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Public Company Advisory Group Quarterly – Summer 2025

September 2025

We are pleased to bring you our Public Company Advisory Group – Summer 2025 Quarterly Newsletter, a concise summary of the latest developments of interest to public companies. In this edition, we focus on notable trends from the 2025 annual reporting season.

SEC DISCLOSURE TRENDS

Below we analyze emerging trends in disclosures relating to artificial intelligence (AI), compliance with new disclosure obligations regarding insider trading and equity timing policies and practices, and risk factors.

The analysis in this section is based on O'Melveny's review of disclosures in Form 10-Ks and proxy statements made by more than 330 companies with a market capitalization greater than $25 billion (referred to herein as large companies). For purposes of this newsletter, we analyzed filings based on the year they were filed with the SEC, rather than the fiscal year covered by the disclosures in the filing.

# of large companies filing…	Year Filed		
	2025[1]	2024	2023
Form 10-K	335	354	362
Proxy Statement	335	371	372

Artificial Intelligence (AI) Disclosures: Trends and Best Practices

AI Governance

Large companies are increasingly discussing board oversight of AI strategy and risk in their proxy disclosures as use of AI, including generative AI, becomes widespread.

In proxy statements filed in 2025, large companies…	
…increasingly disclosed board or committee oversight of AI.	More than 1/3 of large companies disclosed board or committee oversight of AI,[2] a two-fold increase from 2024.
…most commonly assigned AI responsibility to the full board or the Audit Committee.	Approximately 40% of large companies that disclosed board or committee oversight of AI assigned responsibility to the full board, and approximately 30% assigned responsibility to the Audit Committee. Large companies also assigned responsibility for oversight of AI to other committees, including Cybersecurity/Technology, Finance, Risk, and Governance.
…increasingly disclosed that they seek and value director AI proficiency.	13% of all large companies included AI proficiency as a desired director qualification, a two-fold increase from 2024. The percentage of large companies including AI as a topic covered in director education rose to 8%, up from 4% in 2024.
…increasingly engage directors with AI experience.	More than 26% of all large companies disclosed that they have at least one director with AI industry expertise, up from 18% in 2024.[3]

Takeaway

Ensure that the board is actively engaged in oversight of AI strategy and risk. Large companies are increasingly disclosing board-level oversight of AI in their proxy statements, reflecting heightened regulatory and investor scrutiny.

AI in Business Disclosures

In 2025, approximately 41% of all large companies discussed AI in the Business Section of their Form 10-Ks, up from 35% in 2024. This reflects the increasing incorporation of AI tools into products and services across all industries.

In Form 10-Ks filed in 2025…	
…AI business disclosures increased across industries but were most prevalent among companies in the technology space.	AI business disclosures were most common for large companies in the software and data processing industries[4] (72%, up from 71% in 2024) and the semiconductor and computer hardware industries[5] (44%, up from 36% in 2024). AI business disclosures were also common among companies in the finance industry[6] (43%), although disclosures by these companies largely focused on AI regulations.
…AI was most commonly discussed as a component of a large company's products and/or services.	Overall, 20% of large companies (and 53% of large companies that discussed AI in the Business section of their Form 10-K) discussed AI as a component of the company's products and/or services.
…AI is increasingly mentioned in other aspects of large companies' businesses.	Large companies also described AI in their discussions of material regulations affecting the company (12% of all large companies), as an end-market driver (8%), and as a factor in their competitive landscape (7%).

AI Risk Factors

In 2025, 87% of large companies disclosed AI risks in the Risk Factors section of their Form 10-K, up from 72% in 2024. This includes a supermajority of large companies across all industries represented by the Division of Corporation Finance (DCF) review offices.

70%+ of large companies disclosing AI risk factors

- Manufacturing
- Real Estate & Construction

80%+ of large companies disclosing AI risk factors

- Industrial Applications & Services
- Life Sciences
- Energy & transportation

90%+ of large companies disclosing AI risk factors

- Finance
- Technology
- Trade & Services

The AI risks described by large companies can generally be broken down into ten categories:

Cyber threat actors using AI to commit cyber crimes	**Human Capital** retaining a sufficiently skilled workforce	**Regulatory** complying with expanding governmental oversight of AI	**Competitive** keeping pace with technological advancements of competitors	**Use and Misuse** misuse of AI by employees, contractors, and bad actors
Execution launching new tools without vulnerabilities, bugs, or defects	**Strategic** responding to rapid changes in technology and customer preferences	**Intellectual Property (IP)** AI use leading to infringement claims by or against the company	**Research & Development** recovering investments in new technologies	**Reputation** bad publicity or liability arising from company's use of AI

In addition, many large companies also include a "standalone AI risk factor" that consolidates the various risks associated with the company's use of AI into one separate risk factor.

In Form 10-Ks filed in 2025, large companies…	
…most commonly described AI as a component of cybersecurity risk.	64% of large companies mentioned AI in their cybersecurity risk factors, usually with reference to the use of AI by threat actors to develop increasingly sophisticated methods of gaining access to companies' systems.
…also commonly included AI as a component of risk factors relating to business strategy and compliance.	AI was commonly integrated into risk factors relating to large companies' ability to execute on their strategy (36%) and comply with governmental laws and regulations (35%).
…increasingly included a standalone AI risk factor.	Nearly 30% of large companies included a standalone AI risk factor in their Form 10-K, up from 19% in 2024.

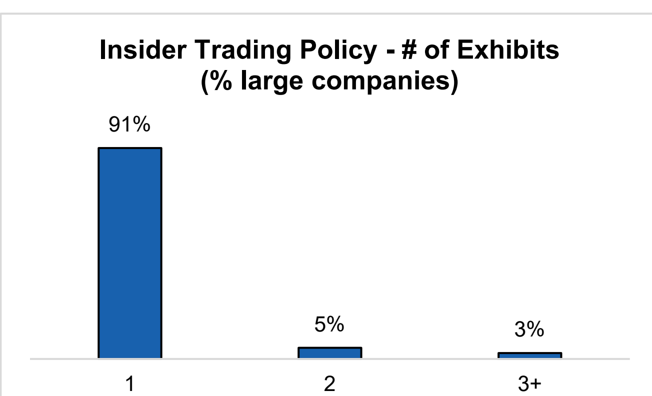
Takeaways

- Review and update risk factors in periodic filings to address any applicable AI-related risks, including cybersecurity threats, legal and regulatory compliance, strategic execution, and reputational harm.
- Consider whether a standalone AI risk factor is appropriate, as nearly 30% of large companies now include one.
- Explicitly address the use of AI by threat actors in cybersecurity risk disclosures, as this is now a common expectation among large public companies.

Insider Trading Policy Disclosures

All public companies are now required to comply with the narrative insider trading policy disclosure requirements pursuant to Item 408(b) of Regulation S-K (referred to herein as the Narrative Disclosure) and to file their insider trading policy as an exhibit to the Form 10-K pursuant to Item 601(b)(19) of Regulation S-K (referred to herein as the Exhibit Disclosure). In 2025:

- **More than half of large companies (55%) that filed both their Form 10-K and proxy statement in 2025 incorporated the Narrative Disclosure into their Form 10-K by reference to their proxy statement.**[7] A small yet notable percentage of companies (~8%) omitted the Narrative Disclosure from their proxy statement entirely, although we expect that this percentage will decrease as companies familiarize themselves with the new rule.
- **The Narrative Disclosure was most often included in the section of the proxy statement where the company describes its other corporate governance policies.** Most large companies either included the Narrative Disclosure in the section of their proxy statement relating to corporate governance practices, often in close proximity to discussions of the company's Code of Business Conduct and Ethics (52% of large companies that filed proxy statements in 2025), or in the executive compensation section of the proxy statement, where it was often combined with a description of the company's policies related to hedging and pledging of company stock (43% of large companies that filed proxy statements in 2025).
- **70% of large companies that provided the Narrative Disclosure in their proxy statement noted only the existence of policies and procedures in their disclosure, without going into details regarding such policies.** Conversely, despite the language of the rule, of the large companies that provided the Narrative Disclosure, (i) 33% failed to include in their Narrative Disclosure the required disclosures about whether they had insider trading policies or procedures covering "other dispositions" of company securities; and (ii) 31% failed to include in their Narrative Disclosure the required disclosures about whether they had insider trading policies or procedures covering transactions by the company in its own securities.
- **Large companies disclosing policies and procedures with respect to transactions in their own securities most commonly disclosed that the company was subject to the company's insider trading policies and procedures.** Of the companies that described policies regarding the company's transactions in its own securities in the Narrative Disclosure, (i) 62% noted that the company's insider trading policies and procedures apply to the company's transactions in its own securities;[8] (ii) 21% stated that the company complies with securities laws and exchange requirements when transacting in its own securities (as a matter of policy or practice); (iii) 16% disclosed that the company follows other procedures for the repurchase or sale of its own securities; (iv) 3% mentioned that the company had a separate policy specific to company repurchases, and (v) only 1% (two companies) explicitly stated that the company was neither subject to the insider trading policy, nor other policies or procedures.
- **The vast majority of large companies filed only one exhibit in the Exhibit Disclosure.** For companies who had insider trading policies and procedures reflected in more than one policy document, some filed these additional policies and procedures as separate exhibits (as noted below), while others combined these policies and procedures together into a single filed exhibit.



Common Types of Additional Exhibits Filed Separately Under Item 601(b)(19)

- Pre-clearance Policy
- 10b5-1 Policy
- Company Repurchase Policy

Takeaways

- Confirm that the Narrative Disclosure is fully responsive to SEC requirements.
- Ensure that the Narrative Disclosure is included in the appropriate sections of the proxy statement or Form 10-K.
- Consider whether the company has additional policies or procedures that should be disclosed to satisfy the requirements of Item 601(b)(19) of Regulation S-K (though in practice this is less common).
- Provide clear, concise disclosures that are responsive to SEC requirements, but evaluate whether additional detail may be warranted to address investor expectations or unique company circumstances.

Item 402(x) Equity Timing Disclosures

All public companies are now required to comply with the narrative and tabular equity timing policy disclosure requirements in Item 402(x) of Regulation S-K (referred to herein as the Equity Timing Disclosure). The Equity Timing Disclosure includes both a narrative and a tabular component:

Equity Timing Disclosure (Item 402(x))	
Narrative Disclosure (Item 402(x)(1))	Tabular Disclosure (Item 402(x)(2))
Discuss "policies and practices on the timing of options in relation to the disclosure of material nonpublic information by the registrant."	Provide table with specified information for options awarded to named executive officers (NEOs) in the period beginning four business days before filing a Form 10-Q or 10-K, or filing or furnishing a Form 8-K with material nonpublic information, and ending one business day after the filing or furnishing (the Filing Window).

In 2025:

- **Almost all large companies (96%) that provided the Equity Timing Disclosure incorporated the disclosure into Item 11 of their Form 10-K by reference to their proxy statement.[9]** Large companies were also unified in the location of the Equity Timing Disclosure, with 98% of large companies that provided the Equity Timing Disclosure in their proxy statement including the disclosure in the section of their proxy statement describing the company's executive compensation policies and practices.
- **Large companies commonly provided disclosure beyond the requirements of the Equity Timing Disclosure.** Most large companies provided disclosure beyond Item 402(x)'s requirements to describe their specific policies regarding the timing option and stock appreciation right (SAR) awards in relation to the disclosure of material nonpublic information and to details about grants of options and SARs made within the Filing Window.

77% of large companies that did not award options to NEOs still described their policies and practices on the timing of non-option equity awards in their proxy statement.

12% of large companies that did not award options to NEOs provided a "negative disclosure" (stating that because options and SARs were not a component of the company's executive compensation program the company did not have any policies and procedures governing the timing of such awards).

33% of large companies that awarded options to NEOs but did not do so within the Filing Window provided "negative disclosure" (stating that they did not award any options or SARs to NEOs during the Filing Window).[10]

Takeaways

- Confirm that equity timing narrative disclosures are fully responsive to the SEC requirements (Items 402(x) of Regulation S-K).
- Ensure narrative disclosures are included in the appropriate sections of the proxy statement and Form 10-K (though in practice this Form 10-K disclosure is commonly incorporated by reference to the proxy statement).
- Consider providing clear, concise disclosures that are responsive to SEC requirements, but also evaluate whether additional detail may be warranted to address investor expectations or unique company circumstances.

New and Emerging Risk Factors

Every year companies update their risk factors to reflect the changing risk environment. We reviewed risk factor disclosures from large companies' Form 10-Ks to identify common trends in business risks across industries.

Trending Up

Artificial Intelligence. 16% of large companies that filed a Form 10-K in both 2024 and in 2025 (through August 18, 2025) added an AI risk factor (or added AI as an element of existing risk factors) to their Form 10-K. As noted above under "Artificial Intelligence (AI) Disclosures: Trends and Best Practices," overall, AI was mentioned in the Risk Factors section of 86% of all Forms 10-K filed by large companies in 2025. Common risk factors mentioning AI included:

- Standalone risk factors describing widespread risk in development or use of AI
- Legal compliance risks amid rapidly developing regulatory frameworks
- Cybersecurity risks from threat actors and from misuse of AI tools
- Risks relating to an uncertain return on investment in AI technologies
- Potential reputational harm from biased or erroneous AI output
- Risks of maintaining or infringing upon intellectual property rights

Tariffs. 18% of large companies that filed a Form 10-K in both 2024 and in 2025 (through August 18, 2025) added a tariff risk factor (or added tariffs as an element of an existing risk factor) to their Form 10-K. Tariff risks were mentioned in the Risk Factors section of 85% of all Forms 10-K filed by large companies in 2025. Common risk factors mentioning tariffs included:

- Tariffs and trade policies impacting availability and pricing for commodities and raw materials
- Tariffs as a factor contributing to volatility in the political and economic environment
- Tariffs and other trade restrictions causing supply chain interruptions
- Tariffs causing fluctuations in customer demand, making forecasting difficult
- Tariffs causing reduction in consumer spending

Presidential Administration Change. 13% of large companies that filed a Form 10-K in both 2024 and in 2025 (through August 18, 2025) updated the Risk Factors section of their Form 10-K to reference President Trump or actions taken by the second Trump administration. The Trump administration was mentioned in the Risk Factors section of 15% of all Forms 10-K filed by large companies in 2025. Common risk factors mentioning the Trump administration included:

- Impact of tariffs proposed by the Trump Administration, including direct impacts to the company's business and impacts on the global economy generally
- Risks to the company (including False Claims Act liability) if their sustainability or other practices are deemed to be in contradiction to the Trump Administration's "anti-ESG" policies

- Impact of the Trump Administration's efforts to reduce the federal workforce, in particular for companies that require federal agency approvals for aspects of their business
- Impact of the Trump Administration's efforts to roll back government spending, in particular for companies that rely on government contracts and subsidies

Trending Down

COVID-19. With more than five years having elapsed since the initial lockdowns of the COVID-19 pandemic, large companies are continuing to remove references to COVID-19 from the risk factor disclosures. 22% of large companies that filed a Form 10-K in both 2024 and in 2025 (through August 18, 2025) removed references to COVID-19 from their Risk Factors section of their Forms 10-K filed in 2025. COVID-19 risks were still mentioned in the Risk Factors section of 46% of all Forms 10-K filed by large companies in 2025, but often as an example of the type of unforeseeable global event that could cause major global and economic disruption.

All but one of the 73 large companies that removed references to COVID-19 from their risk factor disclosures still included in their risk factor disclosures references to pandemics, epidemics, and/or public health crises, most commonly as an element of their risk factors relating to risks of global operations, risks arising out of the global macroeconomic environment, risks relating to supply chain or infrastructure disruptions, or risks of unexpected catastrophic events. More than 20% of the large companies that removed references to COVID-19 from their risk factor disclosures still included a standalone risk factor relating to public health crises or pandemics, just without references to the COVID-19 pandemic.

Evolving

Diversity, Equity and Inclusion (DEI) Matters. Companies were mixed in their approach to referencing DEI in their risk factors in 2025. Overall, the percentage of large companies including references to DEI or equity and inclusion in the Risk Factors section of their Forms 10-K declined from 37% to 23% between 2024 and 2025. However, despite this downward trend, 7% of large companies that filed a Form 10-K in both 2024 and in 2025 (through August 18, 2025) added a risk factor mentioning diversity or equity and inclusion (or added DEI or equity and inclusion as an element of existing risk factors) to the Risk Factors section of their Form 10-K. Large companies that maintained or added to their risk factor discussions relating to diversity and DEI in 2025 often focused on the difficulty of balancing demand for increased diversity disclosure and metrics from certain investors, regulators and consumers with the countervailing pressure and scrutiny from other investors, regulators, consumers and now, the federal government, opposed to such efforts.

Takeaways

- Conduct a thorough annual review of risk factors to ensure they reflect current and emerging risks, such as AI, tariffs, and evolving DEI issues, if relevant to the company.
- Customize risk factors to the company's specific business and regulatory environment, rather than relying on generic language. For example, address how new tariffs or political changes may impact a company's particular supply chain, customer demand, or regulatory compliance.
- Balance the inclusion of DEI and environmental, social, and governance (ESG)-related risk factors with the current political and regulatory climate, recognizing that some companies are reducing such disclosures while others' disclosures continue to evolve.

2025 Proxy Season Snapshot

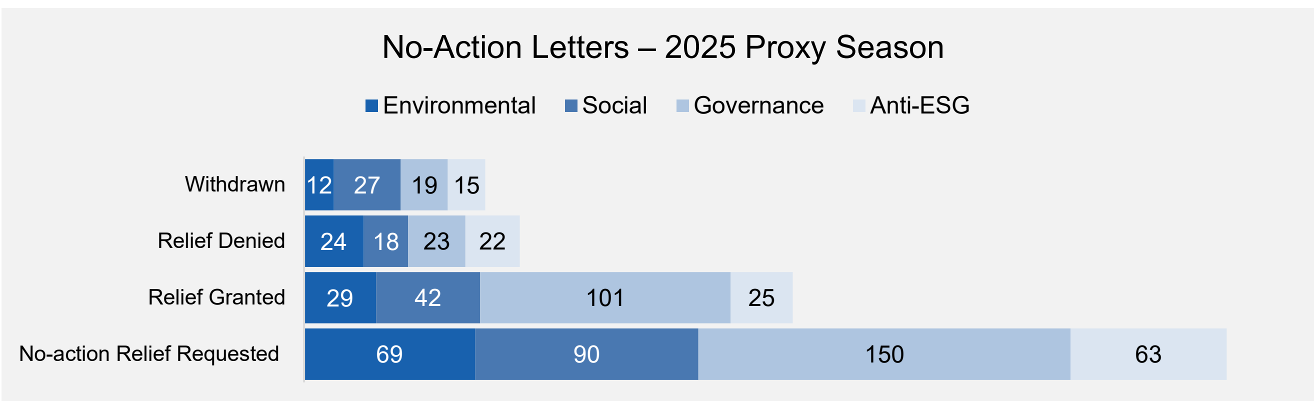
We reviewed shareholder proposals in no-action letters and proxy statements for all companies for the 2025 annual meeting season (which included a review of no-action letters received by the SEC starting in September 2024 and proxy statements and voting results for annual meetings held through July 2025).

For purposes of this analysis, we categorized proposals as Environmental, Social, Governance, or Anti-ESG.

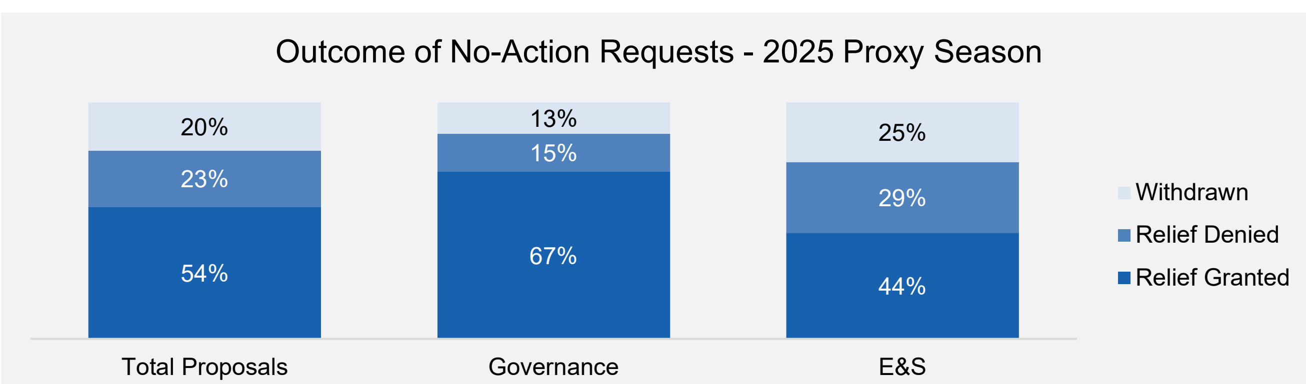
- **Environmental** proposals generally aim to influence corporate impact on climate, sustainability, biodiversity, and natural resources initiatives. For purposes of this analysis, proposals regarding animal welfare were counted as environmental proposals.
- **Social** proposals generally aim to influence corporate impact on social issues including, for example, human rights and other human capital issues (such as labor and diversity reporting), corporate political spending, and lobbying.
- **Governance** proposals generally aim to advance shareholder rights at the company and further other good governance practices. For purposes of this analysis, proposals regarding executive compensation matters were typically counted as governance proposals.[11]
- **Anti-ESG** proposals cover a variety of environmental, social, and governance issues and are generally critical or skeptical of corporate initiatives advancing environmental or social goals.

Rule 14a-8: No-Action Relief Requested and Granted

The SEC granted no-action relief under Rule 14a-8 of the Exchange Act (Rule 14a-8) for 54% of requests made during the 2025 annual meeting season and denied relief for 23% of requests.



The SEC was more likely to grant no-action relief for governance proposals, which were often excluded on procedural grounds, than proposals relating to environmental and social (E&S) topics (including anti-ESG proposals), which more frequently relied on substantive exclusion arguments.



Effect of Staff Legal Bulletin 14M

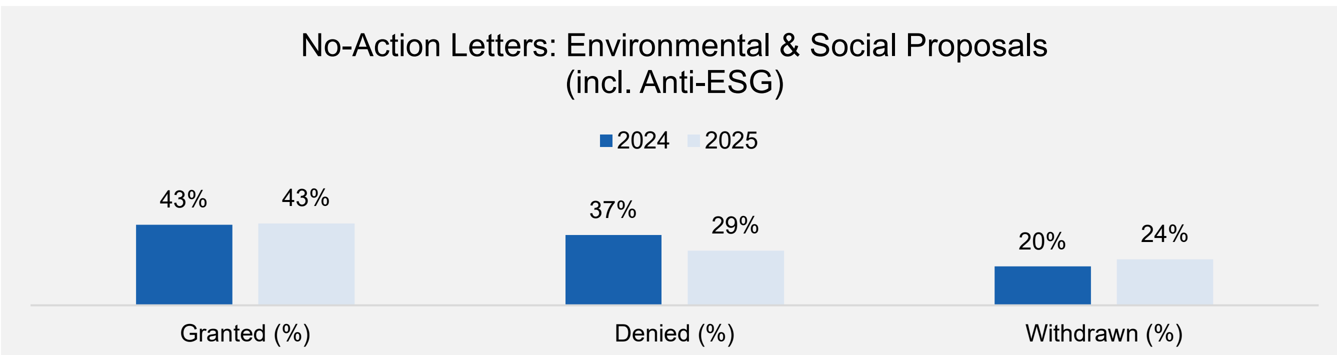
As discussed in our Spring 2025 newsletter, on February 12, 2025 the SEC Division of Corporation Finance issued Shareholder Proposals: Staff Legal Bulletin No. 14M (CF) (SLB 14M) revising the SEC Staff's guidance for two of the substantive bases commonly used to exclude shareholder proposals under Rule 14a-8: the Economic Relevance Exclusion and the Ordinary Business Exclusion (Rule 14a-8(i)(5) and Rule 14a-8(i)(7), respectively).

SLB 14M was widely expected to make it easier for companies to exclude shareholder proposals by, among other things, requiring that any proposal that raises significant social and environmental policy issues have a nexus to the company's business.

Overall, the 2024 and 2025 annual meeting season had very similar overall outcome rates for no-action letters.

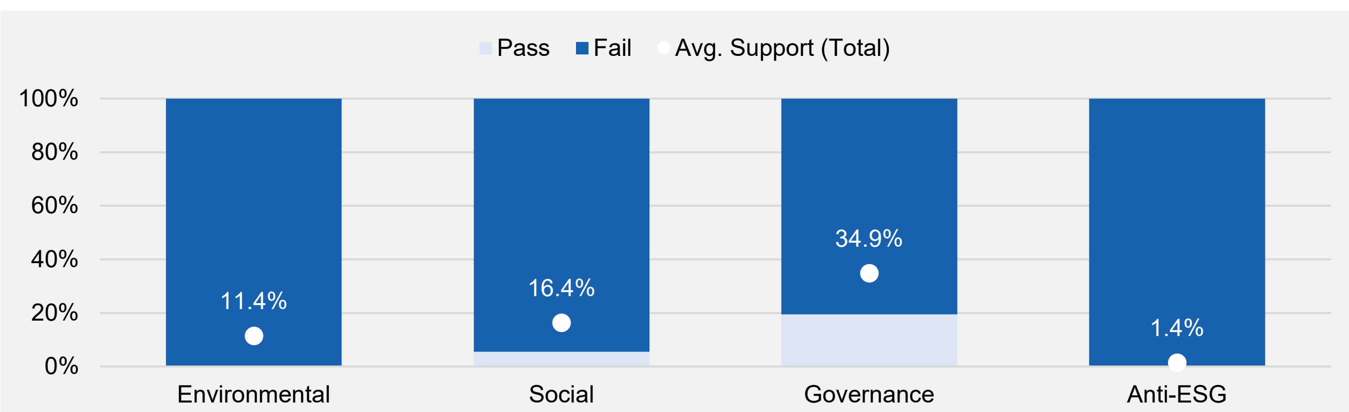
SEC Response Rates to No-Action Letters (2024 and 2025)		
Granted	Denied	Withdrawn
56%	24%	20%

However, with respect to proposals relating to environmental and social topics (including anti-ESG proposals), there was a decline in the percentage of no-action requests denied and an increase in the percentage of no-action letters withdrawn.



Success of Proposals by Category

Overall, only 11% of stockholder proposals voted on during the 2025 annual meeting season were successful.



- Governance proposals generally received higher support than all other types of proposals, averaging 35% voting support[12] across topics. Overall, 19% of governance proposals voted on during the 2025 annual meeting season passed.
- Environmental and anti-ESG proposals were the worst performing category of shareholder proposal, with 0% passage rate and low average voting support. Anti-ESG proposals in particular had very low support at annual meetings, garnering less than 2% voting support on average.

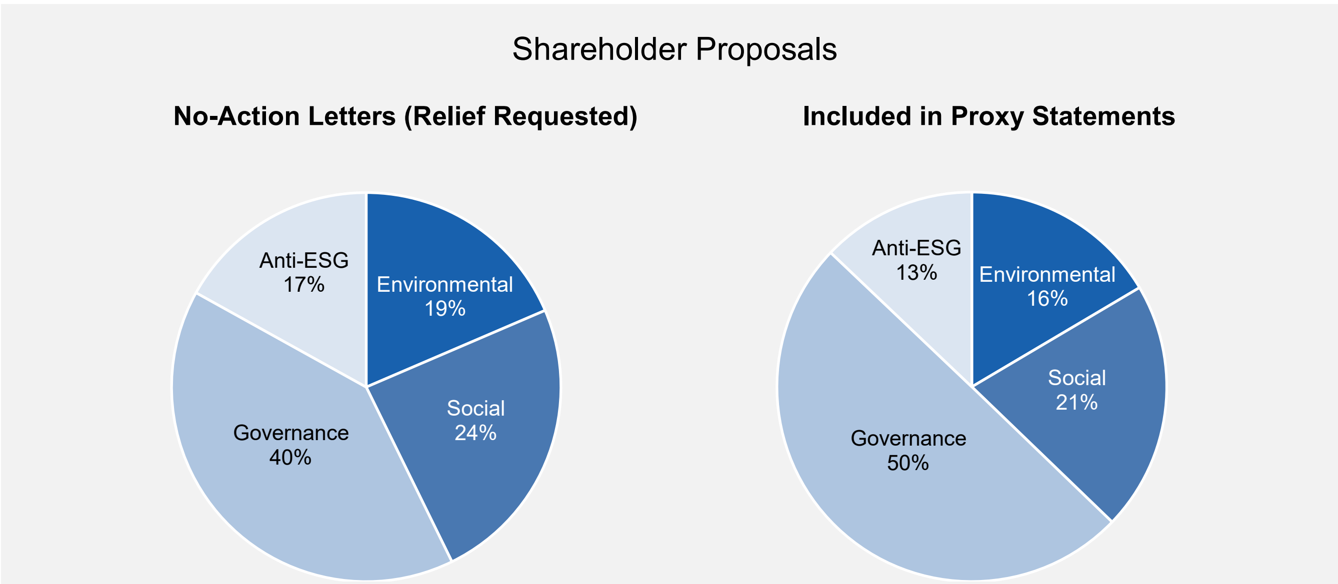
- Social proposals fared better than environmental and anti-ESG proposals, with an overall 5% passage rate and 16% average voting support. However, these numbers were skewed by the relatively high success of proposals requesting corporate transparency on political contributions, which was the most frequent topic voted on in this category and also received among the highest percentage votes in favor of any proposal.

Most Popular Proposals

Shareholders continued to submit large numbers of proposals on environmental, social, and governance (ESG) topics (including anti-ESG) during the 2025 annual meeting season.

No-Action Letters	Proxy Statements (included for a shareholder vote)
373 shareholder proposals on ESG topics	473 shareholder proposals on ESG topics

Nearly half of the no-action letters submitted to the SEC (and half of all proposals included in proxy statements) related to governance matters, with the remaining proposals split almost evenly between environmental, social, and "anti-ESG" matters.



The most commonly *submitted* proposals (which include proposals in no-action letters and proxy statements) for the 2025 annual meeting season were governance proposals seeking to expand shareholder rights.

	Simple Majority Vote	Separate CEO and Chair Positions	Shareholder Approval of Excessive Golden Parachutes	Declassify Board	Director Resignation Bylaws
# of proposals	42	33	29	24	20
# of proposals voted at annual meetings	30	26	28	15	14
% passage rate	73%	0%	0%	87%	0%
% average support	71%	31%	24%	81%	22%

Many popular proposals sought to broaden shareholder rights to call a special meeting, either by creating a right (at a threshold of either 10% or 15% of the holders of common stock), lowering an existing threshold, and/or removing a one-year holding requirement for shareholders to be eligible to vote to call a special meeting.

	Create a Shareholder Right to Call a Special Meeting	Remove Holding Requirement for Shareholders to Call a Special Meeting	Reduce Existing Threshold for Shareholders to Call a Special Meeting
# of proposals	32	24	19
# of proposals voted at annual meetings	20	24	19
% passage rate	35%	0%	11%
% average support	49%	10%	43%

Notably, of the 13 shareholder proposals to create a shareholder right to call a special meeting that did not pass, in nine of those cases (70% of failed proposals) shareholders approved at the annual meeting a competing management proposal to allow shareholder to call a special meeting at a higher threshold than that proposed by the shareholder (typically a 20-25% threshold).

The proposals with the highest success rate in the 2025 proxy season were primarily governance proposals seeking to expand shareholder rights, although proposals asking for companies to provide transparency in political contributions also garnered majority support.

	Declassify Board	Simple Majority Vote	Create a Shareholder Right to Call a Special Meeting	Report on Political Contributions
# of proposals voted at annual meetings	15	30	20	15
% passage rate	87%	73%	35%	33
% average support	81%	71%	49%	40%

In addition to the proposals noted above, shareholders also approved two proposals to reduce an existing threshold for shareholders to call a special meeting, one proposal to permit shareholders to act by written consent and one proposal to instruct the company's board to merge or sell the company.

Although none passed, the following proposals also received significant average support during the 2025 proxy season.[13]

	Separate Chair and CEO Positions	Shareholder Approval of Excessive Golden Parachute Arrangements	Director Resignation Bylaw	Lobbying Transparency Report
% average support	31%	24%	22%	14%
# of proposals voted at annual meetings	25	28	14	15

Takeaways

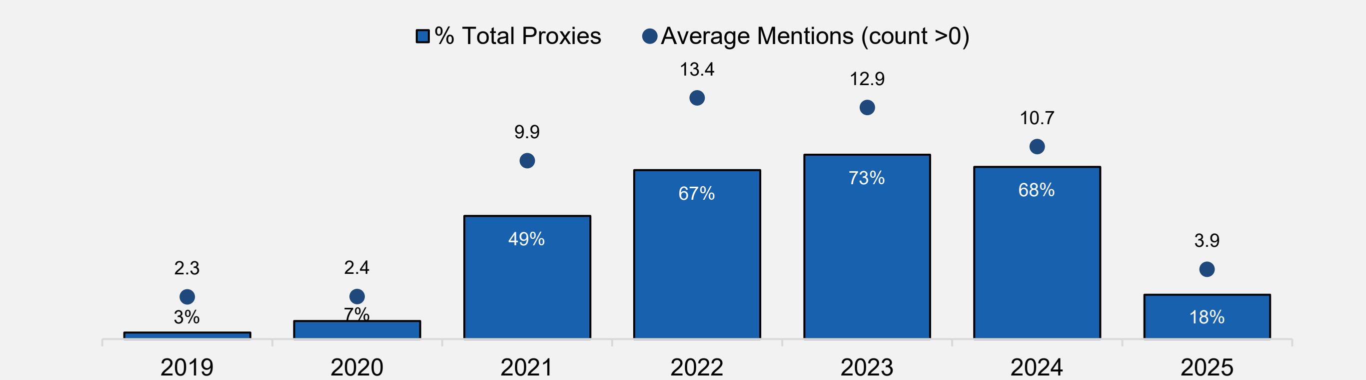
- Review company governance practices that are the subject of frequent shareholder proposals, such as special meeting rights, simple majority voting, board declassification, and transparency in political contributions to assess the potential risk to the company of receiving a shareholder proposal.
- Educate the company's board on the pros and cons of maintaining corporate governance practices that may be common subjects of shareholder proposals.
- Engage with shareholders to discuss the company's corporate governance practices on a regular basis.
- Engage with any proponents of shareholder proposals received by the company for withdrawal of the proposal, whether based on the company's existing practices or on agreed-upon changes to the company's practices on a go-forward basis.

Diversity, Equity, and Inclusion (DEI) Disclosures

Prior to 2025, large companies were increasingly discussing board and corporate diversity in their proxy statements. However, recent public criticism of DEI policies and related pressure campaigns (including lawsuits) against individual companies by activists, anti-DEI legislation, executive orders[14] put forward by certain state governments and the Federal government, and federal court decisions striking down affirmative action practices[15] and mandated diversity disclosures[16] gave many companies reason to reconsider these disclosures.

In proxy statements filed in 2025…	
…the percentage of large companies mentioning DEI, equity, and inclusion was the lowest since 2020.	Only 18% of large companies included such discussion in proxy statements filed in 2025, down from a high of 73% in 2023.
…large companies similarly scaled back the depth of their DEI discussions.	The depth of DEI discussions (measured by the average number of mentions of "DEI" or "diversity, equity, and inclusion" in proxy statements that included those terms) likewise dropped indicating that companies that chose to retain DEI discussions in their proxy statements curtailed those discussions.

Large Company Proxy Statements Mentioning DEI and Equity and Incusion



OTHER UPDATES

California Climate Rule Updates

As discussed in our Spring 2025 Newsletter, companies operating in California that meet certain financial thresholds will need to comply with the climate-related reporting requirements under SB 253 (the Climate Corporate Data Accountability Act) and SB 261 (the Climate-related Financial Risk Reporting Program) (together, the California Climate Disclosure Laws), starting in 2026.

The California Air Resource Board (CARB), which is the agency tasked with promulgating regulations under the California Climate Disclosure Laws "is committed to developing a regulation by the end of [2025]."[17] In the meantime, CARB is hosting virtual workshops[18] to provide the public with updates to, and to solicit feedback on, the pending regulations, and has released Frequently Asked Questions (FAQs) and a Draft Checklist covering the status of their rulemaking process and guidance intended to assist companies with submitting initial reports under the California Climate Disclosure Laws.

As discussed in our Client Alert, CARB previously indicated that it will not take enforcement action under the Climate Corporate Data Accountability Act for incomplete reporting for the first report due in 2026 against companies that made a good faith effort to retain all data relevant to emissions reporting for the entity's prior fiscal year.

A First Amendment challenge to the California Climate Disclosure Laws is still pending in the U.S. District Court for the Central District of California in a case brought by the U.S. Chamber of Commerce and other parties. On August 13, 2025, the Court denied the plaintiffs' motion for a preliminary injunction to enjoin the State of California from enforcing the California Climate Disclosure Laws.[19] The plaintiffs have appealed the denial to the Ninth Circuit Court of Appeals. If the case proceeds, a trial on the merits is expected to take place in November 2026.

In light of uncertainties about the outcome of the litigation on the California Climate Disclosure Laws, companies falling within the financial and other thresholds of the California Climate Disclosure Laws should begin preparing for the first disclosures due in 2026.

SEC Climate Rule Update

As discussed in our Spring 2025 Newsletter, in April 2025, following the SEC's withdrawal of its defense in the consolidated litigation challenging the Biden-era SEC rule imposing climate-related disclosure requirements on public companies (the Climate Rules), the Eighth Circuit Court of Appeals granted a motion filed by 18 states and the District of Columbia (the Intervenor States) to hold the litigation in abeyance. In its order, the Eighth Circuit directed the SEC to file a status report advising how it intended to proceed with respect to the Climate Rules. If the SEC determined to take no action with respect to the Climate Rules, the Eighth Circuit required the SEC to address in its report whether the SEC will adhere to the Climate Rules "if the petitions for review are denied" and, if not, to address why the SEC will not review or reconsider the Climate Rules at this time.

On July 23, 2025, the SEC filed its status report advising the Eighth Circuit that it "does not intend to review or reconsider the [Climate Rules] at this time"[20] and requested "that the Court terminate the abeyance, continue considering the parties' arguments, and exercise its jurisdiction to decide the case." On July 30, 2025, the Intervenor States filed a response calling the SEC's status report "equivocal (at best)" and asked the Court to "continue to hold these consolidated cases in abeyance and direct the SEC to file status reports…until it decides on a course of action" for the Climate Rules.[21]

Regardless of the outcome of the Climate Rule litigation, companies may still be subject to state-level climate reporting requirements (such as the California Climate Disclosure Laws discussed above), as well as international climate reporting requirements such as the European Union's Corporate Sustainability Reporting Directive (CSRD), which has similarly been subject to implementation delays.

1 Refers to filings made through August 18, 2025.

2 "Oversight of AI" refers to either the board or a board committee (i) being assigned responsibility over some aspect of AI governance or (ii) discussing an aspect of AI governance at some point during the fiscal year covered by the proxy statement.

3 Companies are counted as disclosing a director with AI industry expertise if they (i) expressly identified a company in the AI industry in the director's employment history or (ii) mentioned AI experience or expertise in the description of the director's other qualifications for service on the company's board.

4 These companies typically have disclosures reviewed by the SEC Division of Corporation Finance (DCF) Office of Technology.

5 These companies typically have disclosures reviewed by the DCF Office of Manufacturing.

6 These companies typically have disclosures reviewed by the DCF Office of Finance.

7 Pursuant to Instruction G(3) of Form 10-K, the information required by Part III of Form 10-K may be incorporated by reference from the registrant's definitive proxy statement if such definitive proxy statement is filed with the SEC within 120 days after the end of the fiscal year covered by the Form 10-K.

8 Based on our review, this statistic may not accurately reflect the percentage of companies that have policies and procedures regarding company repurchases. We identified a number of large companies whose Narrative Disclosures were inconsistent with the language of their filed insider trading policies (e.g., 17 large companies had language in their filed insider trading policies covering company repurchases but did not include company repurchase language in their Narrative Disclosure, and 14 large companies stated in their Narrative Disclosure that their insider trading policy applied to the company, but company repurchases were not specifically called out as being subject to the policy in their filed insider trading policy).

9 *Id.*

10 For purposes of this analysis, a company was counted as providing "negative disclosure" if it affirmatively stated that it did not grant any options to NEOs during the Filing Window, but not if it stated that (i) it had a policy not to grant options during the Filing Window or (ii) it did not grant options to NEOs during the prior fiscal year.

11 Compensation-related proposals constituted approximately 10% of all governance-related proposals submitted in connection with the annual meeting season. The most popular compensation-related proposals requested that companies give shareholders the right to approve excessive golden parachute payments (42 proposals submitted) or that companies amend their executive compensation programs to include a CEO pay ratio factor (4 proposals submitted).

12 Throughout this section, votes in favor of a proposals are calculated based on the voting standard that applied to the particular proposal being voted on at the annual meeting.

13 Limited to proposals that were voted on at 10 or more annual meetings.

14 *See* Exec. Order No. 14,173, 90 Fed. Reg. 8633 (Jan. 31, 2025), https://www.whitehouse.gov/presidential-actions/2025/01/ending-illegal-discrimination-and-restoring-merit-based-opportunity/. This executive order, which, among other things, asks the U.S. Attorney General to take measures "to encourage the private sector to end illegal discrimination and preferences, including DEI," was discussed in our January 2025 Client Alert. *See also* Exec. Order No. 14,230, 90 Fed. Reg. 11781 (Mar. 11, 2025), https://www.whitehouse.gov/presidential-actions/2025/03/addressing-risks-from-perkins-coie-llp/ (ordering an investigation into whether law firm hiring practices violate race-based and sex-based non-discrimination laws).

15 See Students for Fair Admissions v. Harvard, 600 U.S. 181 (2023). The impact of the Supreme Court decision on corporate diversity programs was discussed in our July 2023 Client Alert.

16 The Fifth Circuit decision striking down Nasdaq's board diversity disclosure requirements was discussed in our December 2024 Client Alert.

17 California Air Resources Board, California Corporate Greenhouse Gas Reporting and Climate-Related Financial Risk Disclosure Programs: Frequently Asked Questions Related to Regulatory Development and Initial Reports (Jul. 9, 2025), available at https://ww2.arb.ca.gov/sites/default/files/2025-07/FAQs%20Regarding%20California%20Climate%20Disclosure%20Requirements.pdf.

18 These included a "kickoff" workshop on July 9, 2025 and a second workshop on August 21, 2025.

19 Order Denying Plaintiffs' Motion for Preliminary Injunction, Chamber of Com. of the U.S.A. v. Cal. Air Resources Bd., No. 2:24-cv-00801 (C.D. Cal. Aug. 13, 2025).

20 Iowa v. SEC, No. 24-1522 (8th Cir. Jul. 23, 2025) (Status Report of the SEC in Response to the Court's April 24, 2025 Order).

21 Iowa v. SEC, No. 24-1522 (8th Cir. Jul. 30, 2025) (Intervenor States' Response to the July 23, 2025 Status Report of the Securities and Exchange Commission).

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This memorandum is a summary for general information and discussion only and may be considered an advertisement for certain purposes. It is not a full analysis of the matters presented, may not be relied upon as legal advice, and does not purport to represent the views of our clients or the Firm. Shelly Heyduk, an O'Melveny partner licensed to practice law in California; Rob Plesnarski, an O'Melveny partner licensed to practice law in the District of Columbia; Andra Troy, an O'Melveny partner licensed to practice law in New York; Ashley Gust, an O'Melveny counsel licensed to practice law in New York; Aliza Cohen, an O'Melveny resource attorney licensed to practice law in California; Chloe Keedy, an O'Melveny associate licensed to practice law in California; and Kate Jones, an O'Melveny associate licensed to practice law in California, contributed to the content of this newsletter. The views expressed in this newsletter are the views of the authors except as otherwise noted.