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Public Company Advisory Group Quarterly – Fall 2026

November 2026

We are pleased to bring you our Fall 2026 edition of the Public Company Advisory Group Quarterly, a concise summary of the latest developments of interest to public companies. In this edition, we cover recent Securities and Exchange Commission (SEC) updates, corporate governance updates, and other developments relevant to our public company clients.

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SEC UPDATES

SEC Order Granting Temporary Conditional Exemptive Relief for Certain Tokenized Securities Venues

On September 17, 2026, the SEC issued an order (the Order) granting temporary, conditional exemptive relief that would, among other things, allow newly defined "Tokenized Securities Venues" (TSVs), subject to specified conditions, to trade tokenized versions of exchange-listed stocks through permissioned, automated market makers and liquidity pools, without registering as an exchange or operating as an alternative trading system.[1] The Order is discussed in greater detail in our October 8, 2026 Client Alert.

A TSV must publish a public notice on its publicly available website containing specific disclosures required by the Order at least 30 calendar days before commencing operations (the TSV Notice). Within one business day of publishing its TSV Notice, the TSV must notify the SEC in writing of its intent to operate as a TSV. The SEC publishes a list of persons that have provided this written notice.

Importantly for companies listed on a national securities exchange, the Order would allow an unaffiliated third party to tokenize the company's shares and offer such tokenized shares for trading on a TSV without the company's affirmative consent. As a result, issuers may have reduced insight into who holds these tokenized interests, how shareholder records are maintained, and how voting and communications will work in practice, even though the TSVs are obliged to verify equivalent rights.

Although affirmative consent is not required, the Order requires that a TSV, before it makes available for trading a stock tokenized by a third party unaffiliated with the issuer, send written notice to the issuer at the physical address of the issuer's principal executive offices or email address as listed on the cover page of its reports filed under the Securities Exchange Act of 1934, as amended (the Exchange Act). The TSV may not begin trading the tokenized stock until at least 30 calendar days after the issuer receives the notice, during which the issuer may object to the tokenization in writing (the Objection Period). A timely objection bars that TSV from trading the token.

After the expiration of the Objection Period and before a TSV may make non-objecting third-party tokenized stock available for trading, the TSV must update its TSV Notice to identify both the tokenized stocks made available for trading and the issuers that objected to tokenization during the Objection Period (and whose stocks will therefore not be tokenized and made available for trading).

As of November 16, 2026, the SEC has received notice from four TSVs of their intent to operate under the Order. Only one of the TSVs, OKXICE TSV, identified in its TSV Notice the ticker symbols of 62 issuers whose NMS stock it intended to tokenize and make available for trading before the expiration of the Objection Period.[2] OKXICE TSV has since updated its TSV Notice to disclose that 90% of those originally listed issuers (plus 11 issuers not identified in the earlier TSV Notice) had objected to tokenization.[3]

In practice, this framework includes several features that issuers should be aware of:

	Issue	Suggested Next Steps
No response will allow trading to proceed.	If an issuer misses or fails to act on a notice within 30 days, trading on that venue may go forward, so a timely, deliberate decision matters.	• Issuers should consider advance discussions with senior management and the board of directors on whether to object to third-party tokenization, so a decision can be made well within 30 days of receiving notice. • Issuers wishing to object to tokenization should have a form of written objection ready for prompt delivery to any TSV that sends a notice.
Notices may arrive at inappropriate locations.	The address listed on the Exchange Act cover page may be a general mailroom or mailbox, which creates a real risk that a notice is never routed to the appropriate legal or investor relations team.	Issuers should verify the physical and email addresses on Exchange Act report cover pages, and ensure any mail or email addressed there is monitored daily and routed promptly to the Legal Department or other appropriate contact.
Objections are venue-specific.	An objection applies only to the TSV that sent the notice, so an objection to one TSV does not automatically apply to notices from other TSVs. Each new venue may trigger a new notice and a new 30-day clock.	A TSV must publish a public notice on its website at least 30 calendar days before beginning operations and, within one business day of publishing that notice, must notify the SEC in writing of its intent to operate as a TSV. The SEC publishes a list of persons that have provided this written notice. Monitoring the SEC list and TSV public notices may give the issuer early warning of new venues.

Companies that view tokenization as positive or inevitable may prefer to tokenize their own shares, directly or through an agent, to retain control over the token's design and record-keeping. Companies should consider looking at programs being offered by listing exchanges as well as peer company practices to benchmark whether to initiate an issuer-sponsored program.

The SEC is soliciting comments on the Order and describes the Order as a bridge to future rulemaking. The SEC has published FAQs concerning the Order, which it may update from time to time.

New Corporation Finance Interpretations (CFIs) Regarding Schedule 13G Engagement

As discussed in our Spring 2025 Quarterly Newsletter, in February 2025 the SEC's Division of Corporation Finance (Corp Fin) issued new CFI Question 103.12 stating that a beneficial owner of more than 5% of an issuer's securities (a "5% shareholder") could lose eligibility to file beneficial ownership reports on Schedule 13G if it "exerts pressure" on the issuer's management to implement specific measures or changes to a policy by, among other things, conditioning the 5% shareholder's support of one or more of the issuer's director nominees on the issuer adopting certain corporate governance measures, undertaking specific actions on social, environmental, or political policies, or meeting the 5% shareholder's expectations on a particular topic.

On September 2, 2026, Corp Fin published three new Exchange Act CFIs clarifying aspects of this new engagement framework by outlining three circumstances that, by themselves, would not disqualify a 5% shareholder from reporting on Schedule 13G.

- **CFI Question 103.13:** Participation by a 5% shareholder in an engagement initiated by an issuer or in response to an issuer's request to understand why the 5% shareholder voted a certain way at a past shareholder meeting would not, by itself, disqualify a 5% shareholder from reporting on Schedule 13G.
- **CFI Question 103.14:** A 5% shareholder's discussion of its views on a particular topic with a person engaged in proxy solicitation would not, by itself, disqualify the shareholder from reporting on Schedule 13G.
- **CFI Question 103.15:** A 5% shareholder's engagement with an issuer to seek clarification about particular facts or statements asserted in the issuer's filings would not, by itself, disqualify the shareholder from reporting on Schedule 13G.

In all cases, however, the ultimate determination of whether the engagement would be viewed as an attempt to "influence" the issuer is based on all the facts and circumstances surrounding such engagement.

SEC Proposes Rule to Rescind Rule 14a-8, Amend Rule 14a-4 and Modernize Other Proxy Rules

On September 16, 2026, the SEC released its proposed rule on Rescission of Rule 14a-8's Federal Regulation of Shareholder Proposals and Amendments to Rule 14a-4 (the Rule 14a-8/14a-4 Proposal) that, if adopted, would:

- Rescind Rule 14a-8 under the Exchange Act, which establishes the federal procedural and substantive framework under which companies are required to include qualifying shareholder proposals in their proxy materials; and
- Expand the circumstances in which a public company may exercise discretionary voting authority with respect to matters not included in its proxy materials via proposed amendments to Rule 14a-4 under the Exchange Act.

The full rescission of Rule 14a-8, if adopted as proposed, would mean that shareholders would no longer have an express federal right to include a properly submitted shareholder proposal in the company's proxy materials. Because shareholder voting occurs predominantly by proxy, shareholders seeking votes on a proposal would generally need to conduct an independent proxy solicitation. Current state laws and company governing documents generally do not address circumstances in which a shareholder proposal may be included in the company's proxy statement outside of the Rule 14a-8 process, rather than through an independent proxy solicitation by the proponent. There are also uncertainties about whether and the extent to which precatory proposals are permitted under state corporate laws.

On November 9, 2026, the Council of the Corporation Law Section of the Delaware State Bar Association took the first step towards addressing this gap for Delaware corporations by seeking comment on a White Paper setting forth proposed amendments to the Delaware General Corporation Law (DGCL) that would be effective only if Rule 14a-8 is rescinded as proposed, and would address "when and how stockholders of a Delaware corporation may submit precatory (non-binding) proposals at annual stockholder meetings and have these proposals included in the corporation's proxy materials" (the DGCL Proposal). The DGCL Proposal would, among other things, not permit the submission of precatory stockholder proposals to corporations with market capitalization of less than $30 billion or newly public companies (i.e., companies that became a public company within the last five years), even if a stockholder would solicit its own proxies for the proposal. For Delaware corporations with market capitalization of $30 billion or greater, the DGCL Proposal would establish a tiered cap on the number of precatory stockholder proposals that the corporation would be required to present to stockholders for a vote at its annual meeting, with the largest corporations

(those with market capitalization of $100 billion or more) only required to present up to a maximum of three precatory stockholder proposals. The DGCL Proposal is discussed in greater detail in our November 2026 Client Alert.

As demonstrated by the DGCL Proposal, if Rule 14a-8 is rescinded as proposed, the law of a company's state of incorporation (or, if permitted, its governing documents) could determine the standards governing the submission of stockholder proposals, including, among other things, (i) what topics are a proper subject for shareholder action and therefore permissible subjects for shareholder proposals (including the permissibility of precatory proposals), (ii) minimum share ownership thresholds or holding periods required for a shareholder to submit shareholder proposals, (iii) resubmission thresholds for shareholder proposals previously voted on by shareholders, or (iv) other additional procedural or informational requirements for submitting stockholder proposals to companies.

Also on September 16, 2026, the SEC proposed a number of amendments to its rules regarding proxy solicitation in a separate proposed rule on Proxy Solicitation Modernization (the Proxy Modernization Proposal), which is intended to reflect developments that have occurred since the rules were initially adopted or last amended. The Proxy Modernization Proposal, if adopted, would modernize several aspects of proxy delivery and solicitation to reflect the widespread availability of EDGAR filings, electronic delivery, and related technological developments. Among other changes, the SEC proposes to eliminate the annual-report delivery requirement, eliminate certain 20-business-day delivery periods for incorporated-by-reference materials, eliminate the Notice of Exempt Solicitation requirement, shorten the minimum broker-search period from 20 business days to five business days, and require specified contact information on proxy-statement and information-statement cover pages.

The Rule 14a-8/14a-4 Proposal and the Proxy Modernization Proposal are discussed in greater detail in our September 24, 2026 Client Alert.

The comment period for the Rule 14a-8/14a-4 Proposal and the Proxy Modernization Proposal is scheduled to close on November 20, 2026.

CORPORATE GOVERNANCE UPDATES

SEC Expands No-Action Relief Offered to Retail Voting Programs

As discussed in our Fall 2025 Newsletter, on September 15, 2025, the SEC Office of Mergers and Acquisitions issued a no-action letter (the ExxonMobil Letter) permitting ExxonMobil to launch a retail shareholder voting program where the company will seek standing voting instructions from retail investors to vote their shares at the annual meeting in accordance with the board's recommendations (the Retail Voting Program).

On September 28, 2026, and September 29, 2026, respectively, the SEC Office of Mergers and Acquisitions issued two additional no-action letters granting relief for retail voting programs to The Goldman Sachs Group, Inc. (the GS Letter) and Tesla, Inc. (the Tesla Letter and, together with the ExxonMobil Letter and the GS Letter, the Retail Voting No-Action Letters).

The retail voting programs contemplated in all three of the letters share a number of common features:

No Cost to Participants	Participants will not be charged for participating in (or withdrawing from) the retail voting program.
Continued Receipt of Proxy Materials	Participants will continue to receive all proxy materials filed and distributed to shareholders for upcoming shareholder meetings.
Two Voting Options	Participants will be given two options: • to vote the board of directors' recommendation on "all matters" or • to vote the board of directors' recommendation on all matters other than contested elections and specified M&A/divestiture matters ("special matters")
Participants May Override Standing Instructions	Participating shareholders may override standing voting instructions with respect to any particular proposal or proposals at no cost by voting using the company's proxy materials.

Participants May Opt Out at Any Time	Participants may opt out and cancel standing voting instructions for future meetings (for which the company has not yet filed a definitive proxy statement) at any time and at no cost.
Issuer Sends Annual Reminders to Participants	The issuer will send participants an annual reminder stating (i) that they have opted into the issuer's retail voting program; (ii) which standing voting instructions they previously selected; and (iii) that they may opt out and cancel their standing voting instruction or override those instructions at any time and at no cost.
Issuer Makes Public Disclosures About Retail Voting Program	• The issuer will file materials describing the retail voting program and any material changes to these materials pursuant to Rule 14a-12 under the Exchange Act. • The issuer will disclose the retail voting program on its website and in proxy statements filed subsequent to the launch of the retail voting program.

Where the programs differ is in the scope of the no-action relief requested and the enrollment mechanisms of the programs themselves.

- The Tesla Letter proposes an industry framework for Issuer Voluntary Retail Voting Programs (IVRVPs) that may be accessed by any issuer, whereas the ExxonMobil Letter and the GS Letter request relief only for ExxonMobil and Goldman Sachs, respectively.
- The Tesla Letter introduces the concept of a "centralized management hub for standard voting instructions hosted by a provider of shareholder communication services" (a Hub) that would allow retail shareholders who are beneficial owners to opt into any (or all) IVRVPs by issuers whose shares are represented in the shareholder's accounts. Through a Hub, a shareholder could submit standing voting instructions covering all shares of an issuer held in a particular account, and the shareholder's enrollment would automatically be reinstated if the shareholder sells and later repurchases the issuer's shares.
- The ExxonMobil Letter contemplates that information about the Retail Voting Program would be sent by the company directly to registered holders and indirectly (through intermediaries) to beneficial owners.
- The GS Letter adds a mechanism intended to facilitate communications and enrollment for current and former employees, including an enrollment platform on an internal system available only to employees.

	ExxonMobil Letter	GS Letter	Tesla Letter
Scope of request	Relief for ExxonMobil's own retail voting program	Relief for Goldman Sachs's own retail voting program	Relief for **any issuer** implementing an IVRVP using a centralized management hub for standard voting instructions
Applicable state law	New Jersey Revised Statutes 14A:5-19	Delaware General Corporation Law, Section 212(b)	Texas (based on a legal opinion to the effect that an IVRVP standing instruction is permitted under Texas law)
Availability of program	All retail investors, including any registered owner or beneficial owner (via bank, broker, or plan administrator)		Available to all or some retail investors (not required to be made available to all retail investors)
Excluded from program	Registered investment advisers exercising voting authority with respect to client securities	No express carve-out for registered investment advisers	

	ExxonMobil Letter	GS Letter	Tesla Letter
Enrollment architecture	Company-led communications to registered holders and indirectly to beneficial owners through intermediaries	Same as ExxonMobil Letter PLUS (i) tailored enrollment communications to current and former employees; and (ii) enrollment portal (through internal company system) available to current employees	Hubs would allow shareholders to opt into IVRVPs of issuers whose shares are represented in their accounts. Shareholder meeting voting platform may provide opportunity for shareholders to participate in IVRVP for future meetings
Account coverage	Appears tied to the shareholder's participating holdings through the program mechanics.	Contemplates additional features as program matures: (i) increased inclusion of broker-dealers through single vote processing agent, (ii) retail voting program opt-in or enrollment to cover multiple accounts ("householding"), and (iii) retail voting program enrollment through a centralized portal.	Expressly includes features forecast in the GS Letter, including householding. Shareholder may utilize Hub to submit voting instructions for all shares of company securities held in a particular account under the shareholder's name (with automatic reenrollment if shareholder sells and later repurchases shares).
Special-matter reminders	Participants who instructed the company to vote their shares on "all matters" will receive an additional reminder prior to any meeting involving a special matter.		All IVRVP participants will receive an additional reminder prior to any meeting that involves a special matter.

During the 2026 proxy season, only one other company launched a retail voting program modeled after the one proposed by ExxonMobil.[4]

Though the impact of retail voting programs on the 2026 proxy season was small, the SEC's recent no-action letters indicate continued interest from issuers and the SEC in expanding this method of increasing retail vote participation in public company annual meetings.

In our Fall 2025 Newsletter, we discussed how companies should weigh the potential benefits of retail voting programs—namely, increased participation in shareholder meetings by retail investors—against the potential costs and uncertainties associated with launching such programs.

Costs Associated with Retail Voting Programs	Uncertainties Associated with Retail Voting Programs
• Drafting and filing program materials • Investor outreach • Third-party proxy service providers	• Company-specific factors driving impact of program • State law compliance • Legal uncertainties • Investor pushback

Notably, the no-action requests submitted by ExxonMobil[5], Goldman Sachs,[6] and Tesla[7] in connection with their respective Retail Voting No-Action Letters each contain statements that the retail voting program proposed by the issuer complies with the law of its jurisdiction of incorporation. This means that while the SEC no-action relief for the Tesla Letter applies to any issuer implementing an IVRVP using a centralized management hub for standard voting instructions, the state law compliance aspect has only been assessed with respect to Texas corporate law (and Tesla only references having received a legal opinion to the effect that the IVRVP is permitted under and governed by the law of the State of Texas, without reference to any specific provision in Texas corporate law). Companies organized under the laws of Delaware, New Jersey, or any other jurisdiction will need to conduct their own analysis to ascertain the state law compliance aspect of the broader Tesla program.

As more companies adopt retail voting programs and service providers develop platforms to facilitate these programs (including any Hubs described in the Tesla Letter, although to date no such Hub has been established), we expect a better understanding of the costs and benefits. However, due to the limited uptake of retail voting programs to date, there remain many unsettled considerations.

Continuing Uncertainties Associated with Retail Voting Programs	
Company-specific factors	ExxonMobil reported that total shares participating in the Retail Voting Program represented 3.0% of ExxonMobil's outstanding shares as of March 1, 2026 (out of approximately 40% of outstanding shares held by retail investors), with 79% of the participating shares opting to vote the board's recommendation for all matters in the proxy statement.[8] Companies should analyze their shareholder base, retail investor voting patterns, and any identified barriers for retail investors to vote at the annual meeting and consider whether increased participation by retail investors in the annual meeting process through a retail voting program will make a meaningful difference for the company in advancing its governance agenda.
State law compliance	The Retail Voting No-Action Letters involve companies incorporated under the laws of the State of New Jersey, the State of Delaware, and the State of Texas. However, as noted above, retail voting programs (and in particular the Tesla IVRVP for which relief has been granted to all issuers) may not be permissible under the laws of all jurisdictions.
Legal uncertainties	The class action lawsuit by the City of Hollywood Police Officers' Retirement System seeking an injunction against ExxonMobil to prevent the company from proceeding with the Retail Voting Program[9] is still ongoing after being transferred from the U.S. District Court for the District of New Jersey to the U.S. District Court for the Southern District of Texas.[10] Additionally, on December 1, 2025, the Boca Raton Police and Fire Fighters' Retirement System filed a complaint against ExxonMobil alleging that its Retail Voting Program violates both federal securities laws and the New Jersey statute governing the legal use of proxies and, among other things, seeking to enjoin ExxonMobil from implementing its Retail Voting Program.[11] The case is still being litigated in New Jersey, but the court is considering transferring the case to the U.S. District Court for the Southern District of Texas.
Investor pushback	Notwithstanding the SEC's acceptance and expansion of such programs or the outcome of the pending litigation, there are indications that investor groups, large investors, and proxy advisory service providers may be critical of a company's election to adopt a retail voting program. For example, following ExxonMobil's launch of its Retail Voting Program, the New York City Comptroller's Office submitted a shareholder proposal, which was included in ExxonMobil's proxy statement for its 2026 annual meeting, asking the board of directors to "adopt and disclose policies to ensure that [ExxonMobil's Retail Voting Program] provides multiple independent options to shareholders so that the retail voting program does not inordinately advantage the Board's own voting recommendations."[12] Proxy advisory firm Institutional Shareholder Services, Inc. (ISS) advised shareholders to vote in favor of the proposal.[13] The proposal received support of nearly 24% of votes cast on the proposal at the annual meeting.

New CFIs Regarding Retail Voting Programs

On October 8, 2026, Corp Fin published two new Proxy Rules and Schedules 14A/14C CFIs on the topic of retail voting programs. The new CFIs are in response to the efforts by certain investors to require retail voting programs to offer to participants a standing voting option other than the board-supported option.

- **Question 189.01**: Confirms that federal proxy rules do not require any person to implement a retail voting program, nor do they require any person that implements a retail voting program to offer more than one type of standing voting instructions (including any voting instructions suggested by another person).
- **Question 189.02**: A company's retail voting program may offer to shareholders an option to submit standing voting instructions that require votes to be cast in accordance with voting recommendations issued by a third party. However, any communications to shareholders regarding the availability of third-party voting instructions must comply with the prohibition on "false or misleading" solicitations under Rule 14a-9 under the Exchange Act (unless

an exemption is available under Rule 14a-2). This prohibition requires that any shareholders given the option of submitting standing voting instructions offered by a third party must be provided with "material information about the recommendations necessary to understand how their shares will be voted on a particular proposal at an upcoming meeting pursuant to instructions." This information must be provided to participants (i) at no cost and (ii) with sufficient opportunity after receiving the recommendation to cast a vote overriding the third party's recommendation. The CFI provides that this requirement may be met either by including the third-party voting recommendation in the company's definitive proxy statement or by providing the voting recommendation directly to shareholders.

ISS Releases Results of Governance Benchmarking Survey

On October 7, 2026, ISS released the results of its 2026 Global Benchmark Policy Survey, through which it solicited feedback on areas of potential ISS policy change. ISS received 253 responses to its 2026 survey, approximately 56% of which were from investors and investor-affiliated organizations.

We summarize below the survey results most relevant to public companies.

Key Findings of ISS Benchmark Policy Survey	
Corporate Governance	
Reincorporation	Investor and non-investor respondents both indicated that ISS should weigh the benefits identified by the company in support of a proposed reincorporation (e.g., operational, regulatory, and tax-related benefits) against any negative changes to shareholder rights that could arise from such a switch. However, nearly half of investor respondents favored giving greater weight to changes to shareholder rights (including a shareholder's ability to hold company insiders accountable) over other factors, while 26% of non-investor respondents favored giving greater weight to significant company benefits.
Recurring problematic governance provisions	Under current ISS policy, adverse vote recommendations based on material governance concerns (e.g., multi-class share structures, supermajority voting provisions, etc.) that are maintained without shareholder adoption or approval, or without phase-out provisions, will continue for so long as the problematic provisions remain in place. A supermajority of investor respondents (76%) supported maintaining this approach. Non-investor respondents were split, but most commonly (33%) favored application of the adverse vote recommendation only to the first director election following adoption of the governance provision. With respect to any negative vote recommendation issued by ISS in relation to a problematic governance provision, investor respondents most commonly (47%) supported an escalation approach, where the negative vote recommendation could apply to all committee members based on the severity of the governance concern, while non-investor respondents most commonly (38%) supported applying an adverse vote recommendation solely to the chair of the company's governance committee.
Semiannual reporting	In light of the SEC's proposed rule on Semiannual Reporting (discussed in our May 7, 2026 Client Alert), ISS asked respondents to indicate how they would view a company's decision to report its results on a semiannual basis. Fifty percent (50%) of investor respondents viewed semiannual reporting as a negative change, while 54% of non-investor respondents indicated there was no concern as "boards should be trusted to balance the various considerations and make the right decision for the company." A smaller percentage of respondents (12% of investors and 19% of non-investors) viewed the switch to semiannual reporting as a positive change. Thirteen percent (13%) of investor respondents and 10% of non-investor respondents thought the proposal made sense for smaller pre-revenue companies, but not for larger, more mature companies.

Signaling executive compensation concerns	Under current ISS policy, when a company does not hold a say-on-pay vote, ISS will apply an adverse vote recommendation that would usually apply to the say-on-pay vote to any incumbent compensation committee members. In light of the SEC's proposed rule on Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies (discussed in our May 22, 2026 Client Alert), which would greatly reduce the number of companies required to hold a say-on-pay vote, ISS asked respondents their views on how to signal significant executive pay concerns in the absence of a say-on-pay vote. A large majority of investor respondents (91%) supported adverse votes in response to executive compensation concerns, but more than half (50.4%) signaled a desire for a more targeted approach that would initially focus on the compensation committee chair and escalate to the full committee if warranted. On the other hand, non-investor respondents were split between supporting adverse vote recommendations (44%, with 24% supporting a more targeted approach) and preferring no adverse vote recommendations for compensation committee members (54%).
Say-on-Pay responsiveness	Under current ISS policy, when a company does not hold a say-on-pay vote, ISS will evaluate the board's response to any vote where a compensation committee member receives less than 70% of votes cast (which is higher than the 50% threshold applied to continuing director elections). When asked about an appropriate responsiveness threshold, 67% of investor respondents supported maintaining the current threshold, while 50% of non-investor respondents wanted to apply the lower director election threshold.
Board of Directors	
Director tenure	Investor and non-investor respondents diverged on whether long director tenure should be a factor in assessing director independence, with 87% of investor respondents believing it should or can sometimes be a factor, a position taken by only 26% of non-investor respondents. Of the respondents who answered that tenure should or can sometimes be a factor in assessing director independence, a majority of both investors and non-investors preferred that tenure be considered as one factor in a broad assessment with other relevant factors, such as board refreshment.
Environmental and Social Topics	
Board accountability for reduced climate-related disclosures	ISS asked respondents whether directors should be considered accountable for a company's reduced environmental- and climate-related disclosures due to regulatory developments. Where the reduced disclosure is driven by developments that make disclosure requirements less stringent, a large majority of non-investor respondents (85%) indicated that directors should not be considered accountable for reduced transparency so long as the disclosures still met the minimum regulatory requirements, a position that was supported by only 24% of investor respondents. On the other hand, 43% of investor respondents indicated that directors should be accountable for reduced transparency, even if the disclosure was in compliance with all regulatory requirements. When the decision to reduce disclosure is based on a company's assessment that such disclosure introduces legal and financial risks, investor respondents were more likely (44%) to indicate that directors should not be considered accountable so long as the company provided disclosure about reasonable steps it was taking to assess the risks and expectations for resuming previous disclosure levels in the future.
Nature-related risks	Investor and non-investor respondents disagreed on whether companies with significant exposure to nature-related risks should disclose information according to a recognized framework (such as the Taskforce on Nature-related Financial Disclosures, or TNFD). Sixty-eight percent (68%) of investor respondents indicated that they should, while 74% of non-investor respondents indicated that they should not.

On October 22, 2026, ISS released its proposed benchmark policy updates for 2027 and opened a comment period on the proposed updates. ISS noted that it expects to announce its final benchmark policy updates for 2027 (which would generally be applicable to shareholder meetings held on or after February 1, 2027) by the end of November 2026.

Glass Lewis Announces Four Research Perspectives

As discussed in our Fall 2025 Newsletter, in October 2025 proxy advisory service provider Glass Lewis announced that it would be making two significant changes to the way it applies proxy voting policies and delivers voting recommendations to its clients, moving away from what it described as the "traditional one-size-fits-all model of proxy advice."[14] The changes would apply to the individual voting frameworks Glass Lewis offers to clients, as well as to its published proxy research and voting recommendations, beginning in 2027.

Client Voting Frameworks	Proxy Research and Vote Recommendations
Offer to all clients personalized voting frameworks reflecting clients' individual preferences.	Offer multiple research perspectives reflecting "the varied viewpoints of clients" rather than a single "house policy."

In November 2026, following a request for public comment,[15] Glass Lewis set forth the four research perspectives it will offer under its new multi-perspective model starting in September 2027.[16] The perspectives vary based on the weight they give to "demonstrated financial performance" versus "broad stakeholder and sustainability outcomes."

Financial Performance		**Stakeholder/Sustainability Outcomes**	
Performance Focused	**Foundational Governance**	**Global Stewardship**	**Sustainability Focused**
Judges core governance standards in the context of a "performance assessment" based on total shareholder returns and other financial and operational measures; higher performance earns latitude on governance.	Treats core governance standards as essential to safeguard long-term shareholder value.	Pairs core governance standards with rigorous oversight of financially material sustainability risks to protect long-term shareholder value, using an industry-specific materiality lens.	Pairs core governance standards with rigorous oversight of sustainability risks that are or could become financially material over extended time horizons and across portfolios; never applies a performance-based exemption.

In light of its upcoming transition to a multi-perspective model, Glass Lewis made no changes to its U.S. Benchmark Policy Guidelines for 2027, which will apply to shareholder meetings held from January 1 through August 31, 2027.[17]

"Big Three" Asset Managers Continue to Expand Access to Voting Choice Programs

Three of the largest asset management firms in the United States—BlackRock, Inc., The Vanguard Group, Inc., and State Street Investment Management (formerly State Street Global Advisors)—have continued to expand and see more investor participation in their pass-through voting programs. These programs, which we discussed in our Fall 2025 Newsletter, give investors the option to vote their shares in accordance with specified voting policies instead of in accordance with the fund's preference.



Takeaways

- Companies should continue to treat pass-through voting cohorts as distinct voters with their own policies.
- Companies should coordinate with proxy solicitors to refine holder-level models and target investor education on close votes, including director elections and votes on compensation and shareholder rights.

BlackRock, Inc.	State Street Investment Management	The Vanguard Group, Inc.
As of June 30, 2026, 23% of the assets held in BlackRock's eligible Institutional Index equity funds participated in its Voting Choice program[18] (unchanged from June 30, 2025[19]).	As of March 31, 2026, State Street Investment Management's (formerly State Street Global Advisors) proxy voting choice program covered over 80% of the eligible index equity assets it manages. State Street Investment Management has not disclosed participation rates for 2026, but in its 2025 annual report State Street reported that as of December 31, 2025, approximately 10% of its eligible institutional assets under management had participated in the program.	As of November 9, 2026, the Vanguard Investor Choice program is open to investors in 32 Vanguard funds, constituting all of Vanguard's U.S. equity index funds and covering $8.2 trillion in eligible assets.[20] In September 2026, Vanguard reported that, as of July 31, 2026, approximately 507,000 fund shareholders, representing $151 billion in assets, participated in the program,[21] up from approximately 82,000 shareholders and $9 billion in assets during the 2025 proxy season.[22]

OTHER UPDATES

Nasdaq and NYSE Arca Prepare for 23/5 Trading

On April 10, 2026, and May 21, 2026, the SEC approved proposals by The Nasdaq Stock Market LLC (Nasdaq) and NYSE Arca, respectively, to extend the exchange trading hours for NMS stocks to 23 hours a day, five days a week (23/5 Trading).[23] The change is intended to address growing interest in trading in U.S. equities overnight, particularly from international investors.

23/5 Trading will commence on Sunday, December 6, 2026 (the 23/5 Trading Effective Date).[24]

Nasdaq's and NYSE Arca's Current Market Hours

Nasdaq and NYSE Arca currently each offer 16 hours of securities trading every weekday between 4 a.m. and 8 p.m. Eastern Time, divided into three sessions: a **Regular Market Hours** trading session and limited **Pre-Market Hours** and **Post-Market Hours** trading sessions (referred to by NYSE Arca as the Core, Early, and Late Sessions, respectively).

Trading Hours			Market Closed
4 a.m. – 9:30 a.m.	9:30 a.m. – 4 p.m.	4 – 8 p.m.	8 p.m. – 4 a.m.
Pre-Market	Regular Market	Post-Market	Overnight Period (Market Closed)

Trading is allowed during the Pre-Market and Post-Market (Early and Late) trading sessions, but is limited in many respects. For example, neither exchange offers certain order types during these sessions: Nasdaq does not offer unpriced orders or pegged orders, and NYSE Arca does not accept market orders, pegged orders, or closing auction orders (e.g., market-on-close and limit-on-close orders). Additionally, trading volume is thinner during these extended trading sessions, so there is less liquidity and stock prices can fluctuate more sharply.

Nasdaq's and NYSE Arca's 23/5 Trading Hours

Starting on the 23/5 Trading Effective Date, Nasdaq and NYSE Arca will each introduce a new overnight trading session (a "Night Session" on Nasdaq and an "Overnight Session" on NYSE Arca) commencing at 9 p.m. Eastern Time and ending at 4 a.m. Eastern Time, Sunday through Thursday.

There will be no changes to current functionality or operations during the existing daytime trading sessions on either exchange. Nasdaq will rename its 4 a.m. – 8 p.m. Eastern Time trading sessions the "Day Session," while NYSE Arca will retain its separate Early, Core, and Late Sessions with unchanged timing.

			Market Closed (8 – 9 p.m.)	
Trading Hours (Day Session)			↓	Trading Hours (Night Session)
4 a.m. – 9:30 a.m.	9:30 a.m. – 4 p.m.	4 – 8 p.m.		9 p.m. – 4 a.m.
Pre-Market	Regular Market	Post-Market		Night Session

Nasdaq and NYSE Arca will each retain a one-hour period between 8 p.m. and 9 p.m. Eastern Time, between the end of the daytime trading sessions and the start of the overnight session, during which the market will be closed. This will enable the exchanges to process certain corporate actions across exchange and market-participant systems.

The overnight session on each exchange will have the same limited functionality as the existing extended trading sessions, with several key features:

- the overnight session will support limit orders, subject to limited exclusions such as orders directed to opening and closing events (NYSE Arca will also reject market orders and pegged orders);
- trades executed during the overnight session between 9 p.m. and midnight will be assigned the next trading day's trade date (settlement processing will continue to be based on trade date);
- during the overnight session, orders priced outside of a static price band calculated to be within twenty percent (20%) of the "listing market's adjusted Official Closing Price" or "the adjusted last round-lot sale prior to 7:45 p.m. Eastern Time" will be rejected; and
- for Nasdaq, any orders remaining outstanding at the end of the Nasdaq Night Session will be cancelled.

Because the new one-hour market closure period may no longer be sufficient to process certain corporate actions across exchange and market-participant systems, Nasdaq and NYSE Arca (together with the other primary listing exchanges) are adopting harmonized Corporate Action Regulatory Halt Rules (to be effective on the 23/5 Trading Effective Date) to impose a trading halt for nine categories of corporate actions (including, but not limited to, CUSIP and trading symbol changes, forward and reverse stock splits, De-SPAC transactions, spinoffs, and mergers). The trading halt would start at 8 p.m. Eastern Time the day before the effective date of the corporate action and last until 8 a.m. Eastern Time on the effective date of the corporate action.[25]

How to Prepare for 23/5 Trading

Companies should consider reviewing their investor relations practices, insider trading policies, Rule 10b5-1 plans, equity compensation plans, and other corporate policies and agreements that may have provisions linked to trading days or closing prices, to ensure that the new trading hours do not create uncertainty in the administration of those plans, policies, or agreements.

SEC Approves Nasdaq Rule Requiring a Minimum $4 Price for Initial Listing on the Nasdaq Capital Market

On October 7, 2026, the SEC approved Nasdaq's proposal to amend Nasdaq Listing Rule 5505 to remove the ability for companies with securities priced below $4 to list on the Nasdaq Capital Market.[26]

Prior to the rule change, Nasdaq Listing Rule 5505(a)(1)(B) allowed companies to list on the Nasdaq Capital Market when priced at $2 or $3 per share if certain other requirements were met.

Even though the SEC has approved Nasdaq's rule change, it may temporarily suspend the rule change at any time prior to November 29, 2026.

California Climate Rules Update

First Greenhouse Gas (GHG) Emissions Reports Due under SB 253 (Climate Corporate Data Accountability Act)

As discussed in our Summer 2026 Newsletter, under SB 253 (the Climate Corporate Data Accountability Act), the first GHG emissions reports for companies that do business in California and have annual revenues exceeding $1 billion were due on November 10, 2026 (the 2026 Reports).

Pursuant to the California Air Resources Board's (CARB) December 2024 Enforcement Notice (the Enforcement Notice) and CARB's November 2025 Frequently Asked Questions (FAQ) document, CARB will exercise enforcement discretion for the 2026 Reports. Specifically, CARB will not recommend enforcement against reporting entities that submitted incomplete 2026 Reports so long as their 2026 Reports disclosed the reporting entity's Scope 1 and Scope 2 greenhouse gas emissions that were determinable "from information the reporting entity already possesse[d] or [was] already collecting at the time [the Enforcement Notice] was issued." Companies that relied on the Enforcement Notice to not submit data for the 2026 Report were still required to submit a statement on company letterhead to CARB, stating that they did not submit a 2026 Report and indicating that, in accordance with the Enforcement Notice, the company was not collecting data or planning to collect data at the time the Enforcement Notice was issued.

Enforcement of SB 261 (Climate-related Financial Risk Act) Still Enjoined While Litigation Remains Pending

SB 261 (the Climate-related Financial Risk Act and, together with SB 253, each as amended by SB 219, the California Climate Disclosure Laws) would mandate climate-related risk reporting for companies with annual revenues exceeding $500 million that do business in California. Enforcement of the January 1, 2026, reporting deadline for the Climate-related Financial Risk Act remains temporarily enjoined pending the outcome of litigation challenging the California Climate Disclosure Laws. CARB will provide an alternate date for reporting once the litigation is resolved.

Update on Pending Litigation Challenging the California Climate Disclosure Laws

Challenges to the California Climate Disclosure Laws are still pending in federal court.

In January 2024, the U.S. Chamber of Commerce and various state chambers of commerce and industry groups initiated legal proceedings against the State of California, asserting that the California Climate Disclosure Laws compel speech on a contentious issue and thereby violate First Amendment rights on their face. The U.S. District Court for the Central District of California dismissed the majority of the plaintiffs' claims, and the plaintiffs appealed the dismissal to the Ninth Circuit. On November 18, 2025, the Ninth Circuit issued an order temporarily enjoining enforcement of SB 261, while denying the business groups' request for a similar injunction against SB 253. On November 9, 2026, the Ninth Circuit held that SB 253's Scope 1 and 2 disclosure requirements are facially permissible regulations of commercial speech[27], but that SB 253's Scope 3 requirement and SB 261 in its entirety likely unconstitutionally regulate non-commercial speech and should be preliminarily enjoined. The court remanded for the district court to decide whether the Scope 3 disclosures are severable from SB 253's other requirements. Pursuant to an order by the district court, the parties are required to meet and confer and propose renewed deadlines for a trial on the merits by November 30, 2026.[28] The Ninth Circuit's ruling and its potential impact on a company's reporting obligations are discussed in further detail in our November 13, 2026 Client Alert.

A separate as-applied challenge to the California Climate Disclosure Laws on First Amendment grounds, brought by ExxonMobil, is currently pending before the U.S. District Court for the Eastern District of California.

1 Order Granting Temporary Conditional Exemptive Relief, Pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934, from the Definition of "Exchange" in Section 3(a)(1) of the Exchange Act for the Use of Certain Distributed Ledger Trading Venues for Tokenized NMS Stocks and from the Definition of "Dealer" in Section 3(a)(5) of the Exchange Act for Certain Liquidity Providers for Tokenized NMS Stocks, and Request for Comment, Exchange Act Release No. 106402, 91 Fed. Reg. 60,168 (Sep. 22, 2026), https://www.sec.gov/files/rules/exorders/2026/34-106402.pdf.

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3 *Public Notice of OKXICE TSV*, OKXICE TSV (Nov. 5, 2026), https://www.okx.com/cdn/assets/okfe/web3-activities/okxicetsv/notices/OKXICE_Tokenized_Securities_Venue_Public_Notice_26.11.05.pdf.

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7 Letter from Brandon Eerhart, Tesla, Inc., to Off. of Mergers & Acquisitions, Div. of Corp. Fin., U.S. Sec. & Exch. Comm'n, Re: No-Action Request Regarding Exchange Act Rules 14a-3(a), 14a-4(d)(2), 14a-4(d)(3), 14a-4(f), 14a-6(o), 14a-10 and 14a-12(a) in Connection with Proposed Issuer Voluntary Retail Voting Program Framework (Sep. 29, 2026), https://www.sec.gov/files/corpfin/no-action/tesla-inc-092926-incoming-letter.pdf.

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9 Class Action Complaint, City of Hollywood Police Officers' Ret. Sys. v. Woods et al., No. 3:25-cv-16633 (D.N.J. Oct. 14, 2025).

10 City of Hollywood Police Officers' Retirement System v. Woods, No. 4:26-cv-07089 (S.D. Tex. Aug. 25, 2026).

11 Verified Shareholder Complaint for Violation of the Federal Securities Laws and New Jersey State Laws, Boca Raton Police & Fire Fighters' Ret. Sys. v. Exxon Mobil Corp., No. 3:25-cv-18060 (D.N.J. Dec. 1, 2025).

12 ExxonMobil Proxy Statement, *supra* note 8.

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