

Matters To Consider for the 2026 Annual Meeting and Reporting Season

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Companies have important decisions to make as they prepare for the 2026 annual meeting and reporting season. We have compiled this overview of key issues — including SEC disclosure requirements, recent SEC guidance, executive compensation considerations and annual meeting and corporate governance trends — for companies to consider as they plan for the upcoming season. As always, we welcome any questions you have on these topics or other areas related to annual meeting and reporting matters.

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Disclosure Developments

Consider Trends in SEC Filing Reviews

The Staff of the Division of Corporation Finance (Staff) of the Securities and Exchange Commission (SEC) continues to review public company disclosures. Based on a recent survey,¹ during the 12-month period ended June 30, 2025, the volume of Staff comment letters and the number of companies receiving comments declined, which was a reversal in the trend of increased comment letters issued in the prior two years.

Below is an outline of the recent comment letter trends and the Staff's areas of focus in its filing reviews. Companies should consider these topics when preparing annual reports.

Comment Trends

Management's discussion and analysis of financial condition and results of operations (MD&A) and non-GAAP financial measures remained the two most frequent areas generating Staff comments. Although the number of companies receiving comments declined, the number of companies that received Staff comments on MD&A and non-GAAP measures each increased by more than 10% compared to last year. Segment reporting and revenue recognition ranked third and fourth, respectively, once again in the top four most frequent sources for comment.

Other areas attracting frequent comment over the past year included (i) goodwill and intangible assets, (ii) inventory, (iii) costs of sales and (iv) business combinations.

Recent Areas of Focus

Below is a summary of the SEC staff's noteworthy areas of focus.

MD&A

The Staff continues to focus on MD&A disclosures, most commonly about results of operations. The Staff's comments on results of operations have continued to request that companies explain MD&A disclosures with greater specificity, including identifying and quantifying the impact of each positive or negative factor, and any offsetting factors, that had a material effect on results of operations.

Staff comments also focused on (i) liquidity and capital resources, including the effects of the macroeconomic environment, and (ii) critical accounting estimates. Staff comments on liquidity and capital resources often requested enhanced disclosures of (a) the availability of cash to fund liquidity needs, (b) underlying drivers contributing to changes in cash flows and (c) the trends and uncertainties related to meeting known or reasonably likely future cash requirements. Staff comments regarding critical accounting estimates frequently noted that companies' disclosures were too general, and requested that companies provide a more robust analysis, consistent with the requirements set forth in Item 303(b)(3) of Regulation S-K. The Staff often emphasized that critical accounting estimates disclosures should supplement, not duplicate, the disclosures in footnotes to financial statements.

The Staff also continued to highlight the presentation of key performance indicators (KPIs) and operating metrics, including how they are calculated and period-over-period comparisons. Staff comments regularly scrutinized KPIs discussed in earnings releases and investor presentations and questioned how these compare to the information disclosed in MD&A.

¹ See Ernst & Young's *SEC Reporting Update* "Highlights of Trends in 2025 SEC Staff Comment Letters" (Sept. 11, 2025).

Moreover, if estimates or assumptions underlie a reported metric or its calculation, companies should consider whether additional disclosure of that information is necessary for the disclosure of the metric to not be misleading.

Staff comments on MD&A reporting also addressed known trends or uncertainties, particularly those related to current or emerging developments in the macroeconomic environment such as inflation, tariffs, interest rates, geopolitical conflicts and supply chain issues.

Comments often requested additional disclosures to enhance an investor's understanding of the impact of these developments on the company and the company's response. As changing macroeconomic factors and other developments emerge, companies will need to provide transparent, company-specific disclosures about the anticipated impacts to help investors understand how and when companies may be affected.

Companies should:

- Regularly reassess and update their MD&A disclosures to include current or emerging trends and uncertainties in the macroeconomic environment.
- Continue to consider the 2020 [Commission Guidance on Management's Discussion and Analysis of Financial Condition and Results of Operations](#), particularly as it pertains to the disclosure and use of KPIs.

Non-GAAP Financial Measures

The Staff continues to focus on non-GAAP financial measures and compliance with the Staff's Compliance and Disclosure Interpretations (C&DIs) on non-GAAP financial measures, in certain cases resulting in requests to remove or substantially modify non-GAAP financial measures.

For example, Staff comments have addressed the undue prominence of non-GAAP measures that provide a discussion of non-GAAP financial measures at the beginning of MD&A before any discussion of results of operations have been reported using GAAP. Consistent with C&DI Question 102.10(a), Staff comments have also objected to companies presenting a full non-GAAP income statement as a form of reconciliation because such presentation gives the non-GAAP information undue prominence.

Staff comments also have addressed adjustments to non-GAAP measures that remove or exclude cash operating expenses that the Staff views as "normal" or "recurring" in the operation of a company's business, and that in the Staff's view, presented a misleading measure under C&DI Question 100.01.

Additionally, Staff comments focused on non-GAAP adjustments related to frequent restructuring and acquisition-related costs, where the Staff's comments have asked companies to (i) detail the facts and circumstances supporting an adjustment for what could be a recurring cost and (ii) explain and quantify the components of these adjustments.

The Staff also continued to issue comments to determine whether certain KPIs are in fact non-GAAP measures and to request that companies present the most directly comparable GAAP financial measure with equal or greater prominence relative to the non-GAAP measure.

Although most of these comments address the use of non-GAAP measures in earnings releases and SEC filings, the Staff also reviews other materials, including company websites and investor presentations. Accordingly, companies should ensure that any public disclosures of non-GAAP financial measures comply with applicable SEC rules and Staff guidance.

Expected Areas of Focus in 2026

In 2026, we expect Staff comments to continue to focus on the reporting areas discussed above. The Staff may also expand the scope of its comments to address artificial intelligence or any new or amended SEC rules adopted in the upcoming year.² For additional discussion and governance considerations related to artificial intelligence, see the "[Review and Update AI and Cybersecurity Disclosures To Align With Emerging Trends](#)" section of this checklist.

Consider SEC Staff Rulemaking Priorities

After a change in SEC leadership, rulemaking priorities shifted in 2025. Under SEC Chairman Paul Atkins, the SEC announced a new [regulatory agenda](#) intended to represent the agency's "renewed focus on supporting innovation, capital formation, market efficiency and investor protection." Notably, the new agenda removed a number of proposals related to environmental, social, and governance (ESG) considerations from the prior administration, including human capital management disclosure, corporate board diversity and conflict minerals reporting, and introduced a number of new areas of focus for rulemaking.

The following is a summary of key rulemaking initiatives, which will require the SEC to propose rules, seek public comment and then adopt final rules before they become applicable to public companies. Additionally, the effectiveness of any new rules that may be adopted are not expected until late 2026, at the earliest.

² See SEC's [Agency Rule List – Spring 2025](#).

Semiannual financial reporting: Chairman Atkins has expressed support for President Donald Trump’s renewed call to end mandatory quarterly reporting in favor of semiannual disclosures and announced that the SEC is “fast-tracking” rulemaking in this area. During President Trump’s first administration, the SEC published a [request for comment](#) on earnings releases and quarterly reports and hosted a roundtable, but declined to pursue further reforms.

Rationalization of disclosure practices: The SEC is considering potential rule changes that rationalize disclosure practices to facilitate (i) material disclosure by companies and (ii) shareholders’ access to that information. For example, streamlining executive compensation disclosures is expected to be an area of focus, following the SEC’s roundtable discussion on executive compensation disclosure requirements with representatives from public companies, investors, industry groups and advisors in June 2025.³

Shareholder proposals: The SEC is revisiting the requirements of Rule 14a-8 of the Securities Exchange Act of 1934 (Exchange Act), which regulate the inclusion of shareholder proposals in company proxy materials for annual meetings of shareholders. Specifically, the SEC is considering potential rule changes to reduce compliance burdens for registrants and account for developments since the rule was last amended. In [remarks at the University of Delaware’s John L. Weinberg Center for Corporate Governance](#), Chairman Atkins addressed the potential rulemaking relating to shareholder proposals on the SEC’s regulatory agenda, stating he has asked the Staff “to evaluate whether the [SEC’s] original rationale for adopting Rule 14a-8 in 1942 still applies today, especially in light of developments in the proxy solicitation process and shareholder communications generally over the last 80 plus years.” Potential rulemaking relating to the shareholder proposal rules and updated Staff guidance regarding Rule 14a-8 no-action requests are discussed in further detail in the “Review Shareholder Proposal Developments and New SEC Staff Guidance” section of this checklist.

Capital formation: Proposed rulemakings are expected to include new rules to (i) simplify the pathways for private companies to raise capital, (ii) modernize the shelf registration process to reduce compliance burdens, (iii) expand emerging growth company accommodations to include more issuers and (iv) simplify filer status categories generally to be less complex.

³ For more information, see the “[Track Potential Updates to Compensation Disclosure Rules](#)” section of this checklist.

Cryptoassets and market structure: New rules are expected to clarify the regulatory framework for cryptoassets, including new and amended rules related to the offer and sale of cryptoassets that serve as exemptions and safe harbors.⁴

Rule 144 safe harbor: The SEC is considering reproposing amendments to the Rule 144 safe harbor for resales of restricted and control securities to increase instances in which the safe harbor would be available. The SEC most recently formally addressed this topic through [potential amendments to Rule 144](#), initially proposed on January 19, 2021. Although the scope of any potential regulatory action is uncertain, the SEC’s proposed amendments from 2021 (discussed in further detail in our client alert “[SEC Proposes Amendments to Rule 144 and Form 144](#)”) may provide insight about what to expect.

Foreign private issuers: As detailed in our client alert “[SEC Requests Public Comment on the Definition of Foreign Private Issuer](#),” the SEC is considering potential amendments to the definition of foreign private issuer (FPI) following the agency’s June 2025 publication of a concept release soliciting public input in response to developments in the FPI population.

Assess Emerging Disclosure Trends

Overview

In recent years, the complexity and materiality of risks associated with tariffs, trade policies and government shutdowns has escalated. In 2025, these issues became increasingly relevant for many U.S. public companies, driven by ongoing geopolitical tensions, shifting U.S. trade policy and recurring threats of a federal government shutdown. Investors, regulators and other stakeholders expect company-specific information about how these external factors are impacting business operations, financial results and strategic planning.

Tariffs and Trade Policy: Evolving Disclosure Practices

A September 2025 survey of Form 10-Qs filed by *Fortune* 500 companies from April 1, 2025, through August 31, 2025, revealed a dramatic increase in the frequency and depth of disclosures related to tariffs and trade policy.⁵ Nearly 90% of these filings referenced tariff- and trade-related concerns — almost double the amount of filings referencing these factors

⁴ For more information on the SEC’s cryptoasset-related developments and potential rulemakings, see our August 8, 2025, client alert “[A Closer Look at the Trump Administration’s Comprehensive Report on Digital Assets](#)” and April 30, 2025, client alert “[SEC Moves Quickly To Create a Regulatory Framework for Cryptocurrencies and Reconsider Its Rules and Guidance](#).”

⁵ See KPMG report “[Effects of Tariffs on SEC Quarterly Disclosures](#)” (Sept. 2025).

from the prior year. This surge reflects both the heightened impact of global trade tensions and companies' efforts to provide investors with meaningful, "decision-useful" information.

Government Shutdown: Heightened Focus and Disclosure Expectations

The risk of a federal government shutdown has become a recurring trend, with significant potential implications for companies that rely on government contracts, regulatory approvals or federal agency operations. The SEC and investors expect companies to address the potential and actual impacts of a shutdown in their disclosures, particularly where such events already have or could materially affect business operations, liquidity or financial condition.

Disclosure Trends

- **Integration across multiple disclosure sections:** Companies are increasingly disclosing tariff-, trade policy- and government shutdown-related information as risk factors, in forward-looking statement disclaimers, and in the Business and MD&A sections of periodic reports.
- **Tailored, company-specific narratives:** Several impacted companies have replaced boilerplate language with tailored narratives that help investors better understand the unique risks and opportunities facing the company.

Disclosure Considerations

- **Materiality assessment:** Companies should periodically assess the materiality of a government shutdown and tariff and trade policy developments on the company's business, including both direct and indirect effects (*e.g.*, supplier cost increases; customer demand shifts; and delays in contract awards, regulatory approvals or access to government services).
- **Forward-looking statements:** Companies may want to include enhanced cautionary language regarding the uncertainty and potential variability of impacts from changes in trade policies and future shutdowns.
- **Operational response and mitigation strategies:** When relevant, companies should disclose specific actions taken or planned to mitigate adverse effects, such as supply chain adjustments, contract renegotiations or changes in product pricing.
- **Consistency across filings:** Disclosures in periodic reports, earnings releases, investor presentations and the proxy statement should be consistent and aligned, particularly when discussing the impact of a government shutdown and tariff and trade policy developments.
- **Outlook:** Companies should also consider whether any assumptions made regarding forecasted results and future outlook are impacted by tariffs, trade policies or a future government shutdown.

Takeaway

As the regulatory and geopolitical environment continues to evolve, companies should carefully review their existing disclosures, expect continued scrutiny of their disclosures in these areas and be prepared to provide company-specific information to meet investor expectations.

Review and Update AI and Cybersecurity Disclosures To Align With Emerging Trends

Overview

The sudden evolution of artificial intelligence (AI) and the increasing sophistication of cybersecurity threats have made these topics more central to public company disclosure and governance. Over the past year, regulatory expectations, investor scrutiny and stakeholder demands have driven pointed changes in how companies approach, oversee and disclose AI and cybersecurity risks and opportunities.

AI Disclosure Trends

Board and Committee Oversight of AI

AI has become a prominent feature in boardroom discussions and public disclosures. In 2025, nearly half of *Fortune* 100 companies specifically cited AI risk as part of the board's oversight of enterprise risk, a threefold increase from the prior year.⁶ Disclosures increasingly highlight the board's role in overseeing both the risks and opportunities associated with AI, including the adoption of responsible AI frameworks, ethical guidelines and the integration of AI into core business processes. Some companies have established dedicated board-level committees or working groups to address AI governance, while others have formalized AI oversight responsibilities in committee charters.

Also, disclosure of AI expertise as a desired or actual qualification for directors has significantly increased. In 2025, 44% of *Fortune* 100 companies referenced AI in director biographies or board skills matrices, up from 26% the previous year.⁷ Some companies are recruiting directors with commercial experience in AI development and others are investing in ongoing board education on AI topics. Related disclosures often describe director participation in AI-focused trainings and external certifications.

Periodic Reports

AI is now routinely discussed in the Business section of Form 10-Ks, with approximately 84% of *Fortune* 500 companies discussing AI in their annual reports and 42% of such disclosures

⁶ See EY report "Cyber and AI Oversight Disclosures: What Companies Shared in 2025" (Oct. 2025).

⁷ *Id.*

appearing in the Business section.⁸ Disclosures cover a range of topics, including the use of AI to enhance efficiency, drive innovation and improve customer experience, as well as the challenges of integrating AI into legacy systems and business models.

Risk factor disclosures related to AI have become nearly universal among large public companies. In 2025, 87% of large companies included AI-related risks in their Form 10-Ks, with nearly 30% providing a stand-alone AI risk factor.⁹ For example, commonly disclosed risks include:

- **Cybersecurity threats:** the use of AI by threat actors to develop sophisticated cyberattacks, including deepfakes and social engineering.
- **Regulatory and legal compliance evolution:** uncertainty regarding evolving AI regulations at the federal, state and international levels.
- **Operational and strategic risks:** challenges in executing AI initiatives, potential defects or vulnerabilities in AI tools, and the risk of falling behind competitors.
- **Reputational and ethical risks:** potential for biased or erroneous AI outputs, misuse of AI by employees or third parties, and public backlash.
- **Intellectual property risks:** infringement claims arising from AI-generated content or the use of third-party data in AI models.

Cybersecurity Disclosure Trends

Board and Committee Oversight of Cybersecurity

Cybersecurity oversight remains a top board and audit committee priority. In 2025, 96% of *Fortune* 100 companies disclosed that at least one board-level committee was charged with cybersecurity oversight, with the audit committee serving as the primary committee in 78% of cases.¹⁰ Disclosures increasingly describe the frequency and format of management reporting to the board, the roles of the chief information security officer (CISO) and other executives, and the use of external advisors or consultants.

Disclosing cybersecurity as a desired or actual area of board expertise is also a popular trend. In 2025, 86% of *Fortune* 100 companies referenced cybersecurity expertise in director biographies or board skills matrices.¹¹

⁸ See Deloitte report “[Disclosure Trends From the 2024 Reporting Season](#)” (April 2025).

⁹ *Id.*

¹⁰ See EY report “[Cyber and AI Oversight Disclosures: What Companies Shared in 2025](#)” (Oct. 2025).

¹¹ *Id.*

Periodic Reports

The SEC’s final [rules on cybersecurity disclosures](#), effective since late 2023, require companies to provide detailed information about their cybersecurity risk management, strategy and governance. In 2024, companies expanded their disclosures to address the following:¹²

- **Risk management processes.** 67% of *Fortune* 500 companies include a description of cybersecurity frameworks (*i.e.*, NIST CSF, ISO 27001) used to assess and manage cybersecurity risks.
- **Incident response and preparedness.** 65% of *Fortune* 500 companies reference response readiness plans.
- **Employee training and awareness.** 64% of *Fortune* 500 companies disclosed education and training efforts to mitigate cybersecurity risks.

SEC Developments

On February 20, 2025, the SEC announced the creation of the Cyber and Emerging Technologies Unit to help combat cyber-related misconduct and to protect retail investors from bad actors in the emerging technologies space. According to Commissioner Mark Uyeda, who was acting chair of the SEC at the time, “The new unit will also allow the SEC to deploy enforcement resources judiciously” and “will not only protect investors but will also facilitate capital formation and market efficiency by clearing the way for innovation to grow. It will root out those seeking to misuse innovation to harm investors and diminish confidence in new technologies.” This unit refocuses the former Crypto Assets and Cyber Unit, which was expanded in size in May 2022. Former Chairman Gary Gensler explained that “[b]y nearly doubling the size of this key unit, the SEC will be better equipped to police wrongdoing in the crypto markets while continuing to identify disclosure and controls issues with respect to cybersecurity.”

Additionally, on April 9, 2025, the SEC and the Department of Justice (DOJ) filed parallel actions against the founder and former CEO of a company that develops mobile apps, alleging that he made false and misleading statements to investors about the company’s purported AI technology.

According to [the SEC’s complaint](#), between spring 2019 and December 2022, the former CEO marketed the company as a mobile shopping application that used AI to process transactions, allegedly telling investors that the company’s application used automated technology that relied on AI to complete purchases made through the app without human involvement. In reality, the

¹² See Deloitte report “[Disclosure Trends From the 2024 Reporting Season](#)” (April 2025).

company relied in large part on contract employees to manually input orders placed by users on the app; the company's success rate in completing transactions was lower than what he represented to investors; and the company's app was not able to use AI to complete purchases. The SEC's complaint charged the former CEO with violations of Section 17(a) of the Securities Act of 1933 and of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

Given this enforcement action, companies should avoid overstating the benefits of AI in their businesses and should carefully assess whether any of their claims about their development or reliance on AI could be considered misleading.

Practical Considerations and Best Practices

Disclosure Controls and Procedures

Companies should review and enhance their disclosure controls and procedures to ensure that AI and cybersecurity risks are identified, assessed and disclosed in a timely and accurate manner. This should include coordination among legal, IT, risk and business teams, as well as regular updates to reflect evolving risks and regulatory expectations.

Tailored, Useful Disclosures

Disclosures should be tailored to the company's specific facts and circumstances, avoiding boilerplate language and providing sufficient detail for investors to understand the company's approach to AI and cybersecurity. Companies should explain the rationale for board and committee oversight structures, the integration of AI and cybersecurity into business strategy, and the steps taken to mitigate material risks.

Ongoing Board Education and Stakeholder Engagement

Boards should consider implementing (or prioritize existing) education on AI and cybersecurity topics, leveraging internal and external expertise. Companies should also engage with shareholders and other stakeholders to understand their expectations and concerns regarding technology governance and risk management.

Effective AI Governance

Companies should establish a robust, principles-based governance framework that enables innovation while managing legal, regulatory and ethical risks. Effective AI governance should be pragmatic — supporting business objectives and innovation — while remaining flexible to adapt to rapidly evolving technologies and regulatory landscapes. Key elements of responsible AI use include:

- **Transparency and record-keeping.** Maintaining detailed records of AI-related activities is essential. This includes documenting prompts, sources and documents used in AI-powered research, as well as tracking human oversight

in drafting and disclosure processes. Transparency supports accountability and facilitates regulatory compliance, especially in the event of audits or investigations.

- **Human oversight and validation.** AI-generated outputs should never be relied upon without human review. Companies remain liable for any misrepresentations or inaccuracies in public disclosures, regardless of whether the inaccuracies originated from AI tools. Human oversight is critical, particularly for legally sensitive statements or disclosures that could impact the company's risk profile or reputation.
- **Data security and confidentiality.** Companies should maintain strict controls over the input and handling of confidential or sensitive information. Only enterprise-approved, secure AI tools should be used, and confidential data should never be entered into unvetted platforms. This reduces the risk of data breaches, inadvertent disclosure of material nonpublic information (MNPI), and regulatory violations.
- **Accuracy and reliability.** AI outputs must be validated for accuracy, especially when used in research, drafting or note-taking. Users should not assume that AI-generated information is correct — plausible-sounding content can be inaccurate or misleading. Companies should pay special attention to industry-specific terminology, names and acronyms, which AI tools may misinterpret.
- **Compliance with retention and notice policies.** When using AI for tasks such as meeting transcription or note-taking, companies should adhere to established data retention policies and provide appropriate notice to participants. Storing AI-generated records beyond permitted periods or failing to inform stakeholders of AI use can create legal and compliance risks.

Takeaway

AI and cybersecurity are becoming more prominent in public company disclosure and governance. As regulatory requirements and stakeholder expectations continue to evolve, companies should proactively assess and enhance their oversight structures, risk management practices and public disclosures in these areas. Robust, transparent and tailored disclosures help maintain investor confidence as companies seek to meet the challenges of the digital age.

Revisit Insider Trading Policies

In December 2022, the SEC adopted amendments intended to address what the agency perceived as abusive practices relating to Rule 10b5-1 trading plans, certain equity awards and gifts of securities. Notably, the amended rules require companies to file copies of their insider trading policies and procedures as exhibits to annual reports on Form 10-K or Form 20-F. The rules became effective during last year's reporting cycle and companies filed their insider trading policies as exhibits for the first time.

For the next annual reporting cycle, companies should consider any necessary updates to their insider trading policies, taking into account market practices and the company's individual circumstances. Below are key provisions companies should revisit when reviewing their policies.

Blackout Periods

Because the announcement of a company's quarterly financial results almost always has the potential to materially impact the market for the company's securities, companies should consider implementing a quarterly blackout period during which persons subject to the blackout may not trade in the company's securities. In setting a blackout period, companies must consider both the appropriate time frame and scope of individuals to include.

Quarterly Trading Windows

Based on insider trading policies filed by companies in the S&P 500 index, companies typically start their quarterly blackout periods on or between the first and 15th day of the last month of the quarter, and commonly open the trading window after the first trading day following release of the company's earnings. However, trading windows vary from industry to industry, and companies ultimately should consider what window is most appropriate for their individual circumstances. Generally, the blackout period should begin when the company's quarterly results become sufficiently certain and visible internally.

Persons Subject to Quarterly Blackout Periods

Quarterly blackout periods typically apply to (i) directors, (ii) officers subject to Section 16 of the Exchange Act and (iii) designated employees who frequently have access to material nonpublic information about the company. However, in certain circumstances, applying quarterly blackout periods to all employees may be appropriate — this is common where there is broad access internally to financial information or the company has a small number of employees.

Transactions on Behalf of the Company

Item 408(b)(1) of Regulation S-K requires companies to disclose in their annual reports whether the company has adopted insider trading policies and procedures governing trading in the company's securities by the company itself. Companies that have not adopted policies or procedures addressing company trading should consider addressing it in their insider trading policies. This approach can be accomplished by stating in the insider trading policy that the company's policy is to comply with applicable securities laws concerning trading in company securities on the company's behalf.

Shadow Trading

In April 2024, a jury in federal court found a former executive civilly liable for insider trading. In the first-of-its kind case, the SEC argued that the executive engaged in "shadow trading." More specifically, the SEC argued that the executive used material nonpublic information about the not-yet-public acquisition of his employer to trade in securities of another company with which he had no relationship, on the assumption that the acquisition of his employer would increase the stock price of the other company. In September 2024, a federal court upheld the jury's verdict, and the case is currently on appeal to the U.S. Court of Appeals for the Ninth Circuit.

In light of this case, companies should consider addressing in their insider trading policies trading in other companies' securities on the basis of material nonpublic information obtained in the course of an individual's position with the company. This prohibition could be applicable to all other companies or a narrower set, such as the company's business partners and competitors. Alternatively, rather than state that shadow trading is a violation of the company's *policy*, the policy can emphasize that shadow trading is a violation of the *law*.

Treatment of Gifts

The SEC also cited concerns with potentially problematic practices involving gifts of securities, such as making stock gifts while in possession of material nonpublic information or back-dating stock gifts to maximize the associated tax benefits. The SEC noted that a scenario in which an insider gifts stock while aware of material nonpublic information and the recipient sells the gifted securities while the information remains nonpublic and material is economically equivalent to a scenario in which the insider trades on the basis of material nonpublic information and gifts the trading proceeds to the recipient.

Accordingly, companies should consider including specific companies can require advance clearance for gifts by persons who are subject to quarterly blackout periods since those individuals are generally more likely to be in possession of material nonpublic information. Alternatively, a company can treat gifts in the same manner it treats ordinary open market purchases and sales, which would prohibit gifts of securities by anyone subject to the policy while subject to a blackout period or in possession of material nonpublic information. Based on insider trading policies filed by companies in the S&P 500 index, companies commonly take this second approach, treating gifts the same way the company treats open market transactions.

Consider Recent Developments in Preparing Climate-Related Disclosures

Although companies no longer need to prepare for implementation of the SEC climate disclosure rules¹³ following the SEC's withdrawal of defense in the related litigation,¹⁴ companies should continue to consider the evolving regulatory landscape in preparing climate-related disclosures.

Climate-Related Disclosure and Sustainability Reports Trends

While the current U.S. regulatory environment no longer prioritizes climate-related disclosures at the federal level, many companies still publish stand-alone ESG or sustainability reports and other climate-related disclosures outside of SEC filings, including in response to state or other countries' disclosure requirements.

However, the nature and timing of sustainability reports has changed. For example, 74% (368) of S&P 500 companies published sustainability reports in both 2024 and 2025, and nearly half (48%) released their 2025 reports at a later date in the year than they did in 2024. The average delay was around five months.¹⁵ Further, the titles of such reports shifted away from "ESG" toward "Sustainability." Also companies either removed or reframed the term "DEI" throughout such reports.¹⁶ For example, only 9.1% of S&P 500 companies that published a report this year included "ESG" in the title, compared with 24.8% in 2024 and 35% in 2023.¹⁷ These trends are largely due to companies monitoring disclosures due to shifts in the regulatory and political landscape. For additional considerations in preparing climate-related disclosures, see our November 5, 2024, publication "[Enhancing Controls and Procedures for Climate-Related Disclosures](#)."

Within SEC filings, specifically Form 10-K, most S&P 500 companies mentioned climate-related information, consistent with the number in both 2023 and 2024.¹⁸ While most companies continue to mention climate-related information in Item 1A. Risk Factors or Item 1. Business, increased disclosures of such information also appeared in Item 7. MD&A and Item 8. Financial Statements.¹⁹

¹³ See our March 8, 2024, client alert "[SEC Adopts New Rules for Climate-Related Disclosures](#)."

¹⁴ On March 27, 2025, the SEC voted to end its defense of the climate disclosure rules in the ongoing litigation in the U.S. Court of Appeals for the Eighth Circuit. In April 2024, the SEC voluntarily stayed the effectiveness of these pending judicial review.

¹⁵ See DiversIQ, "2025 Sustainability and Human Capital Disclosure Trends."

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See CAQ, "[Analysis of Climate-Related Information in S&P 500 Companies' 10-Ks](#)."

¹⁹ *Id.*

California Climate Disclosure Rules

Companies that are subject to California's [Senate Bill 261, Greenhouse Gases: Climate-Related Financial Risk](#) (SB 261) are no longer required to publish their climate related financial risk reports by the January 1, 2026, deadline. SB 261 was enjoined by the U.S. Court of Appeals for the Ninth Circuit, pending the ongoing litigation (as discussed in our November 21, 2025, client alert "[Ninth Circuit Enjoins California Corporate Climate Risk Disclosure Law, but the Waiting Game Continues](#)"). A company may now *voluntarily* post its report on the California Air Resources Board's (CARB's) [online database](#). If a company chooses to post to the CARB database, the company should also post the report on its corporate website. CARB also [formally announced](#) that it would not enforce SB 261 in light of the injunction and that the board will provide further information, including an alternative date for reporting, as appropriate, after the appeal is resolved.²⁰

The Ninth Circuit, however, declined to enjoin [Senate Bill 253, Climate Corporate Data Accountability Act](#) (SB 253), which will require certain companies to publicly disclose greenhouse gas (GHG) emissions data, starting in 2026.²¹

In addition, [Assembly Bill 1305, Voluntary Carbon Market Disclosures Act](#) (AB 1305) remains in effect for a company making climate-related claims or purchasing/using carbon offsets sold in California to publicly disclose on the company website detailed information related to the methodology, verification and/or carbon offsets used to support climate-related claims. For additional information comparing the three California disclosure laws, see our October 28, 2024, client alert "[State of Play: California Amends Climate Disclosure Rules](#)."

CSRD

While the European Union's disclosure rules under the Corporate Sustainability Reporting Directive (CSRD) initially will apply only to EU-incorporated companies, for fiscal years starting on or after January 1, 2028, non-EU companies must report if they have a significant presence in the EU (defined by minimum EU revenues and asset thresholds).²² The EU is finalizing the thresholds for determining which non-EU companies will be required to produce CSRD reports.

²⁰ For additional information of CARB resources, [see the board's website](#).

²¹ We discussed the proposed legislation in our October 28, 2024, client alert "[State of Play: California Amends Climate Disclosure Rules](#)" and our September 26, 2023, client alert "[California Poised to Adopt Sweeping Climate Disclosure Rules](#)."

²² See our April 8, 2025, client alert "[EU Parliament Votes To Delay Implementation of Sustainability Reporting and Due Diligence Obligations](#)."

Executive Compensation Considerations

Incorporate Lessons Learned From the 2025 Say-on-Pay Votes and Compensation Disclosures

Companies should consider their recent annual say-on-pay votes and best practices for disclosure when designing their 2026 compensation programs and communicating about those programs to shareholders. Companies should also review the latest say-on-pay trends, including overall 2025 say-on-pay results, factors driving say-on-pay failure (*i.e.*, those say-on-pay votes that achieved less than 50% shareholder approval), say-on-golden-parachute results and results of equity plan proposals, as well as recent guidance from the proxy advisory firms Institutional Shareholder Services (ISS) and Glass Lewis.

Overall Results of 2025 Say-on-Pay Votes

Below is a summary of the results of 2025 say-on-pay votes from Semler Brossy's annual survey.²³ Overall, say-on-pay approval results at Russell 3000 companies surveyed in 2025 were generally slightly less favorable than those in 2024:

- Approximately 90.6% and 90.9% of Russell 3000 companies in 2025 and 2024, respectively, received at least majority support in their say-on-pay votes, with approximately 94% receiving above 70% support in both 2025 and 2024. This demonstrates slightly decreased say-on-pay support in 2025 compared with 2024.
- The S&P 500 average vote result of 89.5% as of June 2025 is 20 basis points lower than it was at the same time the previous year (89.7%) and matches the index's 2024 year-end average. This suggests slightly decreased say-on-pay support in 2025 compared with 2024.
- As of June 2025, approximately 88.8% of Russell 3000 companies and 90.8% of S&P 500 companies received "For" recommendations on their say-on-pay voting items by ISS, a slight decrease from the 88.9% and 92% "For" recommendations for Russell 3000 and S&P 500 companies sampled in Semler Brossy's 2024 report published on January 16, 2025.
- As of June 2025, the Russell 3000 received an average say-on-pay vote result of 90.6%, which is slightly below the average vote approval of 90.9% approval in 2024.
 - The average say-on-pay vote result exceeded 90% approval in 2025 across multiple industry sectors, including utilities, consumer staples, financials, materials, industrials, consumer discretionary, energy, real estate and communication services.
 - The information technology sector featured the lowest level of average support (compared with other industry sectors) at 87.8%. The only other industry sector below 90% approval in 2025 was health care at 88.9%.
- As of June 2025, approximately 1.2% of say-on-pay votes in 2025 for Russell 3000 and S&P 500 companies resulted in failure to receive approval, which is a slightly lower failure rate than the 1.3% failure rate for Russell 3000 and S&P 500 companies in 2024.

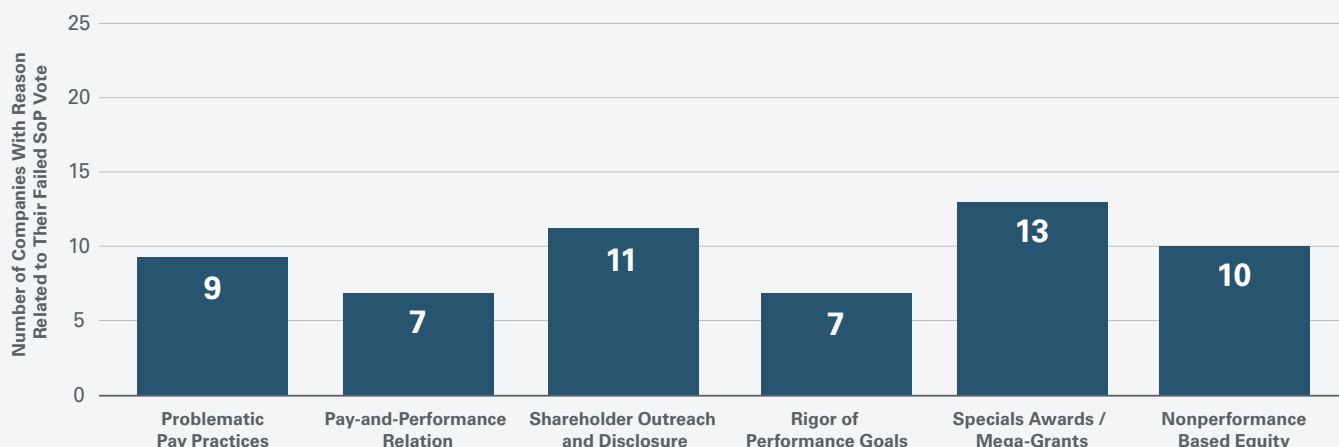
Factors Driving Say-on-Pay Failure

Overall, the most common factors shareholders cite when voting against say-on-pay proposals are special mega-grant awards, shareholder outreach and disclosure issues, nonperformance-based equity, problematic pay practices, pay-and-performance relation and special awards. The chart below summarizes the factors in 2025.²⁴

²³ See Semler Brossy report "[2025 Say on Pay & Proxy Results](#)" (June 26, 2025). Unless otherwise noted, Semler Brossy's report is the source of pay ratio, say-on-pay and equity plan proposal statistics in this checklist.

²⁴ *Id.*

Summary Table: Likely Causes of Failed Say-on-Pay (SoP) Votes in 2025*



*23 companies that failed to receive say-on-pay approval were included in this survey as of June 17, 2025. The same company may be counted toward multiple cases of votes resulting in rejection.

Unlike in 2024, when the relationship between pay and performance was the leading cause of say-on-pay failure, the grant of special awards and/or mega-grants was the most cited cause of say-on-pay failure for 2025. Notably, shareholder discontent with these special awards significantly increased from eight instances in 2024 to 13 instances in 2025. Additionally, the tally shows that in 2025, shareholder outreach and disclosure issues, nonperformance-based equity, and problematic pay practices have slightly outpaced pay-and-performance relation and the rigor of performance goals as leading causes of say-on-pay failure.

ISS Guidance

When evaluating pay practices, proxy advisory firms tend to focus on whether a company's practices are contrary to a performance-based pay philosophy. In December of each year, ISS publishes FAQs to help shareholders and companies understand changes to ISS compensation-related methodologies. In December 2024, ISS published its most recent general U.S. Executive Compensation Policies FAQ.²⁵ As of the date of this checklist, ISS has not yet released an updated FAQ providing guidance for 2026; the advisory firm is expected to release a full set of updated compensation FAQs in mid-December 2025. The key updates from the most recently published U.S. Executive Compensation Policies FAQ in December 2024 are below:

- ISS indicated that it is placing greater focus on performance-vesting equity disclosure and design aspects, particularly for companies that exhibit a quantitative misalignment between executive pay and company performance. Areas of focus could include, without limitation:²⁶

- Nondisclosure of forward-looking goals.
 - Poor disclosure of vesting results following the end of the performance cycle.
 - Poor disclosure of the rationale for adjustments to metrics and program.
 - Unusually large pay opportunities or non-rigorous goals.
 - Overly complex performance-equity design.
- As in previous years, ISS has not endorsed any specific metric in executive incentive plans, stating that the firm's position is that a company's board and compensation committee are best suited to select metrics that drive long-term shareholder value. However, ISS notes that shareholders generally prefer executive incentive plans featuring objective and quantifiable metrics, with the rationale that such metrics increase transparency into pay decisions. The FAQ provides a nonexhaustive list of factors ISS may consider when evaluating the metrics of an incentive program:

²⁶As noted in the FAQ, the risk of an adverse vote recommendation increases if the company has a quantitative pay-for-performance misalignment and their performance-based equity program features multiple of the problematic areas of focus.

²⁵See ISS FAQ "United States Executive Compensation Policies" (Dec. 13, 2024).

- Whether the program emphasizes objective metrics linked to quantifiable goals.
 - The company's rationale for selecting and changing metrics.
 - Whether disclosure of adjustments for non-GAAP metrics and their impact on payouts is transparent.
- ISS reiterated its stance that mid-cycle changes to ongoing incentive programs (such as altering metrics, performance targets or measurement periods) are generally viewed negatively. However, consistent with its proposed policy change regarding equity pay mix discussed below, the FAQ does not state (as it has in previous years) that shifts to predominantly time-vesting incentives would be viewed negatively. Companies should clearly disclose in the Compensation Discussion and Analysis their rationales for mid-cycle changes to incentive programs.
- Consistent with an off-cycle update from October 2024, ISS indicated that for a company's clawback policy to be considered "robust," the policy must extend beyond the minimum requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act or Dodd-Frank) and explicitly cover all time-vesting awards. ISS further clarified that a clawback policy that adheres to the minimum requirements of Dodd-Frank will not be considered robust because those requirements generally do not cover all time-vesting awards.²⁷
- Also consistent with its off-cycle update from October 2024, ISS has revised its estimated calculation methodology of "realizable pay" for the CEOs of S&P 1500 companies, which includes the cash and benefit values actually paid and the value of any amounts "realized" from incentive grants made to any CEO during the last three fiscal years, based on the values as of the end of the measurement period. The FAQ elaborates on this calculation method.

ISS Key Policy Changes for 2026²⁸

On October 30, 2025, ISS opened a public comment period on the proposed ISS benchmark policy changes for 2026.²⁹ On November 25, 2025, ISS published the Benchmark Policy Changes for 2026, which are effective for shareholder meetings on or after February 1, 2026.³⁰ The key compensation-related policy changes are summarized below.

²⁷For more information on clawback policy trends, see the "Clawback Policies" section of this checklist below.

²⁸For more details from ISS' 2026 policy updates announcement, see also our December 3, 2025, client alert "ISS Announces Benchmark Policy Updates for the 2026 Proxy Season."

²⁹See ISS' "Proposed ISS Benchmark Policy Changes for 2026" (Oct. 30, 2025).

³⁰See ISS' "Americas Proxy Voting Guidelines, Benchmark Policy Changes for 2026: U.S., Brazil, Canada, and Americas Regional" (Nov. 25, 2025).

Nonemployee director pay: ISS will expand its ability to make adverse vote recommendations in the first year if unreasonable or problematic director pay is identified or if a pattern of these practices occurs across nonconsecutive years (whereas the current policy's timeline requires two consecutive years of such practices). ISS further notes that the identification of a problematic director-pay practice does not guarantee an adverse recommendation and that director pay levels that marginally exceed the relevant threshold in the absence of other problematic practices or a multiyear pattern would continue to receive warnings without an adverse vote recommendation.

Say-on-pay responsiveness: In light of recent SEC guidance on 13-G versus 13-D filing status for institutional investors that may deter such investors from engaging on executive pay to preserve their institution's passive status, ISS will implement a policy change to allow more flexibility for companies to demonstrate responsiveness to low say-on-pay support despite the possibility of limited investor responses to outreach efforts. Specifically, ISS adapted its say-on-pay responsiveness policy so that if a company discloses meaningful engagement efforts but is unable to obtain specific feedback, ISS would assess the company's specific actions taken in response to the unfavorable say-on-pay vote and rationale for such actions. Also, the policy clarifies that ISS will consider as an additional factor in assessing say-on-pay responsiveness whether low say-on-pay support occurs in connection with proxy contests, mergers, bankruptcy, significant board turnover or other unusual circumstances.

Long-term alignment in pay-for-performance evaluation: ISS will update the U.S. pay-for-performance quantitative screens to assess pay-for-performance alignment over a longer time horizon, considering a five-year rather than a three-year period, while also assessing short-term pay quantum.

Time-based equity awards with long-term time horizons: For the pay-for-performance qualitative review, ISS indicated it will apply a more flexible view of permissible pay mixes, so that an equity-based compensation program that heavily features time-based awards in the pay mix may be viewed positively, as long as the time-based awards have sufficiently long time-vesting schedules. The policy update also clarifies that realized pay outcomes may be considered alongside realizable and granted pay.

Enhancements to the equity plan scorecard: ISS’s policy update adds a new scoring factor under the “Plan Features” pillar that assesses whether plans that include nonemployee directors disclose limits on cash awards (which is considered best practice). The update also introduces a new negative overriding factor for equity plans found to be lacking sufficient positive features under the Plan Features pillar, to address previous cases where plans reached an overall passing score under the ISS’ Equity Plan Scorecard despite receiving a poor Plan Features pillar score.

Glass Lewis Guidance

In October 2025, Glass Lewis announced significant changes to its quantitative pay-for-performance model, effective in 2026, intended to provide a more comprehensive view of pay-for-performance alignment.³¹ In December 2025, Glass Lewis published its 2026 Benchmark Policy Guidelines for the United States, which included the compensation updates in effect for the 2026 proxy season. The key compensation updates and guidelines effective for the 2026 proxy season are summarized below.

- **Pay-for-performance methodology update:** The firm will replace its current A-F letter grade system with a new 0-100 numerical scorecard system, with various ranges corresponding to an associated concern level (e.g., Negligible, Low, Medium, High or Severe). Glass Lewis may consider the following six tests, and will aggregate the resulting ratings on a weighted basis to determine an overall score between 0 and 100, inclusive:
 - i. Granted CEO pay vs. total shareholder return (TSR).
 - ii. Granted CEO pay vs. financial performance.
 - iii. CEO short-term incentive (STI) payouts vs. TSR.
 - iv. Total pay granted to named executive officers (NEO) vs. financial performance.
 - v. CEO compensation actually paid (CAP) vs. TSR.
 - vi. Qualitative factors (Downward Modifier).

However, qualitative factors may also inform Glass Lewis’ voting recommendation and could potentially provide sufficient rationale for a positive voting recommendation even if quantitative tests signal a disconnect between pay and performance. Such qualitative factors include: (a) overall incentive structure; (b) trajectory of the program and disclosed future changes; (c) operational, economic and business context for the prior year; (d) relevance of selected performance metrics; and (e) reasonable long-term payout levels.

³¹ See Glass Lewis’ “Pay-for-Performance: An Updated Model for Insights Across Companies and Regions” (Oct. 1, 2025).

- **Equity awards — vesting periods for long-term incentives:** Previously, Glass Lewis had noted that performance periods of at least three years were common to most well-structured long-term incentive (LTI) plans. Glass Lewis will now expand this to “vesting and/or performance periods” of at least three years, indicating that the firm does not always view the absence of performance-based equity awards as problematic. Glass Lewis notes that changes to LTI program structure that result in significant reductions or elimination of performance-based vesting conditions will be assessed on a case-by-case basis, and cautions that investors are likely to view such changes negatively if the shift to time-based awards is not coupled with meaningful changes to other aspects of the company’s LTI program.

Starting in 2027, the Glass Lewis will transition from standard proxy voting guidelines to differentiated, client-specific voting frameworks reflecting individual investment philosophies and stewardship priorities.

Recommended Next Steps

Overall, proxy advisory firms, institutional investors, the news media, activist shareholders and other stakeholders continue to shine a spotlight on companies’ executive compensation programs.

- This year’s proxy season provides an opportunity for companies to clearly disclose (i) the link between pay and performance and (ii) efforts to engage with shareholders about executive compensation.
- As always, these disclosures should explain the company’s rationale for selecting (i) particular performance measures for performance-based pay and (ii) the mix of short-term and long-term incentives.
- Companies should also carefully disclose the rationale for any increases in executive compensation, emphasizing the link between such increase and specific individual and company performance.

In the year following a say-on-pay vote, proxy advisory firms conduct a thorough review of companies where say-on-pay approval votes fell below a designated threshold: 70% for ISS and 80% for Glass Lewis. ISS’ FAQ explains that this review involves investigating the following:

- The breadth, frequency and disclosure of the compensation committee’s stakeholder engagement efforts.
- Disclosure of specific feedback received from investors who voted against the proposal.
- Actions taken to address the low level of support.

- Other recent compensation actions.
- Whether the issues raised were recurring.
- The company's ownership structure.
- Whether the proposal's support level was less than 50%.

Taking actions to address to these factors can result in effective stakeholder engagement efforts and robust disclosures.

Looking ahead to 2026, companies that received say-on-pay results below the ISS and Glass Lewis review thresholds should consider enhancing disclosures of their shareholder engagement efforts in 2025 and the specific actions they took to address potential shareholder concerns. Companies that fail to conduct sufficient shareholder engagement efforts and to make these disclosures may receive negative voting recommendations from proxy advisory firms on say-on-pay proposals and compensation committee member reelection.

Recommended actions for such companies include the following:

- **Assess results of the most recent say-on-pay vote.** As part of this analysis, identify which shareholders were likely the dissenting shareholders and why.
- **Engage key company stakeholders by soliciting and documenting their perspectives on the company's compensation practices.** Analyze stakeholder feedback, determine recommended next steps and discuss findings with relevant internal stakeholders, such as the compensation committee and the board of directors.
- **Review ISS and Glass Lewis company-specific reports and guidance to determine the reason for their vote recommendations in 2025.** Carefully consider how shareholders and proxy advisory firms may react to planned compensation decisions for the remainder of the current fiscal year and recalibrate as necessary. For example, consider compensation for new hires, leadership transitions and any special one-time grants or other arrangements.
- **Determine, document and provide fulsome disclosure of the changes the company will make to its compensation policies** in response to shareholder feedback.
- **Disclose specific shareholder engagement efforts and results in the 2026 proxy statement.** These disclosures should include information about the shareholders engaged, such as the number of them, their level of ownership in the company and how the company engaged them. This disclosure should also reflect actions taken in response to shareholder concerns, such as a company's decision to offer more detailed disclosures or to adjust certain compensation practices.

Companies that have not changed their compensation plans or programs in response to major shareholder concerns should

consider disclosing (i) to the extent investor feedback was received, a brief description of those concerns; (ii) a statement that the concerns were reviewed and considered; and (iii) an explanation of why changes were not made and how that decision was reached, including factors considered and the process followed.

Say-on-Golden-Parachute Proposal Results

Golden parachute support increased in 2025. Average shareholder support for say-on-golden-parachute proposals increased while the failure rate significantly decreased.³²

Say-on-golden-parachute votes historically have received lower support than annual say-on-pay votes. However, in 2025, average support for golden parachute proposals increased to 84% (from 79% in 2024).³³

Furthermore, in a significant reversal from 2024 — when failure rate for say-on-golden-parachute proposals reached an all-time high of 17%, the failure rate for such proposals in 2025 decreased to 5%. ISS notes that changes in the say-on-golden-parachute failure rate tend to follow trends in the median golden parachute value. In 2025, the median CEO golden parachute compensation decreased by 31% — from \$13.9 million in 2024 to \$9.6 million in 2025.³⁴

Equity Plan Proposal Results

The average support for equity plan proposals decreased in 2025:

- ISS reports that median support level for equity plan proposals declined from 93.7% in 2024 to 92.3% in 2025 — the lowest level since 2014. The failure rate of equity plan proposals also increased slightly from 0.9% to 1%.³⁵
- Similarly, Semler Brossy reports that average vote support for 2025 equity plan proposals as of June 2025 (87.7%) was 10 basis points below the average vote support observed at the same time in the previous year (87.9%).³⁶
- ISS recommended “Against” votes on 30.7% of equity proposals this year, the highest rate in the past ten years.³⁷
- Average support for equity proposals that received an ISS “Against” recommendation as of June 2025 (75%) aligned with average vote support observed for companies that received an ISS “Against” in the past decade (76%).³⁸

³² See ISS' “2025 Proxy Season Review: United States – Executive Compensation” (Aug. 28, 2025).

³³ See *id.*

³⁴ See *id.*

³⁵ See *id.*

³⁶ See Semler Brossy report “2025 Say on Pay & Proxy Results” (June 26, 2025).

³⁷ See *id.*

³⁸ See *id.*

Despite the overall decline in support for equity plan proposals, most companies still garner majority support from shareholders for equity plan proposals regardless of the ISS recommendation:

- As of June 2025, Russell 3000 companies receiving an “Against” recommendation for equity plan proposals still received 75% support for the proposals.³⁹
- The average vote result for companies that received an ISS “Against” recommendation was 18% lower than for companies that received an ISS “For” recommendation as of June 2025.⁴⁰

ISS Equity Plan Scorecard

For 2025, ISS presented no new factors (and no changes to factor weightings or passing scores) for any of the Equity Plan Scorecard models, though as noted above, ISS indicated that it is contemplating adjusting its Equity Plan Scorecard for meetings on and after February 1, 2026.⁴¹

Other Proxy Advisory Firm Takeaways

Each year, companies should consider whether to update the compensation benchmarking peers included in ISS’ database. ISS uses these company-selected peers when it determines the peer group it will use to evaluate a company’s compensation programs. This year, ISS accepted these updates from November 10, 2025, to November 21, 2025.⁴² As of the date of this checklist, ISS has not yet constructed the updated peer groups.

Track Potential Updates to Compensation Disclosure Rules

On June 26, 2025, the SEC hosted a roundtable with representatives from public companies, investors, industry groups and advisors, seeking input on whether the information provided to investors under the current executive compensation disclosure rules is sufficiently useful in light of the cost and burden of compliance.

Major topics discussed included:

- Whether the Item 402 disclosure requirements should become simplified and more practice-based in order to more closely align with the decision-making processes of corporate boards and compensation committees when designing and setting executive compensation.
- Whether an “every dollar matters” approach to disclosing perquisites is preferable or whether to increase the aggregate

disclosure threshold of \$10,000 per fiscal year, as well as what types of benefits to classify as perquisites, particularly in the case of executive security benefits and their impact on companies’ decision-making regarding these expenses.

- New ways to visualize compensation (*e.g.*, revising or eliminating tables and replacing them with disclosure showing target compensation decisions measured against realized performance outcomes).

The SEC solicited public comments to inform its next steps, which may include issuing a concept release or a rulemaking proposal.⁴³ Given the feedback received, simplifying changes to executive compensation disclosure rules may be on the horizon for future proxy seasons, although no such changes are expected to take effect for proxy statements filed in 2026.

Plan for the Fourth Year of Pay-Versus-Performance Disclosures

Pay-versus-performance (PvP) disclosure rules made headlines when they were adopted in 2022, given that they required a number of new complex and quantitative disclosures regarding executive compensation. Calendar-year companies were required to include this disclosure for the first time in their proxy statements filed in 2023. Companies should now incorporate lessons learned during the 2025 proxy season to prepare for the fourth year of PvP disclosure.

Overview

Item 402(v) of Regulation S-K contains the PvP disclosure requirements, which consist of three main components: (i) a PvP table that includes metrics from the previous five fiscal years such as CEO and NEO “compensation actually paid” (CAP), cumulative TSR for the company and its peer groups, financial performance measures and the company’s net income; (ii) a tabular list of financial measures that the company selected to link CAP to the performance metrics; and (iii) a description of the relationship between CAP and the company’s performance metrics.

Specifically, the PvP table requires disclosure of:

- The total compensation of the CEO and the average total compensation of the other NEOs, using the information required to be reported in a Summary Compensation Table.
- The compensation “actually paid” to the CEO and the average total compensation “actually paid” to the other NEOs, calculated in accordance with Item 402(v), along with footnote disclosure of any amounts deducted and added to total

³⁹See *id.*

⁴⁰See *id.*

⁴¹See ISS FAQ “United States Equity Compensation Plans” (Dec. 16, 2024).

⁴²See ISS “Company Peer Group Feedback” (2025).

⁴³See our June 30, 2025, client alert “SEC Signals Coming Changes to Executive Compensation Disclosure.”

compensation of the NEOs to determine the amount of compensation “actually paid.”

- The TSR of both the company and its peer group.
- The company’s net income (under GAAP).
- A “company-selected measure” (CSM) — a financial performance measure selected by the company that in the company’s assessment represents the single most important financial measure used for the most recently completed fiscal year to link the company’s performance to CAP to the company’s NEOs.

Listing important financial measures: Companies also must provide an unranked tabular list of at least three and up to seven financial performance measures (tabular list) that in each company’s assessment represent the most important financial performance measures the company used for the most recently completed fiscal year to link CAP for the company’s CEO and other NEOs to the company’s performance. A company may include nonfinancial performance measures in this list if those measures are among the most important performance measures used by the company to link CAP to performance and the company has disclosed at least three financial performance measures (or fewer, if the company uses fewer than three).

Describing the relationship between pay and performance: Using values reflected in the PvP table, a company is required to describe: (i) the relationship between (a) the CAP to the CEO and the average total CAP to the other NEOs and (b) the company’s TSR, its net income and the CSM; (ii) how the company’s TSR relates to the TSR of its peer group; and (iii) the relationship between (a) the CAP to the CEO and the average total CAP to the other NEOs and (b) any supplemental measures voluntarily included in the PvP table. Companies can describe these relationships through a narrative discussion, a graphic presentation or a combination of both.

Supplemental Disclosures

A company may supplement the disclosure by providing PvP disclosure (in tabular format or otherwise) based on other compensation measures such as “realized pay” or “realizable pay” if the company believes such supplemental disclosures provide useful information about the relationship between the compensation paid and the company’s financial performance. The supplemental disclosure, however, must be clearly identified as supplemental, and may not be misleading or presented more prominently than the required PvP disclosure. In practice, such supplemental disclosures are uncommon.

Covered Issuers

- All reporting companies that file proxies or information statements that require executive compensation disclosure are required to comply with this rule.
- Smaller reporting companies (SRCs) are subject to scaled disclosure requirements. SRCs are not required to provide the peer group TSR or a CSM in the PvP table, or include a tabular list. SRCs are only required to include three years of data in the PVP table.
- Emerging growth companies (EGCs), FPIs and registered investment companies (other than business development companies) are entirely exempt from the disclosure requirements.
- A newly public company is required to file disclosure only for the years in which the company was a reporting company pursuant to Section 13(a) or Section 15(d) of the Exchange Act.

Time Period

Companies must disclose the applicable information for their five most recently completed fiscal years (three years were required in the first year of PvP disclosure, and another year of disclosure was added in each of the two subsequent annual filings). Therefore, for proxy statements filed in 2026, calendar-year public companies will generally include data for the full five fiscal years in their PvP tables.

Applicable Filings

The PvP disclosure is required in any proxy or information statement that is required to include executive compensation disclosure, including those regarding the election of directors.

The disclosure is not required in annual reports on Form 10-K, Securities Act registration statements or Exchange Act registration statements (e.g., registration statements on Form S-1 for IPO companies).

CDI Guidance

In 2023, the SEC released three sets of C&DIs relating to PvP disclosure. These C&DIs help clarify general disclosure and calculation requirements and provide guidance for identifying peer group(s) and CSM.⁴⁴ For a detailed summary of these C&DIs, please refer to our Matters To Consider for the 2024

⁴⁴ See our February 28, 2023, client alert “[SEC Guidance Clarifies Some Issues Regarding Pay-Versus-Performance Disclosure, but Leaves Questions Unanswered](#)”; September 29, 2023, client alert “[SEC Staff Issues Additional Pay-Versus-Performance Compliance & Disclosure Interpretations](#)”; and November 27, 2023, client alert “[SEC Staff Issues New and Revised Pay-Versus-Performance Compliance & Disclosure Interpretations](#).”

Annual Meeting and Reporting Season checklist.⁴⁵ The SEC has not released any C&DIs related to PVP to date in 2025.

SEC Comment Letters on PVP Disclosure

SEC comment letters on PVP disclosure have generally focused on insufficient relationship disclosure, failure to describe how non-GAAP CSMs are calculated from audited financial statements, failure to include net income (loss) as reported in the company's audited GAAP financial statements, and inaccurate CAP table headings/descriptions, among other issues. Below are common triggers for SEC comment letters on PVP disclosure:

Insufficient Disclosure

- Failing to include CAP footnote disclosure for prior years if it is material to an investor's understanding of the information in the PVP table for the most recent fiscal year (*e.g.*, if the company corrects/revises CAP amounts disclosed for prior years but only includes CAP footnote disclosure for the most recent fiscal year).
- Failing to clearly describe the relationship between (a) CAP and (b) TSR, net income, CSM and any supplemental performance measures/metrics.
- Stating that no relationship exists is not compliant (even if a particular measure such as net income is not used in setting compensation).

Calculation Errors

- Using a date other than the required measurement point for TSR calculations.
- Valuing awards that vest during the year based on a year-over-year change, rather than valuing such awards as the difference between the fair value at the end of the prior fiscal year and the vesting date.
- Calculating TSR based upon an initial fixed investment other than \$100.
- Failing to show each of the numerical amounts deducted and added in CAP calculations.
- Using net earnings (loss) attributable to shareholders instead of the net earnings (loss) amounts reported in the company's audited GAAP financial statements. (SEC staff is reconciling against such figures as reported in company filings).

⁴⁵ See our December 12, 2023, checklist "[Matters To Consider for the 2024 Annual Meeting and Reporting Season](#)," pp. 19-21.

CSM Errors

- Using a CSM with a measurement period that spans multiple years, even if the measurement period does not exceed one year.
- Failing to disclose how the CSM is calculated from the audited financial statements if the CSM is not a financial measure under generally accepted accounting principles.
- Incorporation by reference to a separate filing will not satisfy the disclosure requirement; only a cross-reference within the proxy statement is appropriate.
- Failing to include the CSM in the tabular list.

Peer Group Errors

- Using a broad market index (instead of a peer group that is a published industry or line-of-business index, or, if applicable, companies used in the compensation discussion/analysis).
- Failing to present the peer group TSR information for each of the years in the PVP table using the peer group for the most recent year in the table, if the peer group has not changed from the immediately preceding fiscal year.
- Failing to provide footnote disclosure explaining a change of peer groups and the cumulative TSR comparisons against the immediately preceding fiscal year.
- Failing to list all companies that comprise the peer group if it is not a published industry or line-of-business index.

Graphic, Format and Miscellaneous Issues

- Failing to ensure that additional disclosures are clearly identified as supplemental, are not misleading and are not presented more prominently than the required PVP disclosure.
- Failing to use clear descriptions or legends accompanying the relationship disclosure to explain information in the graph.
- Failing to use table headings that accurately reflect the amounts used to calculate CAP.

The Impact of AI on PVP

With the increasing adoption of generative AI, companies should be prepared for the possibility that investors, advisory firms and plaintiffs' attorneys will use AI tools to analyze their proxy statements. AI review tools present the prospect of a black-and-white observational analysis, informing decisions (such as voting recommendations, or judgments as to compliance with Regulation S-K Item 402) based on rapid analysis of proxy disclosures against publicly available shareholder advisory guidelines

and SEC rules.⁴⁶ AI analysis is particularly applicable to PvP disclosure, offering investors shortcuts to analyze PvP data and to uncover foot faults when companies inadvertently fail to comply with PvP's complex rules. Therefore, companies should take extra care to ensure that their PvP and other proxy statement disclosures align with the applicable disclosure rules.

Preparing for 2026 PvP Disclosure

In addition to reviewing the company's approach to PvP disclosure in the prior year and SEC guidance and comment letters, a company should generally consider the following as it prepares for the fourth year of PvP disclosure:

- Companies will need to include the full five years of data in their PvP tables (including the four years previously disclosed and data for the most recently completed fiscal year).
- Companies should update their CSMs as needed by evaluating the single most important financial performance measure (not otherwise included in the table) that the company used in the most recently completed fiscal year to link CAP to the company's performance.
- Companies should consider their tabular lists of financial performance measures and update as needed to reflect the most important financial measures (including the CSM) used for the most recent fiscal year to link CAP to company performance.
- Companies should confirm that their measurement periods for their CSMs do not span years (i.e., a CSM with a one-year period where the factor's calculated measurement period is more than one fiscal year).
- If a company will use a different peer group in its fourth-year PvP disclosure, the company must explain the reason for the change in a footnote and provide comparison information for both the old and the new peer groups.

Footnote disclosure of CAP adjustments is only required for the most recent fiscal year (if the company otherwise included CAP adjustments in prior years' disclosure and such prior years' disclosure is not otherwise material to an investor's understanding of the information in the PvP table for the most recent fiscal year).

⁴⁶ See Choonsik Lee and Matthew E. Souther, *Columbia Blue Sky Blog*, "AI Might Make a Great Proxy Advisor" (Aug. 18, 2025); see also Equilar, "How an AI Disclosure Search Tool Is Taking the Governance World by Storm" (Feb. 27, 2025) (demonstrating how the AI search tool ERIC simplifies and expedites the proxy review process).

Prepare for 2026 Pay Ratio Disclosures

SEC rules require companies to disclose their pay ratios, which compare the annual total compensation of the median company employee to the annual total compensation of the CEO (pay ratio).⁴⁷

Companies must consider annually when preparing the mandatory pay ratio disclosures whether the same median employee may be used again for the upcoming year, and, if not, what new factors to use to identify the median employee.

Determining Whether To Use the Same Median Employee

Under Regulation S-K Item 402(u) Instruction 2, a company only needs to determine its median employee once every three years, unless it had a change in the employee population or compensation arrangements that could significantly affect the pay ratio. This requires companies to assess annually whether their workforce compositions or compensation arrangements have materially changed.

When selecting a median employee for pay ratio disclosures about compensation in fiscal year 2025, companies should consider the following:

- Companies that have been using the same median employee for three years will need to redetermine the median employee for fiscal year 2025.
- Companies that were originally planning to feature the same median employee as last year should not do so if their employee populations or employee compensation arrangements significantly changed in the past year.
- Companies should evaluate how headcount changes may impact their abilities to exclude certain non-U.S. employees from their pay ratio calculations under the commonly relied upon de minimis exemption in Item 402(u)(4)(ii): Companies should calculate whether non-U.S. employees (a) in the aggregate and (b) by jurisdiction newly constitute or no longer constitute more than 5% of the company's total employees.
 - If a company's non-U.S. employees account for 5% or less of its total employees, the company may either exclude all non-U.S. employees or include all non-U.S. employees when identifying its median employee.
 - Alternatively, if over 5% of a company's total employees are non-U.S. employees, the company may exclude up to 5% of its total employees who are non-U.S. employees; provided

⁴⁷ EGCs, SRCs and FPIs are exempt from the pay ratio disclosure requirement. Transition periods are also available for newly public companies.

that the company excludes all non-U.S. employees in a particular jurisdiction if it excludes any employees in that jurisdiction, and employees excluded under Item 402(u)'s data privacy exemption count toward this limit.

- Non-U.S. jurisdictions with employees that exceed 5% of a company's total employees may not be excluded from the pay ratio calculation under the de minimis exemption, although they may be excluded under the data privacy exemption.

Even if a company uses the same median employee in its proxy statement filed in 2026 as the company used in 2025, it must disclose that it is using the same median employee and briefly describe the basis for its reasonable belief that no change occurred that would significantly affect the pay ratio. Additionally, the pay ratio must be recalculated for fiscal year 2025 (as the pay ratio itself is required to be determined every year).

To determine whether a material change occurred, companies should continue to assess the following factors:

- How has workforce composition evolved over the past year?
 - Review hiring, retention and promotion rates.
 - Consider the applicability of exemptions under the pay ratio rules:
 - Determine whether to incorporate employees from recent acquisitions or business combinations into the consistently applied compensation measure (CACM). For example, for the fiscal year in which a business combination or acquisition becomes effective, a company may exclude individuals that become its employees as the result of the business combination or acquisition, as long as the company discloses the approximate number of employees it is omitting and identifies the acquired business it is excluding.
 - Determine whether the de minimis exemption applies within the context of the company's 2025 workforce composition. As described above, under this exemption, non-U.S. employees may be disregarded if the excluded employees account for less than 5% of the company's total employees (with any employees excluded under the data privacy exemption of Item 402(u)(4)(i) counted toward this limit).
 - Analyze how the workforce used for the CACM is distributed across the pay scale and how the distribution has changed since last year.
- How have compensation policies changed in the past year compared to the workforce composition? For example, an across-the-board bonus that benefits all employees may not materially change the pay ratio, while pay for new special commissions limited to a company's sales team would.

- Have the median employee's circumstances changed since last year? Consider changes to the employee's title and job responsibilities alongside any changes to the structure and amount of the employee's compensation, factoring in the company's broader workforce composition. Additionally, if the median employee role was terminated, companies must identify a new median employee.

Although the SEC provides companies with substantial flexibility in calculating their pay ratios, to satisfy the SEC staff and engage with investors, employees and other stakeholders, companies should continue to diligently document and disclose their pay ratio methodology, analyses and rationale.

Pay Ratio Disclosure Impacts on Investors, Stakeholders and Proxy Advisors

In its final rule on pay ratio disclosure, the SEC explained that the pay ratio disclosure is intended to provide shareholders with a company-specific metric to assist their evaluation of the company's executive compensation practices.⁴⁸ Accordingly, proxy advisory firms ISS and Glass Lewis include company pay ratios as an informational data point in their company reports. However, ISS does not consider pay ratio disclosure when making voting recommendations.⁴⁹ Similarly, while Glass Lewis recognizes that the CEO pay ratio has the potential to provide additional insight when assessing a company's pay practices, the ratio is not a determinative factor when Glass Lewis issues a voting recommendation.⁵⁰

Although pay ratio disclosure rarely influences the voting recommendations made by proxy advisory firms at this time, companies should remain aware that investors and other stakeholders may be comparing CEO pay ratios among companies and year-over-year at individual companies when assessing pay practices and making voting decisions.

Review Clawback Policies

Background

As required by the Dodd-Frank Act, in October 2022, the SEC adopted final rules (Rule 10D-1 of the Exchange Act) that directed the stock exchanges to establish clawback listing standards. The rule called for listed companies to develop and implement a policy providing for (i) the recovery of erroneously

⁴⁸ See the SEC's final rule "Pay Ratio Disclosure" (Aug. 5, 2015), p. 9.

⁴⁹ See ISS' "United States Executive Compensation Policies Frequently Asked Questions" (updated Dec. 13, 2024), p. 26.

⁵⁰ See Glass Lewis' "2025 Benchmark Policy Guidelines – United States" (updated Mar. 10, 2025), p. 62.

awarded incentive-based compensation received by current or former executive officers, as defined under Rule 16a-1(f) under Section 16 of the Exchange Act, and (ii) related disclosure obligations, even if there was no misconduct or failure of oversight on the part of an individual executive officer.⁵¹

While clawback policies that track to the clawback listing standards appear straightforward, companies are discovering that implementation of the policies may be more challenging than anticipated. Publicly listed companies should periodically assess whether to take the short-term, medium-term and long-term actions set forth below with respect to their clawback policies. Companies should also stay tuned for potential changes to the clawback listing standards and clawback disclosure obligations. At the SEC Executive Compensation Roundtable on June 26, 2025, certain remarks indicated that the SEC may be reevaluating the clawback rules in light of their complexity and the relative absence of companies' analysis of their accounting errors in response to the clawback rules to date.⁵²

Operational Matters for Dodd-Frank Clawback Policies

Short-Term Action Items

- **File the clawback policy as an annual report exhibit and ensure the annual report cover page is updated.** The Dodd-Frank clawback rules require listed companies to file their clawback policies as exhibits to their annual reports on Form 10-K, 20-F or 40-F, as applicable. Companies should consider whether to voluntarily file any stand-alone supplemental clawback policies that exceed the Dodd-Frank clawback rules' requirements.
- **Review the look-back period.** While the rules provide for the recovery of erroneously awarded incentive-based compensation during the three years prior to the date of the accounting restatement, such look-back period is only required to apply to incentive-based compensation received on or after October 2, 2023. Therefore, the look-back period for 2026 may be less than the three-year requirement. For newly public companies, the look-back period is the later of October 2, 2023, or the date the company listed its securities on Nasdaq or the NYSE.

Medium-Term Action Items

- **Determine which executive officer compensation is incentive-based compensation.** The Dodd-Frank clawback rules apply to "incentive-based compensation," which is "any

⁵¹ For a review of the Dodd-Frank Act clawback rules and related disclosure requirements, see our November 2, 2022, client alert "[SEC Adopts Final Clawback Rules and Disclosure Requirements](#)" and our June 16, 2023, client alert "[SEC Approves Stock Exchange Rules for Dodd-Frank Clawbacks](#)."

⁵² See SEC's [Statement: Remarks at the Executive Compensation Roundtable from Commissioner Mark T. Uyeda](#) (June 26, 2025).

compensation that is granted, earned, or vested based wholly or in part upon the attainment of any financial reporting measure."⁵³ Before a potential accounting restatement arises, listed companies should ascertain which of their executive officer compensation arrangements qualify as incentive-based compensation.

- Annual performance-based bonuses set based on achievement of financial reporting measures qualify as incentive-based compensation, as do many equity awards that vest based on achievement of performance conditions, such as performance-based restricted stock units that vest based on financial reporting measures such as total stockholder return.
- Other types of executive officer compensation may feature incentive-based compensation more implicitly as an underlying variable, making aspects of the compensation incentive-based. For example, if a company's executive officer severance plan provides a pro rata bonus for the year of termination of employment that is paid based on actual company performance and is payable when bonuses are normally paid to actively employed executives, that element of severance could potentially be recoverable as erroneously awarded incentive-based compensation.
- For companies that have a variety of *ad hoc* compensation arrangements with their executive officers, the importance of taking inventory of which arrangements would be incentive-based compensation is heightened. Such preparation can be crucial to positioning companies with complex and varying compensation arrangements to meet the requirement of recovering erroneously award incentive-based compensation "reasonably promptly" if their clawback policies are triggered.
- **Reflect on the rationale for and documentation of forms of executive compensation.** The scope of the "incentive-based compensation" definition in the SEC's clawback rules means that time-based equity awards, bonuses and other forms of compensation that do not contain performance metrics can fall into the category of "incentive-based compensation" if they are granted in consideration of attainment of a past financial reporting measure. For example, if, in recognition of outstanding revenue performance during 2024, a company granted cash bonuses in 2025 that vest solely based on time-vesting criteria over the next three years, those bonuses would be incentive-based compensation. Therefore, companies should be aware that if they are documenting the rationale for executive compensation as based on prior financial reporting measure performance (whether implicitly or explicitly) in compensation committee resolutions, the Compensation Discussion &

⁵³ See the SEC's final [Listing Standards for Recovery of Erroneously Awarded Compensation](#) (Oct. 26, 2022).

Analysis sections of their proxy statements, their executive offer letters or otherwise, that rationale could bring compensation under the umbrella of incentive-based compensation that would have otherwise been excluded from clawback policies, which could meaningfully increase the scope of recoverable compensation if a clawback policy is triggered.

- **Reinforce the importance of an open line of communication between the accounting, finance, HR and legal functions.** If an accounting restatement occurs, various functions such as accounting, finance, HR and legal, along with the company's audit committee and compensation committee, will need to collaborate to determine (i) whether, and the extent to which, the accounting restatement triggers application of the clawback policy and (ii) the process for compensation recovery, if applicable.

Long-Term/As-Needed Action Items

- **If stock price or TSR is an input to incentive-based compensation, consider which advisor(s) to engage.** The Dodd-Frank clawback rules do not prescribe how to determine the amount of incentive-based compensation to recover if the underlying financial performance metric is stock price or TSR. Determining how an accounting restatement impacts stock price and TSR may entail technical expertise, specialized knowledge and significant assumptions. Moreover, under Item 402(1)(i)(C) of Regulation S-K, if recovery is triggered under the company's clawback policy for a given fiscal year, the company is required to disclose an explanation of the methodology it used to determine how much incentive-based compensation related to stock price or TSR to recover, and the company must maintain and provide documentation of the determination in accordance with the applicable stock exchange listing standard.

Given the complexity of the analysis and the fact that aspects of the analysis will be disclosed externally, companies that have incentive-based compensation tied to stock price or TSR that experience an accounting restatement that triggers the company's clawback policy should consider engaging a third-party valuation expert to assist with evaluation and review.

- **Determine the means of recovering erroneously awarded incentive-based compensation.** Once erroneously awarded incentive-based compensation has been quantified, a company will need to assess how it intends to recover the amount, including the means and timing of recovery, as well as how the company plans to communicate any repayment obligation to its executive officers. Listed companies should keep in mind that certain states, such as California, have laws that generally prohibit the recovery of wages that have already been paid.⁵⁴

While the Dodd-Frank clawback rules are currently expected to preempt conflicting state law, litigation in the coming years may confirm whether and when the Dodd-Frank clawback rules apply and could indicate which means of recovery may reduce legal risk.

- **If the clawback policy is triggered, consider the tax consequences to the company and executive officers.** The Dodd-Frank clawback rules require recovery of erroneously awarded incentive-based compensation on a pretax basis. Therefore, if a company's clawback policy is triggered, the company will need to carefully assess how much of that compensation is or was properly deductible, and may be required to refund the Internal Revenue Service for deductions taken in previous years. Similarly, executive officers should work closely with tax advisors to determine how the officers' taxes are impacted by the clawback policy's application, including whether any offset is available under Section 1341 of the Internal Revenue Code of 1986, as amended, or otherwise, especially to the extent that the offset relates to erroneously awarded incentive-based compensation that was paid in a prior tax year.

The SEC's final rules noted "the extent to which a tax system allows current adjustments for tax paid in prior periods under assumptions that later prove incorrect is a matter of tax policy outside the scope of this rulemaking ... [but in] any event, we believe any resulting tax burden should be borne by executive officers, not the issuer and its shareholders."⁵⁵ Open questions about how compensation recovered under clawback policies should be taxed are expected to be answered in the coming years as companies continue to implement their initial clawback policies.

- **Disclose how the clawback policy has been applied during or after the last completed fiscal year.** Item 402(w) of Regulation S-K (or analogous disclosure provisions in the forms applicable to FPIs and listed funds) specifies disclosure requirements in the event of the application of the clawback policy during or after the last completed fiscal year, and the disclosure must be tagged in eXtensible Business Reporting Language (XBRL) format. Such disclosure applies in proxy or information statements that call for Item 402 disclosure or the listed company's annual report on Form 10-K (if not incorporated by reference to the proxy statement).

Additionally, on April 11, 2025, the SEC published C&DIs 104.20-104.25, which clarify disclosure requirements in unique circumstances involving the application of a clawback policy.⁵⁶ Companies should refer to these C&DIs if they are

⁵⁵ See the SEC's final [Listing Standards for Recovery of Erroneously Awarded Compensation](#) (Oct. 26, 2022), p. 78.

⁵⁶ See the SEC's [Compliance and Disclosure Interpretations: Update](#) (April 11, 2025).

⁵⁴ See [California Labor Code § 221](#).

contemplating whether it is necessary to mark the annual report's restatement checkboxes or to include 402(w) disclosure in their annual report, similar to such disclosure provided in the previous year's annual report.

Checkboxes on the Cover Page of Annual Reports

Companies must determine whether the checkboxes on the cover page of the annual report (copied below) are applicable regarding (i) the correction of accounting errors and (ii) a clawback analysis. These disclosures on the cover page of the Form 10-K, 20-F or 40-F must be tagged in XBRL format.

- If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements.
- Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b).

Box 1: Companies should perform a two-step process to determine whether to check Box 1:

1. Did the company correct any errors or make revisions to a previously issued financial statement or footnotes? The term "revision" encompasses (i) "Big R restatements," which correct a material error in the previously issued financial statement; (ii) "little r revisions or restatements," which correct an error that was immaterial to the previously issued financial statement (but correcting the error in the current period would materially misstate the current period); *and* (iii) any other changes.
2. Were such corrections or revisions due to accounting errors under Accounting Standards Codification (ASC) 250?
 - Revisions due to the adoption of an accounting principle that applied to previous periods (*i.e.*, retrospective changes) are not considered accounting errors.
 - Out-of-period adjustments are also not in this category.
 - Correcting errors in the application of GAAP or other mathematical errors are considered accounting errors.

Box 2: Do any of those error corrections involve restatements that require a company to determine whether it must recover incentive-based compensation under the company's clawback policy?

- As noted above, companies should also refer to C&DIs 104.20-104.25 if they are contemplating whether it is necessary to mark the annual report's restatement checkboxes.

Clawbacks Beyond the Dodd-Frank Requirements – Considering Whether To Amend or Supplement the Clawback Policy

Compensation committees (or boards of directors, if applicable) should consider at least annually whether to update the clawback policy in response to company-specific, market and/or industry trends, proxy advisory firm guidance, other clawback rules and other factors that arise in the coming years as law and norms regarding the Dodd-Frank clawback rules take shape. Such trends have not materially changed since 2024. For a detailed summary of such trends, please refer to our Matters To Consider for the 2025 Annual Meeting and Reporting Season checklist.⁵⁷

Evaluate Hart-Scott-Rodino Act Implications on Executive Compensation

Officers and directors who hold or will hold at least \$126.4 million⁵⁸ in voting securities in their companies should consider the need to make Hart-Scott-Rodino (HSR) filings whenever these individuals increase their holdings through an acquisition of voting securities. A company's annual preparation of its beneficial ownership table provides a regular opportunity to assess whether any of the company's officers or directors may be approaching an HSR filing threshold. HSR counsel can advise when exemptions are available to obviate the need to file notifications.

For HSR purposes, an "acquisition" is the receipt of new voting securities or voting power, whether formally (technically) purchased or not. An acquisition is considered to occur only when the officer or director obtains beneficial ownership of the shares (*i.e.*, receives the present right to vote for the board of directors). Therefore, acquisitions may include, without limitation:

- Grants of fully vested shares or restricted stock as a component of compensation.
- The vesting or settlement of time-based or performance-based restricted stock units.
- The exercise of stock options.
- Open market purchases of shares.
- The conversion of convertible nonvoting securities into voting shares.

⁵⁷ See our December 11, 2024, checklist "[Matters To Consider for the 2025 Annual Meeting and Reporting Season](#)," pp. 26-27.

⁵⁸ The HSR Act establishes a set of notification thresholds that are adjusted annually based on changes to the gross national product. The initial filing threshold for 2025 is \$126.4 million and new thresholds will be established in the first quarter of 2026.

- An increase in the voting power of currently held voting securities.⁵⁹

Conversely, an officer or director would not be deemed to “acquire” shares underlying time-based or performance-based restricted stock units that have not vested, or shares underlying stock options that have not yet been exercised. These underlying shares do not constitute “voting securities” prior to vesting, settlement or exercise and thus do not require reporting under the HSR Act.

Generally, an “acquisition” can trigger a filing obligation. For example, an annual grant of voting securities pursuant to an officer’s or director’s long-term incentive award can require HSR Act filings to be completed in advance of the grant, even if the value of the granted shares does not exceed a filing threshold and if the total percentage amount to be held after the effectiveness of the grant does not significantly increase the person’s aggregate holdings. By contrast, a filing requirement is not triggered solely by an increase in the value of an officer’s existing holdings from \$125 million to \$127 million, for example, as a result of share price appreciation. However, if such officer subsequently wanted to exercise a stock option to acquire more voting securities, an HSR obligation could be triggered because the value of the officer’s current holdings already exceeds the current filing threshold.

The filing requirement is triggered whenever — after the acquisition of voting securities — the aggregate value of an officer’s or director’s holdings of voting securities in the company meets or exceeds an HSR filing threshold (the lowest of which is triggered by exceeding \$126.4 million).⁶⁰ The value of the shares to be acquired⁶¹ is added to the current value, not the historical purchase price, of current share holdings to determine whether a threshold has been met or crossed.

Higher HSR reporting thresholds require additional HSR filings if an acquisition of voting securities causes an officer’s or director’s holdings to meet those thresholds.⁶² The other two

dollar amount notification thresholds are \$252.9 million and \$1.264 billion. An HSR filing is also required if the acquisition would cause the officer or director to own 25% of the issuer’s outstanding voting securities, if that issuer is valued at greater than \$2.529 billion. Similarly, an HSR filing is required if the acquisition would cause the officer or director to own 50% of the issuer’s outstanding voting securities, if the aggregate value of all shares to be held post-closing will exceed \$126.4 million.

If an HSR filing is required, both the individual and the company must make a filing and wait 30 days before completing the triggering acquisition. The filer has one year from the date the waiting period ends to cross the applicable acquisition threshold and may make additional acquisitions for five years after the end of the waiting period with no further HSR filings, provided that the filer does not acquire sufficient shares to cross an HSR threshold above the level for which the notification was filed.

The Federal Trade Commission (FTC) and the DOJ have historically followed an informal “one free bite at the apple” enforcement practice in response to certain missed HSR filings involving a mistake and inadvertent circumstances. This “free bite” may address all prior missed filings that occurred before the corrective filing. An officer or director who failed to make a required HSR filing should notify the agencies, submit a corrective filing detailing previous acquisitions, explain the missed filing, and detail how they plan to track and meet filing obligations in the future.

The FTC and the DOJ have otherwise pursued enforcement actions and may impose material civil penalties of up to \$53,088 per day⁶³ for each day of noncompliance when an officer or director fails to make a required HSR filing after submitting a corrective filing and in other non-inadvertent circumstances. Therefore, officers and directors who have made corrective filings should be especially vigilant and consult HSR counsel regularly before a potential “acquisition” event is expected to occur.

⁵⁹Note that an increase in a shareholder’s voting power (*i.e.*, holding or acquiring voting securities that provide more than one vote per share) can trigger an HSR reporting obligation, even if new shares are not technically received. This can happen when there is a change in the voting power of a class of securities that are already held by an officer or director. HSR counsel can analyze the impact of this type of change on a company’s filing requirements.

⁶⁰Under 16 C.F.R. § 801.1(h), only the lowest threshold must be exceeded. All others must merely be met.

⁶¹Several rules govern the valuation of proposed acquisitions. Publicly traded voting securities are valued at the higher of the market price and the officer or director’s acquisition price. Nonpublicly traded voting securities are valued at the acquisition price, but if this has not been determined, at fair market value.

⁶²See the FTC’s [New HSR Thresholds and Filing Fees for 2025](#) (Feb. 6, 2025) for all current notification thresholds.

⁶³The HSR civil penalty amount is adjusted by the FTC each January based on the percentage change in the consumer price index. The maximum civil penalty for an HSR violation in 2025 is \$53,088 per day, and the new maximum will be established in January 2026.

Monitor Form S-8 Share Issuance Capacity

Companies should be mindful to monitor the number of shares available for sale under their Form(s) S-8. As discussed below, the impact of share recycling provisions found in many equity compensation plans can obscure the number of shares available for sale under a Form S-8. When companies register on Form S-8 the sale of securities under an equity compensation plan, a fixed number of securities is registered for sale. Other than automatic adjustments tied to stock splits, dividends and certain antidilution provisions, that fixed number of registered securities cannot be increased without filing a new Form S-8. For purposes of keeping track of the finite capacity available under an effective Form S-8, each share associated with a compensatory award should be deducted from the total number of shares available for issuance under the Form S-8 at the time the sale of the securities occurs. In the case of full value awards such as restricted stock, restricted stock units and performance stock units, the sale occurs at grant, whereas in the case of employee stock options and stock appreciation rights, the sale occurs upon exercise of the subject award. Shares that are deemed sold must be deducted from the available capacity at the time of sale. The shares cannot be added back to the total number of shares available for issuance under the Form S-8 even if those shares are later forfeited back to the company by the grantee and revert to the equity incentive plan.

Impact of Share Recycling

Many equity incentive plans allow for share recycling under certain conditions so that shares subject to awards granted under the plan that are subsequently forfeited or surrendered revert to and replenish the share reserve available under the plan. These share recycling provisions can result in a discrepancy between the number of registered securities available for sale under the Form S-8 and the number of authorized securities available under the subject employee compensation plan.

Recommended Steps

Companies should consider separately tracking the number of registered securities available for sale under the Form S-8 and the number of authorized securities available under the subject employee compensation plan to ensure that a company does not inadvertently grant equity awards under its equity compensation plan when the Form S-8 no longer has a sufficient number of registered shares available for issuance.

Annual Meeting and Corporate Governance Trends

Assess Board Oversight of AI-Related Risk

Boards play an increasingly important role in the oversight of AI-related risk. As companies continue to expand their use of AI, it is essential that boards proactively identify, understand and address the challenges that AI may pose to their organizations by establishing effective governance frameworks and risk management strategies.

Board oversight of AI: The landscape of board oversight of AI is increasingly evolving. For example, in an NACD survey, more than 62% of the director respondents stated they now set aside agenda time for full-board AI discussions.⁶⁴ In addition, the survey found that boards are not only making key inquiries of management regarding AI technologies, including requests for updates on a company's data governance practices, but also questioning how AI could impact future workforce needs.

Effective oversight of AI is crucial due to technological advancements and rapid business adoption. Boards should closely assess the risks associated with AI, consider adopting an AI governance framework and consider conducting an audit to determine where AI is currently in use within the company.

Full board and committee oversight: There has been an increase in disclosure of AI oversight either by the full board or designated to a specific board committee. Boards should consider how to address oversight, whether at the board or committee level. Among *Fortune* 100 companies:⁶⁵

- 40% disclosed that at least one board-level committee was charged with oversight of AI matters in 2025 compared to 11% in 2024.
- 21% disclosed AI oversight by the audit committee in 2025 compared to 8% in 2024.
- 25% disclosed AI oversight by a non-audit committee compared to 8% in 2024.

Additionally, boards should reflect the assignment of such oversight and responsibilities by revising the relevant committee charter or its corporate governance guidelines.

Director expertise: Boards should consider the knowledge and experience of its directors to oversee, assess and manage AI-related risks and opportunities. Among S&P 500 companies, 20% have at least one director with AI expertise on the board.⁶⁶ As companies navigate the risks associated with AI, AI competency should be a priority for boards not only in terms of seeking directors with a certain level of expertise but also in terms of boards receiving regular updates on AI trends, risks and best practices and providing continuing education opportunities.

Board use of AI: In addition to oversight of AI, boards should also consider how the application of AI can reshape their own practices. For example, a Diligent survey found that more than 65% of directors were using or experimenting with AI.⁶⁷ The most common areas for how directors are using AI for board work include meeting preparation, summarization of board materials and benchmarking. However, given the risks associated with AI use for board work, boards should consider working with management to develop clear policies on their own use of AI.⁶⁸

⁶⁴NACD, *Survey Analysis: AI* (July 28, 2025).

⁶⁵EY, "Cyber and AI Oversight Disclosures: What Companies Shared in 2025" (Oct. 14, 2025).

⁶⁶ISS-Corporate, "AI in Focus in 2025: Boards and Shareholders Set Their Sights on AI" (Mar. 19, 2025).

⁶⁷See Diligent Institute's *Corporate Board Member*, "A Pulse Check on AI in the Boardroom" (Sept. 2025).

⁶⁸See our September 14, 2025, client alert "Do's and Don'ts of Using AI: A Director's Guide."

Consider the Benefits of a Retail Voting Program

On September 15, 2025, the staff of the SEC’s Office of Mergers & Acquisition issued a no-action letter to Exxon Mobil Corporation that allows for the adoption of a retail voting program. To address historically low retail shareholder participation, the program would permit ExxonMobil to seek standing voting instructions from retail investors to vote in accordance with the board’s recommendations. This concept, which sometimes is referred to as “client directed voting” or “advance voting instructions,” has been debated for some time. The SEC sought input on the topic in its 2010 concept release on the U.S. proxy voting system. For additional information regarding the mechanics, limitations and requirements of the retail voting program, see our [September 18, 2025, client alert](#) and the no-action request by ExxonMobil to the SEC.

We have communicated with the SEC Staff regarding the steps other companies would need to take to establish a similar program, including whether each company would need to secure its own no-action letter response from the Staff. The Staff confirmed it is open to other companies adopting similar retail voting programs and indicated that companies that closely follow the approach outlined in the ExxonMobil no-action letter do not need to secure their own no-action relief. Companies with programs that differ in structure, technology or implementation should carefully assess whether their approach substantially fits within the established parameters or whether they should seek their own no-action relief from the SEC.

While third-party service providers will not be in a position to implement a retail voting program for this annual meeting season, companies should begin evaluating the merits of establishing such a program in the future. Specifically, companies that wish to increase retail shareholder voting should analyze their shareholder base, historic retail voting patterns and the potential costs and benefits of establishing a retail voting program similar to the one ExxonMobil is implementing.

As companies assess the potential benefits of setting up a retail voting program, they also should be mindful of how certain institutional investors and industry professionals would react and monitor any related litigation.

Assess the Impact of Proxy Advisory Voting Guidelines

Proxy advisory firm ISS has announced updates to its voting guidelines,⁶⁹ and Glass Lewis has updated its voting guidelines for the 2026 annual meeting season.⁷⁰ In addition, Glass Lewis has announced that it will stop offering its standard benchmark proxy voting guidelines in 2027, transitioning clients to differentiated, client-specific voting frameworks reflecting individual investment philosophies and stewardship priorities. As noted below, ISS and Glass Lewis also continue to be subject to regulatory scrutiny and enforcement action. Coming amid this pressure, these updates, which we outline below, reflect evolving investor views, regulatory changes and ongoing legal and political pressures facing proxy advisory firms.

Companies should continue to assess the potential impact of these updates and the ongoing legal and political pressures when considering changes to their corporate governance practices, shareholder engagement and proxy statement disclosures.⁷¹

ISS Updates for 2026

ISS’ updated voting guidelines for 2026 include updated sections as well as clarifying amendments. The updates are summarized below.

- **E&S-related shareholder proposals:** ISS is adopting a fully case-by-case approach for environmental and social (E&S) shareholder proposals on diversity, political contributions, human rights and climate change, reflecting varied proposal scope, shifting investor sentiment, regulatory changes and evolving company practices. ISS notes that this update is a result of feedback received during its client engagement process.
- **Problematic capital structure — unequal voting rights:** ISS is eliminating inconsistencies in the treatment of capital structures with unequal voting rights by considering them problematic regardless of whether superior voting shares are classified as “common” or “preferred.” In extending its negative director voting policy to high-vote preferred stock, ISS added exceptions

⁶⁹For full details of the policy updates for the Americas region, including the U.S., see ISS’ [Benchmark Policy Changes for 2026 — Americas](#) (Nov. 25, 2025). ISS’ comprehensive proxy voting guidelines for 2026, reflecting these updates, are expected to be released in mid-December 2025. For ISS’ current proxy voting guidelines, see ISS’ [Proxy Voting Guidelines — United States](#) (published Jan. 9, 2025, updated Feb. 25, 2025) and [Sustainability Proxy Voting Guidelines — United States](#) (published Jan. 9, 2025, updated Feb. 25, 2025). See also our December 3, 2025, client alert “[ISS Announces Benchmark Policy Updates for the 2026 Proxy Season](#).”

⁷⁰See Glass Lewis’ [2026 Benchmark Policy Guidelines — United States](#) (Dec. 5, 2025) and [2026 Benchmark Policy Guidelines — Shareholder Proposals & ESG-Related Issues](#) (Dec. 5, 2025).

⁷¹For compensation-related updates in ISS’ and Glass Lewis’ 2026 guidelines, see the “[Incorporate Lessons Learned From the 2025 Say-on-Pay Votes and Compensation Disclosures](#)” and “[Prepare for 2026 Pay Ratio Disclosures](#)” sections of this checklist.

for convertible preferred shares that vote on an “as-converted basis” and situations where enhanced voting rights are limited in duration and applicability (e.g., high votes designed to overcome low voting turnout on “noncontroversial” agenda items). On proposals seeking to create dual-class structures, ISS will now generally recommend voting against proposals to create a new class of preferred stock with superior voting rights, subject to the exceptions above.

Unlike Glass Lewis, which will be shifting to customized voting policies in 2027, ISS has not otherwise signaled a willingness to fundamentally change its advisory model.

Glass Lewis Updates for 2026

Glass Lewis’ updated voting guidelines for 2026 include new and updated sections as well as clarifying amendments. The updates are summarized below.

- **General approach to shareholder proposals:** Glass Lewis has updated its language regarding shareholder proposals in light of the dynamic nature of, and impending changes to, the shareholder proposal process in the U.S. While prior guidance on companies’ treatment of the SEC’s former no-action process has been removed, Glass Lewis now takes a broader stance in its general approach to shareholder proposals, noting that shareholders should be afforded the opportunity to vote on matters of material importance. Glass Lewis notes that this policy may be further revised prior to or during the 2026 proxy season should its approach to these matters change or regulatory developments warrant additional updates.
- **Shareholder rights:** Glass Lewis has expanded its criteria for recommending votes against governance committee chairs, or the entire committee, if boards amend companies’ governing documents to reduce or remove important shareholder rights. Examples include amendments that: limit shareholders’ ability to submit proposals; restrict shareholders’ ability to file derivative lawsuits; and replace majority voting with plurality voting.
- **Mandatory arbitration provisions:** In light of the SEC’s recent [policy statement](#) on mandatory arbitration provisions,⁷² Glass Lewis now has an approach to such provisions. When evaluating companies’ governing documents following completion of an IPO, spin-off or direct listing, Glass Lewis will review such provisions or other potentially negative governance provisions and may recommend that shareholders oppose the election of the governance committee chair, or, in certain circumstances, the entire committee. In addition, Glass Lewis will generally recommend a vote against any bylaw or charter amendment

seeking to adopt a mandatory arbitration provision unless the company provides sufficient rationale and disclosure.

- **Amendments to governing documents:** Glass Lewis will now evaluate proposed amendments to the certificate of incorporation and bylaws on a case-by-case basis, with strong opposition to “bundled” proposals (i.e., multiple amendments under one vote). In general, Glass Lewis will recommend voting for amendments that do not materially harm shareholder interests.
- **Supermajority voting requirements:** Glass Lewis’ revised policy on supermajority voting requirements clarifies that while proposals to eliminate these requirements are evaluated on a case-by-case basis, such protections may be justified, particularly if a large or controlling shareholder exists. In these cases, Glass Lewis may oppose their elimination to safeguard minority shareholders.

Glass Lewis Ending Benchmark Proxy Voting Policy in 2027

Starting in 2027, Glass Lewis will no longer publish a single set of “benchmark” voting recommendations. Instead, it will create voting frameworks that reflect individual client investment philosophies and stewardship priorities. Glass Lewis will also move away from providing research and recommendations based on its benchmark policy, in favor of offering multiple perspectives that would capture the varied viewpoints of its clients. According to the firm, most of its clients already use custom or thematic voting policies, and the goal is to enable all clients to vote according to tailored policies by 2027.

Glass Lewis’ change comes amid a broader reshaping of the proxy voting ecosystem — alongside regulatory shifts, stewardship restructuring by major index funds and the rise of pass-through voting — reflecting a continued move toward more investor-specific and diversified approaches to proxy voting. As the proxy voting landscape becomes increasingly fragmented, companies may face greater uncertainty around voting outcomes in key shareholder votes, including contested board elections. For more information, see our October 20, 2025, client alert [“Glass Lewis To End Benchmark Proxy Voting Policy: What Companies Should Know.”](#)

Pressure on Proxy Advisors and Ongoing Litigation

State-level initiatives and other political pressures have put ISS and Glass Lewis under the microscope. Most recently, on November 20, 2025, the Florida attorney general announced an enforcement action against ISS and Glass Lewis alleging violations of state consumer protection and antitrust laws, including by jointly pushing an agenda that favors ESG demands and other directives that expose businesses to legal and financial

⁷²For more information, see our September 26, 2025, client alert [“SEC Reverses Course on Arbitration Clauses. Potentially Opening the Door to Their More Widespread Adoption.”](#)

risk. This litigation adds to the lawsuits ISS and Glass Lewis have filed against the Texas attorney general and other state officials following Texas' enactment of SB 2337, which would require proxy advisors, such as ISS and Glass Lewis, to disclose when recommendations rely on "nonfinancial" factors such as ESG or diversity, equity and inclusion considerations. In August 2025, a federal judge issued preliminary injunctions blocking enforcement of SB 2337, with trial set for February 2026.

On December 11, 2025, the White House issued an executive order intending to limit the perceived influence of ISS and Glass Lewis. The order directs, among other things:

- The FTC chair, in consultation with the attorney general, to determine whether proxy advisory firms are engaged in unfair methods of competition or unfair or deceptive acts or practices.
- The secretary of the Labor Department to strengthen ERISA fiduciary rules and increase fiduciaries' transparency regarding their use of proxy advisory firms in order to ensure proxy advisory firms and plan managers act solely in the financial interest of American workers and retirees.
- The SEC chair to do the following:
 - Review and, if appropriate, rescind or revise all rules and regulations relating to proxy advisory firms that implicate DEI and ESG priorities, as well as rules relating to shareholder proposals that are inconsistent with the purpose of the executive order.
 - Enforce the anti-fraud provisions in securities laws with respect to proxy advisory firms' voting recommendations.
 - Consider requiring proxy advisory firms to provide increased transparency on conflicts of interest and to register as investment advisers.
 - Examine whether proxy advisory firms serve as a vehicle for investment advisers to coordinate their voting decisions.
 - Assess whether ISS and Glass Lewis subscribers who are registered investment advisers have breached their fiduciary duties by engaging proxy advisory firms to advise on nonpecuniary factors (such as DEI and ESG) in investing and following those recommendations.

Companies should continue to monitor these developments, as the outcome of these litigations and any federal actions, including the December 11, 2025, executive order, could impact the obligations, timing and content of proxy advisory recommendations for the 2026 annual meeting season.

Review Shareholder Proposal Developments and New SEC Staff Guidance

Building on a surge in no-action requests in 2024, companies submitted approximately 35% more requests in 2025 while the number of submitted proposals decreased. The SEC granted approximately 70% of the requests (excluding withdrawals), in line with 2024. In February 2025, in the middle of the proxy season, the Staff published new guidance that rescinded Staff guidance issued under former SEC Chair Gary Gensler.

Notably, for the 2026 proxy season, the Staff will not provide substantive responses to no-action requests for companies' intended exclusion of shareholder proposals submitted under Rule 14a-8, with one limited exception. This policy shift will place greater responsibility on companies to make their own exclusion determinations, potentially increasing litigation risk and negative shareholder reactions for excluding shareholder proposals without the Staff's input.

Below is a brief summary of observations relating to Exchange Act Rule 14a-8 and some considerations for the 2026 proxy season.

Limited SEC Review for the 2026 Proxy Season

On November 17, 2025, the Staff published a statement regarding their planned limited role in the Rule 14a-8 process for the 2026 proxy season (October 1, 2025, through September 30, 2026). In a departure from longstanding practice, the Staff will not respond to no-action requests for, and express no views on, companies' intended exclusion of shareholder proposals submitted under Rule 14a-8 from the proxy materials. One exception is that the Staff will still respond to no-action requests to exclude a proposal under Rule 14a-8(i)(1), which permits exclusion if the proposal is not a proper subject for action by shareholders under the relevant state law.

Before the new guidance was issued, the Staff responded to no-action requests under Rule 14a-8 by either concurring or not concurring with companies' arguments for exclusion. While not binding on the SEC, the Staff's responses of concurrence provided some degree of confidence for companies to exclude the subject proposal from their proxy materials.

Under the new guidance, companies that intend to exclude Rule 14a-8 shareholder proposals from their proxy materials must still notify the Staff and proponents no later than 80 calendar days before filing a definitive proxy statement. In addition, if a company includes in the notification "an unqualified representation" that the company has a "reasonable basis to exclude the proposal based on the provisions of Rule 14a-8, prior published guidance and/or judicial decisions," the Staff will respond with a

letter indicating that, based solely on the company's representation, the Staff will not object if the company omits the proposal from its proxy materials (without expressing a view on the merits of the company's basis or bases for exclusion). Notably, the guidance provides that the absence of a prior Staff response or a contrary Staff response does not preclude a company from forming a reasonable basis to exclude the proposal.

While it remains unclear how the uncertainty created by the Staff's new guidance would impact the Rule 14a-8 practices of companies and proponents, companies are expected to continue to analyze and document their basis or bases for excluding any proposal from their proxy materials. The Staff's limited involvement in the Rule 14a-8 process also means that companies may want to consider a broader audience beyond the Staff for any notification provided to the Staff and the proponent for excluding the proposal.

2025 Proxy Season Summary

Fewer Submitted Proposals, More No-Action Requests

For the 2025 proxy season, some noteworthy patterns emerged. Even as the total number of submitted proposals decreased approximately 14%, companies submitted approximately 35% more no-action requests than they did for the 2024 season — to overall success, with the Staff granting more than two-thirds of requests (excluding withdrawals). The season built on the momentum for companies from 2024, when companies submitted a significantly higher number of no-action requests reversing the trend of more limited no-action request submissions.

On February 12, 2025, in an unexpected twist in the middle of the 2025 proxy season, the Staff issued [Staff Legal Bulletin No. 14M](#) (SLB 14M), which rescinded Biden-era Staff guidance and addressed, among other topics, the “economic relevance” and “ordinary business” bases for excluding proposals. SLB 14M also clarified that the substantial implementation, duplication and resubmission bases for exclusion were to be applied consistent with prior SEC and Staff guidance rather than with the 2022 proposed amendments to Rule 14a-8 that had not been adopted.

Although the Staff's decision-making process on some no-action requests remained unclear, the increased success rates in 2024 and 2025 and SLB 14M indicated that the process remains a viable mechanism to exclude many shareholder proposals.

Highlights of Specific Proposal Topics

Environmental and social (E&S) proposals: For the ninth year in a row, E&S proposals outnumbered governance proposals, with 479 E&S proposals submitted compared to 291 governance-focused proposals, but the number of E&S proposals decreased almost 25%

from 2024. Unsurprisingly, more E&S proposals than governance proposals ultimately landed on companies' ballots, with 231 E&S proposals voted on versus 191 governance proposals.

- Consistent with the general trend of decreased support for E&S shareholder proposals in 2025, only five E&S proposals received majority support, up from three in 2024. All of the five E&S proposals that received majority support related to disclosure of political contributions.
- The number of environmental proposals declined, with 145 proposals submitted in 2025 compared to 205 proposals in 2024.
- Average support for environmental proposals that appeared on ballots continued to decline — to 11% compared to 18% in 2024.
- Proposals addressing social issues also decreased in 2025 over 2024, with 334 social proposals submitted compared to 414 in 2024. The number of social proposals voted on decreased to 156 proposals versus 266 in 2024.
 - Average support for these social proposals decreased to 11% compared to 15% average support for social proposals in 2024.
 - Only five social proposals received majority support in 2025, compared to one proposal that received majority support in 2024, but all five proposals related to disclosure of political contributions.

According to ISS data, average support for E&S proposals through June 30, 2025, continued to decline and was well below the 2021 high-water marks, even excluding the impact of proposals ISS classifies as anti-ESG (which typically receive low, single-digit support). Notably, ISS recommended voting in favor of 10% of E&S proposals through June 30, 2025, compared to 43% in 2024.

Similarly, BlackRock voted in favor of fewer than 2% of E&S proposals globally for the 12 months ended June 30, 2025 (down from 4% for the prior 12 months), observing that “many [E&S proposals] were overreaching, lacked economic merit, or sought outcomes that were unlikely to promote long-term financial value” and that the majority “addressed business risks that companies already had processes in place to address, making them redundant.” Vanguard did not support a single U.S. E&S proposal during the 12 months ended June 30, 2025 (for the second straight proxy year), noting that the proposals “did not address financially material risks to shareholders ... or were overly prescriptive in their requests” or Vanguard “did not identify a gap in the given company's practices or disclosures that the proposal would address.”

Governance proposals: Compared to the 2024 season, more proposals concerning governance topics were voted on: 191 compared to 178 in 2024.

- 46 governance proposals received majority support in 2025, up from 45 in 2024.
- The most popular governance topic in 2025 was requests to provide or reduce thresholds for shareholders to call a special meeting, with 64 proposals coming to a vote. Nine of these proposals received majority support in 2025 and average support was 33%, down from the 43% average support these proposals received in 2024.
- 28 independent board chair proposals proceeded to a vote in 2025, with average support of 32% and none receiving majority support.
- 31 supermajority voting-related shareholder proposals proceeded to a vote in 2025, with average support of 71% and 22 receiving majority support.
 - For 11 proposals that management did not oppose, average support was 96%. By contrast, for 20 proposals that management recommended voting against, average support was 61%.
- 10 written consent proposals proceeded to a vote in 2025, with average support of 26% and one receiving majority support.
 - This was similar to 2024, where eight written consent proposals went to a vote with average support of 37% and none receiving majority support.

Executive compensation proposals: The number of executive compensation-related proposals submitted in 2025 decreased to 58 from 72 in the 2024 proxy season. The number of proposals that moved forward to a vote also decreased — to 48 in 2025 from 56 in 2024. The proposals voted on in 2025 had higher average support of 18%, compared with 15% in 2024. Once again, none of the compensation-related proposals received majority support in 2025.

The most common executive compensation proposal type requested adoption of a policy that the board of directors seek shareholder approval of any senior manager’s new or renewed pay package that provides for severance or termination payments — including the vesting of equity awards — with an estimated value exceeding 2.99 times the sum of the executive’s base salary and short-term bonus. There were 28 of these proposals voted on and they received average support of 24%, with none receiving majority support.

Next most common proposal requested amending compensation “clawback” policies to broaden the circumstances potentially triggering a clawback. There were 10 of these proposals voted on, with average support of 7% and none receiving majority support.

No-Action Letter Highlights

Companies successfully asserted ordinary business basis for exclusion, but questions remain. Consistent with prior seasons, the “ordinary business” basis for exclusion was the ground asserted most frequently. Aside from the “micromanagement” prong of this basis for exclusion (discussed below), the Staff concurred with more than half of the ordinary business arguments, which was comparable to the prior year.

Examples where the Staff granted relief on ordinary business grounds included proposals relating to healthy hospital food, worker safety and well-being, collective bargaining rights, company treasury practices and customer accounts, many of which seem unquestionably “ordinary.” In addition, proposals requesting a description of the research and analysis undertaken by the board of directors before making changes to reduce or eliminate diversity, equity and inclusion (DEI) programs also were excluded as ordinary business.

In contrast, proposals relating to smoke-free casinos, financing fossil-fuel energy and risks relating to discrimination based on speech or religion were not excludable on ordinary business grounds.

In SLB 14M, the Staff explained that whether a proposal focuses on a significant policy issue such that it is not excludable as ordinary business is a case-by-case determination depending on the particular policy issue and its significance to the particular company.

In a number of Staff responses rejecting ordinary business arguments, the Staff noted that “the Company has not explained whether the policy issue raised by the Proposal is significant to the Company. Therefore . . . the Company has not demonstrated that the Proposal relates to its ordinary business operations.” It is not yet clear why the Staff raised this concern in certain contexts and not others, or precisely how a company would convince the Staff that a policy issue is not significant to a particular company.

Micromanagement arguments continued to be effective. As articulated by the Staff in Staff Legal Bulletin Nos. [14J](#) and [14K](#), whether a proposal micromanages a company comes down to whether the proposal involves intricate detail or seeks to impose specific time frames or methods for implementing complex policies, thereby potentially limiting the judgment and discretion of the board and management.

In 2025, the Staff concurred with more than half of the no-action requests arguing that a proposal would micromanage the company. Particularly noteworthy was a number of instances where the Staff granted no-action requests to exclude proposals seeking reports on direct and indirect lobbying expenditures.

Other proposals excluded as micromanagement included a variety of proposals relating to greenhouse gas (GHG) emissions reduction targets or other environmental/climate change matters, employee collective bargaining rights and certain executive compensation matters.

That said, other proposals relating to GHG emissions targets, smoke-free casinos, financing fossil-fuel energy, abolishing DEI programs and combating harassment were not found to constitute micromanagement. In some instances, the boundary between micromanagement and permissible proposals remains gray.

Substantial implementation arguments made a comeback.

The Staff granted no-action relief to more than half of the requests arguing substantial implementation, up from a one-third success rate the prior year. One driver of this increased success rate was a return to the historical Staff position that a company replacing a supermajority voting provision in its charter or bylaws with a majority of the **shares outstanding** voting standard is substantially implementing a proposal seeking to replace supermajority voting requirements with a majority of the votes cast voting standard.

An interesting split was seen in proposals asking company compensation committees to revisit incentive compensation metrics to eliminate DEI goals, with some companies able to exclude the proposals as substantially implemented and others unable to do so. This serves as an important reminder of the fact-specific nature of substantial implementation arguments.

Economic relevance arguments see some success. Under the “economic relevance” basis for exclusion, a company may exclude a proposal that relates to operations accounting for less than 5% of the company’s total assets, gross sales and net earnings, and “is not otherwise significantly related to the company’s business.” In SLB 14M, the Staff made clear that the “otherwise significantly related” concept is a company-specific analysis rather than a question of importance in the abstract.

Four proposals were successfully excluded under the relevance test, three involving the sale or distribution of a specific product and one involving the supply chain of a specific ingredient in a particular country. This almost 30% success rate (up from zero) suggests that companies should continue to explore economic relevance arguments when available.

Objectively false and misleading proposals may be excludable.

Companies had moderate success arguing that proposals were false and misleading and therefore excludable as violating the proxy rules. Note, however, that in each of the seven successful instances, according to the Staff, the company was able to demonstrate objectively that certain key factual statements in the proposal were false and misleading.

In contrast, companies were not successful in excluding proposals on the basis that the proposal was overly vague such that shareholders would not understand what they were being asked to vote on.

Nevertheless, the almost 30% success rate (up from zero) indicates a greater willingness on the part of the Staff to hold proponents to a level of accuracy in their proposals that is at least closer to the standard companies must follow in connection with their proxy materials.

SEC Withdrawal of Proposed Amendments to Rule 14a-8

As discussed in detail in our July 15, 2022, client alert “[SEC Proposes Amendments to the Shareholder Proposal Rules](#),” in July 2022 the SEC proposed amendments that would modify the standards for exclusion of a proposal under the “substantial implementation,” “duplication” and “resubmission” grounds in Rule 14a-8. Although presented as an effort to provide greater certainty and transparency to shareholder proponents and companies, the amendments (if adopted as proposed) likely would have increased the number of shareholder proposals received by companies and make it less likely that proposals could be excluded.

On June 12, 2025, the SEC issued a [notice of withdrawal](#) of proposed regulatory actions, including, among other proposed rules, the Rule 14a-8 amendments proposed in July 2022.

Consider Changes to Shareholder Engagement Process

As companies prepare for engagement with their shareholders in connection with the 2026 annual meeting season, they should be mindful of how certain institutional investors have changed their approach. These changes were prompted by recent Staff guidance addressing the ability of certain investors to report their beneficial ownership of more than 5% of a company’s voting, equity securities with the SEC on Schedule 13G.

On February 11, 2025, as discussed in detail in our client alert “[Prepare for Changes to the Shareholder Engagement Process](#),” the Staff issued [updated and new guidance](#) regarding the eligibility of shareholders to file Schedule 13G instead of Schedule 13D beneficial ownership reports. The Staff also withdrew prior guidance that generally allowed engagement with management on issues such as executive compensation, environmental, social or other public interest issues, or corporate governance topics unrelated to a change of control without affecting Schedule 13G eligibility.

The new guidance articulates a broader notion of the actions that would constitute an attempt to influence control, thus disqualifying the shareholder from reporting on Schedule 13G. Specifically, where a shareholder's engagement with an issuer's management goes beyond a discussion and exerts pressure to implement specific measures or changes to a policy, the shareholder may be influencing control over the issuer. The list of the measures or policy changes that could trigger a change in filing status under the new guidance, if the shareholder exerts pressure on management, includes recommending that an issuer "remove its staggered board, switch to a majority voting standard in uncontested director elections, eliminate its poison pill plan, change its executive compensation practices, or undertake specific actions on a social, environmental, or political policy."

The change has made institutional investors circumspect about raising policy issues in discussions with a company's management. And, in response, companies are having to change their approach to interactions with major shareholders in an effort to provide their biggest shareholders the information they want but may now be reluctant to ask for explicitly. In this evolving landscape, companies should carefully assess the following in advance of engaging with their shareholders:

- Investors are being cautious about requesting an engagement and, in many cases, may engage only when requested by companies. Among the factors that investors will likely consider when agreeing to a meeting may include the proposed date of the meeting in relation to the date of the shareholder meeting and the proposals on the agenda at the meeting. Meetings with contested agenda items will likely be greeted with particular caution.
 - Companies that want to speak to an investor should take the initiative to arrange the meeting. Investors could be more willing to share their views during off-season engagements well in advance of the next annual meeting, which reduces the likelihood that such an engagement might be viewed as an attempt to influence control over the issuer.
- In the past, investors have weighed in on the agenda for engagement meetings. Many investors may no longer do that and, if they do, any suggested agenda topics are expected to be less prescriptive.
 - Companies should be prepared to discuss the topics that they expect the investor will likely want to cover and not wait for the investor to raise particular topics.
- Questions from investors at engagement meetings will likely be more open-ended and less targeted. For instance, questions are now likely to be more broadly worded, such as: "We would appreciate if you could share your thoughts on...."

- Companies should be prepared to answer the questions and add gloss that they expect the investor will want/need to make informed investment decisions.
- Similarly, investors will likely not answer pointed questions, including and most specifically any questions about how the investor intends to vote.
 - Companies should be prepared to ask investors more broad-based questions, such as: "Did you get enough information to make an informed voting and/or investment decision?"
- Investors may read disclaimers at the beginning of engagement meetings. The use of these disclaimers will not necessarily eliminate the possible implications under the new Staff guidance. Nonetheless, investors will likely want to make it clear that they do not intend to exert pressure or take the discussion beyond what the Staff currently thinks is allowed for companies filing on the shorter Schedule 13G.
 - Companies may want to respond that they understand the plan for the discussion and they similarly do not intend for the discussion to go beyond what is required.

Many companies have significantly expanded their shareholder engagement efforts over the past few years and companies typically are well served in building productive relationships with their long-term investors, notwithstanding these recent changes to potential engagement meetings. To make the most of these discussions, companies should consider the constraints institutional investors are adapting to as a result of the new guidance. For additional information on those constraints, see "[Say-on-pay responsiveness](#)" section within the "[Incorporate Lessons Learned From the 2025 Say-on-Pay Votes and Compensation Disclosures](#)" section of this checklist.

Understand Dual Listings on Texas-Based National Securities Exchanges

National securities exchanges have developed new listing options. Recently, the Texas Stock Exchange (TXSE) became the first fully integrated national securities exchange in decades to receive SEC approval. In addition, the New York Stock Exchange (NYSE) launched NYSE Texas in 2025, and Nasdaq Stock Market (Nasdaq) announced plans to launch a Texas-based securities exchange in 2026 (Nasdaq Texas). As Texas-based securities exchanges emerge, companies should consider whether dual listing in Texas would align with the company's strategy.

TXSE Dual Listing

The TXSE, which is expected to launch in 2026, plans to initially allow only dual listings by companies currently listed on other national securities exchanges, and TXSE intends to offer original

listings in the future.⁷³ TXSE's proposed initial and continued listing standards, as well as its proposed corporate governance standards, are substantially similar to the current rules of Nasdaq and NYSE. However, TXSE seeks to distinguish itself by reducing the costs of going and staying public, including by leveraging competitive fee structures and a streamlined listing process.

TXSE is also advocating for legislative and legal reforms that are perceived to be favorable to issuers, as the state of Texas pursues initiatives intended to attract businesses to the state. For example, in May 2025, Texas Gov. Greg Abbott signed Senate Bill No. 1057 into law, which permits companies listed on Texas-based securities exchanges to set ownership thresholds for shareholder proposal submissions that are significantly higher than those set forth under Rule 14a-8 of the Exchange Act.⁷⁴ That same month, Governor Abbott also signed Senate Bill No. 29 into law, which codifies the business judgment rule in Texas.

⁷³See Exhibit N to TXSE's application on Form 1.

⁷⁴For example, Senate Bill No. 1057 permits those companies to require shareholders to hold at least the lesser of: (i) \$1 million in market value of the company's voting shares; or (ii) 3% of the company's voting shares.

NYSE Texas or Nasdaq Texas Dual Listings

NYSE Texas and Nasdaq Texas are also providing Texas-based dual-listing platforms. Since its launch in March 2025, a number of S&P 500 companies have dual-listed their common shares on NYSE Texas, and certain Nasdaq-listed companies are expected to follow suit after Nasdaq Texas' planned launch in 2026. Both NYSE Texas and Nasdaq Texas intend to allow dual-listed companies to retain access to the full suite of NYSE and Nasdaq capabilities and services, while also providing more localized support.

When considering whether to dual-list on a Texas-based securities exchange, companies should take into account their individual facts and circumstances, including the geographic location of their operations, investor relations and capital markets strategies, regulatory requirements, trading volumes and liquidity. For companies based in the southeast quadrant of the U.S. or that seek to strengthen their connection to Texas, these dual-listing exchanges may provide additional benefits to consider.

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