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Public Company Advisory Group Quarterly — Winter 2025/2026

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We are pleased to bring you our Winter 2025/2026 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) regulatory and disclosure updates and enforcement actions; stock exchange rulemaking; corporate governance updates; and other topics of interest to our public company clients.

SEC UPDATES

SEC Division of Corporation Finance Ceases Substantive Review for 2025-2026 Proxy Season of Most No-Action Letters Seeking to Exclude Shareholder Proposals

As discussed in our Client Alert, on November 17, 2025, the SEC Division of Corporation Finance (Corp Fin) announced via Statement (the Statement) that, with limited exceptions, SEC staff will not be responding to any no-action letters submitted under Rule 14a-8 (Rule 14a-8) of the Securities Exchange Act of 1934, as amended (the Exchange Act), to exclude shareholder proposals received by companies in connection with the current proxy season (defined as the period starting October 1, 2025 through September 30, 2026).

As always, companies in receipt of a shareholder proposal that they believe does not comply with the procedural or subject matter requirements of Rule 14a-8 are required to notify the SEC of their intent to exclude the proposal in accordance with Rule 14a-8(j) (a Rule 14a-8(j) Notice). However, unlike prior proxy seasons, with limited exceptions, the SEC staff will not review Rule 14a-8(j) Notices or offer a substantive response to any requests for concurrence in a company's views on the appropriateness of the exclusion.

- ***SEC Staff Will Provide Non-Substantive Confirmation Letters Based on a Company's Representations.*** Companies that would prefer to have a written SEC staff response to their Rule 14a-8(j) Notice may include in their notice an "unqualified representation that the company has a reasonable basis to exclude the proposal." SEC staff will respond with a letter indicating that Corp Fin "will not object" to the company's exclusion of the proposal from its proxy materials (a No-Objection Letter). No-Objection Letters are "based solely" on the company's unqualified representations on the basis for exclusion contained in the Rule 14a-8(j) Notice and do not involve a substantive review by the SEC staff of the underlying facts or legal analysis.
- ***SEC Staff Will Continue to Respond to No-Action Requests Related to Rule 14a-8(i)(1).*** Rule 14a-8(i)(1) allows for the exclusion of shareholder proposals that are "not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization." Earlier statements by SEC Chair Paul Atkins (which were discussed in greater detail in our Fall 2025 Quarterly Newsletter) reflected his "high confidence" that the SEC would likely allow Delaware corporations to exclude precatory proposals — which have historically constituted a majority of shareholder proposals — pursuant to Rule 14a-8(i)(1). This is a somewhat novel view and has not yet been brought before the Delaware Supreme Court. Consistent with the view of Chair Atkins and the fundamental shift it represents in analysis of exclusions of shareholder proposals pursuant to Rule 14a-8(i)(1), the SEC staff will continue to review and respond to no-action requests related to Rule 14a-8(i)(1) during the current proxy season and until further notice.

Following the release of the Statement, proxy advisory firms Institutional Shareholder Services Inc. (ISS) and Glass, Lewis & Co. (Glass Lewis) revised their policies to reiterate their views that shareholder voting remains "a fundamental right of share ownership."[1] ISS indicated that, despite the change in SEC policy, it still expects companies to clearly explain their basis for excluding proposals under Rule 14a-8(i)(7) (for proposals relating to the company's ordinary business operations), Rule 14a-8(i)(9) (for proposals that directly conflict with one of the company's own proposals to be voted on at the same meeting), and/or Rule 14a-8(i)(10) (for proposals that have already been substantially implemented by the company), and that—more broadly—ISS may consider a company's "failure to present a clear and compelling argument for the exclusion of the proposal" as a governance failure. In such cases, ISS could highlight the exclusion in the company's report, flag the exclusion at the proposal level, or "in rare cases based on case-specific facts and circumstances," recommend a no-vote against one or more of the company's directors.

The SEC is posting Rule 14a-8(j) Notices (and, where applicable, No Objection Letters) on the SEC's shareholder proposals website. As of January 20, 2026:

- companies had submitted 109 Rule 14a-8(j) Notices in connection with the current proxy season;
- no company had submitted a request for substantive no-action relief under Rule 14a-8(i)(1);
- 78 of the Rule 14a-8(j) Notices (78% of all submitted Rule 14a-8(j) Notices) included the unqualified representations required for a No-Objection Letter, which was then provided by the SEC staff;
- Three of the 21 (14%) Rule 14a-8(j) Notices submitted before the Statement and six of the 88 (7%) Rule 14a-8(j) Notices submitted after the Statement were subsequently withdrawn, indicating that the proponent had either withdrawn their request or the company had withdrawn their intent to exclude the proposal; and
- the SEC staff provided No-Objection Letters on average 9 calendar days after receipt of a Rule 14a-8(j) Notice containing the required unqualified representations from the company.[2]

Takeaways

- Companies in receipt of a shareholder proposal during the current proxy season that the company determines may be excludable under Rule 14a-8 should consider the strength of their arguments and whether excluding the proposal would heighten the company's litigation or reputational risk.
- ISS and Glass Lewis have both reiterated their view that shareholders should have the opportunity to vote on materially important matters. Companies intending to exclude proposals under one or more of the substantive bases for exclusion (especially Rule 14a-8(i)(7), Rule 14a-8(i)(9), and Rule 14a-8(i)(10)) should clearly explain their basis for exclusion in the Rule 14a-8(j) Notice to provide sufficient rationale for review by proxy advisors and other interested parties.

Holding Foreign Insiders Accountable Act Makes Foreign Private Issuers Subject to Beneficial Ownership Reporting Requirements

Beginning on March 18, 2026 (the FPI Compliance Date), directors and officers of foreign private issuers (FPIs) will, for the first time ever, be required to comply with beneficial ownership reporting obligations under Section 16(a) of the Exchange Act.

	Form 3 Initial Statement of Beneficial Ownership	Form 4 Statement of Changes of Beneficial Ownership	Form 5 Annual Statement of Beneficial Ownership
Filing Deadline	Due on the earlier of the FPI Compliance Date or within 10 days of an individual becoming a director or insider of the FPI	Due within two business days of the execution of a transaction resulting in change in beneficial ownership	Due within 45 days of the end of the FPI's fiscal year

The new reporting requirement for FPIs was made pursuant to the Holding Foreign Insiders Accountable Act (HFIAA), which was signed into law by President Trump on December 18, 2025, as part of the National Defense Authorization Act for Fiscal Year 2026.[3]

Unlike for domestic registrants, the beneficial ownership reporting obligations for FPIs do not extend to beneficial owners of more than 10% of an FPI's equity securities. Directors, officers, and more than 10% owners of FPI securities also remain exempt from Section 16(b) and Section 16(c) of the Exchange Act, which relate to short-swing profits and prohibitions on short sales.

Directors and officers of FPIs that were public companies prior to the FPI Compliance Date will need to file their Initial Statement of Beneficial Ownership of Securities on Form 3 on the FPI Compliance Date and comply with the requirements for filing Forms 4 and 5 thereafter.

FPIs should take the following steps in anticipation of the FPI Compliance Date:

- **Ensure that all directors and officers have access to EDGAR through EDGAR Next.** Individuals are required to have both EDGAR codes and accounts in EDGAR Next in order to submit Forms 3, 4 and 5. Individuals who do not have EDGAR access codes and individuals who may already have codes but who did not enroll in EDGAR Next before December 21, 2025, will need to submit an application for EDGAR access on Form ID (which has been updated for EDGAR Next) with sufficient time for SEC staff review before the FPI Compliance Date.
    - The SEC staff asks that filers submit Form ID "well in advance of any anticipated filing" and reported an average six business days turnaround time for reviewing Form IDs as of December 22, 2025.[4]
    - Individual filers are required to submit a notarized power of attorney with their Form ID if a third party (i.e., not the filer) is (i) submitting the Form ID on the filer's behalf, or (ii) acting as an initial account administrator on the filer's EDGAR Next account.
    - Please see our Filer Transition Reference Guide for additional information regarding EDGAR Next.
- **Streamline transaction reporting processes to ensure compliance with beneficial ownership reporting deadlines.** Any change to an FPI director or officer's beneficial ownership of company securities is reportable on Form 4 within two business days of the date of the transaction. FPIs should ensure that they receive prompt reporting from directors and executive officers (and their respective brokers or financial institutions handling transactions on their behalf) on those individuals' transactions in company stock to ensure that the company can submit reports on changes in beneficial ownership by the applicable deadline (taking into account the fact that EDGAR is closed on weekends and will not accept filings after 10:00 p.m. Eastern Time on weekdays).

The SEC can commence enforcement actions against companies and their individual filers in cases where there are recurring failures to submit timely reports on Forms 3, 4, and 5. For example, as discussed in our Fall 2024 Quarterly Newsletter, the SEC announced settled charges (which included civil penalties) against three public companies, and directors and officers of one public company, for repeated failures to timely file beneficial reports.

Reminder: End of EDGAR Next Enrollment Transition Period

As discussed in our Spring 2025 Quarterly Newsletter, the transition period for existing filers to enroll in the SEC's updates to the EDGAR filing system, commonly referred to as EDGAR Next, expired on December 19, 2025. Starting December 22, 2025, all filers who had not already created accounts on EDGAR Next are now required to apply for EDGAR access on the updated Form ID in order to gain access to and submit filings through the EDGAR system.

All filers have been required to use EDGAR Next for SEC filings since September 15, 2025.

SEC Settles Enforcement Action Against Company for Disclosure Failures Relating to Undisclosed Executive Officer

On December 15, 2025, the SEC announced that it had settled charges against public company, Ammo, Inc. n/k/a Outdoor Holding Company (Ammo), for, among other things, violating the SEC's disclosure rules by failing to disclose that Christopher D. Larson, a co-founder of Ammo, was acting as an executive officer of Ammo following its initial public offering (IPO) and for failing to disclose two related party transactions involving Larson.

According to the SEC's complaint, Larson had been enjoined from acting as an officer or director of a public company for a period of five years, starting in June 2020, pursuant to a settlement of a civil action brought by the SEC. Notwithstanding that bar, Larson, who had been a senior executive at Ammo since he co-founded the company in 2016, continued serving in an executive role following the company's IPO in December 2020, when the bar was still in effect.

The SEC's complaint highlighted the facts and circumstances it considered in determining that Larson was an executive officer of Ammo, including that Larson: (i) shared an office with Ammo's chief executive officer and was in frequent communication with Ammo's chief financial officer concerning the company's business; (ii) was shown on company organizational charts as having the second-highest ranking position at Ammo; and (iii) received more in total compensation than any of Ammo's named executive officers (other than the chief executive officer). The SEC's complaint also alleged that Larson led Ammo's mergers & acquisitions efforts and investor relations activity and worked on the company's capital raises, in addition to other day-to-day activities.

By failing to identify Larson as an executive officer, the SEC found that Ammo violated Item 401(b) of Regulation S-K in addition to other disclosure rules relating to executive officers, including but not limited to, disclosure of (i) Larson's involvement in legal proceedings (Item 401(f) of Regulation S-K), and (ii) two related party transactions involving Larson's brother and spouse (Item 404 of Regulation S-K).

Additionally, according to the SEC complaint, Ammo's chief executive officer and chief financial officer falsely represented to Ammo's auditors that Larson was not and would not in the future be employed by the company.

Without admitting or denying the allegations, Ammo agreed to cease and desist from further violations of the Securities Act of 1933, as amended (the Securities Act), and the Exchange Act and to engage and cooperate fully with a compliance consultant.

Takeaways

This settlement highlights the facts and circumstances inherent in making a determination of who is an "executive officer" under Exchange Act Rule 3b-7 and the enforcement power that the SEC will utilize in considering whether an individual may be functioning as an undisclosed executive officer.

SEC Commissioners Express Their Views on the SEC's Regulatory Agenda

Although the SEC has yet to propose any rules under its ambitious Reg Flex rulemaking agenda (which was discussed in greater detail in our Fall 2025 Quarterly Newsletter), the SEC chair and commissioners have, through public statements, provided a glimpse of their priorities and the shape of any future rulemakings or guidance.

Rationalization of Disclosure Practices

In a speech at the New York Stock Exchange (NYSE) on December 2, 2025, Chair Atkins criticized the role that the SEC and Congress has played in creating what he called a "weaponized" disclosure regime that advances social and political topics outside of the SEC's core mission "of facilitating capital formation; protecting investors; and ensuring fair, orderly, and efficient markets." Chair Atkins reiterated his priority of creating a disclosure regime rooted "in the concept of financial materiality," where disclosures provide "the minimum effective dose of regulation needed to elicit the information that is material to investors" and markets are left to dictate the disclosure of information that is "beneficial to investors," but not otherwise material.

Chair Atkins highlighted the SEC's executive compensation roundtable held on June 26, 2025, as evidence of the SEC's focus on addressing SEC disclosures that are no longer rooted in financial materiality.

On January 13, 2026, Chair Atkins expanded the SEC's focus on financial materiality to address all of Regulation S-K, not just those provisions related to executive compensation. He announced via statement that he had instructed Corp Fin to comprehensively review Regulation S-K and that the SEC is now soliciting public comments on how

Regulation S-K can be amended "to focus on eliciting disclosure of material information and avoid compelling the disclosure of immaterial information." Public comments on Regulation S-K are due no later than April 13, 2026.

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

During his speech at the NYSE, Chair Atkins noted that he had urged the SEC to revisit the financial thresholds separating "'large' companies, which are subject to all of the SEC disclosure rules, and 'small' companies that are subject to only some of them."[5] Chair Atkins also proposed modifying the disclosure "on-ramp" currently provided for Emerging Growth Companies (EGCs) to allow companies to remain on the on-ramp for a minimum number of years, rather than requiring some to exit EGC status as soon as one year after going public if certain financial conditions are met.

Shareholder Proposal Modernization

Also in his NYSE speech, Chair Atkins foreshadowed that the SEC would "soon" share the progress it had made on its goal of "de-politicizing" the shareholder proposal process.

Shortly thereafter, SEC Commissioners Mark T. Uyeda and Hester M. Peirce shared their views on the topic.

In a speech at the Institute for Corporate Counsel on December 3, 2025, Commissioner Uyeda highlighted the need for transparency in the Rule 14a-8 shareholder proposal process and advocated for the SEC to state its Rule 14a-8 views and policies "clearly and openly" instead of through internal memoranda currently visible only internally to SEC staff.

In remarks at a Meeting of the SEC Investor Advisory Committee on December 4, 2025, Commissioner Peirce acknowledged the value of shareholder engagement through the shareholder proposal process, but argued that the rules "should provide avenues for shareholders to be heard when they speak to the mutual interests of the company and its shareholders writ large," but not when they "seek to de-prioritize financial return as the sine qua non of corporate purpose." Commissioner Peirce also stated that "eligibility to submit a shareholder proposal under Rule 14a-8 should be limited to shareholders whose interests align with those of the corporation. Otherwise, shareholders, to extract special interest concessions from the company, will submit shareholder proposals, which divert company time, attention, and resources." How this may be reflected in rulemaking remains to be seen.

Rollback of Quarterly Reporting Requirements

As discussed in our Fall 2025 Quarterly Newsletter, while not part of the Spring 2025 Reg Flex Agenda, the SEC has fast-tracked (at President Trump's urging) a proposal to roll back quarterly reporting requirements for at least some issuers. Though the scope of any rollback remains unclear, Commissioner Uyeda indicated in his speech before the Institute for Corporate Counsel that the SEC might focus on companies where the costs (to companies) of disclosure was high compared to the benefits (to shareholders) of reviewing such disclosures. Commissioner Uyeda highlighted in particular the limited informational value of quarterly disclosures for "companies with a multi-year development cycle… and no current revenue."

CORPORATE GOVERNANCE

ISS and Glass Lewis Announcement Benchmark Policy Updates

In November 2025, ISS and Glass Lewis released the 2026 updates to their respective benchmark proxy voting policies. Institutional investors, which typically make up a substantial portion of outstanding share ownership in public companies, often rely on or reference the ISS and Glass Lewis benchmark policies to inform how they vote on matters at a company's annual meeting.

The 2026 updates, which are summarized below, were relatively minor compared to previous years.

ISS Proxy Voting Guidelines[6]

Board of Directors	
Problematic Capital Structures — Unequal Voting Rights	ISS expanded its policy of generally withholding or voting against directors of companies with multi-class voting structure with unequal voting rights. Previously, ISS only considered disparate voting rights between classes of common stock. With the update, ISS will now consider multi-class voting structures affecting other types of capital stock, such as preferred stock. ISS provided limited exception to this policy for (i) convertible preferred shares that vote on an "as-converted" basis; and (ii) enhanced voting rights that are limited in duration and applicability.
Compensation	
Executive Pay Evaluation — Pay for Performance	ISS expanded the time period over which it measures alignment between the company's financial performance measures and those of the company's peer group.
Time-Based Equity Awards with Long-Time Horizon	ISS added qualitative factors relating to time-based equity awards with a long-term focus that ISS will consider positively if ISS's initial pay for performance analysis show significant unsatisfactory long-term pay for performance alignment.
Board of Directors — Responsiveness	ISS revised how it analyzes board responsiveness to a low say-on-pay vote in response to challenges a company's management may face in engaging with large shareholders following the release of the SEC Compliance & Disclosure Interpretation (C&DI) Question 103.12 (which was discussed in greater detail in our Spring 2025 Quarterly Newsletter). Previously, ISS would assess the company's summary of feedback received and responses taken thereto. With the update, if a company engaged in meaningful engagement efforts but was unable to obtain specific feedback, the company should so note and ISS will instead review the company's summary of its actions taken in response to the say-on-pay vote as well as the company's explanation as to why such actions are beneficial for shareholders.
Problematic Compensation Practices: High Non-Employee Director Pay	ISS updated its policy regarding excessive non-employee director compensation so that it can look at non-consecutive years when considering whether there is a pattern of problematic non-employee director pay decisions.
Shareholder Proposals	
Climate Change/Greenhouse Gas Emissions Proposals	Instead of generally voting for requests that companies disclose their climate-related risks, ISS will now consider such proposals on a case-by-case basis.
Diversity — Equality of Opportunity Proposals	Instead of generally voting for requests that companies disclose their diversity policies or initiatives, ISS will now consider such proposals on a case-by-case basis.
Human Rights Proposals	Instead of generally voting for requests that companies disclose their company or supplier labor and/or human rights standards and policies, ISS will now consider such proposals on a case-by-case basis.
Political Contributions Proposals	Instead of generally voting for requests that companies disclose their political contributions and trade association spending policies and activities, ISS will now consider such proposals on a case-by-case basis.

***Glass Lewis Proxy Voting Guidelines*[7]**

Shareholder Rights	
Mandatory Arbitration Provisions	Glass Lewis updated its proxy voting guidelines to reflect the SEC's September 2025 policy statement (which was discussed in our Fall 2025 Quarterly Newsletter) announcing that the presence of mandatory arbitration provisions in a company's governing documents will not affect the SEC's determination whether to accelerate the effective date of a registration statement under the Securities Act. Under the new policy, Glass Lewis may recommend that shareholders oppose the election of the chair or other members of the governance committee of a company that has adopted a mandatory arbitration provision (or other potentially negative governance provisions) following completion of the company's IPO, spin-off, or direct listing. Glass Lewis will also generally recommend that shareholders vote against any bylaw or charter amendment seeking to adopt a mandatory arbitration provision.
Amendments to Governing Documents that Limit Shareholder Rights	Glass Lewis added additional changes to company governance documents that could lead Glass Lewis to recommend a vote against the chair of the company's governance committee or the entire governance committee. These include the adoption of: • provisions that limit the ability of shareholders to submit shareholder proposals; • provisions that limit the ability of shareholders to file derivative lawsuits; and • a plurality voting standard for the election of directors in lieu of a majority voting standard.
Amendments to Certificate of Incorporation and/or Bylaws	Glass Lewis will now evaluate proposed amendments to a company's certificate of incorporation and/or bylaws on a case-by-case basis.
Supermajority Voting Requirements	Glass Lewis will now consider on a case-by-case basis company proposals to abolish supermajority voting requirements and may oppose such proposals if the company has a large or controlling shareholder.
Shareholder Proposals	
General Approach to Shareholder Proposals	Glass Lewis removed some language regarding no-action requests that was rendered inapplicable due to the changes made by the SEC to the Rule 14a-8 no-action request process, but will generally follow "the basic premise that shareholders should be afforded the opportunity to vote on matters of material importance." Glass Lewis noted that its policy could be further adjusted prior to or during the 2026 proxy season.

SELF-REGULATORY ORGANIZATION UPDATES

SEC Approves Nasdaq Rule to Accelerate Delisting for Company Securities With Bid Price Less Than $0.10

Nasdaq rules establish a minimum bid price of $1.00 per share for securities listed on Nasdaq (the Minimum Bid Price Requirement).[8] Nasdaq will determine a company's security to be out of compliance with the Minimum Bid Price Requirement if the security trades below $1.00 per share for a period of 30 consecutive business days.[9] Companies that fall out of compliance with the Minimum Bid Price Requirement are provided with up to two 180-day compliance periods (each, a Compliance Period) to bring their stock price above $1.00 per share for a minimum of 10 consecutive business days before Nasdaq will commence proceedings to delist the security. Nasdaq rules provide an expedited delisting process for securities with a closing bid price of $0.10 or less (the Low Price Requirement). Nasdaq will determine a company's security to be out of compliance with the Low Price Requirement if the security trades at or below $0.10 for 10 consecutive trading days (such securities are referred to as Low Priced Stocks).[10] Nasdaq will immediately suspend trading on securities that fail to comply with the Low Price Requirement.

On December 5, 2025, the SEC approved Nasdaq's proposal to amend Rule 5810(c)(3)(A)(iii) and Rule 5815(a)(1)(B)(ii) to make it easier for Nasdaq to suspend trading in securities that fail to comply with the Low Price Requirement.[11]

Amendment to Rule 5810(c)(3)(A)(iii). Under the previous rule, a company's security would first need to have been in one of the Compliance Periods for failing to meet the Minimum Bid Price Requirement before Nasdaq would suspend trading of a security based on noncompliance with the Low Price Requirement. Under the amended rule, Nasdaq will immediately suspend from trading any security that is a Low Priced Stock, regardless of whether the security is in a Compliance Period for failure to meet the Minimum Bid Price Requirement. Once suspended, Nasdaq will only restore trading in the Low Priced Stock if the security trades above $1.00 for 10 consecutive business days (subject to application of a longer period in Nasdaq's discretion pursuant to Rule 5810(c)(3)(H)).

Amendment to Rule 5815(a)(1)(B)(ii). Companies subject to delisting may request their matter be reviewed by an independent Hearings Panel. Except for certain specified deficiencies set forth in Rule 5815(a)(1)(B)(ii), Nasdaq will typically suspend the delisting action pending the issuance of the written decision by a Hearings Panel. Nasdaq amended the rule to add failure to meet the Low Price Requirement to the enumerated list of deficiencies for which Nasdaq will not stay the suspension and delisting action pending the issuance of a written decision by a Hearings Panel.

SEC Approves Nasdaq Rule Providing Nasdaq with Limited Discretion to Deny Initial Listing to Certain Companies

On December 19, 2025, the SEC approved Nasdaq's proposal to adopt new rule IM-5101-3 to allow Nasdaq to use its discretionary authority to deny initial listing to companies based on factors that Nasdaq believes make the company's securities susceptible to manipulation.[12] These factors include, but are not limited to:

- the location of the company;
- the existence of any persons or entities that exercise substantial influence over the company (Controlling Persons), and the location of any such Controlling Persons;
- the expected public float and dissemination of share distribution;
- any issues with the company's auditors, underwriters, law firms, brokers, clearing firms, or other professional service providers;
- the familiarity of the company's management and board of directors with U.S. public company requirements;
- the existence and/or results of any FINRA, SEC or other regulatory referrals related to the company or its advisors;
- the existence of a going concern audit opinion and the company's plans to continue as a going concern; and
- any other factors "that raise concerns about the integrity of the [c]ompany's board, management, significant shareholders, or advisors."

OTHER UPDATES

President Trump Instructs Agencies to Consider Various Actions Regarding Proxy Advisors

On December 11, 2025, President Trump issued an executive order instructing various agencies to leverage existing rules and consider new rules that would, among other things, subject proxy advisors to additional registration and disclosure requirements, additional litigation risk or otherwise limit their business practices (the Executive Order).[13] The Executive Order represents the latest challenge to the industry, following litigation and investigations undertaken by the State of Texas and oversight hearings by the House Committee on Financial Services earlier in the year.

The Executive Order does not itself direct a specific action, but instead directs the SEC, Federal Trade Commission (FTC), and Secretary of Labor to examine, review, revise, withdraw or enforce existing rules, regulations, and guidance.

With respect to the SEC, the Executive Order directs the SEC to consider the following actions:

EO Direction	Background
Shareholder Proposals	
Consider revising rules and guidance relating to shareholder proposals "that are inconsistent with the purpose of this order"	This follows recent statements from Chair Atkins and Commissioner Uyeda regarding the "depoliticization" of the shareholder proposal process (discussed in greater detail above under SEC Updates - SEC Commissioners Express Their Views on the SEC's Regulatory Agenda), although neither Chair Atkins nor Commissioner Uyeda have focused their statements on the role of proxy advisors.
Mandating and Enforcing Disclosures	
Enforce the anti-fraud provisions of federal securities laws with respect to "material misstatements or omissions contained in proxy advisors' proxy voting recommendations"	H.R. 4590, which was introduced in the U.S. House of Representatives in July 2023, would have amended the Exchange Act to make proxy advisors liable for failing "to disclose material information (such as a proxy voting advice business's methodology, sources of information, or conflicts of interest) or the making of a material misstatement regarding proxy voting advice." The bill was referred to the House Committee on Financial Services, which took no further action.[14]
Consider requiring proxy advisors to disclose "their recommendations, methodology, and conflicts of interest" with respect to diversity, equity and inclusion (DEI) and environmental, social and governance (ESG) factors	This loosely tracks Texas S.B. 2337 (SB 2337) which, among other things, requires proxy advisors to explain the methodology behind any proxy advice based on non-financial factors (e.g., DEI and ESG factors). SB 2337 is currently being challenged by ISS and Glass Lewis on First Amendment grounds in separate lawsuits pending in the U.S. District Court of the Western District of Texas.[15]
Investment Advisers Act of 1940 (Investment Advisers Act)	
Assess whether proxy advisors should be required to register as investment advisors[16]	ISS has been registered as an investment advisor since 1997.[17] Glass Lewis was previously registered as an investment advisor until 2005, and is reportedly considering registering again.[18]
Examine whether registered investment advisors who engage proxy advisors to advise on non-pecuniary factors (such as DEI and ESG) have breached their fiduciary duties	Rule 206(4)-6 under the Investment Advisers Act requires registered investment advisors that vote client securities to vote such securities "in the best interest of clients." In 2019, the SEC issued guidance under the Investment Advisers Act for registered investment advisors engaging proxy advisors in the provision of voting advice. The guidance included recommendations that investment advisors apply a "higher degree of analysis" to proxy advisor recommendations with respect to contested or controversial matters.[19]
Analyze under what circumstances proxy advisors serve as a "group" for purposes of Section 13(d)(3) and 13(g)(3) under the Exchange Act	In his Remarks at the 2025 Institute for Corporate Counsel, Commissioner Uyeda opined that "robo-voting" (the practice of funds and asset managers automatically voting shares based on proxy advisor recommendations) could result in formation of a group and necessitate filing of a Schedule 13D based on the group's collective ownership.[20]

The Executive Order also directs the FTC to investigate whether proxy advisors engage in unfair methods of competition or unfair or deceptive acts or practices that harm U.S. consumers (an action which was already underway prior to the release of the Executive Order)[21] and directs the Secretary of Labor to consider whether proxy advisors should be considered "investment advice fiduciaries" under the Employee Retirement Income Security Act of 1974 (ERISA) and to ensure that ERISA plan managers comply with their fiduciary duties when they receive and act upon advice from proxy advisors, particularly with respect to DEI and ESG matters.

As discussed in our Fall 2025 Newsletter, before the release of the Executive Order, Glass Lewis and ISS had been the subject of increasing scrutiny over the nature of the proxy advice they provide to clients. In October 2025, Glass

Lewis announced that it will transition away from offering voting recommendations based on its standard voting policies and will, by 2027, focus instead on helping clients "to vote according to their own policies."[22]

On January 8, 2026, in a speech before the New York City Bar Association, Brian Daly, the Director of the SEC's Division of Investment Management encouraged investment advisors voting proxies on their clients' behalf to consider moving away from utilizing proxy advisors. While noting that "there is nothing inherently wrong with an investment adviser using a proxy advisor, Daly warned advisers on the "real concern… that habitual adherence to a proxy consultant's recommendations could pull an adviser into a Section 13(d) group" and suggested that investment advisors instead look to properly-trained artificial intelligence agents to "generate a large quantity of principled voting recommendations." This followed reports that JP Morgan Chase's asset management unit was moving away from proxy advisors and instead using an internal artificial intelligence platform to manage votes and provide proxy recommendations for portfolio managers.[23]

Takeaways

While the Executive Order does not mandate any particular action or restriction on the activities of proxy advisors, it foreshadows future action that the SEC and other specified agencies may take in addition to the pressure currently being exerted on proxy advisors by federal and state governments.

California Climate Rules Update

As discussed in our Fall 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, subject to the temporary injunction currently in effect, SB 261 (the Climate-related Financial Risk Act) (as amended by SB 219, together, the California Climate Disclosure Laws).

Climate Corporate Data Accountability Act (SB 253)	Climate-related Financial Risk Act (SB 261)
Imposes greenhouse gas emissions reporting obligations on public and private companies with annual revenues over $1 billion that operate in California.	Requires companies with annual revenues over $500 million that operate in California to publish biennial reports on climate-related financial risks.

Rulemaking Process

The California Air Resource Board (CARB), which is the agency tasked with promulgating regulations under the California Climate Disclosure Laws, released draft regulations for the California Climate Disclosure Laws on December 23, 2025. CARB is holding a public hearing to consider approving the regulations on February 26, 2026.[24]

Reporting Deadlines

Among other things, the draft regulations establish an August 10, 2026 deadline for reporting entities to submit their first emissions report (covering Scope 1 and Scope 2 emissions) under the Climate Corporate Data Accountability Act.

As discussed in our Client Alert, while the January 1, 2026 reporting deadline for SB 261 is fixed by statute and cannot be delayed absent further legislative action, on November 18, 2025, the U.S. Court of Appeals for the Ninth Circuit issued an order temporarily enjoining enforcement of SB 261. On December 1, 2025, CARB issued an Enforcement Advisory which notes that CARB will provide an alternate date for reporting once the appeal is resolved.

For entities that choose to voluntarily report under the Climate-related Financial Risk Act, CARB has opened a public docket for companies to submit the information required for their first report. As of January 20, 2026, 100 companies had submitted their first reports under the Climate-related Financial Risk Act.

Litigation Update

Two separate challenges to the California Climate Disclosure Laws are still pending in federal court.

- **United States of America Chamber of Commerce v. Sanchez:** A First Amendment challenge to the California Climate Disclosure Laws brought by the U.S. Chamber of Commerce is currently pending before the U.S. District Court for the Central District of California and the Ninth Circuit. In August 2025, the District Court denied the plaintiffs' motion for a preliminary injunction to enjoin enforcement of the California Climate Disclosure Laws. The Ninth Circuit heard plaintiff's appeal of the District Court's denial on January 9, 2026. If the case proceeds, the District Court is expected to hold a trial on the merits in November 2026.
- **Exxon Mobil Corporation v. Sanchez:** An as-applied challenge to the California Climate Disclosure Laws brought by Exxon Mobil Corporation (Exxon Mobil) is currently pending before the U.S. District Court for the Eastern District of California. Exxon Mobil is challenging the California Climate Disclosure Laws on First Amendment grounds and is also challenging SB 261 on the grounds that it is preempted by the National Securities Markets Improvement Act of 1996. The State of California filed a motion to dismiss the lawsuit on November 18, 2025, and a hearing on the motion is scheduled before the District Court on January 22, 2026.

1 Institutional S'holder Services, United States - Procedures & Policies (Non-Compensation) Frequently Asked Questions (Dec. 23, 2025), https://www.issgovernance.com/file/policy/latest/americas/US-Procedures-and-Policies-FAQ.pdf?v=2025.1 at 34. *See also* Glass Lewis, 2026 Benchmark Policy Guidelines – United States at 47 ("[T]he Benchmark Policy views the basic right of shareholders to file proposals as critical to the proper functioning of our system of corporate governance and in the best economic interest of all shareholders.").

2 When also including Rule 14a-8(j) Notices received before the SEC issued the Statement, the time for response increased to 14 calendar days.

3 Text - S.1071 - 119th Congress (2025-2026): National Defense Authorization Act for Fiscal Year 2026, S.1071, 119th Cong. (2025), https://www.congress.gov/bill/119th-congress/senate-bill/1071/text.

4 Sec. & Exch. Comm'n, *How Do I Guides: Prepare and Submit My Form ID Application for EDGAR Access*, SEC. & EXCH. COMM'N, https://www.sec.gov/submit-filings/filer-support-resources/how-do-i-guides/prepare-submit-my-form-id-application (last updated Dec. 22, 2025).

5 Paul S. Atkins, Chair, Sec. & Exch. Comm'n , Revitalizing America's Markets at 250 (Dec. 2, 2025), https://www.sec.gov/newsroom/speeches-statements/atkins-120225-revitalizing-americas-markets-250.

6 Institutional S'holder Services, Proxy Voting Guidelines – Benchmark Policy Changes for 2026: U.S., Brazil, Canada, and Americas Regional (Nov. 25, 2025), https://www.issgovernance.com/file/policy/latest/updates/Americas-Policy-Updates.pdf.

7 Glass Lewis, 2026 Benchmark Policy Guidelines – United States.

8 Nasdaq Listing Rule 5450(a)(1).

9 Nasdaq Listing Rule 5810(c)(3)(A).

10 Nasdaq Listing Rule 5810(c)(3)(A)(iii).

11 Order Granting Accelerated Approval of Proposal to Amend the Application of the Minimum Bid Price Rule in Situations Where a Security Does Not Maintain a Closing Bid Price of Greater Than $0.10 for Ten Consecutive Business Days, Exchange Act Release No. 104,318, 90 Fed. Reg. 57225 (Dec. 5, 2025), https://www.sec.gov/files/rules/sro/nasdaq/2025/34-104318.pdf.

12 Order Granting Accelerated Approval of Proposal to Modify Certain Initial Listing Requirements, Exchange Act Release No. 104,450, 90 Fed. Reg. 60184, https://www.sec.gov/files/rules/sro/nasdaq/2025/34-104450.pdf (Dec. 19, 2025).

13 Exec. Order No. 14,366, 90 Fed. Reg. 58503 (Dec. 11, 2025), https://www.whitehouse.gov/presidential-actions/2025/12/protecting-american-investors-from-foreign-owned-and-politically-motivated-proxy-advisors/.

14 Actions - H.R.4590 - 118th Congress (2023-2024): To amend the Securities Exchange Act of 1934 to provide for liability for certain failures to disclose material information in connection with proxy voting advice, and for other purposes, H.R.4590, 118th Cong. (2023), https://www.congress.gov/bill/118th-congress/house-bill/4590/all-actions.

15 Complaint, Glass, Lewis & Co., LLC v. Paxton, No. 1:25-cv-01153 (W.D. Tex. July. 24, 2025); Complaint, Institutional Shareholder Services Inc. v. Paxton, No. 1:25-cv-01153 (W.D. Tex. July. 24, 2025);

16 Section 203(a) of the Investment Advisors Act requires persons who, for compensation, "engage[] in the business of advising others…as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issue[] or promulgate[] analyses or reports concerning securities" to register as investment advisors with the SEC.

17 *Institutional Shareholder Services Inc.*, INVESTMENT ADVISER PUBLIC DISCLOSURE, https://adviserinfo.sec.gov/firm/summary/111940 (last visited Jan. 21, 2026).

18 Ross Kerber, Exclusive: Glass Lewis mulls US investment adviser registration, could ease criticism, REUTERS (Nov. 21, 2025 11:31 AM PST), https://www.reuters.com/sustainability/boards-policy-regulation/glass-lewis-mulls-us-investment-adviser-registration-could-ease-criticism-2025-11-21/.

19 Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers, Investment Advisers Act Release No. 5,325; Investment Company Act Release No. 33,605, 84 Fed. Reg. 47420 (Sept. 10, 2019), https://www.sec.gov/files/rules/interp/2019/ia-5325.pdf.

20 Mark T. Uyeda, Comm'r, Sec. & Exch. Comm'n, Remarks at the 2025 Institute for Corporate Counsel (Dec. 3, 2025), https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-institute-corporate-counsel-120325 ("The evaluation of whether a group has been formed should take into account the business realities of the arrangements, particularly if robo-voting results in coordination of voting practices where owners of the same securities vote in tandem with each other with the effect of influencing control of an issuer.").

21 *See* Jack Pitcher & Dave Michaels, Proxy Advisers ISS and Glass Lewis Are Facing Antitrust Probes, THE WALL STREET JOURNAL (Nov. 12, 2025 6:09 PM ET), https://www.wsj.com/finance/regulation/proxy-advisers-iss-and-glass-lewis-are-facing-antitrust-probes-22f0ff38.

22 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.

23 Jack Pitcher, JPMorgan Cuts All Ties With Proxy Advisers in Industry First, THE WALL STREET JOURNAL (Jan. 7, 2026 7:00 AM ET), https://www.wsj.com/finance/banking/jpmorgan-cuts-all-ties-with-proxy-advisers-in-industry-first-78c43d5f.

24 Cal. Air Res. Bd., Notice of Public Hearing to Consider the Proposed California Corporate Greenhouse Gas Reporting and Climate-Related Financial Risk Disclosure Initial Regulation (Dec. 9, 2025), https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2025/sb253-261/notice1.pdf.

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