



WORKING PAPER SERIES

Governing AI Through SEC Disclosure

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Lessons from Cybersecurity**

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About The AI Disclosures Project

Led by technologist Tim O'Reilly and economist Ilan Strauss, the AI Disclosures Project addresses the potentially harmful societal impacts of AI's unrestrained commercialization. By improving corporate and technological transparency and disclosure mechanisms, it aims to ensure that economic incentives don't compromise safety or equity, and avoid fostering excessive risks. Disclosures are vital for well-functioning markets yet remain lacking in AI. Just as financial disclosure standards fostered robust securities markets, standardized AI disclosures can build trust, expedite adoption, and spur innovation. Through research, collaboration, and policy engagement, the AI Disclosures Project aims to develop a systematic framework for meaningful "Generally Accepted AI Management Principles." The project is generously funded by the Omidyar Network, Alfred P. Sloan Foundation, and Patrick J. McGovern Foundation.

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Governing AI Through SEC Disclosure

Materiality Standards and Incident Reporting – Lessons from Cybersecurity

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Abstract

AI technologies now contribute substantially to corporate performance and risk but using several data points we show that investors lack decision-useful information. Drawing on over 7,800 8-K filings on AI by companies we show that around two-thirds are overwhelmingly positive in nature and avoid 'negative' news. Drawing on the SEC's 2023 cybersecurity reporting rule, we propose a materiality-first AI disclosure regime involving: (1) SEC guidance clarifying what a 'material' AI risk is; (2) A dedicated AI-incident item on the 8-K form; (3) A standing section in the annual 10-K form on AI strategy, governance, risk, and dependencies; and (4) SEC enforcement against AI-washing and other violations. We urge reversing 2012 JOBS Act changes that let large private firms avoid public reporting and registration. Focusing on material impacts – not abstract capabilities – offers an important underexplored avenue to discipline AI deployment and improve market oversight.

Keywords: AI Governance, SEC Reporting, AI Disclosures, AI washing, 8-K, 10-K.

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1 The Need for Material Corporate AI Disclosures

The recent push by the federal government to move away from quarterly corporate reporting has sparked a debate about the value of corporate reports, with important takeaways for AI-related reporting requirements [Atkins, 2025].

John Authers notes in the Financial Times [Authers, 2025], quoting Sarah Williamson at FCLT Global, that disclosures are not really about timing, but “materiality” (i.e., importance): “What really matters . . . is the materiality of what to tell investors, not the periodicity.” And the bar for what is material should be lower, she argues. That is, more events should be considered materially important for companies to disclose, rather than fewer.

This principle has potentially far-reaching implications for AI disclosures. Rather than getting caught up in debates over how often AI companies should report, we should be asking: *What risk events in AI systems are already material enough to investors to warrant immediate disclosure by corporations? And how exactly should these be disclosed by public companies?*

In line with our previous work on corporate disclosures for large digital platforms with Prof. Mariana Mazzucato, we argue that disclosures must evolve with the changing structure of the economy, reflecting the new types of risks and operational facts that are material to investors [Mazzucato et al., 2023, O’Reilly et al., 2023]. This ultimately prioritizes disclosure quality – judged by its relevance and depth – above reporting frequency.

SEC Policy Suggestions. Drawing on the SEC’s 2023 rule on cybersecurity incident reporting [U.S. Securities and Exchange Commission, 2023a], this paper proposes the following steps to bring AI governance within the SEC’s existing public reporting framework:

1. Clarify how existing SEC disclosure rules apply to AI. The SEC should issue “Disclosure Guidance” [U.S. Securities and Exchange Commission, 2025b] specifying what AI activities and risks are material and should be disclosed. Clearly defining material AI incidents – e.g., systematic model failures, major service outages, errors requiring widespread customer remediation, loss of essential third-party model access – will help companies disclose only what matters.
2. Integrate AI-specific risks into existing disclosure filings. In 2023, the SEC introduced a cyber rule [U.S. Securities and Exchange Commission, 2024b] requiring companies to report material cyber events within four days on Form 8-K and describe cyber-risk management in annual 10-Ks. We suggest the same for AI: add an AI incident item to the 8-K and require annual discussion of AI governance and risk management.
3. Enforce the rules. In crypto and cyber [Simona, 2025, U.S. Securities and Exchange Commission, 2024b], improved disclosures followed real prosecutions [Valdetero and van Wengen, 2025, Jennings et al., 2011]. The SEC should continue to bring any material cases against AI

washing, misleading claims, and fraud.¹

4. Remove the loopholes that allow private companies to avoid going public. For any of these disclosure obligations to apply to OpenAI and Anthropic, as private entities, 2012 JOBS Act must be reversed. The act made it easier for large capital raisers to avoid public disclosure by raising money from private capital through special purpose vehicles (SPVs). Previously, companies like Google and Facebook became too big to remain private and were forced to go public. Those obligations were watered down significantly in 2012.

In contrast to managing AI through arbitrary technical thresholds, our approach emphasizes AI governance based initially on its potential material impacts to the real economy. The reporting metric is not an abstract AI capability but consequential effects on a company’s operations, customers, or financial results – a language legislators, courts, investors, and the public already understand. Our recommendations support AI-related disclosure obligations that are more comparable, timely, and granular – and that incentivize greater company risk mitigation measures.

2 Literature Review

Corporate disclosure regimes address information asymmetries through mandatory reporting requirements, anchored in the materiality principle articulated in *TSC Industries v. Northway* [U.S. Supreme Court, 1976]. Material information is that for which there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision.²

The Securities Acts of 1933 and 1934 codified disclosure as the primary regulatory mechanism, premised on the view that transparency enables market discipline rather than direct government intervention [Coffee, 1984, Mahoney, 1995]. Regulation FD (2000) further curbed selective disclosure. Evidence suggests well-designed regimes improve risk management and market transparency, especially when paired with credible enforcement against misstatements [Ettredge and Richardson, 2003, Gordon et al., 2010]. Seminal theory and evidence linking disclosure to market outcomes and managerial incentives include: [Diamond and Verrecchia, 1991, Botosan, 1997, Lambert et al., 2007, Healy and Palepu, 2001, Verrecchia, 2001, Leuz and Wysocki, 2016].

The SEC’s framework has proven adaptable across technological and economic shifts – from environmental disclosures [Cohen, 1966] to cybersecurity, though effectiveness depends on clear guidance, timely reporting mechanisms, and credible enforcement [Healy and Palepu, 2001, Jennings et al., 2011]. The SEC’s iterative updates to Regulation S-K, including the 2020 modernization of business and risk factor disclosure requirements [U.S. Securities and Exchange Commission, 2019], reflect

¹Compare with the arguments in: Atkins and Bondi [2008].

²*Basic v. Levinson* (probability–magnitude), Staff Accounting Bulletin No. 99 (qualitative factors can render small items material), *Matrixx Initiatives v. Siracusano* (materiality not reducible to numerical thresholds), and *Omnicare v. Laborers* (opinions and omissions) [U.S. Supreme Court, 1988, U.S. Securities and Exchange Commission, 1999, *Matrixx Initiatives, Inc. v. Siracusano*, 2011, Court, 2015].

some efforts to maintain disclosure relevance amid evolving sources of corporate risk [U.S. Securities and Exchange Commission, 2019]. The SEC’s 2020 modernization efforts also aimed to curb boilerplate disclosure and elicit decision-useful, firm-specific discussion of risks, but it’s unclear if it actually did so [U.S. Securities and Exchange Commission, 2019].

Despite this adaptability, the framework has not always been applied to new areas of economic significance, such as large diversified digital platforms and their non-price operating disclosures [Mazzucato et al., 2023, O’Reilly et al., 2023].

Regulatory precedents show how emerging risks can be incorporated into SEC frameworks. The 2024 climate-disclosure rule successfully organizes reporting around governance, strategy, risk management, and metrics (portions stayed pending litigation) and draws on the TCFD template that the ISSB’s IFRS S1–S2 has now generalized into a global investor-focused baseline [U.S. Securities and Exchange Commission, 2024a, Bloomberg and Task Force on Climate-related Financial Disclosures, 2017, IFRS, 2023, IFRS Foundation, 2025]. The ISSB’s IFRS S1–S2 standards require companies to disclose sustainability and climate risks using four mandatory categories: governance structures (who is accountable), strategy (how risks affect the business model and cash flows), risk-management processes, and quantitative metrics (including Scope 1–3 emissions). This framework is designed to produce comparable, standardized information that investors can use to assess and price sustainability risks across companies [IFRS Foundation, 2025, IFRS, 2023]. Cyber is another salient precedent we address later [U.S. Securities and Exchange Commission, 2023a]. These precedents suggest AI risks – which affect companies’ governance, strategy, and operational resilience – can fit fairly naturally within existing disclosure architecture. AI does, however, present distinct and unique challenges: black-box opacity, rapid capability evolution, emergent behaviors, difficulty attributing causation [Kaur et al., 2022] – all of which cannot be fully addressed within a corporate disclosures framework.

Existing incorporation of AI risks in the SEC’s regime has so far occurred primarily through the enforcement channel (e.g., “AI-washing”) rather than via prescriptive disclosure items [Vanderford, 2023, Leiva et al., 2025]. But the two work best in combination with one another to ensure no gaps in coverage.

Internationally, the EU AI Act imposes post-deployment obligations on high-risk AI systems: providers must operate post-market monitoring, maintain and review logs, and report serious incidents to market-surveillance authorities within specified timelines. Deployers must ensure human oversight, maintain logs, and promptly inform providers and authorities upon detecting serious incidents. A voluntary GPAI Code of Practice targets general-purpose model providers pending full standards rollout [European Parliament, 2025].

The EU governance duties complement rather than replace financial reporting obligations though and are no substitute for leveraging existing established societal-scale institutions for governing

corporate risks. That being said, these emerging EU disclosure and monitoring obligations for AI risks create data points and tools that could be incorporated into SEC guidance, since companies subject to EU AI Act requirements are already collecting incident data, logs, and monitoring reports.

3 AI as a Market Technology – Materiality and Disclosure

Paul Atkins, the chair of the U.S. Securities and Exchange Commission (SEC), argues that corporate disclosures should be driven by the materiality principle [Atkins, 2025] – disclose what a reasonable investor would care about when making an investment decision [U.S. Supreme Court, 1976]. Let’s “stick to business”. And what is becoming a bigger business than AI?

AI’s contribution to the economy is already staggering: In the first half of 2025, AI-related capital expenditures contributed 1.1% to GDP growth [Aliaga, 2025], more than the U.S. consumer, if the capital items were not largely imported. As a percent of GDP [Kedrosky, 2025], capital expenditures on data centers (1.2%) were greater than the telecom spending in all of 2020 (1%), estimates economist Paul Kedrosky. However, much of this is imported capital inputs and so would be deductions from GDP [Tan, 2025]. Investments in AI are on track to surpass those made in the internet during the boom years of 1995-2000 [Ip, 2025]. Meanwhile 80% of the stock market gains in 2025 (until October) were due to AI companies [Cembalest, 2025].

3.1 AI as a commercially-orientated market technology

Princeton computer scientists Arvind Narayanan and Sayash Kapoor call AI a ‘normal technology’ – transformative but not unlike previous inventions, such as railroads or electricity, where impacts were felt gradually over time as adoption ramped up [Narayanan and Kapoor, 2025]. ChatGPT’s rapid uptake illustrates that digital markets are the ultimate ‘normalizing’ force, though. Once a market takes hold, its logic imprints itself into a technology’s DNA. Social media began as a way to stay connected with friends through a social graph, but monetization pressures transformed it into an engagement-maximizing machine with endless scroll and algorithmically-driven recommendations added to keep users addicted. OpenAI CEO Sam Altman calls algorithmic feeds “the first at-scale misaligned AIs” [Altman, 2025]. AI’s sycophantic capabilities, monetized as companions [Fried, 2025] or bottomless video feeds [Campbell, 2025], already exhibit a similar trajectory.

Given AI’s commercial character, we argue that public oversight should start with the SEC’s corporate disclosure regime. AI markets currently lack full and timely information, since prominent AI companies remain private and, in the absence of guidance, companies disclose platitudes [Uberti-Bona Marin et al., 2025]. In turn, allocations of AI-related capital cannot be properly evaluated, litigation is ballooning [Williams and Csathy, 2025], ‘AI washing’ and fraud are commonplace, and technologies are being deployed prematurely under a ‘move fast and break things’ ethos [Leiva

et al., 2025, Milstead et al., 2025, The Economist, 2025, O’Reilly and Strauss, 2025].

After the 1929 crash, the SEC mandated corporate disclosures to surface material risks to investors by requiring companies to publish annual 10-K reports, quarterly 10-Qs, and event-driven 8-Ks when an incident occurs. This remains one of the few proven systems for assessing corporate risk at scale.

The SEC’s ‘materiality’ standard transforms private knowledge into public disclosure [Hadfield and Clark, 2023], creating the information substrate on which markets for audit, insurance, and research can operate. This ecosystem not only informs but disciplines, rewarding sound AI governance through lower capital costs and punishing poor risk management through market pressures.

4 Cyber Risks as a Model Disclosure Framework for AI-Related Risks

Perhaps as a result of a recent proposal from the Long Term Stock Exchange,³ President Trump proposed that public companies’ quarterly reporting should instead become biannual (twice a year) [Driebusch, 2025, Financial Times, 2025]. Trump made the case for it based on the same LTSE argument: that quarterly reporting places undue burdens on public companies and pushes executives into short-termism – so-called “expectations management.”

Time-based reporting requirements incentivize companies to structure decisions around a company’s financial calendar. But this might delay crucial information from being released by companies to the public as they occur.

The 8-K form offers a solution for this issue. The 8-K can be thought of as a breaking news bulletin, used by the corporations to announce significant events within four business days. The list of “Items” that triggers a filing can vary. Many items are triggered automatically by an event, like a corporate bankruptcy, others are based on the company’s judgment around whether the event is “material” i.e., sufficiently likely that a reasonable investor would care about it – and only then would they file an 8-K form. A cybersecurity incident is one such “if it’s important enough” thing to disclose (Item 1.05).

An important and relatively new corporate disclosure requirement that uses the 8-K Form is the SEC’s 2023 Cybersecurity Incident rule for public companies [U.S. Securities and Exchange Commission, 2023a]. The Cyber rule says that when a company suffers a material cybersecurity incident it must report it to shareholders within four business days through the 8-K Form. And when it’s a material cyber event impacting shareholders, then it can be filed through the newly added Item 1.05, specifically for cyber incidents.

³Tim O’Reilly is an investor in the Long Term Stock Exchange.

In combination with strong SEC enforcement, the Cyber rule seems to have worked [U.S. Securities and Exchange Commission, 2023a]. Cyber incidents are disclosed in a far more timely and comparable manner now, and companies appear to be devoting more resources to the problem. Moreover, companies absorbed these new requirements with ease because they were well prepared from previous guidance.

Part of the Rule’s innovation is that the material event-triggered 8-K filing for cyber incidents sits alongside a new standing annual 10-K disclosure requirement for companies specifically for cyber-related issues (Reg S-K Item 106), covering things like board and management oversight, processes for identifying and managing material cyber risks, whether such risks materially affect the company, and more.

This did not come out of the blue. It built on two decades of guidance beginning with the 2011 CF Disclosure Guidance on cybersecurity risks [U.S. Securities and Exchange Commission, Division of Corporation Finance, 2011, U.S. Securities and Exchange Commission, 2023a]. The Commission progressed from interpretive guidance (2011) and a Commission statement (2018) to a 2023 final rule that created Form 8-K Item 1.05 for material cyber incidents and Regulation S-K Item 106 for governance, strategy, and risk processes, with the aim of delivering “timely, consistent, comparable, decision-useful” information [U.S. Securities and Exchange Commission, Division of Corporation Finance, 2011, U.S. Securities and Exchange Commission, 2018, 2023a].

Next, the question then is whether AI-specific risks require a similar treatment to cyber ones. Below we show that a substantial “disclosure gap” already exists for AI. This is the gap between the AI-risks already out there facing AI companies, and what they are currently disclosing.

5 Evidence on the Disclosure Gap

What corporate reporting would enable responsible investment decisions by investors about AI companies? Share prices are unable to reveal inadequate disclosure – since by definition they only incorporate information already available to the market. But several other data sources can be used to clearly highlight disclosures that investors and the market are demanding by companies around their AI usage. We look at these sources one by one.

5.1 Litigation

Litigation shows market dissatisfaction with existing corporate AI disclosures to be high. Fisher Phillips’ AI litigation tracker for the U.S. currently shows 92 cases [Fisher & Phillips LLP, 2025]. Litigation on securities class action lawsuits covering false or misleading statements on AI is on a near exponential rise in the U.S., from 7 cases in 2023, 14 cases in 2024, and 12 cases so far in 2025 [Walker et al., 2025]. AI-usage now exposes companies to a range of risks from product liability & negligence, wrongful death, defamation, and publicity and privacy, to name but a few.

For example, in *Garcia v. Character.AI & Google*, the court has let the case proceed (May 22, 2025) over a teen’s suicide, allegedly encouraged by a chatbot’s messages. Claims include wrongful death, negligence, and deceptive trade practices.

5.2 10-K Disclosures

To manage growing AI-specific risks, companies are signaling greater disclosure to shareholders, but only superficially. An analysis by Arize AI, as reported by the Financial Times [Kinder, 2024, Arize AI, 2024], found that 56% of Fortune 500 companies cited AI as a “risk factor” in their most recent 2024 annual 10-K reports. Netflix, Motorola, and Salesforce all discuss AI-specific risks – yet only in superficial boilerplate terms, according to a recent and comprehensive academic study on 10-K disclosures for AI [Uberti-Bona Marin et al., 2025]. Similarly, SEC staff letters [Mogilevich et al., 2024] to companies show that much of the guidance was thin on details. Staff consistently requested more specifics from companies on disclosure details for AI-related topics.

Aware of the AI-disclosures gap, the SEC launched in 2024 AI-specific guidance and enforcement covering AI washing, conflicts of interest, and systemic risk, along with enforcement actions [Vanderford, 2023, U.S. Securities and Exchange Commission, 2023b, Gensler, 2024]. The SEC now even has a newly dedicated Chief AI Officer (CAIO) Valerie A. Szczepanik, who will oversee a new SEC AI Task Force, though its focus is more on internal innovations [Szczepanik, 2025, U.S. Securities and Exchange Commission, 2025a].

5.3 8-K Disclosures

To analyze 8-K filings, we constructed our own dataset of all AI-related event-driven filings between November 1, 2022 until September 18, 2025, covering 1,741 corporate issuers. It highlights at least three key AI-related corporate disclosure gaps:

The first is that 8-K disclosures almost exclusively concern a company’s commercial ventures (Figure 1 below), covering important agreements (Item 1.01), such as model licensing, cloud/compute commitments, strategic data deals, and reseller/partnership agreements; but also financial matters (Item 2.02).

Safety and guardrails, i.e., AI-risks, rarely feature. Overwhelmingly most AI filings at 66% (two-thirds) are positive in nature. In other words, companies have a tendency to use the 8-K to alert investors to news that may help their business prospects. More specifically, using GPT 5 nano, we classified filings containing sufficient text (n=7,440) into three buckets of sentiment and found 4,952 (66.6% of) 8-K filings with “positive” sentiment, 1,367 (18.4%) as “negative”, and 1,121 (15.1%) as neutral.⁴

⁴We were unable to extract text from all disclosure filings so we were left with a smaller sample size (compared to our full dataset of 7,856).

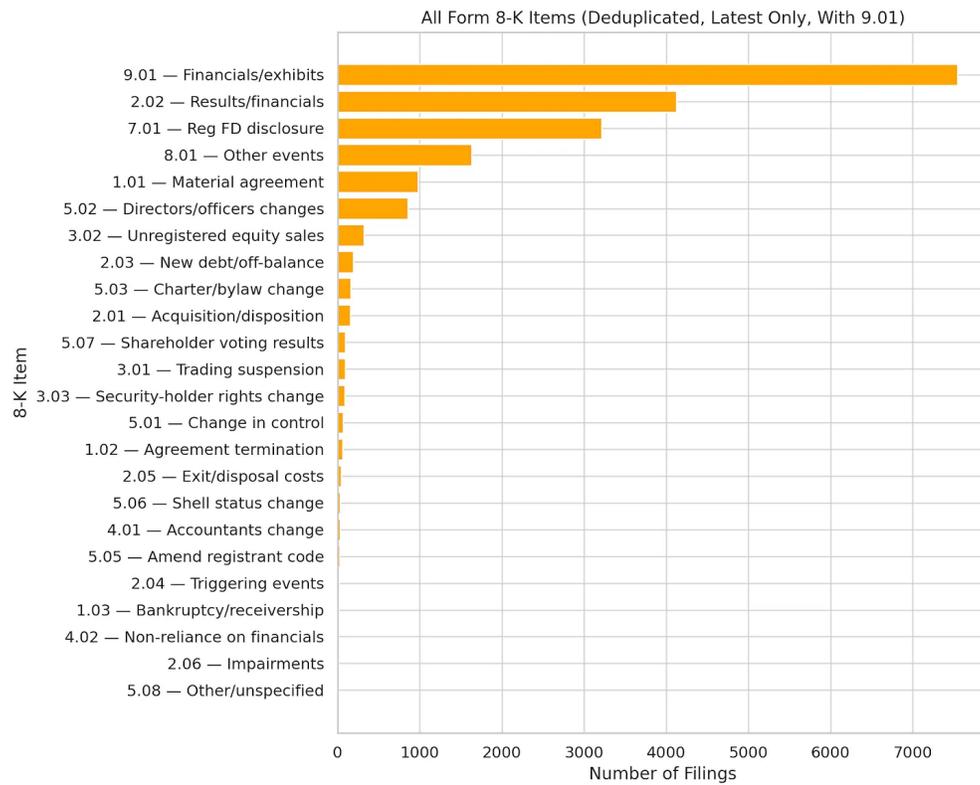


Figure 1. 8-K filings by public companies in the U.S. on artificial intelligence and generative AI, by Item topic. (n=7,856)

Most disclosures for AI-related impacts are through Item 8.01: a voluntary catch-all event category useful for AI updates that are not yet a mandated material trigger but still market-relevant. This implies that companies are not yet sure where to put such AI-triggered events – or are unsure when an event is sufficiently material to disclose it elsewhere.

Big firms need a 10-K mandate. Finally, 8-K filings on AI-related matters are driven by smaller companies since submissions reflect the universe of filing firms. Big Tech’s 8-K disclosures are, as expected, not very prominent, since they only constitute 0.34% of the companies making 8-K submissions in our data. AMZN made 14 submissions, followed by NVDA (11), MSFT (10), and META (12), and GOOGL/GOOG (9 each).

Practically, this means that any new 10-K requirement that covers AI-specific business activities and risks in detail could significantly enhance market transparency, since these mega-cap firms have an outsized impact on the AI market (together with OpenAI, Anthropic, and a few others).

6 The rise of private AI companies

For these changes to have their intended effect, the relevant players must be public companies. OpenAI and Anthropic – and other central companies to the emerging AI stack (such as Stripe, xAI, Databricks, Perplexity) – are private, so they sit outside the SEC’s public-company disclosure regime, despite being multibillion-dollar enterprises. Although private companies remain subject to SEC anti-fraud rules and investor protections, they are exempt from ongoing disclosure requirements.

Previously, companies like Google and Facebook were compelled to go public as they became larger with more shareholders [Schmidt, 2010, Gustin, 2011]. But the 2012 JOBS Act raised the threshold for mandatory registration fourfold and loosened restrictions on private fundraising [U.S. Securities and Exchange Commission, 2016, Seward & Kissel LLP, 2012]. Capital raised through special purpose vehicles (SPVs) now count as a single shareholder and the threshold of total shareholders required in order to force public registration was raised from 500 shareholders of record to 2,000 shareholders of record – or 500 non-accredited investors (whichever comes first). Employees who received stock compensation are excluded from the count entirely. Moreover, most venture investors and many employees are accredited investors (high income or net worth), and so do not count toward the 500 limit.

The 2012 JOBS Act changes combined with the incredible growth in VC, private equity, and sovereign wealth funds capital has resulted in an explosion of late-stage private capital raising that enables very large companies to stay private and avoid public reporting requirements. The role of venture private capital in funding private AI companies is unprecedented compared with other technologies [Hu et al., 2025]. In 2025, OpenAI, Anthropic, and xAI “captured” over \$50 billion in VC funding [Hu et al., 2025]. OpenAI’s capped-profit partnership and Anthropic’s public-benefit

corporation might sound civic-minded, but ultimately insulate them from market-oversight.

This has created a bifurcated market where major technology companies operate at unprecedented scale through Regulation D offerings and special purpose vehicles while remaining exempt from periodic disclosure requirements, raising concerns about transparency and investor protection in systemically important sectors [Ewens and Farre-Mensa, 2020].

Despite being private – and so outside the realm of public disclosure obligations – OpenAI is causing major swings in the public stock market [Vlastelica, 2025]. OpenAI’s decision to partner with Shopify, Etsy, and now Advanced Micro Devices (AMD) has sent their shares soaring. Its partnerships with chipmakers AMD and Nvidia involve fairly opaque, “circular”, financing deals [NVIDIA Newsroom, 2025, Forgash and Ghosh, 2025]. Notes a leading investment strategist in Bloomberg: “*it is certainly an odd situation for a private company to have so much impact. . . [OpenAI] can be more agile and creative, and that leads to the ripple effect we see in other companies, both good and bad.*” Further complicating matters are the incredible investments made in private AI companies by major listed companies, such as Amazon in Anthropic and Microsoft in OpenAI [Bishop, 2025, Barr, 2025]. This increases risks arising from the reverse impacts of these investments on to the investing company.

7 Policies: What should we be aiming for?

Public oversight should begin with the corporate disclosure machinery we already have. In the wake of the 1929 crash, Congress created the SEC and required companies to surface material risks through annual 10-K reports, quarterly 10-Qs and event-driven 8-Ks. That regime remains one of the few proven, scalable checks on corporate behavior – ‘Truth in securities.’ Or, as Justice Louis Brandeis put it, “Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.”

High-quality disclosure can work. Material disclosures convert a company’s private knowledge into publicly verifiable facts. This powers an entire ecosystem, from auditing and banking to journalism and securities law, that keep most firms honest.

But the AI market’s center of gravity now sits outside of key existing public standards. Despite their reach, OpenAI and Anthropic – but also Stripe, Databricks, and other decades-old tech companies – disclose less than public peers about what matters: their financials and business operations.

If AI is going to be governed as a market technology, it must be brought into the market’s accountability machinery. Five policy tweaks would help kickstart this process:

1. *SEC Guidance Note on AI.* To get the ball rolling, an SEC guidance note (called “CF Disclosure Guidance”) could help companies understand how existing corporate disclosure rules apply to AI-related matters. At its core this should define material AI incidents in plain

English to include systemic model failures, major outages, widespread customer remediation, loss of essential third-party model access, impactful changes to safety guardrails, and so on. It should also clarify how AI-driven events fit within existing 8-K categories and how to disclose relevant AI-activities within a company’s annual 10-K report.

A guidance note is not binding law, but it can strongly influence company filings and SEC actions. For example, the 2011 Cybersecurity memo (Topic No. 2) told issuers what to discuss under Risk Factors, MD&A, Business, and other items in their 10-K report.

An AI guidance note would provide the same practical roadmap as the 2011 Cyber memo: specific, concrete examples showing companies how to disclose AI risks and opportunities substantively across business operations (S-K Item 101), risk factors (Item 105), trends and uncertainties in MD&A (Item 303), and other key sections – avoiding generic boilerplate

Part of the guidance might encompass AI-related escalation criteria for potential Form 8-K reporting. Companies should maintain disclosure controls that identify AI-related developments which, if material, may require a current report on Form 8-K.

Quantitative indicators (escalation): Statistically significant deviations from historical baselines in KPIs plausibly affected by AI system changes – e.g., engagement (DAU/MAU, time-on-platform), monetization (CTR, conversions), and risk metrics (credit approval or denial rates, charge-offs, loss ratios, harmful-output and jailbreak rates, fraud-detection efficacy). Indicators inform but do not by themselves determine materiality and Item applicability, consistent with SEC KPI/MD&A guidance [[U.S. Securities and Exchange Commission, 2020](#)].

Qualitative indicators (escalation): Changes to AI objectives, guardrails and policies with expected impact on harmful-output rates or regulatory exposure; material data-provenance shifts (e.g., addition of sensitive datasets); dependency changes (e.g., migration of core functionality to third-party models and APIs); or significant compute capacity loss or outage. Counsel should assess whether any specific 8-K Item is implicated (e.g., Items 1.05, 1.01, 2.06, or 8.01).

2. *Create a new AI-risk item on the 8-K disclosure Form for material AI-driven events as they happen – modeled on Item 1.05, Cybersecurity Incidents (2023).* Note that it is not the technology (AI) itself that triggers a filing rather than a material, incident-style impact. The trigger is not “an AI model changed,” but that “the change or failure had a meaningful effect on operations, customers, compliance, or financial results.”

Companies already use the 8-K Form to alert investors when something important happens between annual or quarterly reports. The idea here is to add a dedicated item for AI-related material incidents, so that there is a clear place to report them when they matter. This can help ensure that companies do not skip reporting the “risks” when disclosing material

AI-related events.

An “AI incident” is a development arising from the use of AI systems that has a meaningful effect on the business. Examples include: a model failure that misprices loans; an AI system outage interrupting service; an AI-driven error requiring customer remediation; or a sudden loss of access to a third-party model on which a product depends. The trigger is the impact itself.

3. *Add a standing AI section in the annual 10-K Form that explains how a company manages AI.* One-off 8-K event reports are, by themselves, insufficient. Investors also need a clear, yearly picture of how a company runs its AI-related activities, covering: how it is used in products and operations, who oversees it, what the main risks are, and what controls are in place. A new 10-K item would provide that exact structure, thereby encouraging companies themselves to adopt a longer view of these risks.

Companies would explain their approach to risk management (how they test and monitor systems, how they roll out changes, how they respond when something goes wrong); their strategy (where AI fits in the business and why); and their governance (who is accountable at the management and board level). They would also describe key dependencies that could affect reliability or cost (such as reliance on outside model providers, critical data sources, or a single cloud vendor), along with any concentration risks that come with those choices.

The goal is not to jam in unnecessary detail into the 10-K but to make the business implications of AI understandable to the investing public: where the leverage points are, how failure is prevented, and what the plan is when problems occur.

Finally, labeling the main AI elements with standard, machine-readable (iXBRL) tags (the same way the SEC does for several other disclosures, such as the SEC’s cyber rule) would let analysts and watchdogs compare companies more easily and spot patterns over time.

4. *Enforce the rules.* In crypto and cyber, improved disclosures followed real prosecutions [Jennings et al., 2011, Simona, 2025, U.S. Securities and Exchange Commission, 2024b, Valdetero and van Wengen, 2025]. The SEC should continue to bring any material cases against AI washing, misleading claims, and fraud.
5. *Reverse the JOBS Act loopholes that allow companies to raise billions from hundreds of investors while remaining private.* If you access public savings at scale, you should meet public disclosure standards.

Today’s most consequential AI firms can avoid Exchange Act reporting due to higher Section 12(g) thresholds and “holders of record” counting rules introduced by the 2012 JOBS Act – later implemented by SEC rulemaking. Targeted fixes would close this transparency gap and bring widely held private issuers accessing public savings within the same disclosure discipline

[112th. Congress, 2012].

So-called “Regulation D” exemptions currently permit unlimited private capital raises from accredited investors by a company without triggering reporting requirements.

We propose: treating SPVs as look-through entities so consolidated shareholder counts cannot be gamed; narrowing the employee shareholder exemption; and capping Reg D fundraising (e.g., \$1 billion lifetime or 250 shareholders) before companies must register as reporting entities.

7.1 Conclusion: Empower Markets with Information

Unlike capability thresholds, the SEC disclosure approach for public reporting companies anchors oversight in materiality: what AI does to a firm’s operations, customers, and earnings that an investor would care about. It rewards evidence – not hype. It is a language investors, courts, and boards already understand.

No disclosure regime will fix every AI risk. But a materiality-based framework can better align company incentives, surface urgent hazards, and give democratic institutions leverage over a profoundly commercial technology. If quarterly reporting goes, the quid pro quo should be stronger event-driven transparency and annual reporting.

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