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## Public Company Advisory Group Quarterly – Fall 2025

October 2025

We are pleased to bring you our Fall 2025 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) disclosure updates and other public statements; governance updates; and other topics of interest to our public company clients.

### SEC UPDATES

#### SEC Releases First Reg Flex Agenda Under SEC Chair Paul Atkins

On September 4, 2025, the SEC released its Spring 2025 [Unified Agenda of Regulatory and Deregulatory Actions](#) (the Reg Flex Agenda), a biannual reporting of significant rules that the SEC expects to consider (but is not required to consider) in the next 12 months. The Spring 2025 Reg Flex Agenda is the first Reg Flex Agenda issued by the SEC under Chair Paul S. Atkins, and it reflects what Chair Atkins described as “the [SEC’s] renewed focus on supporting innovation, capital formation, market efficiency, and investor protection.”<sup>1</sup> The Spring 2025 Reg Flex Agenda includes five proposed actions of interest to public companies.

|                                         |                                                                                                                  |                                    |                      |                                    |
|-----------------------------------------|------------------------------------------------------------------------------------------------------------------|------------------------------------|----------------------|------------------------------------|
| Rationalization of Disclosure Practices | Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies | Shareholder Proposal Modernization | Rule 144 Safe Harbor | Foreign Private Issuer Eligibility |
|-----------------------------------------|------------------------------------------------------------------------------------------------------------------|------------------------------------|----------------------|------------------------------------|

The proposed actions are described in greater detail below.

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|------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Rationalization of Disclosure Practices</b> | Recommendation that the SEC “propose rule amendments to rationalize disclosure practices to facilitate material disclosure by companies and shareholders’ access to that information.” |
|------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

The Spring 2025 Reg Flex Agenda item on “Rationalization of Disclosure Practices” has yet to be outlined by the SEC, but could include rulemaking on various topics, including some already underway, as discussed in further detail below.

#### **Scaling Public Company Disclosure Requirements**

Commissioner Uyeda has suggested that the SEC revisit the financial thresholds for qualifying as a large accelerated filer and accelerated filer (which have not been updated since 2005), and consider scaling disclosure obligations based on a company’s size and resources.<sup>2</sup>

He also has suggested that the only requirement that currently meaningfully differentiates large accelerated filers from other companies is the 60-day deadline for filing their Annual Report on Form 10-K, and has recommended that the SEC “identify rules that should apply only to the largest companies”<sup>3</sup> so that “smaller companies are not disproportionately burdened as they compete.”<sup>4</sup> Commissioner Peirce has expressed support for this idea as well, noting that “[i]t is worth asking whether each disclosure item is appropriate for all companies, small, medium, and large.”<sup>5</sup>

## **Focus on Financial Materiality**

Chair Atkins and Commissioners Peirce and Uyeda have spoken often about their desire for the SEC's disclosure rules to be "based on financial materiality... rather than non-financial factors."<sup>6</sup> By this, they seem to mean that disclosures should aim to help investors "understand the true risks of an investment"<sup>7</sup> rather than be focused on disclosing items which pertain more to "politics and social change."<sup>8</sup>

Among such disclosure rules questioned by Chair Atkins and Commissioners Peirce and Uyeda are rules regarding disclosures on climate, diversity and inclusion, and share repurchase policies.<sup>9</sup> Commissioner Uyeda has also urged Congress to repeal the Conflict Mineral Rule.<sup>10</sup>

In an effort to turn the focus of disclosures back to financial materiality, Commissioner Peirce has suggested that the SEC review its existing disclosure regime in order to identify rules "that are more costly than they are worth regardless of company size."<sup>11</sup>

## **Executive Compensation Disclosures**

The SEC's sweeping set of executive compensation disclosure rules (many mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010), which Commissioner Peirce has referred to as the "growing alphabet of Item 402 of [Regulation] S-K,"<sup>12</sup> is under consideration by the SEC.

In June 2025, the SEC hosted a [Roundtable on Executive Compensation Disclosure Requirements](#) (the Roundtable) to seek feedback from public companies, investors, and compensation advisors on, among other things, (i) how companies make compensation decisions, (ii) what executive compensation information investors consider material in making investment decisions, (iii) whether the SEC's executive compensation disclosure rules provide a clear and complete picture of the company's compensation practices, and (iv) how the SEC can address challenges "companies or investors have encountered with executive compensation rules and the resulting disclosures."<sup>13</sup>

Chair Atkins and each of the Commissioners released statements expressing their views on executive compensation disclosures in connection with the Roundtable. Chair Atkins decried the "volume and complexity" of the rules and expressed a desire for the rules to "be cost-effective for companies to comply with and provide material information to investors in plain English."<sup>14</sup> Commissioner Peirce warned of poorly crafted executive compensation disclosures that she believed were "decreasingly useful."<sup>15</sup> Commissioner Uyeda expressed his view that the purpose of executive compensation disclosures is not to "influence compensation practices" or "address[] desired political or social outcomes with respect to income and wealth inequality in the United States" but to "provide information material to an informed investment or voting decision."<sup>16</sup> Commissioner Crenshaw also weighed in, highlighting the statutory basis for much of the SEC's executive compensation rulemaking and noting that, in her view, shareholders are entitled to a "fulsome, detailed and fair picture of **the process** of how executive compensation is set."<sup>17</sup>

As of October 20, 2025, the SEC has received 70 individual comments on the Roundtable (generally offering support and suggestions for improving the current executive compensation disclosure framework), plus nearly 1,040 comments submitted on standardized form templates expressing support of the current executive compensation disclosure framework.

### **Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies**

Recommendation that the SEC "propose rule amendments to expand accommodations that are available for Emerging Growth Companies (defined generally to include new issuers with total annual gross revenues of less than \$1.235 billion) and to rationalize filer statuses to simplify the categorization of registrants and reduce their compliance burdens."

At the Florida Bar's 41<sup>st</sup> Annual Federal Securities Institute and M&A Conference in February 2025, Commissioner Uyeda offered his views on the "wide-reaching disclosure requirements" that he believes are barriers to some late-stage private companies availing themselves of the public markets.<sup>18</sup>

## **Enhancement of Emerging Growth Company (EGC) Accommodations**

Commissioner Uyeda praised the “concept of an on-ramp for compliance with disclosure requirements” afforded to EGCs, but noted that EGCs have not been provided relief from requirements under a number of recently adopted SEC rules, including cybersecurity and clawback disclosures and the amendments to Rule 10b5-1.<sup>19</sup>

Commissioner Uyeda also announced that he is asking SEC staff to (i) consider whether EGCs could benefit from temporary relief from “certain existing disclosure obligations,” and (ii) recommend potential changes to the EGC definition, “including how a company qualifies and the duration for which it retains the status.”<sup>20</sup>

## **Simplification of Filer Status**

Commissioner Uyeda noted that the SEC’s “current rules with respect to filer categories and associated disclosure obligations are needlessly complex.”<sup>21</sup> He suggested that the SEC should “re-align” the definitions of large accelerated, accelerated, and non-accelerated filer on one hand, and smaller reporting company, on the other, to “reflect the size and makeup of public companies today.”<sup>22</sup> He also questioned whether it makes sense for certain public companies to qualify as both a smaller reporting company and an accelerated filer (which would require the smaller reporting company to provide an auditor attestation of the company’s evaluation of its internal control over financial reporting) based on their public float and revenue.<sup>23</sup>

### **Shareholder Proposal Modernization**

Recommendation that the SEC “propose rule amendments to modernize the requirements of Exchange Act Rule 14a-8 to reduce compliance burdens for registrants and account for developments since the rule was last amended.”

Chair Atkins and SEC Commissioners Peirce and Uyeda have made clear through their public statements that they view shareholder proposals focused on environmental and social topics as unnecessary and costly distractions for public companies and the SEC staff.<sup>24</sup>

As to specific rulemaking on the topic, Commissioner Peirce has suggested increasing the ownership thresholds for shareholder proposals and re-examining “other available tools to ensure that a proponent has some meaningful economic stake or investment interest in a company.”<sup>25</sup>

Additionally, on June 12, 2025, the SEC withdrew a number of regulatory actions proposed by the SEC during the Biden administration,<sup>26</sup> including a July 2022 [proposed rule](#) that would have defined the circumstances when a company could rely on three commonly used bases of exclusion for shareholder proposals under Rule 14a-8 under the Exchange Act (Rule 14a-8): substantial implementation (Rule 14a-8(i)(10)), duplication (Rule 14a-8(i)(11)), and resubmission (Rule 14a-8(i)(12)). The proposed rule received 67 comments, many in support of the changes. However, others criticized the proposed rules as overly prescriptive.<sup>27</sup>

The SEC staff has already shifted the balance of the shareholder proposal process outside of formal rulemaking, including through the release of Staff Legal Bulletin 14M during the 2025 proxy season (which was discussed in our [Spring 2025 Newsletter](#)) and in statements made by Chair Atkins expressing doubt as to whether non-binding shareholder proposals are excludable as being improperly brought under Delaware law (described in further detail below under [Corporate Governance Updates - Chair Atkins Suggests Pathways For Companies to Exclude Shareholder Proposals](#)).

### **Rule 144 Safe Harbor**

Recommendation that the SEC “repropose amendments to Rule 144, a non-exclusive safe harbor that permits the public resale of restricted or control securities if the conditions of the rule are met, to increase instances in which the safe harbor would be available.”

Rule 144 under the Securities Act of 1933, as amended (the Securities Act), sets forth the conditions that must be met before restricted or control securities may be sold in a public marketplace.

Currently, the Rule 144 safe harbor numerates five conditions which, when met, provide a “safe harbor” for holders of restricted or control securities that wish to sell their shares to the public. Although neither Chair Atkins nor any of the other SEC Commissioners have made any public statements on Rule 144 or the safe harbor, this agenda item appears

to support Chair Atkins' purported goals of supporting capital formation. It has been suggested by some practitioners that the holding period for Rule 144 might be reduced and the Rule 144 volume limitation be increased to further encourage such goals.<sup>28</sup>

### Foreign Private Issuer Eligibility

Recommendation that the SEC “seek public comment on the definition of a foreign private issuer (FPI), to account for developments within the FPI population since the Commission last conducted a broad review of reporting FPIs and the eligibility criteria for FPI status.”

The SEC has historically provided accommodations—such as less frequent periodic reporting, scaled disclosures, and exemptions from certain other requirements as compared to domestic registrants—for foreign companies seeking to have their shares sold in U.S. markets that qualify as FPIs. The reduced disclosure requirements applicable to FPIs are based on the premise that “foreign companies are subject to meaningful regulation and disclosure obligations in their home jurisdictions.”<sup>29</sup>

In June 2025, the SEC issued its [Concept Release on Foreign Private Issuer Eligibility](#) (the Concept Release) seeking feedback on whether the current FPI definition properly balances the SEC's interest in allowing foreign companies access to U.S. markets against its interest in providing investors with “information equal as nearly as possible and practicable as that provided to investors in securities of domestic issuers.”<sup>30</sup>

The Concept Release flagged the following changes in the FPI population:

- **Jurisdiction of incorporation and of headquarters.** Between 2003 and 2023, the population of FPIs went from being primarily incorporated and headquartered in Canada or the United Kingdom to being most commonly incorporated in the Cayman Islands and most commonly headquartered in mainland China.<sup>31</sup>
- **Divergence between jurisdictions of headquarters and incorporation.** Between 2003 and 2023, the percentage of FPIs with different jurisdictions of headquarters as compared to their jurisdiction of incorporation increased from 7% to 48%,<sup>32</sup> driven by the increase in China-based issuers, nearly all of which are incorporated in the Cayman Islands.<sup>33</sup>
- **Reliance on U.S. capital markets.** The SEC staff defined a category of FPIs that “appear[] to have their equity securities traded almost exclusively in U.S. capital markets”<sup>34</sup> and found that in 2023, more than half (55%) of FPIs appeared to fall into this category (up from 44% in 2014).<sup>35</sup> The SEC staff also found that in 2023, 64% of FPIs did “not have any significant trading outside of the U.S. capital markets” (compared to 48% in 2014).<sup>36</sup>

According to the Concept Release and accompanying statements by the SEC Commissioners, the “significant shift”<sup>37</sup> in the jurisdictions of headquarters and of incorporation of FPIs since 2003 (particularly towards jurisdictions that “may provide diminished oversight, disclosure or reporting requirements”<sup>38</sup>), accompanied by the shift in how FPIs avail themselves of global equity markets, could indicate that U.S. investors may no longer be receiving “appropriate disclosure” to remain “adequately protected when investing in FPI's securities.”<sup>39</sup>

The Concept Release sought comment on several approaches to narrowing the FPI definition. Comments to the Concept Release were due on September 8, 2025. As of October 20, 2025, the SEC had received 70 comment letters on the Concept Release, including comments submitted by ICMA, Center for Audit Quality (CAQ), and several law firms and accounting firms.



### Takeaways

- The SEC is not required to undertake rulemaking on any of the items covered in its Reg Flex Agenda, and the SEC may pursue rulemaking on topics not included in its Reg Flex Agenda.
- Still, the 2025 Reg Flex Agenda provides good insight into the priorities of the SEC under Chair Atkins and the nature and focus of any rulemaking or other guidance the SEC may undertake over the next twelve months.

## New Compliance & Disclosure Interpretation (C&DI) Regarding Smaller Reporting Company (SRC) Eligibility

On August 27, 2025, the SEC's Division of Corporation Finance published a new [Exchange Act C&DI Question 130.05](#) to clarify that a company may continue to file as a non-accelerated filer for a full fiscal year after it first determines that it is no longer eligible to file as an SRC based on the application of the "revenue test" (paragraph 2 of the definition of "smaller reporting company" under Rule 12b-2 under the Exchange Act).

C&DI 130.05 is significant because non-accelerated filers are provided notable accommodations as compared to their larger (accelerated filer and large accelerated filer) counterparts. These include:

- extended deadlines to file their Quarterly Reports on Form 10-Q and Annual Report on Form 10-K; and
- exemption from the requirement under Section 404(b) of the Sarbanes-Oxley Act to include in their Form 10-K an attestation report of their registered public accounting firm (the Attestation Requirement).

Prior to C&DI 130.05, and based on a reading of the relevant definitions under Rule 12b-2, a filer that determined it no longer qualified as an SRC under the revenue test at the end of its second fiscal quarter could conceivably have been required to comply with filing deadlines applicable to accelerated filers and the Attestation Requirement as early as its very next Annual Report on Form 10-K covering the same fiscal year in which its SRC determination was made.

Note that C&DI 130.05 only applies when a company qualifies as an SRC based on the revenue test. Companies that qualify as an SRC based on the "public float test" (paragraph 1 of the definition of "smaller reporting company" under Rule 12b-2 under the Exchange Act) could qualify simultaneously as an SRC and an accelerated filer.

|              | Public Float Test                              | Revenue Test                                                                                             |
|--------------|------------------------------------------------|----------------------------------------------------------------------------------------------------------|
| Public Float | Filer has public float less than \$250 million | Filer has no public float <u>or</u> public float greater than \$250 million, but less than \$700 million |
| Revenue      | n/a                                            | Annual revenues less than \$100 million                                                                  |

## SEC Issues Policy Statement Clarifying that Mandatory Arbitration Provisions Will Not Affect Effectiveness of Registration Statements

On September 17, 2025, following a 3:1 vote, the SEC issued a [policy statement](#) (the Policy Statement) announcing that the presence of a provision requiring arbitration of investor claims arising under the federal securities laws in a company's governing documents will not affect its determination whether to accelerate the effective date of a registration statement under the Securities Act.

While the SEC staff had not spoken publicly on mandatory arbitration provisions prior to the Policy Statement, it adhered to the view that such provisions could weaken the investor protections aspects of the federal securities laws by unduly impeding shareholders' "ability to bring private actions to vindicate their rights" under such laws.<sup>40</sup>

In announcing the Policy Statement, Chair Atkins noted that the permissibility of mandatory arbitration provisions sits at the intersection of the federal securities laws, state corporate law, and the Federal Arbitrations Act (FAA).<sup>41</sup> In deciding to issue the Policy Statement, the SEC considered Supreme Court cases regarding the FAA and concluded that the federal securities laws do not override the FAA's policy favoring enforcement of arbitration agreements. Chair Atkins further noted that the SEC should not "participate in a debate on whether mandatory arbitration provisions are 'good' or 'bad' for companies and their shareholders," but that it should instead focus on ensuring full disclosure of material information regarding such a provision if there is one.<sup>42</sup> In contrast, Commissioner Crenshaw, the only SEC Commissioner to vote against the Policy Statement, criticized the SEC's new policy position as being "against the public interest and at odds with protecting investors" and thus, "out of step with [the SEC's] history."<sup>43</sup>

Although the Policy Statement was intended to clarify that mandatory arbitration provisions “are not inconsistent with the federal securities laws,”<sup>44</sup> the SEC declined through the Policy Statement to “express any views on the specific terms of an arbitration provision, or whether arbitration provisions are appropriate or optimal for issuers or investors.”<sup>45</sup>



### Takeaways

- Mandatory arbitration provisions may still be prohibited under the general corporation laws of individual states (including the State of Delaware), other federal laws, or the general corporate law concept of fiduciary duties.
- Advantages of mandatory arbitration provisions generally include confidentiality, more limited discovery, and avoiding the costly defense of securities class action litigation as well as the likelihood that a single shareholder action is not advantageous to the plaintiff’s bar.
- Companies should also consider the potential disadvantages of mandatory arbitration provisions: (i) potential negative reaction by investors, including institutional investors and proxy advisory firms; and (ii) potential loss of the benefits of the Private Securities Litigation Reform Act, which require a heightened pleading standard, a discovery stay pending a motion to dismiss, and a right to appeal.

### SEC to Fast-Track Proposed Rules Rolling Back Quarterly Reporting Requirements

On September 28, 2025, following a social media post by President Trump advocating for semi-annual public company reporting,<sup>46</sup> Chair Atkins announced that he was “fast-tracking President Trump’s proposal to [give] companies... the option to report on a semi-annual basis, rather than locking them into the current quarterly reporting regime.”<sup>47</sup>

Public companies have been required to file quarterly reports containing unaudited financial statements and other non-financial disclosures with the SEC pursuant to Rule 13a-13 under the Exchange Act since 1970. However, the practice has faced scrutiny before, including during President Trump’s first term. In 2018, following a social media post by President Trump announcing that he had “asked the SEC to study” moving to a biannual reporting system,<sup>48</sup> the SEC issued a [Request for Comment on Earnings Releases and Quarterly Reports](#) to solicit feedback on “the nature, timing, format and frequency of periodic reporting,” including “the potential benefits and drawbacks of providing an option for companies that issue earnings releases to use the releases to satisfy the core disclosure requirements of Form 10-Q.” The SEC received 89 comments in response to its request but did not take any further action on the topic during President Trump’s first term.

Although investors generally favor more frequent disclosures of financial and other material business information, proponents of less frequent reporting believe that it would reduce some of the administrative costs associated with public company compliance and allow companies to focus on long-term plans rather than on the achievement of short-term (i.e., quarterly) targets.

The SEC is planning to address the proposal through notice-and-comment rulemaking, and Chair Atkins has indicated that the SEC could release a proposed rule in 2026 (taking into account delays stemming from the U.S. government shutdown that began on October 1, 2025).<sup>49</sup>

## CORPORATE GOVERNANCE UPDATES

### SEC Grants No-Action Relief for Exxon Mobil Retail Shareholder Voting Program

On September 15, 2025, the SEC Office of Mergers and Acquisitions issued a [no-action letter](#) permitting Exxon Mobil to launch a retail shareholder voting program whereby 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).

Specifically, Exxon Mobil requested and received relief from enforcement under Rule 14a-4(d)(2) and Rule 14a-4(d)(3) under the Exchange Act.

| Rule 14a-4(d)(2)                                                                                              | Rule 14a-4(d)(3)                                                                           |
|---------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|
| Prohibits a proxy from conferring authority to vote at any annual meeting other than the next annual meeting. | Prohibits a proxy from conferring authority to vote with respect to more than one meeting. |

Though this represents a sea change in the SEC staff's approach to allowing standing instructions, as described in more detail below, both the SEC and Exxon Mobil have already received pushback from activist investor groups who are challenging the validity of the Retail Voting Program through regulatory channels and legal challenges.

In its [letter to the SEC requesting no-action relief](#) (the Request Letter), Exxon Mobil said that it intended the Retail Voting Program to make it easier for retail investors to cast their votes at the company's annual meeting of stockholders. According to Exxon Mobil, at its last annual meeting (i) nearly 40% of the company's outstanding shares were held by retail investors, (ii) only a quarter of those shares were voted, and (iii) approximately 90% of the voted shares were voted in line with the recommendations of the company's board of directors. Exxon Mobil also noted that it had received feedback from retail investors complaining of the time commitment required to vote at the company's annual meeting, in part due to the large number of proposals voted on at each meeting.

The key elements of the Retail Voting Program, as described in the Request Letter, are set forth below.

- The Retail Voting Program is available to all retail investors, including registered owners of shares and beneficial owners who hold shares through banks, brokers, or plan administrators.
- The Retail Voting Program is available at no cost.
- Investors must affirmatively opt in to the Retail Voting Program.
- Investors opting in to the Retail Voting Program (Participating Investors) may opt to have their standard voting instructions apply to (i) all matters, or (ii) all matters except contested director elections or certain transactions that require shareholder approval under applicable state law or stock exchange rules.
- Votes of Participating Investors for a meeting will be cast shortly after Exxon Mobil files its definitive proxy statement for that meeting with the SEC.
- Participating Investors may override their standard voting instruction for a specific meeting by manually voting their shares in accordance with the proxy materials they received for that meeting.
- Participating Investors may opt out of the Retail Voting Program at any time at no cost.
- Participating Investors will receive annual reminders of their enrollment in the Retail Voting Program, including instructions on how to opt out of the Retail Voting Program.
- The Retail Voting Program complies with state law.

On September 17, 2025, as stated in the Request Letter, Exxon Mobil filed copies of the printed and online materials sent to its retail shareholders in connection with the launch of its Retail Voting Program with the SEC on [Schedule 14A pursuant to Rule 14a-12](#).

While companies may establish their own retail voting programs following the framework proposed by Exxon Mobil in the Request Letter, such a program may not be advisable in all instances. Companies should balance the costs, benefits, and uncertainties of a retail voting program before implementing their own such program.

| Costs Associated with Retail Voting Programs |                                                                                                                                                                                                                                                  |
|----------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Drafting and filing program materials</b> | Companies will need to draft materials to be sent to shareholders in connection with the retail voting program, including any material updates to the program (together, the Program Materials), and to file the Program Materials with the SEC. |

| Costs Associated with Retail Voting Programs                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|---------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Investor outreach</b>                                                  | Companies will need to invest time and resources into engaging with retail investors, educating them about the retail voting program, and giving them the opportunity to opt in to the program. The company will need to continue outreach during the term of the retail voting program as annual reminders of the program terms and the ability to opt out were important components of the Retail Voting Program as proposed in the Request Letter.                                                                                                                                                                                                                                                                                                                                    |
| <b>Third-party proxy service providers</b>                                | Companies will need to engage a third-party service provider (such as Broadridge Financial Solutions, Inc.) to administer the retail voting program (including distributing Program Materials to stockholders, tracking Participating Investors, and casting votes of Participating Investors in accordance with their standard voting instructions).                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Benefits of Retail Voting Programs                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Increased participation in shareholder meeting by retail investors</b> | A retail voting program may remove barriers to voting in the annual meeting for some retail investors and may give companies greater certainty during the annual meeting process.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Uncertainties Associated with Retail Voting Programs                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Company-specific factors</b>                                           | 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 may make a meaningful difference for the company in advancing its governance agenda.                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>State law compliance</b>                                               | According to the Request Letter, the Retail Voting Program is permissible under the laws of the State of New Jersey and the State of Delaware. However, retail voting programs may not be permissible under the laws of all jurisdictions.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Uncertainty about the legality of retail voting programs</b>           | On September 30, 2025, two shareholder activist organizations filed a request that the SEC rescind its “effective approval” of the Retail Voting Program. <sup>50</sup><br><br>Separately, on October 14, 2025, the City of Hollywood Policy Officers’ Retirement System filed a class action complaint against Exxon Mobil and the members of the Exxon Mobil board of directors (i) alleging that the Retail Voting Program “violates federal law, unlawfully impairs the voting rights of Exxon’s public shareholders, and constitutes an unlawful entrenchment device meant to perpetuate” the board of directors’ control over the company; and (ii) seeking an injunction against Exxon Mobil to prevent the company from proceeding with the Retail Voting Program. <sup>51</sup> |
| <b>Pushback from investor groups</b>                                      | Notwithstanding the SEC’s current acceptance of such program or the outcome of the challenges to its validity, companies launching retail voting programs may anticipate pushback from larger institutional investors at the expense of a larger retail shareholder vote.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

### Institutional Shareholder Services, Inc. (ISS) Releases Results of Governance Benchmarking Survey

On September 22, 2025, ISS released the results of its [2025 Global Benchmark Policy Survey](#), whereby ISS solicited feedback on areas of potential ISS policy change. ISS received responses to its 2025 survey from 248 respondents, approximately 67% 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

|                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|----------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Multi-class capital structures</b>        | ISS currently only includes common shares in its analysis of whether a company has two or more classes of shares with disparate voting rights.<br><br>When asked, a majority of investor respondents (71%) responded that “non-common” shares should be considered the same way as common shares in ISS’s analysis, but a majority of non-investor respondents (62%) responded that they should not.                                                                                                                                     |
| <b>Shareholder action by written consent</b> | A majority of investor respondents (57%) agreed with current ISS policy that a 10% ownership threshold is a sufficiently robust shareholder special meeting right.                                                                                                                                                                                                                                                                                                                                                                       |
| <b>CEO overboarding</b>                      | Investor respondents largely favored limits to CEO external board seats, with 55% and 23% responding that CEOs should hold a maximum of one or two external board seats, respectively. Non-investor respondents were split between favoring no limits (39%) or favoring a limit of one external board seat (34%). A supermajority of investor respondents (77%), but only one-third (32%) of non-investor respondents, indicated that it would be a “particular concern” for a CEO to serve as board chair at a separate public company. |
| <b>Say-on-Pay responsiveness</b>             | In light of the recently instituted SEC guidance that lowers the threshold of shareholder engagement that would cause investors to lose Schedule 13G eligibility (which was discussed in our <a href="#">Spring 2025 Newsletter</a> ), both investor and non-investor respondents (64% and 89%, respectively) indicated that a company should not be negatively judged for failing to disclose sufficient investor feedback following a low say-on-pay vote if it disclosed that it “attempted but was unable to obtain” such feedback.  |
| <b>Corporate DEI programs</b>                | 24% of investor respondents and 11% of non-investor respondents indicated that disclosure of corporate Diversity, Equity & Inclusion (DEI) practices (including risks or opportunities associated with DEI) are “generally helpful for shareholders.”                                                                                                                                                                                                                                                                                    |

### Board of Directors

|                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Director overboarding</b> | A supermajority of investor respondents (72%) favored placing a limit on board service by non-executive directors, with most in favor of limiting directors to four or five board seats (25% and 26% respectively). On the other hand, 38% of non-investor respondents responded that a “general limit should not be applied.”                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Board oversight of AI</b> | Investor respondents were split between wanting companies to disclose details of board oversight of artificial intelligence (AI) in “all or most cases” (43%) versus only in cases where AI is significant to the company’s business or business strategy (54%). On the other hand, non-investor respondents overwhelmingly thought companies should disclose board oversight of AI only when AI is material to the company’s business (72%).<br><br>Only 21% of investor respondents and 16% of non-investor respondents thought that “most boards should have some AI expertise among their members.” The remaining respondents felt that it was only necessary for a company to have AI experts on their board when “AI is central to their core business or poses significant risks.” |
| <b>Board diversity</b>       | As discussed in our <a href="#">Summer 2025 Newsletter</a> , public companies are scaling back their disclosures of DEI efforts. Nevertheless, 30% of investor respondents “expect most companies will disclose their approach to the diversity demographics of their boards as well as other DEI matters” (such as workforce diversity). Nearly a quarter of respondents still consider gender (25% of investor respondents and 23% of non-investor respondents) and race/ethnicity (20% of investor and 23% of non-investor respondents) when considering or assessing the diversity of the board.                                                                                                                                                                                      |

| Shareholder Proposals                                 |                                                                                                                                                                                                                                                                                                                                                                                    |
|-------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Burden of proof for shareholder proposals             | Non-investor respondents (60%) and investor respondents (43%) were most likely to expect that proponents of a shareholder proposal make “a detailed and company-specific case” in favor of their proposal in <u>all</u> cases, regardless of whether the proposal is precatory, novel, or “merely seeks enhanced disclosure.”                                                      |
| Shareholder proposals seeking independent board chair | Investor and non-investor respondents disagreed on whether shareholder proposals seeking an independent board chair structure were “understandable” (43% of investor respondents) or would only be appropriate in “unusual cases such as when there is evidence that the existing leadership structure has failed to ensure adequate oversight” (51% of non-investor respondents). |

## Chair Atkins Suggests Pathways For Companies to Exclude Shareholder Proposals

In an October 9, 2025 speech, Chair Atkins laid out possible avenues for companies to exclude shareholder proposals under Rule 14a-8.<sup>52</sup> He framed these ideas as a means to “de-politicize shareholder meetings and return their focus to voting on director elections and significant corporate matters,”<sup>53</sup> and one of “three pillars” which he hoped would further his goal to make “being a public company an attractive proposition for more firms.”<sup>54</sup>

### ***Exclusion of Non-Binding Shareholder Proposals as Being “Improper” Under Delaware Law***

In his speech, Chair Atkins highlighted the increasing number of social and environmental shareholder proposals—many of them non-binding, or “precatory”—being voted on at shareholder meetings, and the generally low support received by these proposals. Chair Atkins cast doubt on whether precatory shareholder proposals are a “proper subject” for action by shareholders under Delaware law, and thus excludable by companies pursuant to Rule 14a-8(i)(1).

Although Chair Atkins acknowledged that his and the SEC staff’s “expertise and domain” is in federal securities laws and not Delaware law, Chair Atkins stated that notable practitioners of Delaware law, including former Vice Chancellor of the Delaware Court of Chancery Leo Strine, had advanced this idea.<sup>55</sup> Chair Atkins expressed “high confidence” that the SEC would allow companies to exclude precatory shareholder proposals pursuant to Rule 14a-8(i)(1) if they “obtain[] an opinion of counsel that the proposal is not a ‘proper subject’ for shareholder action under Delaware law.”<sup>56</sup>

Chair Atkins indicated that if needed, he would seek to certify the question to the Delaware Supreme Court for declaratory judgment.<sup>57</sup>

These comments are a departure from the language in the notes to Rule 14a-8(i)(1), which states that most precatory proposals “are proper under state law” and that the SEC “will assume that a [precatory proposal] is proper unless the company demonstrates otherwise.” This departure is significant because it would provide a pathway for Delaware companies to exclude many, if not most, shareholder proposals on environmental and social topics.

### ***Shareholder Proposal May Be Improper Under a State Law That Sets a Higher Bar Than Rule 14a-8***

In his speech, Chair Atkins also referred to Section 21.373 of the [Texas Business Organizations Code](#) (the TBOC), which became effective on September 1, 2025, and which allows companies to opt in (by amending their governing documents) to ownership thresholds for shareholders to be eligible to submit proposals that are significantly higher than those set forth in Rule 14a-8(b).

| TBOC Section 21.373                                                                                                                                                            | Rule 14a-8(b)                                                                                                                       |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|
| Only holders of at least \$1 million in market value of the company’s voting shares (or at least 3% of the company’s voting shares) may submit proposals at an annual meeting. | Shareholders holding as little as \$2,000 in market value of the company’s voting shares may submit proposals at an annual meeting. |

Chair Atkins stated that, despite what some commentators had suggested, he did not believe that the lower eligibility thresholds in Rule 14a-8(b) preempted the higher thresholds allowed under the TBOC, and accordingly, he believed that a company opting in to the higher TBOC eligibility thresholds could exclude a shareholder proposal based on a shareholder's failure to meet those higher thresholds even if the shareholder met the lower ownership requirements of Rule 14a-8(b).

Chair Atkins also concurred with the theory of “private ordering for shareholder proposals” previously suggested by Commissioner Uyeda, whereby “[R]ule 14a-8’s procedural bases for exclusion... should be viewed as default standards that apply only if companies decline to establish their own standards in their governing documents.”<sup>58</sup>

### “Big Three” Asset Managers Shift Their Approach to Investment Stewardship

Starting in 2025, three of the largest asset management firms in the United States—BlackRock, Inc., The Vanguard Group, Inc., and State Street Global Advisors—have split their investment stewardship functions between two groups, with each group having independent investment management and investment stewardship teams.

This split is occurring while the asset managers continue to expand and see more investor participation in their pass-through voting programs. These programs, which we discussed in our [Winter 2024/2025 Newsletter](#), give investors the option to vote their shares in accordance with specified voting policies instead of in accordance with the fund’s preference.

|                        | Blackrock, Inc.                                                                                                                                                                                                                                                 | State Street Global Advisors                                                                                                                                                                                                                                          | Vanguard Group, Inc.                                                                                                                                                                                                                                                                                      |
|------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Investment Stewardship | As of January 1, 2025, BlackRock divided investment stewardship between BlackRock Investment Stewardship (for assets invested in index equity strategies) and BlackRock Active Investment Stewardship (for assets invested in active strategies). <sup>59</sup> | In 2025, State Street launched its Sustainability Stewardship Service to complement its Asset Stewardship program. <sup>60</sup> The Sustainability Stewardship Service is offered to clients who wish to engage “with portfolio companies on sustainability topics.” | In June 2025, Vanguard <a href="#">announced</a> that, starting in 2026, it will split its funds between two investment advisors—Vanguard Capital Management and Vanguard Portfolio Management—each with its own investment management and investment stewardship teams.                                  |
| Voting Choice Programs | As of June 30, 2025, 24% of the assets held in Blackrock’s eligible Institutional Index equity funds participated in the <a href="#">Voting Choice</a> program.                                                                                                 | State Street Global Advisors’ <a href="#">proxy voting choice</a> program covers over 81% of the eligible index equity assets it manages.                                                                                                                             | The <a href="#">Vanguard Investor Choice</a> program is open to investors in 15 participating Vanguard funds, representing more than 50% of Vanguard’s total U.S.-based equity index assets. <sup>61</sup> Vanguard plans to expand investor choice to all U.S. equity index funds in 2026. <sup>62</sup> |

While State Street’s Sustainability Stewardships Service is specifically targeted towards clients who wish to engage with portfolio companies on “sustainability topics,” it is unclear how the splits in the other asset managers will affect engagement by those managers on environmental, social, and governance topics



## Takeaways

Companies should consider the following actions to update their shareholder engagement practices in light of these shifts in the voting practices of asset managers.

- **Update engagement strategies.** Companies should target engagement in recognition of the separate interests and priorities of specific stewardship teams and update stewardship points of contact across split teams at asset managers to direct engagement and inquiries accurately. Companies should expect that in light of the updated guidance in C&DI [Question 103.12](#) (which was discussed in our [Spring 2025 Newsletter](#)), they may need to be more proactive in initiating engagement and directing the topics and agenda of the engagement itself.
- **Review voting models.** Split asset manager stewardship teams and pass-through voting participation at certain asset managers may impact forecasts on how shareholders may vote. Companies should coordinate with their proxy solicitors in case it's worthwhile to refine voting models or conduct targeted education on items anticipated to have a close vote.
- **Tighten disclosures.** Given the diverging voter segments that may arise following the asset managers' splitting of stewardship functions, companies should sharpen their 2026 proxy disclosures to clearly articulate governance topics of interest, such as board oversight, material environmental and social risk management, and rationales for any bylaw or policy changes.

## Glass Lewis Announces Shift Away from Proxy Voting Recommendations

On October 15, 2025, proxy advisory service provider Glass Lewis announced that over the next two years it will transition from offering voting recommendations based on standard voting policies to helping clients “to vote according to their own policies.”<sup>63</sup> Glass Lewis already offers a custom voting framework to clients, but with this change the custom approach will be the only one available to clients.

In announcing these changes, Glass Lewis pointed to regulatory actions, diverging investor priorities, and technological advances that enable the company to provide a more customized approach to voting.

Proxy advisory firms such as Glass Lewis and ISS have received increasing scrutiny over the nature of the proxy advice they provide to clients, which has resulted in lawsuits<sup>64</sup> and investigations<sup>65</sup> brought by the State of Texas, a hearing before the House Committee on Financial Services,<sup>66</sup> and an SEC rule from 2020 (recently invalidated) that, among others, attempted to codify the SEC's interpretation that proxy voting advice (such as the type provided by Glass Lewis) constitutes a “solicitation” subject to the SEC's proxy rules.<sup>67</sup>

## OTHER UPDATES

### California Climate Rules Update

As discussed in our [Summer 2025 Newsletter](#), starting in 2026, 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) (as amended by [SB 219](#), together, the California Climate Disclosure Laws).

A First Amendment challenge to the California Climate Disclosure Laws is still pending in the Ninth Circuit Court of Appeals and 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.<sup>68</sup> The plaintiffs have appealed the denial to the Ninth Circuit Court of Appeals<sup>69</sup> and the appeal has been fully briefed. If the case proceeds, a trial on the merits is expected to take place in November 2026.

On October 24, 2025, a second challenge to the Climate Disclosure Laws on first amendment grounds was brought by Exxon Mobil, this time in the U.S. District Court for the Eastern District of California.<sup>70</sup>

The California Air Resource Board (CARB), which is the agency tasked with promulgating regulations under the California Climate Disclosure Laws, previously “committed to developing a regulation by the end of [2025].”<sup>71</sup> However, on October 10, 2025, they informed the public that they now intend to propose initial rulemaking in the first quarter of 2026.<sup>72</sup>

Notwithstanding the foregoing, CARB has not adjusted the compliance dates for the California Climate Disclosure Laws, which are set forth below.

| SB 253<br>Emissions Reporting                                                                                                                                                                                                                                                                                                                                                                                                                                      | SB 261<br>Risk Reporting                                                                                                                                                                                                                                                    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| CARB has proposed June 30, 2026 as the deadline for reporting entities to submit their first emissions report (covering Scope 1 and Scope 2 emissions for 2025). As discussed in our <a href="#">Winter 2024/2025 Newsletter</a> , CARB has stated that, for the 2026 report, reporting entities may submit 2025 emissions data “that can be determined from information the reporting entity already possesses or is already collecting” as of December 5, 2024.” | Reporting entities must publish their first report on climate-related financial risks (Risk Report) to their company website by January 1, 2026. CARB will launch a public docket where companies will share the website link to where the company’s Risk Report is posted. |

In the meantime, CARB has published a number of documents to assist the public in preparing for their first disclosures while the formal rules are still pending. These include:

- A [Frequently Asked Questions \(FAQs\)](#) document (published in July 2025) covering the applicability of the Climate Disclosure Laws and threshold questions regarding compliance with the California Climate Disclosure Laws.
- A [Draft Checklist](#) (published in September 2025) containing additional FAQs regarding the Climate Related Financial Risk Reporting Program and a draft checklist intended to be “used as a starting point for reporting entities” in complying with the program.
- A [Preliminary List of Covered Entities](#) (published in September 2025) which is intended to “support the development of the fee regulation.” The Preliminary List is not intended to be a comprehensive list of all entities subject to the California Climate Disclosure Laws and “[e]ach potentially-regulated entity remains responsible for compliance with statutory requirements, regardless of whether it was included in [the Preliminary List].”
- A [Draft Reporting Template](#) (published in October 2025) intended to provide guidance that entities may choose to follow when reporting Scope 1 and Scope 2 greenhouse gas emissions pursuant to the Climate Corporate Data Accountability Act. CARB is soliciting comments on the Draft Reporting Template through October 27, 2025.

- <sup>1</sup> Paul S. Atkins, Chair, Sec. & Exch. Comm'n, Statement on the Spring 2025 Regulatory Agenda (Sep. 4, 2025), <https://www.sec.gov/newsroom/speeches-statements/atkins-2025-regulatory-agenda-090425>.
- <sup>2</sup> Mark T. Uyeda, Comm'r, Sec. & Exch. Comm'n, Remarks at the Florida Bar's 41st Annual Federal Securities Institute and M&A Conference (Feb. 24, 2025), <https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-florida-bar-022425> [hereinafter Uyeda February 24 Statement] ("Besides not updating the qualification thresholds, the Commission also has not sufficiently scaled the disclosure requirements between the two categories"); Mark T. Uyeda, Comm'r, Sec. & Exch. Comm'n, Remarks at the 44th Annual Small Business Forum (Apr. 10, 2025), <https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-small-business-forum-041025> ("A more harmonized regulatory regime for who qualifies as a large, mid-sized, and small company, together with scaled disclosure requirements, can help ensure that the Commission's rules are tailored to a company's sizes and resources, while still maintaining appropriate levels of investor protection.").
- <sup>3</sup> Uyeda February 24 Statement, *supra* note 2.
- <sup>4</sup> *Id.*
- <sup>5</sup> Hester M. Peirce, Comm'r, Sec. & Exch. Comm'n, Bridging the Gap: Remarks before the Northwest Securities Institute (May 30, 2025), <https://www.sec.gov/newsroom/speeches-statements/peirce-remarks-northwest-securities-institute-053025> [hereinafter Peirce Bridging the Gap Remarks].
- <sup>6</sup> Paul S. Atkins, Chair, Sec. & Exch. Comm'n, Keynote Address at the Inaugural OECD Roundtable on Global Financial Markets (Sep. 10, 2025), <https://www.sec.gov/newsroom/speeches-statements/atkins-keynote-address-inaugural-oecd-roundtable-global-financial-markets-091025>. See also Hester M. Peirce, Comm'r, Sec. & Exch. Comm'n, Sheep in the Steep: Remarks before the Northwestern Securities Regulation Institute (Jan. 27, 2025), <https://www.sec.gov/newsroom/speeches-statements/peirce-remarks-northwestern-securities-regulation-institute-012725> [hereinafter Peirce Sheep in the Steep Remarks] ("An effective disclosure regime for public companies is a tempting target for people who want information from companies for reasons other than deciding whether to invest. Attempts to co-opt the SEC's disclosure program to serve non-investor constituencies is not new but has gained steam in recent years."); Mark T. Uyeda, Comm'r, Sec. & Exch. Comm'n, Remarks at the "SEC Speaks" Conference 2025 (May 19, 2025), <https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-sec-speaks-051925> [hereinafter Uyeda SEC Speaks Remarks] ("... I do not believe that the climate-related disclosure rule was ever about financial materiality").
- <sup>7</sup> Paul S. Atkins, Chair, Sec. & Exch. Comm'n, Opening Remarks at the SEC Town Hall (May 6, 2025), <https://www.sec.gov/newsroom/speeches-statements/atkins-townhall-05062025>.
- <sup>8</sup> Uyeda SEC Speaks Remarks, *supra* note 6 ("If the Commission had studied the historical past, it would have realized that social change through financial disclosure regulation does not usually work.").
- <sup>9</sup> See Peirce Sheep in the Steep Remarks, *supra* note 6 ("[E]fforts to expand public company climate disclosure serve not only constituencies that seek to lower greenhouse gas emissions but also sellers of climate consulting services to increasingly over-encumbered public companies. Labor interests seek expanded human capital disclosures. Proponents of higher corporate taxes seek more granular disclosures of how much tax companies pay in each jurisdiction. If this trend continues, companies' securities disclosures will bury information material to investors in an unwieldy catalog of responses to special interest groups' demands"). See also Uyeda SEC Speaks Remarks, *supra* note 6 ("Staying on course is an important objective, from which the Commission strayed mightily from its historical path. The SEC would use its power and authority to address climate change, diversity and inclusion, share repurchase policy, and financial products and services, predicated on whether it favored or disfavored specific investments or practices.").
- <sup>10</sup> Uyeda SEC Speaks Remarks, *supra* note 6.
- <sup>11</sup> Peirce Bridging the Gap Remarks, *supra* note 5.
- <sup>12</sup> Hester M. Peirce, Comm'r, Sec. & Exch. Comm'n, Spare the Trees So Investors Can See the Forest: Remarks before the Executive Compensation Roundtable (June 26, 2025), <https://www.sec.gov/newsroom/speeches-statements/remarks-peirce-executive-compensation-roundtable-062625> [hereinafter Peirce Executive Compensation Roundtable Remarks].
- <sup>13</sup> Paul S. Atkins, Chair, Sec. & Exch. Comm'n, Statement on the Upcoming Executive Compensation Roundtable (May 16, 2025), <https://www.sec.gov/newsroom/speeches-statements/statement-upcoming-executive-compensation-roundtable>.
- <sup>14</sup> Paul S. Atkins, Chair, Sec. & Exch. Comm'n, Remarks at the Executive Compensation Roundtable (June 26, 2025), <https://www.sec.gov/newsroom/speeches-statements/remarks-atkins-executive-compensation-roundtable-062625>.
- <sup>15</sup> Peirce Executive Compensation Roundtable Remarks, *supra* note 12. See also Hester M. Peirce, Comm'r, Sec. & Exch. Comm'n, A Creative and Cooperative Balancing Act, Speech before the SEC's 31<sup>st</sup> International Institute for Securities Market Growth and Development (May 8, 2025), <https://www.sec.gov/newsroom/speeches-statements/peirce-iisimgd-050825> ("Requiring a company to disclose in detail executive compensation, including how it relates to other employees' pay, for example, can limit the company's ability to hire the best people to run the company. Keeping disclosure requirements principles-based and rooted in materiality of the information to investors seeking to maximize the long-term value of the company helps them stand the test of time.").
- <sup>16</sup> Mark T. Uyeda, Comm'r, Sec. & Exch. Comm'n, Remarks at the Executive Compensation Roundtable (June 26, 2025), <https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-executive-compensation-roundtable-062625>.
- <sup>17</sup> Caroline A. Crenshaw, Comm'r, Sec. & Exch. Comm'n, Statement at the Executive Compensation Roundtable (June 26, 2025), <https://www.sec.gov/newsroom/speeches-statements/statement-crenshaw-executive-compensation-roundtable-062625>.
- <sup>18</sup> Uyeda February 24 Statement, *supra* note 2 ("Appropriately tailoring the Commission's wide-reaching disclosure requirements for newly public companies may, on the margin, incentivize more companies to go public.").
- <sup>19</sup> *Id.*
- <sup>20</sup> *Id.*
- <sup>21</sup> *Id.*
- <sup>22</sup> *Id.*
- <sup>23</sup> *Id.*
- <sup>24</sup> Paul S. Atkins, Chair, Sec. & Exch. Comm'n, Keynote Address at the John L. Weinberg Center for Corporate Governance's 25th Anniversary Gala (Oct. 9, 2025), <https://www.sec.gov/newsroom/speeches-statements/atkins-10092025-keynote-address-john-l-weinberg-center-corporate-governance-25th-anniversary-gala> [hereinafter Atkins Weinberg Center Address] ("... [The SEC] should re-evaluate [Rule 14a-8's] fundamental premise that shareholders should be able to force companies to solicit for their proposals—to the extent that a shareholder proposal is a proper subject for shareholder action under state law—at little or no expense to the shareholder."); Peirce Sheep in the Steep Remarks, *supra* note 6 ("The increased volume of pro- and anti-environmental and social proposals should not be mistaken for popularity among voting shareholders. Sorting through the bluster is no small cost for companies . . ."); Mark T. Uyeda, Comm'r, Sec. & Exch. Comm'n, Remarks at the Society for Corporate Governance 2023 National Conference (June 21, 2023), <https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-society-corporate-governance-conference-062123> (highlighting actual costs and opportunity costs for companies responding to shareholder proposals). Commissioner Crenshaw is the only SEC Commissioner to strike a different tone. She has described the shareholder proposal process as "designed to... facilitate a dialogue with investors" and has noted that there are a number of "mechanisms in place to limit the availability of the proxy ballot to shareholders." Caroline A. Crenshaw, Comm'r, Sec. & Exch. Comm'n, Statement on Staff Legal Bulletin 14M (Feb. 12, 2025), <https://www.sec.gov/newsroom/speeches-statements/crenshaw-statement-staff-legal-bulletin-14m-021225>.
- <sup>25</sup> Peirce Sheep in the Steep Remarks, *supra* note 6.
- <sup>26</sup> Withdrawal of Proposed Regulatory Actions, Securities Act Release No. 11,377, Exchange Act Release No. 103,247, Investment Company Act Release No. 35,635, 90 Fed. Reg. 25531 (released June 12, 2025), <https://www.sec.gov/files/rules/final/2025/33-11377.pdf>.
- <sup>27</sup> See, e.g., Inv. Co. Inst., Comment Letter on Proposed Amendment to Certain Substantive Bases for Exclusion of Shareholder Proposals under Exchange Act Rule 14a-8 (Sep. 12, 2022), <https://www.sec.gov/comments/s7-20-22/s72022-20138924-308618.pdf> ("We believe that adopting these proposed amendments would increase the quantity of shareholder proposals but not necessarily their overall quality."); Nasdaq, Inc., Comment Letter on Proposed Amendment to Certain Substantive Bases for Exclusion of Shareholder Proposals under Exchange Act Rule 14a-8 (Sep. 15, 2022), <https://www.sec.gov/comments/s7-20-22/s72022-20143023-308847.pdf> ("Unfortunately, we believe the changes contemplated by the Release could be a step backwards in the Commission's efforts to modernize the shareholder proposal process, and appears to be part of a broader trend to narrow the bases for excluding shareholder proposals.").
- <sup>28</sup> See Letter from Christian O. Nagler, Sec. Regul. Comm. Chair, Ass'n of the Bar of the City of N.Y. to Paul S. Atkins, Chair, Sec. & Exch. Comm'n (May 22, 2025), <https://www.nycbar.org/wp-content/uploads/2025/05/20221479-LetterSECChairmanAtkins.pdf>.
- <sup>29</sup> Hester M. Peirce, Comm'r, Sec. & Exch. Comm'n, From Canada to the Caymans: Statement on Concept Release on Foreign Private Issuer Eligibility (June 4, 2025), <https://www.sec.gov/newsroom/speeches-statements/peirce-remarks-foreign-private-issuer-eligibility-060425>.
- <sup>30</sup> Mark T. Uyeda, Comm'r, Sec. & Exch. Comm'n, Statement on the Concept Release on Foreign Private Issuer Eligibility (June 4, 2025), <https://www.sec.gov/newsroom/speeches-statements/uyeda-statement-foreign-private-issuer-eligibility-060425> (quoting Rules, Registration and Annual Report Form for Foreign Private Issuers, Exchange Act Release No. 16,371 (Nov. 29, 1979) at 70133). See also Caroline A. Crenshaw, Comm'r, Sec. & Exch. Comm'n, Remarks at the September 18th Investor Advisory Committee Meeting (Sep. 18, 2025), <https://www.sec.gov/newsroom/speeches-statements/crenshaw-remarks-investor-advisory-committee-meeting-091825> ("Our regulatory framework should, of course, accommodate foreign private issuers to the extent they are already subject to a comparable, robust regulatory framework in their home country—which would require, for example, substantive disclosure, comparable to what U.S. investors receive from domestic issuers.").

- <sup>31</sup> Concept Release on Foreign Private Issuer Eligibility, Securities Act Release No. 11,376, Exchange Act Release No. 103,176, 90 Fed. Reg. 24232 (published June 9, 2025), <https://www.sec.gov/files/rules/concept/2025/33-11376.pdf> [hereinafter Concept Release] at 23.
- <sup>32</sup> Concept Release, *supra* note 31, at 24.
- <sup>33</sup> Concept Release, *supra* note 31, at 25. For purposes of the Concept Release, the SEC considered an issuer a "China-based issuer" if it was either headquartered or incorporated in (i) mainland China, (ii) Hong Kong, SAR, or (iii) Macau, SAR. In fiscal year 2023, 97% of China-based issuers were incorporated in either the Cayman Islands (82%) or the British Virgin Islands (15%). *Id.*
- <sup>34</sup> Concept Release, *supra* note 31, at 31.
- <sup>35</sup> Concept Release, *supra* note 31, at 32.
- <sup>36</sup> Concept Release, *supra* note 31, at 32.
- <sup>37</sup> Concept Release, *supra* note 31, at 20.
- <sup>38</sup> Carolina A. Crenshaw, Comm'r, Sec. & Exch. Comm'n, Statement on the Concept Release of Foreign Private Issuer Eligibility (June 4, 2025), <https://www.sec.gov/newsroom/speeches-statements/statement-crenshaw-concept-release-foreign-private-issuer-eligibility-060425>.
- <sup>39</sup> Concept Release, *supra* note 31, at 40.
- <sup>40</sup> Acceleration of Effectiveness of Registration Statements of Issuers with Certain Mandatory Arbitration Provisions, Securities Act Release No. 11,389, Exchange Act Release No. 103,988, 90 Fed. Reg. 45125 (published Sep. 19, 2025) at 45127, <https://www.sec.gov/files/rules/policy/33-11389.pdf>.
- <sup>41</sup> Paul S. Atkins, Chair, Sec. & Exch. Comm'n, Open Meeting Statement on Policy Statement Concerning Mandatory Arbitration and Amendments to Rule 431 of the Commission's Rules of Practice (Sep. 17, 2025), <https://www.sec.gov/newsroom/speeches-statements/atkins-091725-open-meeting-statement-policy-statement-concerning-mandatory-arbitration-amendments-rule-431>.
- <sup>42</sup> *Id.*
- <sup>43</sup> Caroline A. Crenshaw, Comm'r, Sec. & Exch. Comm'n, Mandatory Dis-Agreements: The Commission's Policy of Quietly Shutting the Door on Investors (Sep. 17, 2025), <https://www.sec.gov/newsroom/speeches-statements/crenshaw-statement-mandatory-dis-agreements-the-commissions-policy-of-quietly-shutting-the-door-on-investors-091725>.
- <sup>44</sup> SEC Issues Policy Statement Clarifying that Mandatory Arbitration Provisions Will Not Affect Effectiveness of Registration Statements, SEC Release No. 2025-120 (Sep. 18, 2025), <https://www.sec.gov/newsroom/press-releases/2025-120-sec-issues-policy-statement-clarifying-mandatory-arbitration-provisions-will-not-affect>.
- <sup>45</sup> *Id.* At 45130.
- <sup>46</sup> Donald J. Trump (@realDonaldTrump), Truth Social (Sep. 15, 2025, 8:05 AM ET), <https://truthsocial.com/@realDonaldTrump/posts/115208219886830624> ("Subject to SEC Approval, Companies and Corporations should no longer be forced to 'Report' on a quarterly basis (Quarterly Reporting!), but rather to Report on a 'Six (6) Month Basis.' This will save money, and allow managers to focus on properly running their companies. Did you ever hear the statement that, 'China has a 50 to 100 year view on management of a company, whereas we run our companies on a quarterly basis???' Not good!!!!").
- <sup>47</sup> Paul S. Atkins, Chair, Sec. & Exch. Comm'n, Opinion, *Let the market decide how often companies report*, FINANCIAL TIMES, Sep. 28, 2025, <https://www.ft.com/content/0f6be08a-fd24-4558-b373-6ada31e18900>.
- <sup>48</sup> Donald J. Trump (@realDonaldTrump), X (Aug. 17, 2018, at 7:30 AM ET), <https://x.com/realDonaldTrump/status/1030416679069777921> ("In speaking with some of the world's top business leaders I asked what it is that would make business (jobs) even better in the U.S. 'Stop quarterly reporting & go to a six month system,' said one. That would allow greater flexibility & save money. I have asked the SEC to study!").
- <sup>49</sup> Matt Peterson, *Shutdown Delays Plan to Scrap Quarterly Reporting, SEC Says*, BARRONS (Oct. 7, 2025 7:44 PM EDT), <https://www.barrons.com/livecoverage/government-shutdown-news-today-100725/card/shutdown-delays-plan-to-scrap-quarterly-reporting-sec-says-1ked03jpGWeLUNWxaFKe>.
- <sup>50</sup> Press Release, As You Sow, Shareholders Ask SEC to Reconsider ExxonMobil Program Locking in Pro-Management Vote in Violation of SEC Rules (Sep. 30, 2025), <https://www.asyousow.org/press-releases/2025/9/30/shareholders-ask-sec-to-reconsider-exxonmobil-program-locking-in-pro-management-vote-in-violation-of-sec-rulesnbp>.
- <sup>51</sup> Class Action Complaint, City of Hollywood Police Officers' Retirement System v. Woods, No. 3:25-cv-16633 (D. N.J. Oct. 14, 2025).
- <sup>52</sup> Atkins Weinberg Center Address, *supra* note 24.
- <sup>53</sup> *Id.*
- <sup>54</sup> *Id.* The other two pillars relate to "simplify[ing] and scal[ing] disclosure requirements" and "reforming the litigation landscape for securities lawsuits."
- <sup>55</sup> *Id.* See also Pinder, Kyle, Abstract, *The Non-Binding Bind: Reframing Precatory Stockholder Proposals under Delaware Law*, 15 MICH. BUS. & ENTREPRENEURIAL L. REV. (forthcoming) (2025), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=5418534](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5418534).
- <sup>56</sup> Atkins Weinberg Center Address, *supra* note 24.
- <sup>57</sup> *Id.* ("If the need for the Commission to certify a question to the court arises in the future, I hope that both the agency and the court will continue to benefit from this unique partnership to expeditiously resolve matters of Delaware law that arise in the context of the federal securities laws.")
- <sup>58</sup> Atkins Weinberg Center Address, *supra* note 52 (quoting Mark T. Uyeda, Comm'r, Sec. & Exch. Comm'n, Remarks at the Society for Corporate Governance 2023 National Conference (June 21, 2023), <https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-society-corporate-governance-conference-062123>).
- <sup>59</sup> BlackRock Active Investment Stewardship, *Shareholder Rights Directive II – Engagement Policy* (2025) at 3, <https://www.blackrock.com/corporate/literature/publication/blk-shareholder-rights-directiveii-engagement-policy-bais-2025.pdf> ("As of 1 January 2025, BlackRock's stewardship policies are developed and implemented separately by BlackRock Investment Stewardship (BIS) and BlackRock Active Investment Stewardship (BAIS). While the two teams operate independently, their general approach is grounded in widely recognized norms of corporate governance and shareholder rights and responsibilities.").
- <sup>60</sup> State Street Investment Management, Sustainability Stewardship Service Proxy Voting and Engagement Policy (August 2025) at 1, <https://www.ssga.com/library-content/assets/pdf/global/asset-stewardship/sustainability-stewardship-service-proxy-voting-and-engagement-policy.pdf> ("Effective upon launch of the Sustainability Service in 2025.").
- <sup>61</sup> Press Release, Vanguard, Vanguard Adds Three New Funds – Including Vanguard 500 Index Fund (VFIAX/VOO) – to Vanguard Investor Choice (Oct. 21, 2025), <https://corporate.vanguard.com/content/corporatesite/us/en/corp/who-we-are/pressroom/press-release-vanguard-adds-three-new-funds-including-vanguard-500-index-fund-to-vanguard-investor-choice-102125.html>.
- <sup>62</sup> Vanguard, *Vanguard Investor Choice 2025: Investor participation and preferences* (September 2025), [https://corporate.vanguard.com/content/dam/corp/advocate/investment-stewardship/pdf/investor-choice/investor\\_participation\\_preferences.pdf](https://corporate.vanguard.com/content/dam/corp/advocate/investment-stewardship/pdf/investor-choice/investor_participation_preferences.pdf).
- <sup>63</sup> Press Release, Glass Lewis, Glass Lewis Leads Change in Proxy Voting Practices (Oct. 15, 2025), <https://www.glasslewis.com/news-release/glass-lewis-leads-change-in-proxy-voting-practices>.
- <sup>64</sup> Complaint, Glass, Lewis & Co., LLC v. Paxton, No. 1:25-cv-01153 (W.D. Tex. July 24, 2025); Complaint for Declaratory and Injunctive Relief, Institutional S'holder Services, Inc. v. Paxton, No. 1:25-cv-01160 (W.D. Tex. July 24, 2025).
- <sup>65</sup> Press Release, Att'y Gen. of Tex., Attorney General Ken Paxton Investigates Proxy Advisors Glass Lewis and ISS for Misleading Public Companies to Push Radical Agenda (Sep. 16, 2025), <https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-investigates-proxy-advisors-glass-lewis-and-iss-misleading-public>.
- <sup>66</sup> Press Release, House Comm. on Financial Serv., Capital Markets Subcommittee Examines Market Influence by Proxy Advisory Firms (Apr. 29, 2025), <https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=409711>.
- <sup>67</sup> Proxy Voting Advice, Exchange Act Release No. 95,266, 87 Fed. Reg. 43168 (released July 19, 2022), <https://www.sec.gov/files/rules/final/2022/34-95266.pdf> (the 2020 Proxy Rule). The 2020 Proxy Rule was struck down by the U.S. Court of Appeals for the District of Columbia on July 1, 2025. Institutional S'holder Services, Inc. v. Sec. & Exch. Comm'n, 142 F.4th 757 (D.C. Cir. July 1, 2025).
- <sup>68</sup> 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).
- <sup>69</sup> Notice of Appeal, Chamber of Com. of the U.S.A. v. Cal. Air Resources Bd., No. 2:24-cv-00801 (C.D. Cal. Aug. 20, 2025).
- <sup>70</sup> Complaint for Declaratory and Injunctive Relief, Exxon Mobil Corp. v. Sanchez, No. 2:25-at-01462 (E.D. Cal. Oct. 24, 2025).
- <sup>71</sup> 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), <https://ww2.arb.ca.gov/sites/default/files/2025-07/FAQs%20Regarding%20California%20Climate%20Disclosure%20Requirements.pdf>.
- <sup>72</sup> Resources: California Corporate Greenhouse Gas (GHG) Reporting and Climate Related Financial Risk Disclosure Programs, Cal. Air Res. Bd., <https://ww2.arb.ca.gov/our-work/programs/corporate-ghg-reporting/resources> (last visited Oct. 17, 2025).

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