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2026 Annual Report and Proxy Season: E&S Matters, Executive Compensation, and Governance

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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"), 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. 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."

CURRENT DISCLOSURE REQUIREMENTS FOR CLIMATE -BASED RISK

Today, the SEC's 2010 climate disclosure guidance remains in effect. 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") and Senate Bill No. 261, "Greenhouse gases: climate-related financial risk" 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."

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. Illinois and Colorado introduced their own legislation, HB 3673, and HB 25- 1119, 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."

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," 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 memorandum 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. 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."

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.

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."

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," and our post, "Inside the Numbers: Year Two of Pay Versus Performance Disclosures."

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 DoddFrank 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."

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. 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. 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 nonexecutive company employee and independent sales agent, respectively. 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).