



April 10, 2026

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

Re: File Number CLL-15. Statement on Reforming Regulation S-K

Dear Ms. Countryman:

The Interfaith Center on Corporate Responsibility (“ICCR”) appreciates the opportunity to submit its views regarding potential changes to Regulation S-K. ICCR’s 350 institutional members are a cross section of religious investors, foundations, asset managers, pension funds, and other long-term institutional investors collectively representing over \$4 trillion in invested capital. Our members view robust management of a company’s financial risks as a driver of superior long-term performance. These risks include environmental, social, and governance issues that may affect long-term financial performance. The ability to gauge those risks depends on access to sufficient relevant information.

ICCR and its members have consistently advocated for comprehensive mandatory disclosures that inform investors about issuers’ businesses, risks, and governance. SEC-mandated disclosures are a vital source of information ICCR members use to make security buy/sell decisions and to inform stewardship actions such as proxy voting and engagement. In this connection, we welcome the flexibility afforded by principles-based disclosures, as long as they have a meaningful framework within which to operate. The mandatory disclosures provide that framework, as they are designed to elicit sufficient relevant information so as to facilitate comparability.

At the same time, to avoid the risk of less-useful boilerplate disclosures, we encourage the Commission to craft any new or revised provisions, or guidance with respect to existing rules, in a manner that elicits tailored responses that reflect each company’s own business and operations. It is in this context - as an adjunct to and a structure within mandated disclosures - that we view principles-based disclosures as most potentially useful.

ICCR has served as a home for institutional investors for over 50 years. The comments we offer below are based on our half-century wealth of experience providing resources to institutional investors, together with input we receive from our members acquired from years of applying their own investment expertise in the public markets.

Regulation and the Going-Public Decision

A key premise underpinning the Commission's re-examination of disclosure requirements is that over-regulation has contributed substantially to the decline in the number of public companies.¹ We dispute that conclusion. A 2021 empirical study² affirmed the relatively small role played by regulation, concluding that "regulatory costs only explain a small fraction of the disappeared IPOs, in contrast to the popular claim," and those costs "do not appear to be a significant driver of going private decisions." Specifically, the study found that "[r]emoving all estimated regulatory costs increases the average IPO likelihood after 2000 from 0.95% to 1.4%, which explains only 7.4% of the decline in IPO likelihood from pre-2000 to post-2000."

Factors other than public company disclosure requirements play important roles in companies' decision making around whether to go public:

- The expansion of private financing sources such as private credit and private equity enables companies to satisfy significant capital needs while staying private.³ It is worth noting that the Commission's own policy choices, most notably the expansion of exemptions from the registration and disclosure requirements associated with public offerings, have fueled the growth of private markets.⁴ Chairman Paul Atkins has expressed concern about the 40% decline in public companies between his departure from the SEC in the mid-1990s and his return as Chair in 2025, but that period maps much more neatly onto the Commission's steady deregulation and the ensuing growth of private markets than it does to "regulatory creep."⁵
- Market volatility can deter IPOs, and 2025 saw significant volatility, which hit early-pandemic levels.⁶ Recent sources of volatility include tariffs, geopolitical instability, and supply chain disruptions, factors that are difficult to forecast in an unpredictable policy environment.⁷ According to PwC, "While a more deregulatory stance could encourage

¹ *E.g.*, <https://nam.org/sec-chairman-paul-atkins-discusses-disclosure-reform-and-ipos-at-the-nam-35677/>; <https://www.msn.com/en-us/money/topstocks/sec-chair-atkins-tells-nyse-he-wants-to-make-ipos-great-again/ar-AA1RzF1D>; <https://corpgov.law.harvard.edu/2026/03/20/remarks-by-chair-atkins-on-the-secs-regulatory-philosophy-and-policy-agenda/>

² Michael Ewens et al., "Regulatory Costs of Being Public: Evidence From Bunching Estimation," Working Paper 29143 (Aug. 2021) (available at https://www.nber.org/system/files/working_papers/w29143/w29143.pdf)

³ <https://www.forbes.com/councils/forbesbusinesscouncil/2023/02/01/the-current-ipo-market-factors-in-its-decline-and-reversing-the-trend/>

⁴ <https://bettermarkets.org/wp-content/uploads/2025/02/SEC-is-Killing-IPOs-Fact-Sheet-02.25.25-Final.pdf>

⁵ <https://docs.house.gov/meetings/BA/BA00/20260211/118952/HHRG-119-BA00-Wstate-AtkinsP-20260211.pdf>

⁶ <https://www.edelmanfinancialengines.com/education/investment-management/2025-market-volatility/>

⁷ <https://www.kiplinger.com/investing/ipos/why-has-the-ipo-market-gone-cold>;
<https://www.pwc.com/us/en/services/consulting/deals/library/ipo-market-faces-renewed-uncertainty.html>;
<https://www.cmegroup.com/openmarkets/equity-index/2026/How-Global-Tensions-Are-Reshaping-US-Equity-Risk.html>

more companies to go public by lowering compliance costs, sustained policy uncertainty may continue to deter new listings.”⁸

- The lower level of IPOs over the past several years may reflect timing factors. The post-COVID 2021 IPO boom likely accelerated IPOs of less mature companies, depleting the pipeline.⁹

Prominent securities law scholar John C. Coffee Jr. has called the premise that “high regulatory costs and burdensome SEC rules discourage many private companies that would otherwise go public from doing so” an “irrepressible myth.”¹⁰ In 2018 congressional testimony, Professor Coffee characterized proposed bills as “ideological attempts to dismantle core provisions of our contemporary disclosure system,” noting that if over-regulation were the culprit, the decline in IPOs would be a “uniquely American problem,” which it is not. He observed that companies now have abundant financing options in the private markets, and direct listings—non-underwritten offerings of existing shares to the public—enable companies to provide liquidity to early investors and employees.

Professor Coffee highlighted another possible reason fewer companies are going public: the persistent underperformance of smaller company IPOs. He testified that:

IPOs for smaller firms have been consistently unsuccessful for a sustained period, losing money for all concerned (both investors and underwriters). Finance professor Jay Ritter, the leading scholar on IPOs, has recently released data showing that a high majority of small offerings have had negative earnings per share for years after the offering and poor first day returns. Thus, analysts and underwriters tend to shun such offerings. Academic research suggests that the relative disappearance and unprofitability of smaller firm IPOs is because such firms cannot gain the economies of scale and scope that are increasingly necessary to compete in a globalizing marketplace.

Other facts support the hypothesis that factors besides regulation account for the diminishing number of IPOs. Only 20% of companies that went public between 2016 and 2020 were profitable, down dramatically from 80% in the 1980s and 1990s.¹¹ Professor Jay Ritter testified in 2012 before the Senate Committee on Banking, Housing, and Urban Affairs that “private firms are not avoiding IPOs because the IPO market is broken, but because being part of

⁸ <https://www.pwc.com/us/en/services/consulting/deals/library/ipo-market-faces-renewed-uncertainly.html>

⁹ <https://russellinvestments.com/content/ri/us/en/insights/russell-research/2025/03/manager-views-ipo-environment.html>

¹⁰ John C. Coffee, Jr., “The Irrepressible Myth That SEC Overregulation Has Chilled IPOs,” The CLS Blue Sky Blog (May 29, 2018) (available at <https://clsbluesky.law.columbia.edu/2018/05/29/the-irrepressible-myth-that-sec-overregulation-has-chilled-ipos/>)

¹¹ <https://sloanreview.mit.edu/article/ipo-disclosures-are-ripe-for-reform/>

a larger organization creates more value,”¹² leading small firms to merge with larger ones rather than go public. Professor Aswath Damodaran and two colleagues have noted that IPO companies in 2020 were twice as old as those in the 1980s—12 and six years old, respectively—which they attribute to the 2020 companies “spending more time scaling up revenues,”¹³ consistent with Professor Coffee’s and Professor Ritter’s observation about the increased salience of economies of scale.

The relative unimportance of regulation in the going-public decision must inform any analysis of the costs and benefits of reducing the amount of disclosure provided to investors. On balance, neither investors nor the capital markets more broadly will benefit from rule changes that lead to a small increase in IPOs but deprive investors of information that informs their investment decision making across all or a significant segment of issuers.

Materiality Must Be Defined by the Needs of Investors, Which Are Not Monolithic

“Materiality first” is a key theme of the current re-examination of Regulation S-K.¹⁴ In a January 2026 speech, Chairman Atkins indicated that current disclosure requirements under Regulation S-K are “burying shareholders in an avalanche of immaterial information [which] is a result that neither protects investors nor facilitates capital formation.”¹⁵ The current re-assessment of Regulation S-K will focus on retaining requirements that provide investors with “financially material” information.¹⁶ Business interests have also argued that information related to what they refer to as “societal concerns”¹⁷ is not material to investors.

But materiality is not defined by reference to what companies would prefer to disclose or what regulators judge to be an appropriate investment approach; rather, it hinges on investor needs. The Supreme Court has said information is material if there is 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.”¹⁸

Repeatedly over the past 15 years, investors and their organizations have urged the Commission to mandate disclosure of more, rather than less, information to use in investment

¹² <https://www.banking.senate.gov/imo/media/doc/RitterTestimony3612.pdf>

¹³ <https://sloanreview.mit.edu/article/ipo-disclosures-are-ripe-for-reform/>

¹⁴ *E.g.*, <https://www.parkerpoe.com/news/2026/01/sec-announces-regulation-s-k-review-which-could;>
<https://www.joneswalker.com/en/insights/blogs/perspectives/sec-launches-comprehensive-review-to-reform-regulation-s-k.html?id=102m1zb>

¹⁵ <https://www.sec.gov/newsroom/speeches-statements/atkins-statement-reforming-regulation-s-k-011326>

¹⁶ <https://www.sec.gov/newsroom/speeches-statements/atkins-remarks-sec-speaks-031926-prepared-remarks-sec-speaks>

¹⁷ <https://www.businessroundtable.org/the-materiality-standard-for-public-company-disclosure-maintain-what-works>

¹⁸ *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976) (emphasis added).

decision making. For example:

- A 2011 petition was filed by ten corporate and securities law academics to require disclosure of information on political spending¹⁹ (the “Political Spending Petition”).
 - Over one million comments were filed in support of the Political Spending Petition, more than on any other petition or Commission rule making.
 - Many institutional investors and their organizations submitted comments in support.²⁰
- In 2018, investors and investor organizations representing more than \$5 trillion in assets under management, including the California Public Employees' Retirement System (“CalPERS”), New York State Comptroller Thomas P. DiNapoli, and the U.N. Principles for Responsible Investment, signed a petition urging the Commission to require companies to disclose environmental, social, and governance information.²¹
 - The petition included an analysis showing that a “significant majority” of comments to the Commission’s 2016 Concept Release on Business and Financial Disclosure Required by Regulation S-K (the “Concept Release”) supported requiring better environmental, social and governance disclosure.
- Investor comments on the Concept Release asked the Commission to mandate disclosure on topics including risks related to tax strategies, human rights, political spending, workforce matters, and climate change.²²
- The Human Capital Management Coalition, a group of institutional investors with \$2.8 trillion in assets, petitioned the Commission in 2017 to require companies to disclose information about the management of their workforces (the “HCMC Petition”).²³

ICCR has made and supported numerous calls for enhanced disclosure, including:

- Commenting on the Concept Release, supporting rules-based mandatory disclosure of environmental, social and governance information, including disclosures around human

¹⁹ <https://www.sec.gov/files/rules/petitions/2011/petn4-637.pdf>

²⁰ *See, e.g.*, <https://www.sec.gov/comments/4-637/4637-14.pdf>; <https://www.sec.gov/comments/4-637/4637-14.pdf>; <https://www.sec.gov/comments/4-637/4637-6.pdf>; <https://www.sec.gov/comments/4-637/4637-9.pdf>

²¹ <https://www.sec.gov/files/rules/petitions/2018/petn4-730.pdf>

²² <https://perma.cc/28WQ-NA5A>, at 10; <https://www.sec.gov/comments/s7-06-16/s70616-267.pdf>; <https://www.sec.gov/comments/s7-06-16/s70616-28.pdf>; <https://www.sec.gov/files/rules/petitions/2018/petn4-730.pdf>, at 14-15

²³ <https://www.sec.gov/files/rules/petitions/2017/petn4-711.pdf>

rights, climate change, political spending and lobbying, diversity and pay equity, indigenous rights and community relations, and taxes.²⁴

- Co-signing a comment in support of the Political Spending Petition.²⁵
- Submitting a comment in favor of the Commission’s proposed climate disclosure rules.²⁶
- Co-signing a comment supporting the HCMC Petition.

Enhanced disclosures facilitate the evaluation of material risk factor information on which investors rely. For example:

- Disclosures about an issuer’s business, including key inputs and the location of operations and/or suppliers, help ICCR members identify issuers with significant risk of causing or contributing to human rights abuses.
- Risk factor disclosures provide insight into how companies assess and manage emerging risks, such as those associated with immigration raids on their premises (Home Depot’s 2025 10-K²⁷) and artificial intelligence (Visa’s 2025 10-K²⁸); vulnerabilities in their business models, like customer concentration (Robinhood Markets’ 3Q 2024 10-Q²⁹) and regulation (UnitedHealth Group’s 10-K³⁰); and geopolitical risks such as doing business in Russia (Pepsico’s 2025 10-K³¹).
- Information about executive compensation and the relationship between CEO and median worker pay allows ICCR members to understand the incentives that drive management’s decision making, assess the quality of board oversight, and identify issuers where internal pay inequity poses a threat to long-term value creation. Large pay gaps within the named executive officer group can suggest shortcomings in the succession planning process that could cause disruption in the event of a CEO’s death or unplanned departure.
- ICCR members submit hundreds of shareholder proposals each year, the vast majority of which request expanded disclosure on a specific subject. Many of these proposals lead to

²⁴ <https://www.sec.gov/comments/s7-06-16/s70616-103.pdf>

²⁵ <https://www.sec.gov/comments/4-637/4637-11.pdf>

²⁶ <https://www.sec.gov/comments/s7-10-22/s71022-20132186-302699.pdf>

²⁷ <https://www.sec.gov/ix?doc=/Archives/edgar/data/354950/000162828026019436/hd-20260201.htm>, at 15

²⁸ <https://stocklight.com/stocks/us/nyse-v/visa/annual-reports/nyse-v-2025-10K-251458314.pdf>, at 30

²⁹ <https://www.sec.gov/Archives/edgar/data/1783879/000178387924000296/hood-20240930.htm>, at 12

³⁰ https://www.sec.gov/Archives/edgar/data/731766/000073176626000062/unh-20251231.htm#i34b361ff6a694842a8bcfd246e9d7327_19, at 5-8

³¹ <https://investor.pepsico.com/docs/pepsico-5v9wci20/media/Files/investors/q4-2025-form-10k.pdf>, at 36

negotiated settlements, while others go to a vote. In the 2025 proxy season, five shareholder proposals submitted by ICCR members seeking political spending disclosure, the subject of the Political Spending Petition, received majority voting support.³²

A broad swath of investors, then, clearly view information related to environmental, social and governance performance as at least potentially altering the “total mix” of available information and thus material to their investment decision making. The fact that investors pay data brokers for what is often incomplete information on company environmental, social and governance performance speaks to its importance to investors. Some Commissioners have expressed views suggesting a belief that such disclosures can never be financially material. That view is considered by many to be outdated, and conflicts with, among others:

- The Sustainability Accounting Standards Board, which identifies material industry-specific environmental, social and governance disclosures for companies.³³
- The International Financial Reporting Standards Foundation, whose S1 and S2 standards mandate disclosure of “sustainability-related risks and opportunities that could reasonably be expected to affect the entity’s cash flows, its access to finance or cost of capital over the short, medium or long term” and “information about [an entity’s] climate-related risks and opportunities that is useful to users of general purpose financial reports in making decisions relating to providing resources to the entity,”³⁴ respectively.
- The Financial Stability Board (“FSB”), which was established by the G20 to, among other things, “[a]ssess vulnerabilities affecting the global financial system as well as to identify and review, on a timely and ongoing basis within a macroprudential perspective, the regulatory, supervisory and related actions needed to address these vulnerabilities and their outcomes.”³⁵ The FSB has identified climate change as a risk to financial stability and has characterized firm-specific disclosure of climate risks as “the basis for the pricing and management of such risks both internally at individual companies making the disclosures and at individual investors, lenders and others with financial exposures to those companies.”³⁶ The FSB created the Task Force on Climate-Related Financial Disclosures “to improve and increase reporting of climate-related financial information.”³⁷

³² <https://www.politicalaccountability.net/wp-content/uploads/2025/07/Law360-Disclosing-Political-Spending-Wins.pdf>

³³ <https://www.ifrs.org/issued-standards/sasb-standards/understanding-sasb-standards/>

³⁴ <https://www.ifrs.org/issued-standards/ifrs-sustainability-standards-navigator/ifrs-s1-general-requirements/>

³⁵ <https://www.fsb.org/about/>

³⁶ <https://www.fsb.org/uploads/P070721-2.pdf>

³⁷ <https://www.fsb-tcf.org/>

- An extensive body of research concluding that environmental, social and governance performance affects firm performance, firm value, and companies' share price volatility.³⁸

Investors are a diverse group in terms of investment style, risk tolerance, time horizon, and values. Investors with very short-term investment horizons³⁹ or an investment approach that focuses on momentum, event arbitrage, or quantitative/algorithmic analysis of market data will almost certainly focus on different information from investors that invest for the long term or that seek to minimize risk. Fiduciaries of pension funds, upon whom the retirement savings of tens of millions of Americans rely, must necessarily focus on a longer time horizon in which climate risk and other long-term risks can be highly material.

Markets would be far less dynamic if all investors were to consider the same pieces of information as their key criteria regardless of their investment objectives, strategies, and time horizons. These diverse investor perspectives should be taken into account in any review of Regulation S-K. Indeed, nearly 70% of Concept Release comments expressing a view on the appropriate audience for disclosure opined that the “reasonable investor” for materiality purposes should encompass all investors.⁴⁰

³⁸ E.g., Robert G. Eccles & Svetlana Klimenko, “The Investor Revolution,” *Harvard Business Review*, May-June 2019 (<https://hbr.org/2019/05/the-investor-revolution>); Gunnar Friede et al., “ESG and Corporate Financial Performance: Mapping the global landscape” (Dec. 2015) (https://prohumana.cl/wp-content/uploads/2016/02/k15090_academic_insights_uk_emea_rz_online_151201_final_2.pdf); Gunnar Friede et al., “ESG and financial performance: aggregated evidence from more than 2000 empirical studies,” *Journal of Sustainable Finance & Investment*, Vol. 5, pp. 210-233 (Oct. 2015) (<https://www.tandfonline.com/doi/full/10.1080/20430795.2015.1118917>); Paul Gompers et al., “Corporate Governance and Equity Prices,” *Quant. J. Econ.*, 118(1), 107-155 (Feb. 2003) (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=278920); Martijn Cremers & Allen Ferrell, “Thirty Years of Shareholder Rights and Firm Valuation” (2013) (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1413133); Olunmi Faleye, “Classified Boards, Firm Value, and Managerial Entrenchment,” 83 *J. F. Econ.* 501 (2007) (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=877216); Lucian Bebchuk et al., “What Matters in Corporate Governance,” *Rev. Fin. Stud.*, Vol. 22, No. 2, 783-827 (Feb. 2009) (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=593423); https://newsroom.bankofamerica.com/system/files/2019_Environmental_Social_Governance.pdf; Credit Suisse, “Does Gender Diversity Improve Performance?” Jul. 31, 2012 (<https://www.credit-suisse.com/us/en/about-us/research/research-institute/news-and-videos/articles/news-and-expertise/2012/07/en/does-gender-diversity-improve-performance.html>); Vivian Hunt, Dennis Layton & Sara Prince, “Diversity Matters,” McKinsey & Company, Feb. 2, 2015 (<http://www.diversitas.co.nz/Portals/25/Docs/Diversity%20Matters.pdf>); see also Guido Giese, “Foundations of ESG Investing: How ESG Affects Equity Valuation, Risk, and Performance,” *J. Portfolio Mgmt.*, at 4-5 (July 2019) (<https://www.msci.com/documents/10199/03d6faef-2394-44e9-a119-4ca130909226>)

³⁹ Cf. <https://blogs.cfainstitute.org/marketintegrity/2019/09/18/are-esg-factors-relevant-only-for-investors-with-long-term-investment-horizons/> (noting that factors that seem relevant only over the long term can become more immediately salient).

⁴⁰ See Virginia Harper Ho, “Disclosure Overload? Lessons For Risk Disclosure & ESG Reporting Reform From the Regulation S-K Concept Release,” *Villanova L. Rev.*, vol. 65, pp. 67-156, at 96 (2020);

We do not suggest that the regulations should require disclosure of “what any particular investor may be curious to know,” as Chairman Atkins put it.⁴¹ Rather, the Commission should listen to what investors are saying is important to them, without privileging any particular investment approach. We believe that many asset owners and asset managers believe the information being provided through Regulation S-K is valuable and important to have to compare companies with each other on key issues.

“Information Overload” is Not a Significant Problem

“Information overload,” which has been offered as a justification for paring back disclosure requirements,⁴² is not a significant concern in the existing disclosure regime. Evidence for this proposition is thin: As one academic who later served as Director of the Division of Corporation Finance noted, “the ratio of the overload critique's political traction in Washington D.C. to the empirical evidence that overload is a problem for investors is remarkably high.”⁴³

Investors do not consume disclosure documents the way they did decades ago, nor do all investors use them in the same way. Chairman Atkins has analogized long SEC filings to Tolstoy’s *WAR AND PEACE*,⁴⁴ but most investors, including ICCR members, do not sit down and read periodic filings from beginning to end the way they would a novel. Instead, they can search within filings for the information of interest, make use of the tags that now appear throughout filings to mark specific items, and use AI to extract, analyze and summarize data. For this reason, investors faced with a long filing would not be deterred from ever opening it, as the Chairman fears.

Any reform effort that does not take the availability of these technologies into account will result in a disclosure regime that is based on outdated priorities, and will be far less useful to investors. There is ample precedent for the Commission to take into account technological developments or the availability of specific technologies in the context of rulemaking. For example, a 2022 release supported a new requirement requiring N-PX filings to use an XML data language by explaining that “the current requirement to file Form N-PX in HTML or ASCII is not suitable for automated validation or aggregation.”⁴⁵ Chairman Atkins recently suggested that

⁴¹ <https://www.sec.gov/newsroom/speeches-statements/atkins-remarks-sec-speaks-031926-prepared-remarks-sec-speaks>

⁴² <https://corpgov.law.harvard.edu/2013/07/16/the-importance-of-the-sec-disclosure-regime/>

⁴³ Erik F. Gerding, “Disclosure 2.0: Can Technology Solve Overload, Complexity, and Other Information Failures?” 90 Tul. L. Rev. 1143, 1146 (2016)

⁴⁴ See <https://docs.house.gov/meetings/BA/BA00/20260211/118952/HHRG-119-BA00-Wstate-AtkinsP-20260211.pdf>

⁴⁵ <https://www.sec.gov/files/rules/final/2022/33-11131.pdf>

paper delivery for shareholder communications should not be the default “[i]n an age of algorithmic trading and artificial intelligence.”⁴⁶

None of this is to say that a disclosure requirement that is outdated and truly not useful to investors should remain in effect. But the Commission should obtain meaningful investor input before deciding that is the case. Engagement with investors would also shed light on how they access disclosure documents, including their use of technology to extract and analyze information.

Rules-Based Disclosures Limit Managerial Discretion and Allow Investors to Compare Issuers

Investors have consistently supported rules-based disclosure requirements, which limit managerial discretion, in addition to more flexible principles-based mandates. Although principles-based disclosures can provide valuable insights, they are inadequate standing alone. They generally are not drafted or formatted in a standardized way, making it difficult or impossible to compare disclosures between issuers.

In our view, principles-based disclosure is most useful when complemented by rules-based disclosures. Executive compensation disclosure exemplifies this interplay: The compensation discussion and analysis section of the proxy statement allows issuers to describe their compensation philosophy, programs, and processes, giving investors insight into the overall approach and links to company strategy, while specific line-item disclosures permit them to evaluate the compensation committee’s implementation decisions and to benchmark issuers.

An analysis of comments on the Concept Release found that 88% of investors supported at least some reliance on rules-based requirements.⁴⁷ A key reason for that stance is that rules-based disclosures constrain management’s ability to avoid disclosing information that reflects negatively on the company. The CFA Institute, representing investment professionals holding the chartered financial analyst designation, stated in its Concept Release comment that “registrants have shown a tendency to interpret principles in a manner that is most beneficial to them rather than most beneficial to investors.”⁴⁸ Similarly, CalPERS’ comment noted that “the fact that registrants determine what is material to reasonable investors is problematic in getting meaningful and comparable disclosures.”⁴⁹

Issuers’ overwhelming preference for principles-based disclosures—75% of Concept Release issuer comments affirmatively opposed rules-based requirements⁵⁰—should not be

⁴⁶ <https://corpgov.law.harvard.edu/2026/03/20/remarks-by-chair-atkins-on-the-secs-regulatory-philosophy-and-policy-agenda/>

⁴⁷ Ho, *supra* note 40, at 95

⁴⁸ <https://www.sec.gov/comments/s7-06-16/s70616-375.pdf>

⁴⁹ <https://www.sec.gov/comments/s7-06-16/s70616-267.pdf>

⁵⁰ Ho, *supra* note 40, at 95

dispositive in the Commission’s decision making. Instead, the lodestar of the Commission’s process should be the utility of disclosures to investors.

Reducing the Number of Issuers Making Full Disclosure Would Give Investors Less Information About the Riskiest Issuers

ICCR and our members are concerned about the impact of further reducing the number of companies that provide the full suite of disclosures required under Regulation S-K. Chairman Atkins has indicated an interest in extending the “IPO on-ramp” provided in 2012’s Jumpstart Our Business Startups (JOBS) Act,⁵¹ which excuses compliance with certain disclosure requirements, the external auditor internal controls attestation, and the “say on pay” advisory vote requirement for “emerging growth companies”—those with revenues of less than \$1.235 billion in the most recently completed fiscal year—for a period following the IPO.⁵²

Already, fewer than half of public companies are required to provide full disclosures. In his 2018 congressional testimony, Professor Coffee opined that “it is no favor to the retail investor to allow smaller companies to escape full disclosure or to avoid corporate governance norms, when these are precisely the offerings most likely to fail.”⁵³ We agree.

It is important to acknowledge the benefits of disclosure to issuers, including emerging growth companies, as well as to investors and the capital markets. More robust disclosure about use of proceeds⁵⁴ and products/intellectual property⁵⁵ has been found to correlate with less IPO underpricing. A 2017 study examining the impact of the JOBS Act found that taking advantage of three of its reforms—filing draft registration statements confidentially, reporting compensation information for fewer than five top executives, and omitting the compensation discussion and analysis disclosure—was associated with greater IPO underpricing and higher post-IPO volatility.⁵⁶ Another study found a similar pattern, with greater underpricing for companies that availed themselves of the JOBS Act provisions, compared with similar control companies that did not do so. The author concluded that “the intended benefits of the Act came

⁵¹ <https://www.sec.gov/newsroom/speeches-statements/atkins-remarks-iac-031226>

⁵² <https://www.wilmerhale.com/-/media/eddf8509c61143e087853ebb1e817323.pdf>;
<https://ideasdev.darden.virginia.edu/the-jobs-act-friend-or-foe-to-the-small-firm-ipo>

⁵³ John C. Coffee, Jr., “The Irrepressible Myth That SEC Overregulation Has Chilled IPOs,” The CLS Blue Sky Blog (May 29, 2018) (available at <https://clsbluesky.law.columbia.edu/2018/05/29/the-irrepressible-myth-that-sec-overregulation-has-chilled-ipos/>)

⁵⁴ Andrew J. Leone et al., “Disclosure of Intended Use of Proceeds and Underpricing in Initial Public Offerings,” J. Acctg. Res. 45(1) (Mar. 2007)

⁵⁵ Re-Jin Guo et al., “The Valuation of Biotech IPOs” (Dec. 2004) (available at <https://ssrn.com/abstract=660281>)

⁵⁶ Mary E. Barth et al., “The JOBS Act and Information Uncertainty in IPO Firms” (Jan. 2017) (available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2465927)

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at the expense of a higher cost of capital.” She also noted that the JOBS Act did not accomplish its purpose of boosting the number of IPOs.⁵⁷

* * *

ICCR appreciates the opportunity to provide our perspective on the importance of Regulation S-K disclosures to our members, investors more broadly, and the capital markets. For further discussion, please contact me at jzinner@iccr.org.

Sincerely,



Josh Zinner
Chief Executive Officer

cc: Hon. Paul Atkins, Chairman
Hon. Hester Peirce, Commissioner
Hon. Mark Uyeda, Commissioner

⁵⁷ <https://ideasdev.darden.virginia.edu/the-jobs-act-friend-or-foe-to-the-small-firm-ipo>