June 15, 2026

VIA EMAIL TO:
secretary@sec.gov
chair@sec.gov

Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: **OpenAI, Inc. / OpenAI Group Public Benefit Corporation:** S-1 Registration Statement and Unresolved Governance Risks to Public Investors

Dear Chair Atkins and Members of the Commission:

The EyesOnOpenAI Coalition writes to bring to your attention a set of material, unresolved governance defects in the corporate structure of OpenAI, Inc. and its public benefit corporation ("PBC") subsidiary — *OpenAI Group Public Benefit Corporation* — as that entity prepares for a public offering anticipated in late 2026. We respectfully urge the Commission to exercise its full authority to ensure that OpenAI's registration statement discloses these risks with the specificity and candor that investors are owed under federal securities laws.

EyesOnOpenAI is an independent public-interest coalition of 60 nonprofit, philanthropic and labor groups organized to ensure that the governance of one of the world's most consequential AI companies is transparent, accountable, and consistent with the charitable mission under which its foundational assets were developed.

The concerns raised in this letter are independently grounded in the public documentary record, including the executed Memorandum of Understanding between OpenAI and the California Attorney General (October 27, 2025) (the "MOU"), the trial record in *Musk v. Altman, et al.*, Case No. 4:24-cv-04722-YGR (N.D. Cal.) — including Dkt. Nos. 379-107, 390, and 391-49, testimony and exhibits introduced at trial in May 2026, and OpenAI's publicly filed Form 990 disclosures.

We also note that on May 12, 2026 ten U.S. attorneys general separately wrote to the Commission asking it to scrutinize OpenAI's governance documents ahead of the anticipated IPO. Our letter is independent of that submission but consistent with the concerns it raises. Multiple independent parties are raising issues about OpenAI's IPO because the governance questions surrounding this offering require careful attention.

While the public record is extensive, we have also endeavored to secure additional records to support the issues we raise in this letter. We note that the California Attorney General's office has confirmed, in response to a California Public Records Act ("CPRA") request submitted by our coalition (DOJ No. 2026-1156), that it is conducting an ongoing investigation into matters related to OpenAI's governance and charitable obligations. The AG's office withheld all responsive records under exemptions for official information (Gov. Code §7923.600), investigative files (Evid. Code §1040), and attorney work product (Code Civ. Proc. §2018.030). That investigation provides essential regulatory context for the disclosures we urge the Commission to require.

We write now precisely so the Commission can ensure the investing public is fully aware of the risks associated with OpenAI's governance structure. The governance questions we identify below are not speculative: they are documented, contested in active regulatory proceedings, and material to any reasonable investor's assessment of the company's valuation, regulatory exposure, and long-term governance stability. They must be reflected, clearly and specifically, in OpenAI's prospectus.

Background: An Unprecedented Structural Conversion

OpenAI was founded in 2015 as a 501(c)(3) nonprofit with the stated mission "to ensure that artificial general intelligence benefits all of humanity." It raised donor contributions, recruited world-class talent, and built foundational AI systems under that charitable mandate. Beginning in 2019, it began transferring assets and operations into a for-profit structure while retaining the nonprofit shell. In October 2025, OpenAI reached an agreement with the California and Delaware Attorneys General governing the terms of its conversion to a public benefit corporation—one that remains under the governance control of the 501(c)(3) nonprofit, now called the OpenAI Foundation.

To our knowledge, this will be the first time in history that a 501(c)(3) nonprofit has taken a controlled entity through an IPO. That novelty itself generates a category of legal and governance risk with no established market precedent — and that investors must understand before pricing the offering.

Material Governance Defects Requiring Disclosure

A. MOU Conditionality and Active Regulatory Investigation

The California Attorney General's ("AG") non-objection to the recapitalization is explicitly conditioned on three requirements set forth in MOU ¶ 22: (a) no material change to OpenAI's business that would require the information provided to be updated; (b) no facts material to the AG's review having been excluded from the information OpenAI provided; and (c) approval of the recapitalization by the NFP Board. MOU ¶ 28 further states that the AG "is expressly and solely relying upon the Information and the Representations, which OpenAI has asserted to be true and accurate in all material respects."

Evidence produced in *Musk v. Altman* under court order — including Greg Brockman's personal journals (Hawes Decl., Exs. 43, 45, 46) and the February 2022 Altman-Microsoft memorandum — was produced after the MOU was signed. It isn't clear whether that documentary record existed in the AG's possession when the MOU was negotiated. To the extent that record bears on the accuracy of OpenAI's representations to the AG under ¶ 22(b), the conditionality of the AG's non-objection remains an open question.

That question is not abstract. As noted above, the California AG's office has confirmed, in response to our coalition's CPRA request (DOJ No. 2026-1156), that it is conducting an investigation, withholding all responsive records under exemptions applicable to ongoing investigative and enforcement proceedings. The existence of that ongoing investigation — and its potential bearing on the status of the MOU's conditions — is itself material information for investors evaluating OpenAI's claim that its regulatory clearance is settled. Investors must understand that the AG's non-objection was reliance-based, is conditioned on representations that are now subject to active scrutiny, and has not been publicly confirmed as final in light of post-MOU evidence. As long as the nonprofit OpenAI Foundation remains in control of the PBC,

OpenAI will be subject to increased regulatory scrutiny, the likes of which do not apply to its competitors. This regulatory risk should be disclosed in the prospectus.

B. A Documented Pattern of Conflict-of-Interest Failures

OpenAI's Amended and Restated Conflict of Interest Policy (filed in *Musk v. Altman*, Dkt. 379-107) requires insiders to disclose material interests "promptly upon learning of the proposed transaction," requires Audit Committee review of covered transactions, and mandates recusal and documentation of all conflict determinations. The policy is detailed and on its face comprehensive.

But the litigation record documents a pattern in which the policy's requirements appear not to have been operationalized in a manner consistent with customary nonprofit governance practice — a pattern that, in our view, creates prospectus disclosure obligations independent of whether any individual transaction technically complied with the policy's letter.

The expert report in Dkt. 391-49 concludes that "OpenAI seems not to have conformed to" customary conflict-disclosure practice, noting that independent directors "needed 'a more robust process for conflict disclosures'" and that the board was not receiving adequate information about major operational decisions — including learning about the launch of ChatGPT on Twitter rather than in advance. The expert characterizes this as symptomatic of a structural failure of board oversight, not merely isolated incidents. (¶¶ 196–200.)

Against that documented backdrop, the following specific conflicts warrant disclosure in the S-1:

- **Bret Taylor / Sierra (Frontier Partners):** Bret Taylor serves as Chair of both the NFP and PBC boards. He is also co-founder and CEO of Sierra, an AI company that operates as a "Frontier Partner" of OpenAI — a category of commercial counterparty with a direct business relationship with the PBC. This converts Taylor's structural dual-board role into a documented related-party transaction requiring Audit Committee review and disclosure under the conflict policy and Form 990 Schedule L. Whether that review occurred and was documented as required is not established in available public records. The deposition record notes that former director McCauley expressed concern about Taylor's ability "to make disinterested decisions" given his personal relationships with management. (Dkt. 391-49, fn. 254.)
- **Sam Altman / Helion Energy:** Altman holds a personal stake in Helion Energy valued at approximately $1.7 billion as of December 31, 2025, per May 2026 court filings. OpenAI is in advanced negotiations to purchase substantial quantities of electricity from Helion — discussions that, if completed, would represent one of the largest customer contracts in Helion's history and would materially increase the commercial value of a company in which Altman holds his largest personal stake. Altman has represented that he recused himself from deal negotiations and has stepped down as Helion's board chair. However, the adequacy of recusal procedures where a CEO holds a $1.7 billion personal stake in a major counterparty — and whether those procedures were documented and reviewed by the Audit Committee in compliance with the conflict policy — raises questions that investors evaluating the S-1 are entitled to have answered with specificity.
- **Sam Altman, Adam D'Angelo and Greg Brockman / Cerebras:** Available evidence from the *Musk v. Altman* record indicates that Altman, D'Angelo and Brockman held personal equity stakes in Cerebras at the time that OpenAI extended approximately $1 billion in loans and entered into a $10 billion+ compute contract with Cerebras. Whether those personal stakes were disclosed to the NFP board in accordance with the conflict

policy — which requires disclosure "promptly upon learning of the proposed transaction" — has not been established in the public record. A public records request to the AG seeking Altman's conflict-of-interest disclosure forms was denied in light of the AG's ongoing investigation.

Taken individually, each of these conflicts may be addressable through disclosure and recusal. Taken together, however, they document a pattern in which the CEO of the world's most highly valued AI company holds large personal financial stakes in multiple significant counterparties of that company — and in which the governance structure responsible for reviewing those conflicts is the same structure that experts and former independent directors have characterized as inadequate. Whether or not each transaction was technically processed through the Audit Committee, that pattern itself is a material risk factor. The question is not merely whether the policy was followed, but whether a policy-compliant process run by a structurally conflicted board provides investors with the governance independence they are being led to expect.

This systemic concern has an established legal analog. Under SEC rules and Regulation S-K, issuers must disclose not only specific related-party transactions but also the adequacy of their policies and procedures for identifying and reviewing such transactions. Where the documented pattern suggests that those policies — however well-drafted — have not functioned as designed, that gap is itself a disclosure obligation.

C. Board Independence: A Structural Conflict of Interest at the Core of Oversight

The MOU establishes the OpenAI Foundation (the "NFP") as the entity charged with overseeing the PBC. The NFP holds Class N shares that confer the sole right to appoint and remove PBC board members, approve safety and security decisions, and intervene on major governance changes. This oversight function is the central accountability mechanism the AG accepted in lieu of more stringent conditions on the conversion.

Yet seven of the eight members of the NFP's Board of Directors concurrently serve on the PBC Board. (MOU ¶ 14; OpenAI Foundation Form 990, 2024.) This structural identity between the boards means the entity responsible for independent oversight of the PBC is controlled by the same individuals who run the PBC. The MOU's only remedial measure is a requirement that one additional director serve exclusively on the NFP within one year (MOU ¶ 14) — an adjustment the expert record in *Musk v. Altman* (Dkt. 391-49) identifies as plainly inadequate to cure a conflict of this magnitude, noting that customary nonprofit governance practice "would not characterize getting two independent board members as a major achievement" where the boards are otherwise structurally identical.

The deposition record from *Musk v. Altman* (McCauley Deposition, at 42; Toner Deposition, at 92–93, as cited in Dkt. 391-49, ¶ 197.) further documents that former independent directors Helen Toner and Tasha McCauley raised specific concerns about the adequacy of the conflict disclosure process — concerns that led the board to conclude it needed "a more robust process for conflict disclosures." That assessment, made by the people responsible for oversight, predates the current governance structure and applies with even greater force now that seven of eight directors span both boards.

For investors, this defect is not merely a governance quality concern, it is a pricing risk. If the AG or a court requires structural remediation — including mandatory board reconstitution, as proposed in the remedies brief filed in *Musk v. Altman* (Dkt. 390) — the resulting changes would directly affect the NFP's power to appoint and remove PBC directors, with immediate

consequences for governance stability and management continuity at the time of, or after, the IPO.

D. The Class N Share Governance Feature: PBC Shareholders in Tension with NFP

The NFP maintains its governance control of the OpenAI PBC through a share of Class N stock, which affords it effectively the sole right to control the composition of the PBC's board. Public investors purchasing Class A Common Stock in OpenAI's IPO will acquire shares with very limited rights to vote on the election or removal of PBC directors. There is no mechanism by which public shareholders can discipline the board, contest independence determinations, or respond to conflicts of interest at the management or director level. Functionally, the entire board accountability function is vested in the NFP, over which public investors have no rights and no recourse. The NFP cannot divest that governance share without triggering legal action by the Attorney General of California.

OpenAI must disclose in detail its board oversight structure, explain the specific rights available to public shareholders to oversee the board, and articulate the legal risk if it were to try and undo this governance mechanism.

E. The NFP's Equity Stake: A Stated Number Without Independent Verification

OpenAI has publicly stated that the NFP holds approximately 26–27% of the PBC following the September 2025 recapitalization. That figure, however, sits in unexplained tension with the trial record. OpenAI's own representative Robert Wu testified under oath in *Musk v. Altman* that, while the MOU allocates the NFP a nominal undiluted share of 31.5% of the PBC, accounting for dilution from SoftBank and other investors the actual share would be between 20% and 30%. (Wu Deposition, as cited in Dkt. 391-49, ¶ 277 n.291.) The stated 26–27% falls within that range, but no independent financial analysis has been publicly disclosed that reconciles the nominal figure, the dilution calculation, and the resulting operative stake — or that verifies the stated figure is correct.

Whether that figure is accurate, and whether it is fair, are separate questions — and the public record provides no independent answer to either. This matters because the MOU (¶ 22) conditions the AG's non-objection on the recapitalization being "fair or reasonable from a financial point of view to the NFP." No publicly disclosed independent fairness opinion supporting that condition has appeared in the trial record or in OpenAI's public filings.

The documentary record draws a pointed distinction on this question. The expert report in Dkt. 391-49 (¶ 125) notes that OpenAI did retain Goldman Sachs in connection with the 2024 renegotiation of Microsoft's investment terms ("Project Watershed") — a bilateral negotiation between OpenAI and Microsoft about revising Microsoft's existing position. The expert cites the Goldman retention specifically as evidence of what rigorous process looks like, contrasting it with the "absence of comparable transactions and financial modeling" in earlier investment rounds where profit-distribution terms were originally set. (Dkt. 391-49, ¶¶ 124–125.) The Goldman work was advocacy for OpenAI in a negotiation — not an independent fairness opinion advising the NFP on whether the conversion terms were fair to the NFP.

That distinction matters legally and for investors. A financial advisor retained by OpenAI to negotiate better terms with Microsoft is not the same instrument as an independent fairness opinion rendered to the NFP board — the entity with the fiduciary obligation to protect the

charitable mission. The latter is what customary practice requires when a nonprofit gives up its residual interest and full GP control in exchange for a fixed equity stake. Whether any such opinion exists, and if so what it concluded, is information that investors evaluating the IPO are entitled to see.

The same process failure documented for the earlier investment rounds is therefore relevant context for the conversion itself. The expert report concludes that throughout OpenAI's history of dealing with for-profit affiliates and investors, "OpenAI did not undertake the level of analysis I would expect in large transactions at sophisticated nonprofits," and that the NFP board "did not consider any financial or quantitative analysis specifically prepared by a third-party financial advisor" when approving the key economic terms. (Dkt. 391-49, ¶¶ 142–143.) Whether the September 2025 conversion departed from that pattern — and whether the NFP's board received independent advice before approving terms that extinguished its residual interest — has not been publicly disclosed.

This is not a question of whose expert opinion about "fair" valuation prevails. It is a question of whether the NFP's board followed any defensible process in approving terms that allocated most of the upside to investors and employees while leaving the charitable mission holder with a share stake under what it is truly owed. If a court or regulator requires supplemental equity transfer or enhanced governance rights as a remedy — as proposed in the *Musk v. Altman* remedies brief (Dkt. 390) — the resulting dilution risk is material to PBC shareholders and must be disclosed.

Accordingly, we urge the Commission to require OpenAI to produce as part of its prospectus any independent valuation report or fairness opinion prepared on behalf of the NFP in connection with the September 2025 recapitalization and conversion. If no such report exists, OpenAI should be required to disclose that fact expressly — and to explain what process the NFP's board did use to satisfy the MOU's "fair or reasonable" condition — so that investors can assess whether the oversight architecture rests on a foundation of independent financial judgment or on the same insider-controlled process that the expert record has characterized as inadequate.

F. DeployCo: A Third Corporate Layer Outside MOU Oversight

OpenAI has recently launched a new deployment subsidiary — a majority-owned LLC (informally, "DeployCo") valued at approximately $10 billion, led by Brad Lightcap, and backed by TPG, Bain Capital, Brookfield, Goldman Sachs, SoftBank, and Warburg Pincus — that offers institutional investors a guaranteed 17.5% annual return. This subsidiary appears to constitute a third corporate layer below the PBC that may fall outside the MOU's governance and oversight framework.

For prospectus purposes: the extent to which the MOU's governance conditions, the NFP's oversight rights, and the AG's notification requirements apply to DeployCo's transactions and governance has not been publicly clarified. If DeployCo is structured to operate outside MOU oversight, this is a material gap in the governance architecture that may trigger an AG investigation and which investors must understand.

Specific Requests to the Commission

In light of the foregoing, EyesOnOpenAI respectfully requests that the Commission:

- **Issue targeted comment letters on the confidential S-1 currently under review** requiring specific, prominent disclosure of each of the governance risk categories identified above. These should include factual descriptions of the specific structural conditions, their legal contingency, and their potential financial consequences for investors.
- **Require disclosure of the MOU's conditionality** under ¶¶ 22 and 28, including acknowledgment that the AG's non-objection was reliance-based, that evidence bearing on the accuracy of OpenAI's representations to the AG was produced in subsequent litigation, and that the California AG has confirmed an active ongoing investigation (DOJ No. 2026-1156).
- **Require specific disclosure of the valuation process failure** documented in Dkt. 391-49, including the absence of third-party financial analysis in setting the NFP's share stake as a contingent dilution and governance risk factor.
- **Require disclosure of DeployCo's structure** and its relationship to the MOU's governance framework, including whether the NFP's oversight rights and the AG's notification requirements apply to DeployCo's transactions and the guaranteed return structure.
- **Require specific related-party transaction disclosure** addressing the Bret Taylor/Sierra, Sam Altman/Helion, and Altman/Brockman/D'Angelo/Cerebras situations—and any other similar situations—with express representation as to whether Audit Committee review, board recusal, and required documentation occurred in compliance with the Conflict of Interest Policy, and whether those reviews were adequate in light of the documented pattern of governance concerns.
- **Coordinate as appropriate** with the California Attorney General's office regarding its ongoing investigation and the bearing of that investigation on the representations OpenAI makes in its prospectus concerning the status and enforceability of the MOU's conditions.

The Investor Interest at Stake

OpenAI is seeking to raise capital from public investors at a valuation upwards of $850 billion — potentially one of the largest IPOs in history. The governance architecture that underlies that valuation includes: an oversight mechanism controlled by directors with direct financial conflicts; a divestiture loophole of governance shares that could trigger an AG action; an unresolved equity valuation dispute grounded in documented process failures with material dilution implications; regulatory clearance that is explicitly conditioned, reliance-based, and subject to active state enforcement scrutiny; a new $10 billion subsidiary whose relationship to the oversight framework is unclear; and a pattern of related-party transactions involving the CEO's personal portfolio that has drawn concerns from the company's own former independent directors, active federal congressional inquiry, and state regulatory attention.

None of these risks is hypothetical or speculative. Each is grounded in the executed MOU, active litigation, court-filed expert analysis, public financial filings, and OpenAI's own governance documents. Taken together, they represent a category of unpriced governance risk that institutional investors, stewardship teams, and proxy advisory firms will need to evaluate — but cannot evaluate if the S-1 characterizes the governance structure as settled and the regulatory clearance as unconditional.

The Commission's disclosure authority is the appropriate mechanism to ensure that investors have the material facts they need. We urge the Commission to use it.

We welcome the opportunity to discuss these concerns further and can provide supporting documentation on request.

Respectfully submitted,

Catherine Bracy, Founder and CEO, TechEquity
Orson Aguilar, Founding President and CEO, Latino Prosperity
Teri Olle, Vice President, Economic Security California

On behalf of the EyesOnOpenAI Coalition (full list of coalition members can be found here: https://www.eyesonopenai.org/coalition)

APPENDIX: DOCUMENTARY RECORD CITED IN THIS LETTER

- Memorandum of Understanding Between OpenAI and the California Attorney General (October 27, 2025), ¶¶ 2, 14, 19, 22, 28 ("MOU")
- *Musk v. Altman, et al.*, Case No. 4:24-cv-04722-YGR (N.D. Cal., Judge Gonzalez Rogers)
  - Dkt. No. 390: Court Order Denying Summary Judgment (January 15, 2026)
  - Dkt. No. 379-107: OpenAI Corporate Governance Guidelines and Amended and Restated Conflict of Interest Policy (filed January 6, 2026)
  - Dkt. No. 391-49: Expert Report on Nonprofit Governance and Fiduciary Standards (filed January 16, 2026)
  - Dkt. No. 379-67: Deposition of Greg Brockman (September 23, 2025)
  - Hawes Decl., Exs. 43, 45, 46: Greg Brockman Personal Journal Entries
- EyesOnOpenAI Coalition CPRA Request to California AG, DOJ No. 2026-1156; Response Withholding All Records Under Gov. Code §7923.600, Evid. Code §1040, and Code Civ. Proc. §2018.030
- OpenAI Foundation Form 990, 2024 (publicly filed)
- Trial Exhibit Introduced During Altman Testimony, *Musk v. Altman*, May 13, 2026: Confidential Investment Disclosure List, Altman Stakes in Nine Companies as of December 31, 2025 (Helion Energy stake $1.65–1.7 billion; total portfolio value exceeding $2 billion)