Americans for Financial Reform Education Fund

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

April 13, 2026

Re: Statement on Reforming Regulation S-K

Dear Secretary Countryman:

We write to urge the Securities and Exchange Commission (SEC) not to eliminate or water down current Regulation S-K disclosure requirements. The price of admission for companies accessing public markets has historically been increased transparency and accountability to their new dispersed shareholder base. We are concerned by recent SEC actions to make public companies more like private companies by allowing opacity and insulating management from input and accountability from regular investors.

Private markets deregulation is a central reason for the decline in initial public offerings (IPOs), not public company disclosure requirements

While reforming public company disclosures has been framed as part of the SEC's goal of increasing the number of companies that go public,[1] the central reason for the decline in IPOs has been the deregulation of private markets, not public company disclosure requirements. Indeed, the renowned securities law and corporate governance expert John C. Coffee Jr. referred to 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."[2] Coffee argued regulatory and legal costs are trivial compared to the underwriter's discount, which is by far the largest cost of an IPO. He argued the real reasons for the decline in IPOs are the ability of companies to raise capital in the private markets and that IPOs for smaller firms had been consistently unsuccessful.[3]

In the last few decades, both the SEC and Congress have greatly expanded how many investors companies can have while remaining private, the number of investors eligible to purchase private securities, how widely private companies can solicit purchasers of their securities, and the ability for investors to resell their private securities. This has allowed many private companies to get their capital

[1] Atkins, Paul S. U.S. Securities and Exchange Commission. "Testimony Before the U.S. House Financial Services Committee." February 11, 2026.
[2] Coffee, Jr. John C. "The Irresponsible Myth That SEC Overregulation Has Chilled IPOs." The CLS Blue Sky Blog. May 29, 2018.
[3] *Id.*

and liquidity needs met without accessing the public markets for longer periods of time. Below is a timeline of these changes.[4]

- 1972: The SEC adopted Rule 144 allowing investors to resell private securities after two years if certain conditions are met and after three years without conditions.
- 1982: The SEC adopted Regulation D. Rules 504 and 505 (now rescinded) exempted certain small offerings from registration requirements. Currently, Rule 504 exempts offerings of $10 million or less from registration, without requiring disclosures or an assessment of purchasers' sophistication. Rule 506 allows issuers to sell unlimited amounts of securities to an unlimited number of "accredited investors" without disclosure, and up to 35 other investors if disclosure is provided to those investors. For individuals, "accredited" status is determined based on the investor's income and net worth. Rule 502(c) prohibited general solicitations for all Regulation D offerings. These new regulatory exemptions eliminated many of the requirements developed through caselaw that investors in exempt offerings be knowledgeable about investing and have access to information about the investments being offered.
- 1988: The SEC adopted Rule 701, which exempts securities offerings to private company employees if under an aggregate amount of $5 million within a one-year period.
- 1990: The SEC adopted Rule 144A, allowing investors to resell private securities to large institutional investors.
- 1996: Congress passed the National Securities Markets Improvement Act (NSMIA), removing the 100 investor limit in private funds and allowing the SEC to lift caps on aggregate offering amounts under Rules 504, 505, and 701.
- 1997: The SEC amended Rule 144 so that investors can resell private securities after one year if certain conditions are met.
- 1999: The SEC lifted the $5 million annual cap on exempted offerings to private company employees under Rule 701. For offerings exceeding $5 million during any one-year period, companies were required to provide certain disclosures.
- 2007: The SEC amended Rule 144 so that investors can resell private securities after one year without conditions.
- 2007: The SEC exempted employees holding stock options from the 500 shareholder cap under section 12(g) of the Securities Exchange Act.
- 2012: Congress passed the JOBS Act, creating new exemptions from registration and directing the SEC to exempt Rule 506 transactions limited to accredited investors from the ban on general solicitation. Congress also amended section 12(g) of the Securities Exchange Act, increasing the number of shareholders triggering registration from 500 to 2,000 (excluding certain shareholders including employees).

[4] Unless otherwise cited, the timeline draws from three sources: 1) De Fontenay, Elisabeth. Duke University School of Law. "The Deregulation of Private Capital and the Decline of the Public Company." 68 Hastings Law Journal. 2017. and 2) Jones, Renee M. Boston College Law School. "Congressional Testimony: Examining Private Market Exemptions as a Barrier to IPOs and Retail Investment." September 11, 2019. 3) Aran, Yifat. "Making Disclosure Work for Start-Up Employees." Columbia Business Law Review. December 1, 2019.

- 2013: The SEC implemented Rule 506(c), which allows companies to engage in general solicitations of exempt offerings as long as the issuer takes reasonable steps to make sure that all investors are accredited.
- 2018: Congress passed the The Economic Growth, Regulatory Relief and Consumer Protection Act, raising the Rule 701 threshold for requiring disclosure to employees from offerings of over $5 million in a year to offerings of over $10 million in a year. The SEC implemented this change.
- 2025: The SEC issued a no action letter relaxing the obligations of issuers to verify the accredited status of purchasers in a Rule 506(c) transaction exempt offering conducted by means of general solicitation.[5] This change will make it easier for private fund managers to cast a wide net when seeking new investors and risk luring investors into unsuitable investment vehicles.

Additionally, if successful, current attempts by the Trump administration, the SEC, and the Department of Labor to open up 401(k)s and other plans governed by the Employee Retirement Investment Security Act to private markets would provide new opportunities for liquidity to private markets investors, creating further disincentives for managers to pursue IPOs.

Meanwhile, the role of regulatory costs in the decline of initial public offerings is minimal. Indeed, a 2021 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."[6]

Investors want more disclosures, not less

While it has been argued that Regulation S-K reforms are necessary because investors are burdened by too much information,[7] investors have not requested less disclosures. In fact, investors have repeatedly sought *more* information through rulemaking requests, regulatory comments, shareholder proposals, and other engagements with companies.

The topics for which investors have sought additional disclosures include human capital, climate-related risks, political spending, country-by-country tax reporting, and stock buybacks.[8] The Human Capital Management Coalition, composed of 35 asset owners representing over $10 trillion in assets, has long called for companies to report on four metrics and various principles-based disclosures to "allow

[5] Byrne, Jeb. Chief, Office of Small Business Policy. Division of Corporate Finance. "No Action Letter: Latham & Watkins." U.S. Securities and Exchange Commission. March 12, 2025.
[6] Ewens, Michael, Kairong Xiao, and Ting Xu. "Regulatory Costs of Being Public: Evidence from Bunching Estimation." National Bureau of Economic Research. August 2021 at 5.
[7] Atkins, Paul S. U.S. Securities and Exchange Commission. "Statement on Reforming Regulation S-K." January 13, 2026.
[8] Bertsch, Kenneth A. Council of Institutional Investors. Comment letter in response to "Business and Financial Disclosure Required by Regulation S-K." July 8, 2016 at 8; Americans for Financial Reform Education Fund et al. "Reproposing the Share Repurchase Disclosure Modernization Rule." February 29, 2024.

investors to fully evaluate human capital management skill and identify risks and opportunities."[9] An analysis of 320 comment letters submitted to the climate-risk disclosure rule comment file by asset owners and asset managers that collectively own or manage over $50 trillion in assets found that 270 investors mentioned requiring climate-risk disclosures in the 10-K and 97 percent of those who did supported it.[10] Investors have filed approximately 600 shareholder proposals calling for lobbying reporting since 2011, generally receiving strong shareholder support.[11] Eighty-seven investors with more than $2.3 trillion in assets under management petitioned the SEC to require public companies to report on tax information disaggregated by country.[12] Investors strongly supported the SEC's 2022 proposal to significantly increase stock buybacks disclosures.[13]

Since investors do not have access to all the information they find material through company disclosures, many spend significant resources on private data brokers to fill the gaps.[14] Unfortunately, this information is not widely accessible and can be unreliable.

Hyperfocusing on disclosure quantity is misguided due to the role of technology and the ability of investors to benefit from disclosures they do not directly consume

The stated goal of reducing the number and scope of disclosures ignores the role of technology. Investors do not need to read disclosures cover to cover for the information to be useful. Investors can focus on the disclosures that matter most to them and can easily extract the information they need using machine-reading technology, as much of the disclosure is now tagged.

Many have taken note of this reality. For example, the Wall Street Journal's Jonathan Weil writes: "Investors don't read annual reports like a novel, any more than customers at a lunch buffet sample every dish." He adds that "[d]ebates about report length are largely moot" because "[r]eports that once seemed voluminous can be mined instantly…for subtle shifts and emerging risks."[15] Sandy Peters, senior head of financial reporting policy at the CFA Institute, notes that "page counts are largely irrelevant" because "[i]nvestors, particularly younger generations, access information through data providers, structured datasets and electronic filings" and "do not experience disclosures as stacks of 8.5×11 pages."[16]

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[9] Human Capital Management Coalition. "Foundational Reporting: Taking a Balanced Approach." Available at https://www.hcmcoalition.org/foundational-reporting. Accessed April 2026 and on file with Americans for Financial Reform.
[10] Rothstein, Steven. Ceres. "Analysis shows that investors strongly support the SEC's proposed climate disclosure rule." October 11, 2022.
[11] Interfaith Center on Corporate Responsibility. "Investors File 60 Proposals Calling for Transparency Around Corporate Political Activity." April 1, 2025.
[12] FACT Coalition. "87 Investors Call on Regulators to Require Public Country-by-Country Reporting for U.S.-Listed Multinationals." July 31, 2024.
[13] *See, e.g.,* Davis, Glenn. Council of Institutional Investors. File No. S7-21-22 Comment Letter. U.S. Securities and Exchange Commission. March 31, 2022.
[14] *See* Ehrsam, Karl et al. "Alternative data at investment management firms: From discovery to integration." Deloitte Insights. November 29, 2023.
[15] Weil, Jonathan. "Now Isn't the Time to Slow the Market's Data Flow." Wall Street Journal. March 25, 2026.
[16] Peters, Sandy. Is the SEC regulating for a pre-AI world? CFO.com. February 24, 2026.

Also, investors benefit from more information even when they do not directly consume it, as they benefit from other market participants consuming and acting on it, leading to better price discovery.[17] Analysts filter information and use it to make investment recommendations. Journalists also analyze disclosures and amplify key information for the public.

Decreasing the number of companies required to provide full disclosures would harm investors and make markets less efficient

We are alarmed by the proposal to expand the number of companies that are not required to provide full disclosures.[18] Already fewer than half of public companies are required to provide full disclosures, limiting investor access to information about risk factors, internal controls over financial reporting, and financial data from earlier years. Further decreasing this number would put investors in the dark about critical information they need to make investment decisions and make markets less efficient. A study of Emerging Growth Companies found that taking advantage of certain reduced disclosure requirements was associated with larger underpricing and post initial public offering volatility.[19] Another study found that more specific disclosures about intended use of proceeds are associated with lower IPO underpricing.[20]

Safe harbors from liability would open the door to fraud

We also strongly oppose any effort to create safe harbors from liability under anti-fraud provisions.[21] Creating safe harbors from liability would prevent investors from being able to recover losses from fraud. Since the enactment of the Private Securities Litigation Reform Act, investors have recovered approximately $100 billion from securities class actions.[22] Lawsuits filed by the SEC and the private bar in major corporate frauds like WorldCom, Enron, and Tyco led to more than $21.15 billion recouped for investors.[23] During the financial crisis, securities fraud lawsuits recovered over $8.5 billion for investors.[24] Chipping away at investors' ability to sue to recover losses would both directly hurt investors through their inability to be made whole when they are victims of fraud and undermine their trust in corporate disclosures and the capital markets more broadly.

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[17] Rajgopal, Shivaram. Redundant Financial Statement Disclosure: What preparers call immaterial, resourceful investors call raw material. Forbes. January 30, 2026. (Stating that "disclosure need not be directly consumed by retail investors to serve them. The channel runs through price efficiency. Cutting disclosures to make filings 'simpler' for retail investors may leave them holding securities whose prices reflect less information—hardly a consumer-friendly outcome.")
[18] Uyeda, Mark T. U.S. Securities and Exchange Commission. "Remarks at the 53rd Annual Securities Regulation Institute." January 26, 2026.
[19] Barth, Mary E., Wayne R. Landsman, and Daniel J. Taylor. "The JOBS Act and Information Uncertainty in IPO Firms." Stanford Graduate School of Business. January 2017.
[20] Leone, Andrew J. and Steve Rock. "Disclosure of Intended Proceeds and Underpricing in Initial Public Offerings." Journal of Accounting Research. February 2007.
[21] Atkins, Paul S. U.S. Securities and Exchange Commission. "Remarks at the Texas A&M School of Law Corporate Law Symposium." February 17, 2026.
[22] American Association for Justice. "SEC Policy Change to Gut Shareholder Rights: AAJ Response." Press Release. October 17. 2025 at note xiv and associated text.
[23] *Id.* at note xv and associated text.
[24] *Id.* at notes xvi-xvii and associated text.

Investors, not issuers, should be in the driver's seat of determining materiality

Lastly, we do not believe disclosures should be subject to an issuer-determined materiality test. Certain disclosures should be mandatory. Materiality is about what *investors* find important, not issuers, and investors have made clear there are many disclosures they find material that issuers are not currently providing. 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." *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976) (emphasis added).

Scholars have been debating whether regulators should mandate certain disclosures or let issuers decide what to disclose for decades. John C. Coffee Jr. made the case for a mandatory disclosure system in a seminal 1984 article, arguing that it would "improve the allocative efficiency of the capital market—and this improvement in turn implies a more productive economy."[25] Many others have also called for a mandatory disclosure system over the years as well as an increase in the amount of mandatory disclosures required.[26] Scholars and others have often cited the need for investors to be able to have comparable data and incentives for issuers to provide less disclosures than would be optimal for investors and efficient markets as reasons for a robust mandatory disclosure system. Paul G. Mahoney, a David and Mary Harrison Distinguished Professor at the University of Virginia Law School who served as dean of the Law School and interim president of the university, has argued that the main justification for mandatory disclosures is to reduce the costs of investors monitoring corporate management to prevent their self-serving use of company resources.[27] The SEC should therefore continue to mandate certain disclosures instead of leaving it up to issues to determine whether they should.

Thank you for the opportunity to comment on the importance of Regulation S-K disclosures. For further discussion, please contact Natalia Renta at natalia@ourfinancialsecurity.org.

Sincerely,

Americans for Financial Reform Education Fund

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[25] Coffee, Jr. John C. Market Failure and the Economic Case for a Mandatory Disclosure System. 70 VA. L. REV. 717. 1984.
[26] *See, e.g.* Brown, J. Robert. Revisiting (Again) "Truth in Securities Revisited" The SEC Disclosure Regime in the New Millennium. Journal of Law and Political Economy, 5(2). May 2025. Fox, Merritt B. The Issuer Choice Debate. 2 THEORETICAL INQUIRIES L. 563. 2001. Fox, Merritt B. Retaining Mandatory Securities Disclosure: Why Issuer Choice Is Not Investor Empowerment. 85 VA. L. REV. 1335. 1999. Green, Andy et al. "Letter to SEC on Corporate Transparency and Accountability and the Coronavirus Pandemic." May 26, 2020. Guttentag, Michael D. An Argument for Imposing Disclosure Requirements on Public Companies. Florida State University Law Review, No. 32, 2004. February 26, 2009.
[27] Mahoney, Paul G. Mandatory Disclosure as a Solution to Agency Costs. 62 U. CHI. L. REV. 1047. 1995.