

NOVEMBER 20, 2025

2026 U.S. ANNUAL REPORT AND PROXY SEASON: IT'S GO TIME!

Although it may seem early, it is already time to start preparing for the 2026 annual report and proxy season. While many disclosure requirements remain consistent from prior years, there has been a significant shift in the focus of, and discourse relating to, the priorities of the Securities and Exchange Commission ("SEC"). Practitioners started to see the impact of these developments over the past year, and these developments are likely to have an even more significant impact on disclosure and governance practices during the 2026 season.

This Legal Update provides an overview of key issues companies should consider as they address their annual report and proxy disclosure requirements. Topics are organized as follows:

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THE NEW ADMINISTRATION AND CHANGING VIEWS AT THE SEC

THE SEC IS OPEN FOR BUSINESS

Since the commencement of the second Trump administration on January 20, 2025, the SEC has taken a dramatically different approach to disclosure and reporting by public companies compared to the previous administration. Starting under then-acting Chairman Mark Uyeda, the SEC's Division of Corporation Finance published new Staff Legal Bulletin 14M ("SLB 14M"), providing updated grounds for excluding shareholder proposals under Rule 14a-8 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Subsequently, on November 17, the Division of Corporation Finance published new guidance stating that, during the 2026 proxy season, it would only provide substantive views on requests to exclude shareholder proposals pursuant to Rule 14a-8(i)(1), a substantial departure from previous proxy seasons. On another note, the SEC also elected not to defend litigation of recently adopted rules governing climate-based disclosure. These are just a couple of examples of actions by the SEC and its Divisions that mark a clear divergence from the priorities articulated in prior years.

In addition, the SEC Commissioners, including Commissioner Hester Peirce, have spoken publicly about the need for principles based disclosure for the sole purpose of informing investment decisions, and of the SEC's "limited mission," such that "[p]ublic companies should be at the beck and call of shareholders qua shareholders, not the ever-growing, never-satisfied set of stakeholders that brazenly grasp at company resources to do something other than maximize the value of the company. Directors and executive officers serve shareholders and society best by keeping the companies they guide focused on maximizing long-term financial value."¹ The views of the current administration are also reflected in the SEC's recently-published spring 2025 regulatory agenda,² which includes an item titled "Rationalization of Disclosure Practices" that hints strongly at changes to the current disclosure and regulatory scheme to reflect the views shared by Commissioner Peirce.

The sum total of the above, in combination with many executive actions issued by the Trump administration would lead practitioners, companies and other stakeholders in a new direction this annual reporting and proxy season. That said, the rules governing disclosure have not changed. Companies will need to grapple with the SEC's new perspective and the views expressed by both the Trump administration and other stakeholders, as well as a fluid and challenging economic environment and geopolitical climate, while satisfying the rule requirements and providing the material information investors need to make informed investment decisions.

DRAFTING IN TIMES OF UNCERTAINTY

Against the backdrop of heightened macro volatility in 2025, including introduced and threatened tariffs, rapid developments and emerging risks in artificial intelligence ("AI"), and broader political and geopolitical instability, companies should review and recalibrate their approach to disclosures for the upcoming annual report and proxy season with renewed discipline. As we discuss in further detail below, companies should reassess and refine their Form 10-K disclosures with an emphasis on specificity, materiality, and cross-document consistency. In Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A"), companies should address known trends and uncertainties that are reasonably likely to materially affect liquidity, capital resources, supply chains, pricing, customer demand, or segment

performance, making clear the timing, magnitude, and drivers of impacts (e.g., tariff exposure by product or geography, mitigation strategies, and sensitivities). Risk factor drafting should avoid boilerplate and describe company-specific risks, including tariff-related trade restrictions and retaliatory measures, regulatory shifts in AI (such as use of generative AI tools and evolving compliance expectations for AI governance), cybersecurity threats, and policy unpredictability affecting environmental, social and governance (“ESG”) matters and diversity, equity and inclusion (“DEI”) initiatives. Companies should also consider whether any of these developments warrants updates to its cautionary language related to forward-looking statements.

Much like in 2025, we expect that a number of high profile issues will receive attention from investors, companies and other stakeholders during the 2026 proxy season. These issues, including ESG matters and climate-based disclosure, among others, reflect the changing political landscape and highlight the differences between the current SEC administration’s priorities and those of the prior administration.

We address each of these topics further below.

EDGAR NEXT TRANSITION DELAYS AND REGULATION S-K ITEM 405 IMPLICATIONS

In 2025, the SEC introduced EDGAR Next, a modernized electronic filer account management system, and phased out the legacy EDGAR system. The transition began in March and use of the new EDGAR Next system became mandatory on September 15. Unfortunately, many filers experienced materially longer-than-anticipated enrollment delays during mid-to-late 2025 due to SEC backlogs in reviewing amended Form IDs and related enrollment steps. As the SEC indicated in its August 2025 webinar,³ the Staff added resources relating to the amended Form ID and urged filers to scrutinize Form ID submissions to avoid avoidable delays. Nonetheless, practical hurdles, such as the 60-character title field constraint, challenges resetting codes when legacy email points-of-contact were inaccessible, and the need for coordination across multiple account administrators and delegated entities, extended enrollment time for a significant number of filers. These bottlenecks, combined with the September 15, 2025, deactivation of legacy filing access codes for submissions, resulted in late Section 16(a) reports for many companies and insiders who could not timely complete EDGAR Next onboarding or obtain new credentials.

Companies should be mindful of the Regulation S-K Item 405 implications in their 2026 proxy statements. Item 405 requires disclosure of any known failures to file timely Forms 3, 4 or 5 during the most recent fiscal year, including identification of the reporting persons and the number of late reports and transactions. In preparing 2026 proxies, issuers should carefully reconcile insider reporting logs against EDGAR timestamps, assess whether delays were attributable to EDGAR Next transition issues, and include required delinquency disclosure where appropriate. Even if transition delays may have been operational in nature, Item 405 is a bright-line, disclosure-based requirement. Therefore, issuers should treat EDGAR Next-induced late filings no differently from other late filings and make clear, accurate delinquency disclosures in their 2026 proxy statements.

ANNUAL REPORTS ON FORM 10-K

Reporting companies in the United States must file their annual reports on Form 10-K (or Form 20-F for foreign private issuers (“FPIs”)) in the first few months of 2026, with the exact timing depending on their

filer status. While there have not been any changes to the rules governing the disclosure in annual reports since last year, companies must still determine how best to satisfy the SEC's rules and regulations amid a shifting (and rapidly changing) political and regulatory climate.

KEY DISCLOSURE SECTIONS

RISK FACTORS

Risk factor disclosure is an important feature of an annual report, and perhaps even more important in years of substantial change and uncertainty. Generally, risk factors must focus on the material factors that make an investment in a company's securities speculative or risky, tailored to the specific reporting company. It is important to take a fresh look at risk factor disclosures each year to consider whether any risks need to be updated, whether any new risks should be added (in response to disclosure elsewhere in the filing or otherwise) and whether it would be appropriate to delete any risk factors.

Companies should be particularly sensitive to situations in which they previously described a risk in hypothetical terms and subsequently an actual event of that nature occurred. In these circumstances, an update to the risk factors may be needed to avoid securities law liability for misleading risk factors. This is a recurring issue in the cybersecurity area, both with regard to SEC and private litigation, where a prior risk factor discussed the potential of a data breach or ransomware attack and thereafter the company suffered a cyber incident. The same consideration applies to other topics, including supply chain disruptions, tariffs, and macroeconomic factors.

In preparing annual risk factor updates, companies should consider the following topic areas, tailored to their business:

- **Inflation and interest rates.** Where inflationary pressures or interest rate changes have materially impacted operations, the disclosure should identify the types of inflationary pressures faced and how they have affected the business. Where practicable, quantify the impacts and discuss whether mitigation efforts (such as pricing actions, hedging or supplier diversification) introduce new risks or uncertainties.
- **Tariffs and trade policy.** Given heightened protectionism and evolving U.S. tariff policies, companies should assess whether actual or potential tariffs, retaliatory measures by trade partners, and related trade policy uncertainties warrant tailored risk disclosure. Consider identifying impacted geographies (*e.g.*, China, Mexico, Canada, EU and UK), products or inputs (*e.g.*, steel, aluminum, autos and parts, semiconductors), and potential effects on sourcing, costs, pricing, demand and competitive dynamics. Where reliance on exclusions or quota arrangements is material, address the risk of expiration or modification.
- **Geopolitical risks.** Companies should assess whether and how evolving geopolitical dynamics could materially affect their business and warrant risk factor disclosure, including the potential impact of rising trade protectionism and tariff actions, shifting national security-driven regulations and policy interventions, and government executive actions that alter market access, supply chains, or cost structures. Importantly, these impacts must be considered on an international, national and local level. Companies should also consider any risks posed by active conflicts, including, but not limited to, those between Russia and Ukraine and those in the Middle East.

- **Climate and diversity.** Companies should consider whether they need to update risk factor disclosure related to climate change or diversity-related disclosure, considering such topics in light of the current political and regulatory climate. For example, companies may consider addressing the difficulty of balancing demand for increased diversity disclosure from certain investors and market participants with the countervailing opposition and scrutiny from the federal government and others. See “[Environmental and Social Matters](#)” below for additional discussion on climate and diversity related disclosures.
- **Cybersecurity and data privacy.** Continue to assess whether cyber threats, data privacy compliance, third-party service provider risks, and the potential operational and financial impacts of cyber incidents are appropriately addressed and tailored, especially following any material incidents or near misses.
- **Collateral related risks.** The recent bankruptcy filings by First Brands Inc. and Tricolor Auto Acceptance, LLC highlight collateral related risks to lenders, ranging from risks related to the adequacy of due diligence procedures, from depth to scope, to risks related to credit agreement provisions with regard to pledged assets, as well as whether a third party holds custody of pledged assets, and risks related to control over cash flows, among others.
- **Artificial intelligence.** Companies that develop or use generative or other AI products may consider including risk factors addressing potential issues in that area, either on a stand-alone basis or as component of other risk factors. For example, a company’s AI risks might include violation of existing and future laws regulating development and use of AI, lack of data science skills, limited access to training data, biased or inaccurate results, price pressure from competitors using lower-cost AI systems, and/or failure to secure intellectual property rights.
- **Risks related to U.S. government shutdowns.** In October 2025, the U.S. government entered into a prolonged shutdown, which ended on November 12, 2025. Companies, especially those who do substantial business with or that are dependent upon the U.S. government, must evaluate the materiality of such shutdown (or possible future shutdowns) on their business and operations, including but not limited to any ongoing negative economic impact.
- **Risks associated with immigration policy changes.** Companies that have been, or expect to be, affected by changes in immigration policy should consider discussing the effects on their work force, recruitment, and labor costs, among other areas.
- **Regulatory change; political risk.** The change in administration has brought about significant regulatory change. Depending upon a company’s industry, these changes or anticipated changes may require significant disclosure updates. For example, companies in the healthcare or pharmaceutical sectors may be particularly affected. As a general matter, public companies and their boards of directors are facing heightened political risks, may have less predictability with respect to their interactions with their regulators, and may have limited ability compared to prior periods to respond to new policy or regulatory announcements. Again, this may be more pronounced for companies in certain industries and may require significant disclosure updates.

Because risks may change from year to year, and because material risks can arise from all aspects of a company’s business, it is important from a disclosure control perspective that the full set of risk factors

contained in an annual report be reviewed by the appropriate departments within the company to determine whether new risks need to be added or any existing risk factor disclosure needs to be revised.

MANAGEMENT'S DISCUSSION AND ANALYSIS

As expressly stated in Regulation S-K Item 303, the objective of MD&A "is to provide material information relevant to an assessment of the financial condition and results of operations of the registrant," focusing "specifically on material events and uncertainties known to management that are reasonably likely to cause reported financial information not to be necessarily indicative of future operating results or of future financial condition," including "descriptions and amounts of matters that have had a material impact on reported operations, as well as matters that are reasonably likely based on management's assessment to have a material impact on future operations." Accordingly, MD&A disclosures are very company-specific.

To achieve the MD&A's objective, companies should approach the MD&A section of their annual reports on Form 10-K with a fresh perspective each year. While the MD&A discussion may need to update prior year strategies and discuss how results and financial condition changed from the prior period, it should also provide insight into the company's current operations and trends likely to materially affect the company. The MD&A is a key element of the Form 10-K and it should be thoughtfully drafted and carefully reviewed.

In 2025, MD&A was the second most frequently commented area in SEC Staff reviews. Within MD&A, many of the comments focused on the disclosures about results of operations. While these disclosures often span a variety of topics depending on the nature of the company's business, the Staff has specifically called out discussions on whether geopolitical risks, supply chain disruptions, inflation, trade wars or tariffs have materially affected the company's outlook or business goals and whether such challenges have materially impacted the results of operations or capital resources. In some cases, the Staff's comments also asked companies to quantify, to the extent possible, the impacts on sales, profitability, and liquidity.

Given recent and proposed tariff measures and retaliatory actions by trading partners, MD&A should address whether and how tariffs have affected or may affect sourcing, costs of goods, pricing strategies, demand, export markets, and competitive positioning. Where practicable, disclosure should quantify the impacts, including cost increases, margin compression, pricing actions, changes in inventory levels, supplier diversification, or shifts in country-of-origin. MD&A should also discuss any known trends or uncertainties arising from mitigation efforts (for example, re-sourcing, inventory planning, pricing changes) and whether these introduce new risks.

The SEC Staff's comments continue to focus on three key areas: (i) liquidity and capital resources, including clear discussion of the drivers of cash flows and the trends and uncertainties related to meeting known or reasonably likely future cash requirements; (ii) critical accounting estimates, including the methods and judgments involved in applying significant accounting policies, the sensitivity of reported results to changes in assumptions, and the likelihood of materially different results if different assumptions were used; and (iii) macroeconomic effects, including inflation, interest rates, and supply chain dynamics, on results of operations and capital resources. Companies should also assess their segment disclosures and tax disclosures to ensure consistency throughout the MD&A.

NON-GAAP FINANCIAL MEASURES

Financial measures that do not comply with U.S. generally accepted accounting principles (“GAAP”) remain a central focus of SEC oversight. The Staff’s December 2022 updates to the Compliance and Disclosure Interpretations (“C&DIs”) on non-GAAP measures continue to guide practice, with persistent emphasis on avoiding misleading and unduly prominent presentations.⁴

Several of the C&DIs explicitly refer to the danger that non-GAAP measures can be misleading. As clarified in C&DI 100.01, a non-GAAP performance measure that excludes normal, recurring operating expenses can be misleading. The C&DIs go on to provide examples of individually tailored recognitions or measurements that can render a non-GAAP measure misleading, and underscore that non-GAAP measures can be misleading if not appropriately labeled and clearly described. C&DI 100.06 makes clear that a non-GAAP measure may be misleading even if accompanied by disclosure about the nature and effect of each adjustment.

The C&DIs also explicitly address the prominence of non-GAAP measures, including examples of impermissible prominence in non-GAAP measures as well as of reconciliations that give undue prominence to non-GAAP measures, such as starting the reconciliation with a non-GAAP measure. The C&DIs also explains that an income statement that is comprised of non-GAAP measures and includes all or most of the line items and subtotals found in a GAAP income statement is considered a “non-GAAP income statement” which, by itself or as part of the required non-GAAP reconciliation, gives undue prominence to non-GAAP measures.

The use of non-GAAP financial measures has been consistently one of the most cited issues in Staff comment letters over the past few years. In fact, non-GAAP financial measures has been one of the top three most frequent topics in Staff comment letters in almost every year since 2013, and was the most frequent topic cited by the Staff in the one-year period ended June 2025. Specifically, comments have addressed the prominence of non-GAAP measures in relation to GAAP measures, the labeling, use and function of these measures, the reconciliation of non-GAAP measures to GAAP measures, and whether such measures may be misleading to investors.

The SEC has also brought enforcement proceedings relating to the use of non-GAAP measures. Many of these proceedings have cited that the companies lacked appropriate disclosure controls and procedures and internal accounting controls related to non-GAAP measures. The same observations apply to key performance indicators (“KPIs”). The Staff continues to issue comments related to the use of KPIs in disclosure, as well as to raise questions concerning KPIs used in earnings presentations and investor presentations and how these compare to information presented by the company in its periodic filings. Companies should maintain robust disclosure controls, engage audit committees in oversight of non-GAAP and KPI usage, and ensure transparent, consistent practices aligned with SEC rules and interpretations. For more information, see our Legal Update, “Understanding the Requirements Related to the Use of Non-GAAP Financial Measures.”⁵

SEGMENT DISCLOSURE

Another related frequent area of comment by the Staff is segment reporting, including Accounting Standards Update 2023-07 (“ASU 2023-07”), which outlines the Financial Accounting Standards Board’s updated segment disclosure reporting requirements. ASU 2023-07 requires public entities to provide

investors with “additional, more detailed information about a reportable segment’s expenses” with the goal of “improv[ing] the disclosures about a public entity’s reportable segments.” Specifically, comments have addressed the identification of segments, any changes in reporting segments, the aggregation of operating segments, as well as disclosures about entity-wide product or service revenue and reconciliations to consolidated amounts. Where a company reported a single reporting segment, the most frequent Staff query was whether the company actually has multiple segments.

Answering this comment requires a specific analysis based on the unique facts and circumstances of the company. First, the company must analyze its operating segments and reporting segments. “Operating segments” are how an entity manages its business; specifically, the company must have available financial information and operating results that are regularly reviewed by the company’s chief operating decision maker (“CODM”). An operating segment may become a “reportable segment” if it meets 10% of combined segment revenues. Two or more operating segments may be combined if they are sufficiently similar.

In connection with comments, the Staff may request to see reports given to the CODM to understand how management evaluates segment performance. The Staff has also asked for disclosure of the CODM’s title and position and to explain how the CODM uses reported segment performance levels (such as measures of profit or loss), and whether a segment performance measure is also a non-GAAP financial measure.

Notwithstanding the general prohibition in Regulation S-K Item 10(e) against presenting non-GAAP financial measures in the notes to the financial statements, recent SEC Staff guidance indicates it does not object to the inclusion of non-GAAP performance measures in the segment footnote when disclosed in accordance with ASU 2023-07. The Staff has emphasized that while ASU 2023-07 permits, but does not require, disclosure of more than one measure used by the CODM, any additional measures that are not computed in accordance with GAAP are non-GAAP measures and therefore must fully comply with Regulation G and Regulation S-K Item 10(e).

OTHER ACCOUNTING DISCLOSURE TOPICS: TAXES AND CRITICAL ACCOUNTING ESTIMATES

TAXES

On July 4, 2025, President Trump signed the One Big Beautiful Bill Act (“OBBBA”), which, among other things, has substantial potential business tax impacts, which, in turn, will impact tax disclosure across almost all industries. Specifically, according to BDO USA, P.C., the legislative changes will affect income tax accounting in accordance with Accounting Standards Codification 740, Income Taxes. Among the most potentially impactful “provisions include the restoration of 100% bonus depreciation; the creation of Section 174A, which reinstates expensing for domestic research and experimental (R&E) expenditures, modifications to Section 163(j) interest limitations, updates to the rules for global intangible low-taxed income (GILTI) and foreign-derived intangible income (FDII), amendments to the rules for energy credits, and the expansion of Section 162(m) aggregation requirements.”⁶

That said, because of when the OBBBA was signed, its impact on the current year’s financial statements may be limited. Even so, companies and auditors should think about whether any disclosure about the potential or expected impacts of the OBBBA are required; for example, in the notes to the financial statements, risk factors, or MD&A.

CRITICAL ACCOUNTING ESTIMATES

Building on our discussion of MD&A, which is governed by Regulation S-K Item 303, another “hot topic” in recent SEC Staff comment letters is critical accounting estimates. In general, the Staff’s comments have focused on the judgments used in making such estimates. Most comments ask companies to (i) discuss the assumptions underlying the most significant and subjective estimates and how those assumptions were determined, (ii) disclose how much each estimate and/or assumption has changed over a relevant period, and (iii) disclose the sensitivity of the reported amount to the methods, assumptions and estimates underlying its calculation. Companies should be sure to provide comprehensive and thorough disclosure in the area of estimates in their disclosure in order to reduce the likelihood of comments from the SEC Staff.

CYBERSECURITY DISCLOSURE

In July 2023, the SEC adopted final rules aimed at standardizing and enhancing disclosure relating to cybersecurity incidents and risk management processes. These rules require public companies to report (1) material cybersecurity incidents on Form 8-K Item 1.05 or Form 6-K for FPIs and (2) cybersecurity risk management processes in a more standardized manner annually on Form 10-K in accordance with Item 106 of Regulation S-K or Form 20-F for FPIs.

Item 106 and the corresponding section of Form 20-F require disclosures of (1) the company’s processes, if any, for identifying and managing cybersecurity risks, (2) the board of directors’ role in oversight of cybersecurity risks, and (3) management’s role in managing cybersecurity-related risks and implementing the company’s cybersecurity policies and procedures. Companies should take a fresh look at their prior year’s disclosure and assess whether it adequately addresses:

- Whether and how their cybersecurity processes have been integrated into their overall risk management system or processes;
- Whether the company engages assessors, consultants, auditors, or other third parties in connection with any such processes; and
- Whether the company has processes to oversee and identify material risks from cybersecurity threats associated with its use of any third-party service provider.

In addition, the disclosure should address:

- The board of directors’ oversight of risks from cybersecurity threats and, if applicable, identify any board committee or subcommittee responsible for oversight of cybersecurity risk;
- If applicable, the processes by which the board or the applicable committee is informed about cybersecurity risks;
- Whether and which management positions or committees are responsible for managing cybersecurity risk, and the relevant expertise of such persons;
- The processes by which such persons or committees are informed about and monitor the prevention, mitigation, detection and remediation of cybersecurity incidents; and
- Whether such persons or committees report on cybersecurity risk to the board of directors or a committee of the board of directors.

Staff comments on this disclosure have requested additional detail on the areas of responsibility of a company's management team and board of directors, how a company's processes for assessing, identifying, and managing material cybersecurity threats have been integrated into its overall risk management system, and the expertise of the company's senior leadership responsible for managing the company's cybersecurity risk.

For additional information, see our Legal Update, "SEC Adopts Final Rules on Public Company Cybersecurity Disclosures of Incidents and Processes."⁷

FORWARD-LOOKING STATEMENTS AND CAUTIONARY LANGUAGE

Given the evolving macroeconomic, regulatory, and trade landscape, companies should assess whether forward-looking statements in annual reports and earnings materials are accompanied by meaningful, tailored cautionary language that identifies the most important factors that could cause actual results to differ materially. Companies should consider including specific, company-relevant risks related to tariffs and trade policy, geopolitical risks, inflation and interest rate pressures, supply chain constraints, labor costs and availability, cybersecurity incidents and regulatory changes, and mitigation actions that may themselves introduce uncertainties. Boilerplate or generic warnings are disfavored and may not qualify for safe harbor protection.

CERTIFICATIONS, EXHIBITS, SIGNATURES, AND CONSENTS

Interestingly, growing areas of SEC Staff comments include the certifications, exhibits, signatures and consents to expertized portions of a filing, including consents of subject matter experts and counsel. In terms of the certifications required by Item 601(b)(31) of Regulation S-K, the Staff often comment when the language of the certification does not exactly match the language of Regulation S-K, or when the language has been incorrectly modified. In terms of exhibits, the Staff will often comment if an exhibit is missing, for example, when a material contract was entered into or amended during the reporting period and not filed as an exhibit. The same stands true for expertized consents—where the findings or opinion of an expert, such as a tax or mining expert, for example, are included or summarized in the filing, the company must include the expert's consent as an exhibit to the filing.

HUMAN CAPITAL MANAGEMENT DISCLOSURE

Companies must discuss their human capital resources, including the number of employees, as well as any human capital measures or objectives that the company focuses on in managing its business in the business section of their annual reports on Form 10-K, to the extent material. This requirement, set forth in Item 101(c) of Regulation S-K, is principles-based, although it specifies the types of information that may be material to certain companies. For example, the regulation identifies measures or objectives addressing the development, attraction, and retention of personnel as issues that may be appropriate to disclose, depending on the nature of a company's business and workforce.

There is wide variation in how companies have implemented the human capital management disclosure requirements, including with respect to the amount of detail given and the human capital measures discussed. Some companies also include human capital management disclosure in their proxy statements, including workforce data by race/ethnicity and gender that they submitted to the US Equal Opportunity Commission on EEO-1 reports. The proxy statement provides companies with the opportunity to focus

their corporate messaging in a reader-friendly manner, often enhanced with graphics, on key human capital topics they choose to highlight.

Human capital management continues to evolve as a disclosure topic. In light of the Presidential executive orders targeting DEI programs, during the 2025 proxy season many companies tempered their disclosures related to human capital to the extent they previously discussed diversity initiatives, often focusing more on inclusion and a more general discussion of workforce development, as discussed below.

ENVIRONMENTAL AND SOCIAL MATTERS

CLIMATE CHANGE

STATUS OF THE SEC'S RULES ON CLIMATE DISCLOSURE

In March 2024, the SEC adopted rules entitled "The Enhancement and Standardization of Climate-Related Disclosures for Investors" (the "Climate Rules"),⁸ intended to standardize how public companies report material climate-related risks and greenhouse gas emissions. The Climate Rules were almost immediately the subject of litigation, which was subsequently consolidated in the U.S. Court of Appeals for the Eighth Circuit (the "Eighth Circuit"), where they were subject to a voluntary stay pending litigation. Subsequently, the SEC withdrew its defense of the Climate Rules, but requested that the Eighth Circuit resolve the litigation on the merits.⁹ In September 2025, the Eighth Circuit ordered that the litigation would be held in abeyance until the SEC reconsiders or renews its defense of the Climate Rules, which seems very unlikely at this time. Therefore, the litigation remains paused, and will likely remain so for the foreseeable future. For more information, see our article, "Regulatory Climate Shift: Updates on the SEC Climate-Related Disclosure Rules."¹⁰

CURRENT DISCLOSURE REQUIREMENTS FOR CLIMATE-BASED RISK

Today, the SEC's 2010 climate disclosure guidance remains in effect.¹¹ The guidance suggests that, where material, companies should disclose the direct effect of environmental legislation, regulation and international treaties, the indirect consequences of climate change, and the impact of physical changes to our planet caused by the climate.

Climate change continues to be an area of focus for investors and other constituencies, as well as companies themselves. This has prompted a growing number of companies to include sustainability initiatives in distinct sections of their proxy statements in addition to disclosure in annual reports. The approach of adding voluntary climate change and other ESG disclosure in the proxy statement may provide an opportunity for companies to control their message and provide a basis to direct shareholder engagement in this area. When preparing climate change disclosure for the proxy statement or annual report, companies should be cognizant of the securities laws and other legal ramifications of such disclosure. As alluded to above, misleading climate change disclosures can give rise to SEC or state enforcement proceedings and hefty monetary penalties. From a liability perspective, it may be prudent to describe corporate climate change initiatives in aspirational terms rather than as commitments to achieve specific results, unless the company is actively working towards reaching those goals within a designated time frame and is prepared for increased follow-up disclosure in subsequent years.

Companies may need to expand their disclosure controls and procedures, and possibly their internal control procedures, to take climate change disclosures into account. The team involved in drafting and approving climate change disclosure should develop a process to fact-check disclosures. Board oversight and review of climate change disclosure may help to confirm alignment with company initiatives. There should be consistency between a company's climate change disclosures in its SEC filings and the company's disclosures in any sustainability report it publishes and other climate change disclosures it makes on its website or in public statements. It is important that public companies draft climate change disclosure in a manner that is not susceptible to a characterization that it is inaccurate or misleading.

Companies also need to pay attention to potential climate change reporting requirements beyond the SEC's rules. Some U.S. states have adopted regulations addressing disclosure of climate-based risks and greenhouse gas emissions. For example, California's Senate Bill No. 253, "Climate Corporate Data Accountability Act" ("SB 253")¹² and Senate Bill No. 261, "Greenhouse gases: climate-related financial risk"¹³ although the effective date of the final rules is currently delayed until Q1 2026.

For more information, see our Legal Update, "California's Climate Disclosure Laws: Navigating the Latest Updates."¹⁴

The California Air Resources Board has been working to aid in compliance with the legislation; most recently, in October, it released a draft reporting template for reporting Scope 1 and Scope 2 emissions under SB 253 for comment.¹⁵ Illinois and Colorado introduced their own legislation, HB 3673,¹⁶ and HB 25-1119,¹⁷ respectively, each of which are related to emissions disclosures, in early 2025. New York has also introduced climate-disclosure based legislation, which is currently with the state's Senate Finance Committee.

Many state regulations are intended to apply not only to certain companies that are incorporated in a state, but also extend to those meeting certain criteria that do business within the state, such that these statutes can have potentially far-reaching consequences. For example, California's SB 253 will require businesses with annual revenues of more than \$1 billion that do business in California to disclose Scope 1 and Scope 2 GHG emissions, starting in 2026 and Scope 3 GHG emissions, starting in 2027.

International reporting requirements may also apply. In July 2023, the International Sustainability Standards Board published its global sustainability disclosure standards. These standards provide "disclosure requirements designed to enable companies to communicate to investors about the sustainability-related risks and opportunities they face over the short, medium and long term and "set out specific climate-related disclosure requirements for a company to disclose information about its climate-related risks and opportunities."

Companies with EU operations, including U.S. domestic companies with operations there, must comply with the Corporate Sustainability Reporting Directive and Corporate Sustainability Due Diligence Directive, which require climate and sustainability reporting from 2025 onward.

For more information, see our article, "Regulatory Climate Shift: Updates on the SEC Climate-Related Disclosure Rules."¹⁸

DEI PROGRAMS AND DISCLOSURES

On December 11, 2024, the U.S. Court of Appeals for the Fifth Circuit vacated the SEC's 2021 approval of rules adopted by The Nasdaq Stock Exchange to promote more diverse board membership at Nasdaq-listed companies, such that Nasdaq listed companies are no longer required to provide board diversity disclosure under Nasdaq Rule 5606, placing them on equal footing with companies listed on the New York Stock Exchange.

In addition, President Trump has issued a series of executive orders aimed at eliminating DEI programs, including a January 21, 2025 executive order, "Ending Illegal Discrimination and Restoring Merit-Based Opportunity,"¹⁹ which called on agencies to "combat illegal private-sector DEI preferences, mandates, policies, programs, and activities." In February, the U.S. Department of Justice ("DOJ") issued a memorandum²⁰ that, among other things, charted a path to investigate and eliminate purportedly illegal DEI programs in the private sector in conjunction with these executive orders. Subsequently, in July, DOJ released guidance for recipients of federal funding to ensure they do not engage in unlawful discrimination.²¹ The guidance emphasizes the significant legal risks of initiatives involving discrimination based on protected characteristics and offers best practices to help entities that receive federal funds avoid potential violations and revocation of federal grant funding.

For more information, read our Legal Update, "DOJ Defines "Illegal DEI," Warns Recipients of Federal Funds to Take Notice."²²

As discussed in further detail below, Institutional Shareholder Services ("ISS") updated its 2025 voting guidelines with regard to diversity, while Glass Lewis & Co., LLC ("Glass Lewis") did not revise its formal policy but informed clients of a modified approach to diversity considerations in proxy guidance. In parallel, many public companies removed explicit references to "DEI" and "diversity" from their proxy statements and eliminated previously provided individual director demographic information. According to Glass Lewis, aggregate reporting of board diversity became less prevalent in 2025, declining among Russell 1000 companies from approximately 94% in 2024 to about 70% in 2025.²³

Today, many companies are reframing DEI disclosures to emphasize compliance with applicable law, equal opportunity and skills-based hiring, and broader workforce development, while avoiding demographic quotas or numerical targets and reducing or aggregating individual demographic reporting; disclosures should focus on board effectiveness, qualifications, and oversight of human capital, supported by robust controls to prevent misleading statements or "greenwashing"/"social-washing." Companies should note, however, that certain diversity-related line item disclosure requirements, including Items 101, 401(e) and 407 of Regulation S-K, have not changed. Therefore, companies need to balance providing this required disclosure while carefully framing their DEI-related disclosure to focus on compliance, qualifications and the company's broader commitment to talent development, rather than to diversity targets or demographic goals.

For more information, see our article, "The Future of Board Diversity Disclosures."²⁴

ESG AND ANTI-ESG MOVEMENT

ESG matters have been a key area of concern for companies, shareholders, investors, regulators and lawmakers both in the United States and globally. Stakeholders have become more vocal about concerns

over how companies treat the planet, treat people and govern themselves, and as a result, ESG has become ingrained in business and investment strategy.

However, anti-ESG sentiment is growing, fueled by concerns over perceived overreach of ESG initiatives, skepticism about their financial credibility, and broader debates on the role of companies in addressing ESG issues. The second Trump administration has shown a less permissive attitude toward company and investor engagement on ESG. Further, litigation efforts by state and private actors challenging ESG policies have had mixed results, with plaintiffs more likely to find success when focused on potential faults in decision-making processes or disclosures.

ESG LITIGATION TRENDS

Most ESG litigation stems from allegedly false or misleading statements about companies' environmental impact or practices, also commonly known as "greenwashing." Examples of greenwashing include vague or exaggerated statements about environmental practices, carbon neutrality or net-zero emissions, claims lacking evidence or inconsistent with the company's business model, and claims based on controversial offsetting mechanisms. Companies also face scrutiny for lacking ESG commitments or failing to meet stated goals. Recent cases pertain to inadequate environmental targets, misalignment of the business model with international climate commitments, and supply chain abuses.

The anti-ESG movement has also targeted companies with ESG goals such as climate transition. Recent examples include an action brought by U.S. state attorney general against major asset managers for allegedly disrupting the energy market by citing their climate commitments to compel companies to cut coal production. In November 2024, the Texas Attorney General, together with a coalition of 12 Republican-led states, sued BlackRock, State Street, and Vanguard, alleging that their participation in climate initiatives and related shareholder engagement amounted to an antitrust conspiracy to restrict coal output and manipulate energy markets. On August 1, 2025, a federal judge in the Eastern District of Texas largely denied the asset managers' motions to dismiss, allowing the core federal and state antitrust claims to proceed while dismissing a limited set of consumer-protection counts. The ruling opens the door to discovery and was accompanied by support from Trump-appointed officials at the DOJ and Federal Trade Commission, signaling continued scrutiny of investor climate commitments under the antitrust laws.

EXECUTIVE COMPENSATION DISCLOSURE AND DEVELOPMENTS

COMPENSATION DETERMINATIONS IN UNCERTAIN TIMES

Companies whose business or results of operations are impacted by broader economic or political trends, including tariffs and related trade policy uncertainties, may be facing challenging decisions about their executive compensation programs and how to maintain the effectiveness of their incentive plans. For example, compensation committees are likely to be grappling with the continued appropriateness of specific performance goals or the effect of stock price volatility on their equity incentive awards. If decisions are made with respect to named executive officer compensation, companies should ensure that such decisions are clearly disclosed. For instance, changes to performance targets need to be disclosed, and companies need to consider whether any changes have shifted non-equity incentive plan compensation into discretionary bonuses, which requires different treatment in the summary

compensation table (analysis of any shift to the bonus column may depend on whether any adjustment is a permitted adjustment in the original documentation for the award or a discretionary adjustment outside of the terms of the award). Additionally, companies should understand the accounting treatment of any changes with respect to existing awards as part of the process of deciding whether such changes are appropriate. Beyond the technical reporting of any changes, companies should provide clear and fulsome disclosure of any adjustments to executive compensation and the rationale behind such adjustments.

For example, ISS has noted the following for how it will evaluate changes to the performance goals for outstanding awards: “Mid-cycle changes (such as to metrics, performance targets and/or measurement periods) for in-progress incentive programs are generally viewed negatively. As with other kinds of unusual pay program interventions, companies should disclose clear and compelling rationale for such actions and explain how they do not circumvent pay-for-performance outcomes.”

PAY VERSUS PERFORMANCE DISCLOSURE

The 2025 proxy season was the third year that public companies complied with the SEC’s “pay versus performance” rule. This rule requires companies to disclose in a clear manner the relationship between executive compensation actually paid and the financial performance of the company.

Pay versus performance disclosure is governed by Item 402(v) of Regulation S-K, which requires:

- A pay versus performance table;
- A clear description of the relationship between the compensation actually paid to the principal executive officer (“PEO”) and to the average of the compensation actually paid to the other named executive officers (“Remaining NEOs”) and the company’s performance across each measure included in the pay versus performance table, which may be presented as a narrative, a graph or a combination of the two; and
- A tabular list of the most important financial performance measures that the company uses to link named executive officer compensation to company performance (other than smaller reporting companies (“SRCs”).

The pay versus performance table must disclose the compensation paid to the PEO and the average compensation paid to the Remaining NEOs as compared to the following performance measures:

- Company total shareholder return (“TSR”);
- Peer group TSR (other than SRCs);
- Net income; and
- A company-selected financial performance measure (“Company-Selected Measure”) (other than SRCs).

Following adoption of the pay versus performance disclosure requirement, the SEC Staff issued several C&DIs to clarify the disclosure requirements. Recent comments also provide insight into the Staff’s expectations with respect to the information provided under the rules. Generally, the comments appear to indicate that the Staff is seeking careful compliance with the rule; for example, the Staff commented when a company included other net income amounts in the table, such as net income attributable to the

controlling interest, rather than U.S. GAAP net income or loss. Similarly, the Staff has focused on the calculation of “compensation actually paid” and whether the company has fully presented and precisely described all calculations. The Staff has also focused on how performance is assessed and how that assessment is used in regard to performance targets; for example, asking companies to disclose how performance targets were actually used in determining compensation paid, to discuss the purpose of specific targets, or to discuss the impact, if any, that share repurchases have on whether or not performance targets are considered to be achieved. Lastly, the Staff has also asked that employment agreements be filed as exhibits to annual reports.

The pay versus performance rules have been strongly criticized, both for being burdensome and for not reflecting pay for performance consistently with how most companies’ compensation committees do. Therefore, companies may want to consider whether they want to update their compensation discussion and analysis to further emphasize their own view of pay for performance.

For additional information, see our Legal Update, “SEC Adopts Pay Versus Performance Disclosure Rule,”²⁵ and our post, “Inside the Numbers: Year Two of Pay Versus Performance Disclosures.”²⁶

SEC EXECUTIVE COMPENSATION ROUNDTABLE

While not relevant to this reporting season, it is potentially indicative of new directions at the SEC that on June 26, 2025, the SEC hosted a roundtable on executive compensation disclosure requirements with representatives from public companies, their advisors, and investors. Many panelists representing companies and their advisers called for a reduction or simplification of the requirements, with a focus on whether compensation-related information disclosed under the rules is material to an investment or voting decision. Investors on the panel stressed the need for clear information to understand companies’ compensation decisions.

SEC Chairman Paul Atkins encouraged members of the public to provide their views on several relevant questions, including setting compensation, making investment and voting decisions, the past, present, and future of executive compensation disclosure, and executive compensation “hot topics,” including requirements imposed by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the “Dodd-Frank Act”) and the SEC’s 2006 revisions to the executive compensation disclosure rules. The SEC received over 50 substantive comment letters submitted from market participants ranging from trade groups to compensation consultants, investor protection groups, and law firms urging reform in a variety of areas, as well as over 1,000 form comment letters that support keeping or expanding the current disclosure rules.

Some common themes include calls for the SEC to reassess the utility and limitations of the Summary Compensation Table and other tables, and potentially to eliminate or streamline certain of the tables. Perquisites are another common theme, including requests to reconsider the definition of a perquisite and the threshold at which perks are required to be disclosed, and particularly to revisit the requirement to treat personal security costs as a perquisite. Many commenters also weighed in on the Dodd-Frank Act-mandated executive compensation rules, such as pay ratio, pay-versus-performance, and clawbacks, criticizing the SEC’s discretionary implementation of the Dodd-Frank Act requirements as overly complex and inconsistently aligned with board practices. Commenters also urged the SEC to consider reducing the number of executives for whom compensation disclosure is required. While no changes are expected to

the SEC's rules for the 2026 proxy season, this initiative has the potential to drastically affect the preparation of proxy statement disclosure in future seasons.

For more information, see our post, "SEC Hosts Executive Compensation Roundtable."²⁷

GOVERNANCE MATTERS

BOARD INDEPENDENCE, LEADERSHIP STRUCTURE, AND RISK OVERSIGHT

An area of consistent SEC Staff scrutiny is the specificity and quality of disclosure regarding board leadership structure and the board's oversight of risk. Companies should ensure that their proxy statements clearly explain why their chosen leadership structure (*i.e.*, whether it has combined or separated chair/CEO roles, or the use of a lead independent director) best supports effective oversight, and should detail the lead independent director's responsibilities, authority and cadence of engagement with management and independent directors.

The Staff's ongoing emphasis on tailored risk oversight disclosures extends to material enterprise risks. Companies should highlight how the board's structure, committee allocations and expertise collectively facilitate robust risk oversight.

Investor and proxy advisor sentiment continues to reflect divergent views on board leadership. While many investors favor independent board chairs as the most direct mechanism for accountability and robust oversight, others accept alternative structures where companies provide clear, decision-useful disclosure explaining why the chosen approach is appropriate and how independent oversight is ensured in practice. In this environment, companies should proactively address shareholder expectations by explaining the rationale for their leadership model, the safeguards in place to preserve independent oversight, and any circumstances that warrant deviation from general preferences, with transparent disclosure of those exceptions.

Director independence also remains an area of focus. For example, in March 2024, the SEC settled charges against a company for failing to disclose a number of transactions dealing with payments to family members of executives and unpaid but required reimbursements totaling at least \$120,000 by executives to the company for personal charges.²⁸ Further, in September 2024, the SEC settled charges against a director and former CEO of a public company for violating the proxy disclosure rules by standing for election as an independent director without informing the board of his close personal friendship with a high-ranking company executive.²⁹ Similarly, in January 2025, another SEC enforcement action was settled for a company's failure to disclose that (i) a sibling of an executive officer and director and (ii) a child of another director were paid an aggregate of more than \$1 million for compensation for their roles as a non-executive company employee and independent sales agent, respectively.³⁰ Companies should review relationships that may call independence into question, including interlocking directorates and other affiliations that could impair objective judgment. Not only should companies make sure that these relationships are approved in advance in accordance with any relevant policies, but these decisions should be carefully documented to ensure that the relationships can be clearly disclosed under Item 404 of Regulation S-K.

In addition, concerns around director overboarding persist. Boards should consider whether their policies appropriately limit the number of public company boards on which directors, and especially CEOs, may

serve, and should disclose those policies and any exceptions. Clear, credible disclosure regarding independence and bandwidth can mitigate voting risks, including negative recommendations against directors where capacity or conflicts could hinder effective oversight.

Relatedly, attention in previous years has focused on board interlocks, which can, on the positive side, result in shared knowledge and experience between the companies on whose boards a director sits. However, interlocks are also subject to regulatory attention, including but not limited to the possibility of antitrust concerns. As with other areas relating to director independence, companies should provide clear disclosure about the boards on which directors serve, as well as any potential benefits and potential risks.

Finally, companies should emphasize board effectiveness in their disclosures. Narrative disclosures should make clear how the board's composition, leadership roles, committee mandates, and oversight mechanisms collectively support the board's stewardship of strategy and risk. Transparent, consistent disclosure, coupled with active investor engagement on governance and risk oversight, can reduce vulnerability to adverse proxy advisor recommendations and shareholder proposals, and can foster long-term alignment with investor expectations.

CONTROLS AND PROCEDURES

Companies should regularly evaluate their controls and procedures for effectiveness, which is subject to quarterly certification by their respective chief executive officers and chief financial officers. Examples of important disclosure controls and procedures and internal control over financial reporting include:

- Companies should assess and enhance controls over the use of non-GAAP financial measures and KPIs, with particular attention to consistency in preparation and usage, calculation accuracy, and evaluation of data provenance and reliability. Where metrics are customized, there should be a formal process to document the methodology and underlying data inputs so the metric can be calculated and reported consistently over time and across disclosures.
- Companies need an appropriate disclosure control to determine whether any director or officer adopted or terminated any Rule 10b5-1 or other trading arrangement so companies can accurately fulfill their quarterly disclosure obligations.
- Companies should implement controls in connection with any stock repurchase programs as well as with stock repurchases by insiders.
- It may be appropriate for companies to consider the timing of stock-based compensation grants, particularly options and stock appreciation rights, in relation to the handling of material nonpublic information.
- Companies should ensure their disclosure controls and procedures cover cyber security incidents and cybersecurity risks.
- Companies should ensure controls and procedures are in place to identify, evaluate, and disclose executive perquisites appropriately, including clear criteria, centralized tracking, and review protocols.

- Companies should implement robust disclosure controls and procedures over all sustainability disclosures to vet accuracy, ensure consistency across filings and other public statements, and document underlying assumptions and data sources.
- Audit committees and management should remain alert to new or changing business risks, design and implement responsive control updates, and consider risks such as loss of financing, customer concentrations, deteriorating industry conditions, and changes in technology that could impact transaction processing and the timely identification of potential material misstatements.

DIRECTOR AND OFFICER QUESTIONNAIRES

In light of the SEC enforcement actions discussed above, in preparing D&O questionnaires for the upcoming proxy season, companies should refine the independence section to expressly capture close personal friendships and other social ties with management as potential material relationships. Stock exchange rules require boards to affirmatively determine each director's independence, while SEC rules require proxy disclosure identifying independent directors, citing applicable standards, and describing the categories of matters considered in making independence determinations. To support these determinations, companies generally rely on D&O questionnaires and consolidate results for board review, but the recent SEC matters underscore the risks of relying solely on written responses and the importance of follow-up discussions to ensure directors appreciate the breadth of "material relationships," including social and personal ties.

Companies should also expand the director expertise section to collect information sufficient to assess the board's skills in cybersecurity and AI, reflecting the growing need for technological fluency at the board level and the board's role in overseeing digital transformation, cyber risk, and AI governance, which are areas increasingly intertwined with fraud, privacy, and ethics.

Finally, for new directors and officers who require EDGAR codes, questionnaires should be updated to address EDGAR Next's new Form ID requirements, including whether the applicant, any account administrator, or the Form ID signer has been convicted of, or civilly or administratively enjoined, barred, suspended, or banned in connection with federal or state securities violations (noting that this requirement is not subject to a 10-year lookback).

PROXY ADVISORY FIRM UPDATES

ISS AND INSTITUTIONAL ADVISORS AMENDED DIVERSITY-BASED VOTING GUIDELINES

On February 11, 2025, ISS announced that it would no longer consider the gender, racial or ethnic diversity of company board members in shareholder meeting reports published on or after February 25, 2025. In contrast, on March 4, 2025, Glass Lewis notified its clients that it intends to stand by its 2025 benchmark guidelines, which recommend that shareholders vote against certain directors of boards that lack diversity. Glass Lewis noted that when giving any voting recommendation against a director in connection with diversity, it plans to flag counter arguments and other information that could support alternative votes in order to help clients avoid political risks.

In addition, several major institutional investors, including BlackRock, State Street, and Vanguard, updated their proxy voting guidelines to de-emphasize demographic metrics in favor of disclosures related to director qualifications, skills matrices, and governance effectiveness. For example:

- BlackRock indicated it will assess diversity in the context of overall board composition and oversight of human capital management, rather than requiring specific gender or racial representation.
- State Street Global Advisors shifted from specific numeric diversity expectations to evaluating whether the board composition supports long-term strategy and risk oversight.
- Vanguard emphasized that while it continues to value diverse perspectives, it will prioritize independence, relevant experience, and accountability in its voting decisions.

Together, these changes suggest a broader recalibration of investor expectations from prescriptive diversity mandates to a principles-based focus on board effectiveness, qualifications, and transparent disclosure practices.

For more information, see our post, “ISS Announces Halting Diversity-Based Voting Recommendations.”³¹

TEXAS SENATE BILL 2337 AND RELATED LITIGATION

Over the past year, Glass Lewis and ISS have been under pressure with respect to topics like executive pay, DEI initiatives and environmental politics. For example, in Texas, a new law, known as Senate Bill 2337 (“SB 2337”) imposed regulations on proxy advisory firms. SB 2337 would require proxy advisory firms, including Glass Lewis and ISS, to provide prominent disclosures when making voting recommendations based on non-pecuniary factors, such as environmental, social and governance matters. SB 2337 was scheduled to take effect on September 1, 2025. However, both Glass Lewis and ISS filed suit, alleging that the law violates the First Amendment by compelling speech and is unconstitutionally vague, among other grounds. Subsequently, on August 29, 2025, the U.S. District Court for the Western District of Texas issued a preliminary injunction against SB 2337, blocking its enforcement against Glass Lewis and ISS. The trial is currently set for February 2, 2026. If SB 2337 is upheld, proxy advisors issuing recommendations for companies that are either headquartered in Texas, incorporated in Texas, or redomesticating to Texas will be subject to significant new disclosure and procedural requirements.

On November 12, 2025, the *Wall Street Journal* reported that the FTC had launched an investigation into whether ISS and Glass Lewis violated antitrust laws, just as news emerged that the Trump administration is considering executive orders to reduce their influence on shareholder voting.

Companies and institutional investors should monitor these developments closely, as the outcome of the litigation and any federal actions could materially alter the obligations, timing, and content of proxy advisory recommendations for the upcoming proxy season.

GLASS LEWIS ANNOUNCES END TO BENCHMARK RECOMMENDATIONS

On October 14, 2025, Glass Lewis announced that, starting in 2027, it will no longer offer its benchmark voting recommendations and will instead offer a set of options. Glass Lewis cited the growing split between how U.S. and European investors approach issues like fiduciary duties and sustainability. Also, as reported by Reuters, a Glass Lewis spokesperson explained that the change is indirectly a result of

criticisms that it has faced from U.S. Republican politicians, stating “[t]he whole geopolitical environment is attached to this.”³²

For more information, see our post, “Glass Lewis Announces End to Benchmark Recommendations.”³³

2025 ISS GLOBAL BENCHMARK POLICY SURVEY RESULTS

On September 22, 2025, ISS released its annual Global Benchmark Policy Survey.³⁴ The survey highlights several areas of investor focus relevant to the upcoming proxy season and offers directional insights into how investors are likely to evaluate governance practices and ballot items.

- **Shareholder rights.** A plurality of investors favor heightened rigor in the shareholder proposal process, with 43% indicating that proponents should provide a detailed, company-specific case for all proposals and an additional 24% supporting more rigorous justification where proposals seek action beyond disclosure. A majority of investors (57%) support permitting action by written consent at non-controlled companies as a shareholder rights tool, though approximately one-third view robust special meeting rights as a potential substitute. Among those favoring special meeting rights as an alternative, most identified a 10% threshold as “sufficiently robust,” which aligns with current benchmark recommendations.
- **Board leadership.** Investor sentiment continues to lean toward support for an independent chair as a governance best practice. While views remain split, 43% characterize an independent chair as “best,” and 38% support the practice while acknowledging that exceptions may be appropriate based on company-specific circumstances.
- **Director overboarding.** Most investors prefer that non-executive directors serve on no more than four to five total public company boards. At the same time, more than one-third oppose a one-size-fits-all cap and favor board-level discretion to determine appropriate limits. With respect to CEOs, a majority (55%) believe CEOs should hold no more than one external public board seat, and many view service as an external listed-company chair as a particular overboarding concern. For directors serving on boards within a corporate group, 46% of investors see multiple seats within the same group as less problematic than comparable service across unrelated companies due to perceived synergies.
- **Non-executive director pay.** Investors flagged several practices as problematic and warranting concern. These include inadequate disclosure or an absence of a clear rationale for unusual payments in the proxy; excessive perquisites (such as travel), performance-based awards, stock option grants, or retirement benefits; and particularly large director pay magnitudes, including instances where director pay exceeds that of executive officers.
- **Executive compensation.** While many investors (38%) accept time-based equity as an element of long-term incentive plans, they prefer a balanced mix that includes performance-based equity. Nearly half (46%) agree that an aggregate of at least five years of vesting and/or post-vesting holding is sufficiently long term. In addition, 41% view a requirement to retain 100% of after-tax net shares for a specified period as a meaningful stock retention policy, whether measured post-vesting or post-exercise.

- **Say-on-pay responsiveness.** Investor feedback on post-vote engagement was more limited this year, in part due to the new Schedule 13D/13G guidance, discussed above. Still, 64% of investors agree that if a company sought but could not obtain investor feedback, the absence of disclosed feedback should not be penalized. Further, 80% agree that demonstrable improvements to compensation design can evidence responsiveness even without disclosed shareholder feedback.
- **ESG/DEI metrics.** Against a shifting political backdrop, investors expressed a clear preference for stability in incentive design. 73% favor the traditional view that mid-cycle changes to in-flight awards are generally negative absent a compelling rationale.
- **AI governance.** Investors increasingly expect companies with significant AI use to adopt a recognized governance framework, such as the OECD AI Principles³⁵ or NIST AI Risk Management Framework.³⁶ 58% believe it is probably timely for such adoption, while 41% view it as premature for most companies. Investors value disclosure regarding board oversight of AI, together with evidence of director expertise, training, engagement, and integration of AI into risk management; disclosure alone is not seen as sufficient to demonstrate board understanding of AI-related risks.
- **Board diversity.** Many investors remain focused on diversity at the board, executive, and workforce levels, including the use of targets where appropriate, and on transparent DEI-related disclosure addressing risks, opportunities, and program evolution. Skills and experience mix, gender mix, and tenure mix rank as top priorities, with race and ethnicity also salient for a significant number of investors.

PROXY VOTING MATTERS

During the 2025 proxy season, the volume of shareholder proposals fell in the United States and rose modestly in Europe and the UK. From a substantive perspective, the season underscored an investor preference for targeted governance reforms, and in particular, the removal of supermajority provisions, board declassification, and enhanced special meeting rights.

SHAREHOLDER PROPOSALS

As noted, in 2025, shareholder proposal activity decreased in the United States and shifted toward traditional governance priorities. According to The Conference Board, of the companies listed on the Russell 3000, total shareholder proposals dropped by around 150 proposals to 781 proposals in the 2025 proxy season (January 1 through June 30).³⁷ Corporate governance related proposals were the most dominant at 261 proposals, followed by social proposals and environmental proposals. Despite the decline in the total number of shareholder proposals, the number of proposals omitted increased to 179 proposals, likely due in part to SLB 14M (discussed below) making it easier for companies to exclude proposals from their proxy ballots.

Although proposal volume support for corporate governance proposals rebounded, support for environmental and social proposals fell for the third consecutive year (corporate governance proposals accounted for 43 of the 55 total successful proposals in 2025). Specifically, proposals aligned with long-standing governance norms tended to be most successful; proposals calling for removal of supermajority thresholds and for board declassification produced high pass rates and strong average support, while proposals to enhance special meeting rights, which was the most common corporate governance topic

filed in 2025, also performed well. In regard to specific categories of proposals during the 2025 proxy season:

- **ESG and anti-ESG proposal trends.** Anti-ESG proposals became more common, a trend mirroring that seen in recent years. In addition, proponents that, in past proxy seasons, submitted proposals on clearly anti-ESG topics submitted proposals on a broader array of topics in 2025. For more information, see our Legal Update, “Anti-ESG Shareholder Proposals in 2025.”³⁸
- **Climate-related shareholder proposal trends.** Shareholder support for climate-related proposals declined noticeably, possibly due, at least in part, to political and legal developments. The Trump administration has emphasized opposition to certain climate-related initiatives, and several Republican-led states have pursued litigation against major asset managers over their net-zero commitments. According to Jasper Street data, ISS did not support any environmental proposals this year. In addition, political scrutiny may have created reluctance among investors to publicly support ESG measures, while expanded disclosure on climate-related metrics may have reduced the perceived need for shareholder action. For more information, see our post, “No Environmental Shareholder Resolutions Passed During 2025 Proxy Season.”³⁹
- **Say-On-Pay proposals.** As usual, say-on-pay proposals at most companies received overwhelming majority approval. According to Semler Brossy, only 1.2% of Russell 3000 companies and S&P 500 companies had a failed say-on-pay vote in the 2025 proxy season. Misalignment between pay and performance, problematic pay practices, rigor of performance goals, shareholder outreach and disclosures, non-performance based equity awards and special awards and particularly large grants were among the factors likely contributing to a failed say-on-pay vote.⁴⁰ While an “against” recommendation from a proxy advisory firm does not always result in a failed say-on-pay vote, it will likely cause shareholder support to decline, which may influence the ongoing level and tone of shareholder engagement, as well as future votes on say-on-pay and director elections. If a company prepares additional material in support of its executive compensation program following an “against” recommendation, it must file the materials with the SEC as definitive additional soliciting material not later than the date first distributed or used to solicit shareholders.

NO-ACTION LETTER TRENDS

RULE 14A-8 AND STAFF LEGAL BULLETIN 14M IN 2025

On February 12, 2025, the Staff of the SEC’s Division of Corporation Finance published SLB 14M. Among other things, SLB 14M rescinded previous Staff guidance on no-action requests and clarified the Staff’s views on the scope and application of the “economic relevance exclusion” pursuant to Exchange Act Rule 14a-8(i)(5) and the “ordinary business exclusion” pursuant to Exchange Act Rule 14a-8(i)(7).

During the period beginning on February 13, the day after the publication of SLB 14M, and ending on May 2, 2025, the Staff responded to almost 280 no-action requests.⁴¹ Approximately 40% of these letters requested no-action relief under Rule 14a-8(i)(5) and/or Rule 14a-8(i)(7).

RULE 14A-8(I)(5): THE ECONOMIC RELEVANCE EXCLUSION

Pursuant to Exchange Act Rule 14a-8(i)(5), a company can exclude a shareholder proposal if it “relates to operations which account for less than 5 percent of the company’s total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company’s business.” Under SLB 14M, a proponent must tie social or ethical issues raised in support of its proposal directly to matters that have a “significant effect” on the company’s business. Between February 13 and May 2, the Staff agreed that the company could exclude a proposal in around four of the 12 no-action requests submitted pursuant to Rule 14a-8(i)(5).⁴² Overall, the proposals the Staff agreed could be omitted seemingly referred only to broad societal risks, or potential legal and reputational risks to the company.⁴³ In contrast, the subject of the proposals the Staff declined to exclude likely was implicated by the companies’ specific actions, showing that the Staff continues to require the inclusion of proposals where there is a direct link between a social policy issue and the company’s business.

RULE 14A-8(I)(7): THE ORDINARY BUSINESS EXCLUSION

Exchange Act Rule 14a-8(i)(7), the “ordinary business exclusion,” allows a company to exclude a proposal that “deals with a matter relating to the company’s ordinary business operations” that should be the jurisdiction of the board and management, rather than the shareholders. The central considerations underlying this exclusion are (a) the subject matter of the proposal and (b) the degree to which the proposal “micromanages” the behavior of the company. While the SEC has long recognized an exception to this exclusion for proposals that focus on significant policy issues with a broad societal impact, the Staff evaluates both “significance” and micro-management on a company-specific basis, based on factors such as the nature and detail of the proposal, the specific circumstances of the company, and the manner in which a proposal is raised.

Since the publication of SLB 14M through mid-May, the Staff addressed more than 110 no-action requests under Rule 14a-8(i)(7). In more than 60% of these, the Staff determined that the proposal was properly excludable under Rule 14a-8(i)(7). While the excludable proposals address a cross-section of issues, they generally share several common traits. First, almost all address a social policy issue, such as climate-related risk or ESG or anti-ESG policy, and each proposal can be directly tied to the company’s business and operations in a manner that is specific to that company, rather than a general, broad-based risk that could be applicable to many companies. None of the proposals includes intricate detail; for example, none require the company to act within a specific time frame or give specific instructions for how the company should act in response to the proposal. Lastly, the Staff did not view any of the proposals as being “too complex” for shareholders to consider or, in other words, none of the proposals were characterized as being too prescriptive to the company. That said, it is not always possible to determine the specific factors that form the bases of the Staff’s decisions.

For more information, read our Legal Update, “Shareholder Proposals in the Wake of Staff Legal Bulletin 14M.”⁴⁴

NEW SECTION 13G GUIDANCE AND EFFECT ON SHAREHOLDER ENGAGEMENT

In February 2025, the SEC’s Division of Corporation Finance revised two C&DIs relating to beneficial ownership disclosures on Schedules 13D and 13G. Schedule 13D is required to be filed to report 5% or

greater ownership of a class of equity securities of a public company, while short-form Schedule 13G is available to certain beneficial owners who meet the eligibility requirements, including certifying that the subject securities were not acquired and are not held “for the purpose of or with the effect of changing or influencing the control of the issuer.” The C&DIs caused asset managers and other investors to carefully weigh, and, in many cases, change, their approach to engagement with SEC-reporting companies.

As revised, C&DI 103.11 states that The Hart-Scott-Rodino Act (the “HSR Act”) provides an exemption from certain HSR Act provisions for an acquisition of securities made “solely for the purpose of investment,” where the acquiror has “no intention of participating in the formulation, determination, or direction of the basic business decisions of the issuer.” The C&DI clarifies that an acquiror who is unable to rely on this HSR Act exemption is not necessarily required to file a Schedule 13D, but should determine its eligibility to file a Schedule 13G based on a facts-and-circumstances analysis.

Revised C&DI 103.12 addresses the circumstances under which a shareholder’s engagement with an issuer’s management could disqualify a shareholder from certifying that the subject securities are not held “for the purpose of or with the effect of changing or influencing the control of the issuer,” such that the shareholder would be required to report on Schedule 13D. Similar to C&DI 103.11, the C&DI states that this determination must be made via a facts-and-circumstances analysis. However, it goes on to draw a line between a shareholder who discusses their views on an issue with management and one who “exerts pressure on management to implement specific measures or changes to a policy,” which is more likely to result in an obligation to file a Schedule 13D.

Following the posting of these new C&DIs, many passive institutional investors paused their communications with companies in order to evaluate the guidance. Subsequently, Commissioner Mark Uyeda addressed the C&DIs, sharing his belief that the guidance was not intended to change the way in which such investors engaged with issuers; “[b]y requiring that a shareholder needs to ‘exert pressure on management,’ the C&DI indicates that there needs to be something more than the mere planting of an idea with management in order to lose Schedule 13G eligibility.”⁴⁵ After evaluating the guidance, passive institutional investors are now generally willing to engage with companies, although some engagement practices have changed, such as:

- Investors may wait for companies to reach out to them, rather than affirmatively scheduling meetings or setting agendas. They may also be cautious about discussing contentious or controversial topics.
- Investors may ask more open-ended, rather than targeted, questions. Companies should affirmatively set an agenda to address topics on which they would like investors’ views, and affirmatively ensure that investors have enough information on which to make informed voting decisions.
- Investors may provide disclaimers at the beginning of meetings to ensure that all parties are aware that they do not intend to influence or control the company. While this does not guarantee that investors will not be required to file a Schedule 13D, it does clarify the intentions and goals of the parties.

For more information, see our post, “SEC Provides New Guidance on the Use of Schedules 13D and 13G.”⁴⁶

SEC REVIEW OF SHAREHOLDER PROPOSALS IN 2026

CHAIRMAN ATKINS' OCTOBER 2025 KEYNOTE ON RULE 14A-8

In the keynote address at the John L. Weinberg Center for Corporate Governance's 25th Anniversary Gala, SEC Chairman Paul Atkins addressed both precatory shareholder proposals under Rule 14a-8(i) of the Act and securities litigation reform. Notably, his statements with regard to precatory shareholder proposals and Rule 14a-8 marks a potentially significant departure from the historic approach to such proposals.

A central focus of Chairman Atkins' remarks was the increasing "politicization" of shareholder meetings through precatory, or non-binding, shareholder proposals. He questioned whether Exchange Act Rule 14a-8(i)(1) actually permits companies to exclude such proposals, concluding that this is likely the case, at least with regard to companies incorporated in Delaware.

Specifically, Rule 14a-8(1)(i) permits a company to exclude a proposal that is not a "proper subject" for shareholder action under state law, which raises a question as to whether precatory proposals are, indeed, "proper subjects." In the notes to Rule 14a-8(1)(i), the SEC Staff states that it "will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise," creating a presumption that a precatory proposal is a "proper subject." Taking the opposite view, Chairman Atkins argues that, under Delaware law, precatory proposals might not be "proper subjects" because Delaware law does not explicitly provide shareholders the right to vote on non-binding matters. Chairman Atkins suggested that a company could, with counsel's opinion that a proposal is not a "proper subject" under state law, seek to rely on Rule 14a-8(i)(1) to exclude such proposal, expressing his "high confidence" that the SEC Staff would "honor" this position, at least with regard to that specific company. However, this would not prohibit a proposal proponent from submitting an opposite opinion. As such, Chairman Atkins raised an open question as to whether the SEC would take the issue to the Delaware Supreme Court, should the SEC have to reconcile this argument between a company and a proponent.

Chairman Atkins then turned to the operation of Rule 14a-8(1)(i) under other state law, noting that where a company has opted for higher state-level thresholds, "or has otherwise properly established conditions in its governing documents," and subsequently receives a proposal from a proponent that does not satisfy the requirements of state law or its own governing documents, then the proposal should be excludable under are preempted by Rule 14a-8.

Chairman Atkins concluded his remarks on Rule 14a-8 by calling for a "fundamental reassessment" of the rule's premise, especially given that the Exchange Act itself is intended to govern disclosure.

For more information, read our post, "SEC Chair Calls for Reassessment of Exchange Act Rule 14a-8; Reform of Securities Litigation."⁴⁷

NOVEMBER 2025 STAFF GUIDANCE ON RULE 14A-8

On November 17, 2025, the Staff of the Division of Corporation Finance published a regarding the review of requests to exclude shareholder proposals by both the Division of Corporation Finance and the Division of Investment Management (together, the "Divisions") during the 2026 proxy season. Specifically, due to a shortage of resources after the 43-day government shutdown that ended on November 12, in combination with the "extensive volume" of Staff guidance regarding shareholder proposals, the Divisions will only

respond to or express views on no-action requests to exclude shareholder proposals pursuant to Exchange Act Rule 14a-8(i)(1), a dramatic departure from past proxy seasons.

Further, the Divisions' decision to continue to review requests to exclude proposals under Rule 14a-8(i)(1) appears to be temporary, based on "uncertainty in the application of state law and Rule 14a-8(i)(1) to precatory proposals," such that these reviews may stop when "there is sufficient guidance available to assist companies and proponents in their decision-making process," (likely a reference to Chairman Atkins' October remarks on Rule 14-8, which included the potential of bringing the question about whether precatory shareholder proposals can be omitted under Rule 14a-8(1)(i) to the Delaware Supreme Court).

In addition, the Staff reminded companies of the notice requirement in Rule 14a-8(j), under which companies that intend to exclude shareholder proposals from their proxy materials must provide timely notice (no later than 80 calendar days before filing a definitive proxy statement) to both the SEC and proponents. While this notice is still required, the Staff noted that it is informational only, and that there is no requirement that companies seek the Staff's views regarding their intended exclusion of a proposal, and no response from the Staff is required. However, if a company that provides notice wishes to receive a response from the Divisions for any proposal that it intends to exclude pursuant to a basis other than Rule 14a-8(i)(1), the company or its counsel must include, "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 relevant Division will respond with a statement that, based solely on the aforementioned opinion, it will not object if the company omits the proposal from its proxy materials. No substantive views or opinions will be expressed.

In sum, the potential magnitude of this change to the shareholder proposal process cannot be understated, and practitioners and companies will need to carefully consider how the new guidance impacts their actions in the 2026 proxy season. For more information, see our post, "SEC Staff Reviews of Requests to Exclude Shareholder Proposals during 2026 Proxy Season."⁴⁸

NEW RETAIL SHAREHOLDER VOTING PROGRAMS

The 2025 proxy season saw a significant development in retail shareholder engagement mechanics with Exxon Mobil Corporation's introduction of a standing voting instruction program for retail investors. On September 15, 2025, the Division of Corporation Finance issued no action relief indicating it would not recommend enforcement under Exchange Act Rules 14a-4(d)(2) and 14a-4(d)(3) if Exxon Mobil proceeds with the program as described. The Staff's position turned on several investor-protection features: the program is limited to retail shareholders and is voluntary and cost-free; participants receive annual off-season reminders; and shareholders retain at all times the ability to opt out for future meetings and to override standing instructions for any upcoming meeting after receiving meeting-specific proxy materials. The Staff emphasized that different facts could warrant a different conclusion and expressly declined to opine on compliance with other provisions of the proxy rules or the federal securities laws.

At a high level, the program allows retail shareholders to opt in to an instruction directing that their shares be voted in accordance with the board's recommendations at each annual or special meeting on an ongoing basis. Shareholders may elect to apply the standing instruction to all matters, or to all matters other than contested director elections and extraordinary transactions (e.g., mergers, acquisitions or divestitures requiring shareholder approval under applicable law or listing rules). Votes pursuant to

standing instructions are submitted by the company's vote-processing agent after the definitive proxy statement is filed but before distribution to shareholders, and participants continue to receive full proxy materials for each meeting. State-law compatibility was a predicate to Exxon Mobil's request: Exxon Mobil noted that New Jersey (its state of incorporation) permits non-expiring standing instructions, and that Delaware law similarly permits proxies that remain valid beyond one year if specified. The SEC Staff's no-action response did not independently resolve state-law questions.

The program is intended to target a persistent participation gap among individual investors. Exxon has reported that approximately 40% of its outstanding shares are held by retail shareholders, but only about one quarter of those shares are typically voted. By offering a streamlined, opt-in framework with opt-out and override rights, Exxon Mobil is aiming to increase turnout, help meet quorum requirements and, as a practical matter, increase votes cast in line with board recommendations.

The initiative, however, has drawn criticism and legal challenge. On September 30, 2025, shareholder advocacy groups As You Sow and the Interfaith Center on Corporate Responsibility petitioned the SEC to reconsider and rescind the no-action relief. They argued that the program contravenes the plain language of Rule 14a-4 by effectively conferring voting authority for more than one meeting and without contemporaneous delivery of meeting-specific proxy materials, and that it entrenches management by institutionalizing a "vote with the board" default without an equivalent standing instruction against management. The groups also contend that Exxon Mobil's reliance on a distinction between a "standing voting instruction" and a "proxy" is a functional end-run around the rule's one-meeting limitation and form-of-proxy requirements. In addition, on October 14, 2025, the City of Hollywood Police Officers' Retirement System filed a putative class action in the U.S. District Court for the District of New Jersey alleging that adoption of the program breaches fiduciary duties. These challenges introduce litigation risk and underscore that, notwithstanding the SEC Staff's no-action posture, state-law and private-litigation scrutiny remain material considerations.

For companies, the Exxon Mobil no-action letter may offer a path, but not a safe harbor, for companies with meaningful and stable retail ownership to explore opt-in standing voting instruction programs. However, adopting a shareholder voting program requires a rigorous, company-specific assessment of benefits and burdens and implementation entails coordination with transfer agents and vote-processing intermediaries, development of enrollment and reminder infrastructure, and enhanced recordkeeping. Further, participation among retail shareholders is yet unproven, and companies must carefully weigh investor dynamics and potential litigation risks.



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ENDNOTES

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- ³ See “EDGAR Next Webinar, Enrollment and FAQs – August 26, 2025 (Live Recording),” available at: <https://www.youtube.com/watch?v=38O6Cv-PqzE>
- ⁴ See <https://www.sec.gov/corpfin/non-gaap-financial-measures>
- ⁵ <https://www.freewritings.law/wp-content/uploads/sites/24/2025/10/On-Point-Non-GAAP-Financial-Measures-Oct-2025.pdf>.
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- ¹⁷ See <https://leg.colorado.gov/bills/hb25-1119>
- ¹⁸ See <https://corpgov.law.harvard.edu/2025/09/30/regulatory-climate-shift-updates-on-the-sec-climate-related-disclosure-rules/>
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- ²³ See <https://corpgov.law.harvard.edu/2025/09/16/proxy-season-global-briefing-trends-on-boards-of-directors/>
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- ²⁸ See <https://www.sec.gov/newsroom/press-releases/2024-33>.
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- ³⁴ See <https://www.issgovernance.com/file/policy/active/policy-survey-summary-2025.pdf>
- ³⁵ The OECD AI Principles were initially adopted in 2019 and updated in May 2024 to guide AI actors in their efforts to develop trustworthy AI and provide policymakers with recommendations for effective AI policies, available here: <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0449>
- ³⁶ The National Institute of Standards and Technology (NIST) AI Risk Management Framework was released in 2023 as a framework to manage risks related to AI, available here: <https://nvlpubs.nist.gov/nistpubs/ai/NIST.AI.100-1.pdf>
- ³⁷ See The Conference Board, “2025 Proxy Season Review – From Escalation to Recalibration,” dated August 31, 2025, available at: <https://www.conference-board.org/publications/2025-Proxy-Season-Review-From-Escalation-to-Recalibration>

³⁸ <https://www.mayerbrown.com/en/insights/publications/2025/06/anti-esg-shareholder-in-2025>

³⁹ <https://acrosstheboard.mayerbrown.com/2025/09/no-environmental-shareholder-resolutions-passed-during-2025-proxy-season/>

⁴⁰ See Semler Brossy “2025 Say On Pay + Proxy Vote Results,” dated June 26, 2025

⁴¹ As reflected on the SEC’s website on the afternoon of May 6, 2025. Responses to approximately 70 no-action requests were posted before the publication of SLB 14M; more than 80% of these were withdrawn by the proponent or decided on procedural grounds.

⁴² The Staff did not respond to any no-action requests pursuant to Rule 14a-8(i)(5) in 2025 prior to the publication of SLB 14M.

⁴³ See, e.g., *AbbVie Inc.*, SEC No Action Letter, dated March 18, 2025, available at: [https://www.sec.gov/files/corpfin/no-action/14a-](https://www.sec.gov/files/corpfin/no-action/14a-8/hoysaabbvie31825-14a8.pdf)

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National Center for Public Policy Research Proposal, dated March 25, 2025, available at: [https://www.sec.gov/files/corpfin/no-action/14a-](https://www.sec.gov/files/corpfin/no-action/14a-8/ncpprcvs32525-14a8.pdf)

[8/ncpprcvs32525-14a8.pdf](https://www.sec.gov/files/corpfin/no-action/14a-8/ncpprcvs32525-14a8.pdf). Note that this is somewhat subjective, and it is not possible to track the Staff’s thinking in its entirety.

⁴⁴ <https://www.mayerbrown.com/en/insights/publications/2025/05/shareholder-proposals-in-the-wake-of-staff-legal-bulletin-14m>

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