to act; it need only be viewed "by the reasonable investor as having significantly altered the 'total mix' of information made available."[28] So information that is trivial would not meet this standard, but it is hard to view the disclosures that Regulation S-K requires to be information that investors would not consider important, significant, or altering the total mix of available information.

The context in which Justice Marshall defined materiality also matters greatly. He noted that in "formulating a standard of materiality" it was necessary to recognize the "broad remedial purpose" of the federal securities laws "to ensure disclosures by corporate management in order to enable the shareholders to make an informed choice."[29] As a result, Justice Marshall said that any doubts as to the materiality of information should "be resolved *in favor of those the statute is designed to protect*"[30]—namely, the everyday investors the SEC is supposed to represent.

> William O. Douglas, the U.S. SEC's third Chairman from 1937-1939 and the longest serving U.S. Supreme Court Justice, said that the SEC is the 'investor's advocate.'[159] This philosophy has been the bedrock that has seen the SEC through . . . and it is a primary reason that nearly 60% of U.S. households are confident enough to invest their retirements and children's education in the capital markets. . . . Being the investor's

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23 426 U.S. 438 (1976).

24 Atkins, supra note 2.

25 426 U.S. at 448-49.

26 *Id.* at 449.

27 *Id.*

28 *Id.*

29 *Id.* at 448.

30 *Id* (emphasis added).

> advocate means that the individual investor, not the large industry firms or corporate issuers, should be treated as the ultimate client of the securities authority.[31]

Justice Marshall's admonition that doubts about materiality should be resolved in favor of investors, as well as the SEC's responsibility to act as the investor's advocate, means that the SEC should be promoting corporate disclosures rather than circumscribing Regulation S-K.[32]

The SEC certainly should not curtail the disclosures required under Regulation S-K unless investors would consider them, in the words of Justice Marshall, trivial, and there is no indication that the disclosures the SEC is contemplating eliminating fit that description. Although Chair Atkins did not indicate what disclosures he thought involved immaterial information, other than executive compensation disclosures that the Commission appears to be considering separately,[33] Commissioner Uyeda recently gave a speech in which he provided a number of examples of disclosures that in his view he thought should be revised.[34] The problem is that it is almost impossible to consider these disclosures as involving trivial information.

Commissioner Uyeda said that the Commission should "consider deleting the requirement . . . that mandates companies explain whether they have an insider trading policy or provide reasons if they do not."[35] Yet recent events underscore the materiality of corporate insider trading policies. The rise of prediction markets has led to widespread concerns about rampant insider trading on those platforms.[36] In response to those concerns, and in an apparent attempt to alleviate them, prediction market platforms have trumpeted their release of insider

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31 Ziven Scott Birdwell, *The Key Elements for Developing a Securities Market to Drive Economic Growth: A Roadmap for Emerging Markets*, 39 Ga. J. Int'l & Comp. L. 535, 584 (2011) (quoting Troy A. Paredes, Comm'r, SEC, Remarks at the SEC Speaks in 2011 (Feb. 4, 2011)), http://www.sec.gov/news/speech/2011/spch020411tap.htm.

32 *See* Alfred Dennis Mathewson, *From Confidential Supervision to Market Discipline: The Role of Disclosure in the Regulation of Commercial Banks*, 11 J. Corp. L. 139, 157-58 (1986). ("'The keystone of the entire structure of Federal securities legislation is disclosure' to investors so that they may make informed investment decisions. A by-product of disclosure is an efficient market system. An efficient market occurs when buyers and sellers have full information. Thus, public disclosure is the means used to protect investors and provide efficient security markets. The SEC is not concerned that disclosure may cause a firm to fail or an entire industry to suffer. The SEC's job is to ensure that investors are able to minimize the harm to themselves by making informed investment decisions.") (internal citation omitted).

33 *See* Benjamin Schiffrin, *The Public Has a Right to Know How Much CEOs Get Paid*, Better Markets (June 26, 2025), https://bettermarkets.org/newsroom/the-public-has-a-right-to-know-how-much-ceos-get-paid/.

34 Commissioner Mark T. Uyeda, *Remarks at the 53rd Annual Securities Regulation Institute* (Jan. 26, 2026), https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-securities-regulation-institute-012626.

35 Uyeda, supra note 34.

36 *See, e.g.*, Emily Nicolle, *Polymarket Iran Bets Draw Fresh Dispute and Insider Scrutiny*, Bloomberg (Apr. 8, 2026), https://www.bloomberg.com/news/articles/2026-04-08/polymarket-s-iran-bets-draw-fresh-disputes-and-insider-scrutiny?sref=mQvUqJZj.

trading policies.[37] The idea that whether a public company has policies against insider trading, or the reasons it does not, is immaterial information to investors in the company is inconceivable.

Commissioner Uyeda said further that cybersecurity disclosures "are likely shaming or indirectly compelling companies to change practices rather than eliciting material disclosure as to what the company is doing." But even the financial industry recognizes that cybersecurity is a "potentially materially financial risk" and that the "relevant question" for "long-term investors" is "whether companies are prepared to manage" this risk.[38] The notion that cybersecurity disclosures are intended to shame companies rather than elicit material information is absurd.

Commissioner Uyeda also said that the Commission should consider deleting the required disclosure of "the five-year graph of the issuer's total cumulative return compared to a broad index and a line-of-business or peer group index."[39] However, the Commission adopted this requirement because it recognized that "shareholder return is a primary benchmark for shareholders and investors in assessing corporate performance."[40] Commissioner Uyeda questions whether investors "continue to need such disclosure" given "the wide availability of evaluative tools on the internet and mobile devices." The fact that investors might be able to do their own research and uncover the information does not make the information immaterial. The Commission should also not be making it harder for investors to obtain material information.

Companies want as much information as possible about consumers. That's because information about consumers "has become increasingly profitable for companies."[41] Companies are able to use the massive amounts of information about consumers at their disposal to "adapt and leverage advertisements to target a particular demographic or even a particular consumer's interests."[42] So companies have essentially monetized access to information about their customers.[43] There is no reason companies should have almost unlimited access to information about consumers to enable them to profit, but investors should lack the information that they need about those companies to enable them to make informed investment decisions. Investors deserve as much material information as possible about the companies in which they invest.

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37 *See, e.g.*, Rob Wile, *Insider trading concerns around oil and military moves are on the rise. Can anyone police the bets?*, NBC News (Mar. 27, 2026), https://www.nbcnews.com/business/consumer/insider-trading-prediction-markets-trump-rules-rcna265452.

38 Isabelle Mast and Greg Heywood, *The high stakes of cybersecurity*, Morgan Stanley (Mar. 2026), https://www.morganstanley.com/content/dam/im/assets/publication/thought-leadership/global-equity-observer/article_highstakesofcybersecurity_ltr.pdf?1775691218758.

39 Uyeda, supra note 34.

40 *Executive Compensation Disclosure*, Exchange Act Release No. 31327, 1992 WL 301259, at *23 (Oct. 16, 1992).

41 Andrew A. Cammarano, *Better Get Some Help: Patient Data Privacy Concerns Arising from Telehealth*, 25 J. High Tech. 40, 48 (2024).

42 FTC, BRINGING DARK PATTERNS TO LIGHT 2 (2022), https://perma.cc/A6HY-6RMM.

43 Linda Khan et al., *After Notice and Choice: Reinvigorating 'Unfairness' to Rein in Data Abuses*, 77 Stan. L. Rev. 1375, 1383 (2025).

Conclusion

We hope these comments are helpful as the Commission considers this matter.

Sincerely,

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