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Public Company Advisory Group Quarterly – Spring 2025

April 2025

We are pleased to bring you the Spring 2025 edition of our 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, stock exchange rulemaking, corporate governance trends, and other topics of interest to public companies.

REGULATORY UPDATES

SEC Division of Corporation Finance Issues New Guidance on Shareholder Engagement and Schedule 13G Eligibility

On February 11, 2025, the SEC's Division of Corporation Finance issued new Compliance & Disclosure Interpretation (C&DI) Question 103.12 (superseding portions of C&DI Question 103.11) to expand the circumstances in which engagement by a beneficial owner of more than 5% of an issuer's securities with the issuer's management could cause the shareholder to lose eligibility to file beneficial ownership reports on Schedule 13G as a "passive investor."

Sections 13(d) and 13(g) of the Securities Exchange Act of 1934 (the Exchange Act) generally require greater than 5% shareholders to report their beneficial ownership on Schedule 13D or Schedule 13G. Schedule 13G imposes less burdensome disclosure requirements but is only available to investors who qualify as: (i) qualified institutional investors, (ii) exempt investors, or (iii) passive investors (who can certify that they have not "acquired the securities with any purpose, or with the effect, of changing or influencing the control of the issuer").

Prior Schedule 13G Eligibility C&DIs

Under the previous C&DI Question 103.11, greater than 5% shareholders could engage with an issuer's management on matters relating to executive compensation or "social or public interest issues (such as environmental policies)" without jeopardizing their Schedule 13G passive investor eligibility so long as the shareholder did not engage with management "with the purpose or effect of changing or influencing control of the issuer." A greater than 5% shareholder could also engage on corporate governance topics (such as removal of staggered boards, majority voting standards in director elections and elimination of poison pill plans) if the discussion was undertaken to promote the shareholder's views on good corporate governance practices or if the engagement was part of a broad effort to promote the shareholder's view of good corporate governance practices for all of its portfolio companies, rather than to facilitate a specific change in control at the issuer. This language was deleted from C&DI Question 103.11 and replaced with new C&DI Question 103.12.

New Schedule 13G Eligibility C&DIs

Under new C&DI Question 103.12, a greater than 5% shareholder who discusses with management its views on a particular topic and how its views may inform its voting decisions, without more, would not be disqualified from reporting on a Schedule 13G. However, the shareholder can lose its Schedule 13G passive investor eligibility if it "exerts pressure" on the issuer's management to implement specific measures or changes to a policy, including, for example, by:

- explicitly or implicitly conditioning the shareholder's support of one or more of the issuer's director nominees at the next director election on the issuer's adoption of the shareholder's recommendation that the issuer remove its staggered board, switch to a majority voting standard in uncontested director elections,

eliminate its poison pill plan, change its executive compensation practices, or undertake specific actions on a social, environmental, or political policy; or

- stating or implying during any discussion with management on the shareholder's voting policy on a particular topic and how the issuer fails to meet the shareholder's expectations on such topic that the shareholder will not support one or more of the issuer's director nominees at the next director election unless management makes changes to align with the shareholder's expectations.

The Staff's revised position significantly lowers the bar as to the level of engagement and discourse on social or public interest issues that can cause an investor to lose its Schedule 13G passive investor eligibility.

Following the release of the updated C&DIs, asset managers Vanguard and Blackrock briefly paused shareholder engagements.[1] Although they have since resumed engagements, institutional investors and other large shareholders are now taking steps to maintain their "passive" status, including (i) updating voting policies to note that they will not apply their voting policies to specific matters with the intent of changing the control of the issuer;[2] and (ii) taking a more passive approach to engagements generally, such as requiring issuers to initiate engagements and set the agenda and/or including a disclaimer at the start of engagements to formally establish passive intent. Some investors may now also be hesitant to convey to issuers how they will be voting on particular issues, which may cause greater uncertainty for issuers coming out of the engagements.

Despite this changing landscape, shareholder engagements remain an important way for companies to help investors better understand the company and its board of directors and we continue to recommend that companies seek out engagements with their largest investors on relevant topics of interest.

EDGAR Next is Now Live

As discussed in our Client Alert and summarized in our Reference Guide, the SEC's updates to the EDGAR filing system, collectively referred to as EDGAR Next, went live on March 24, 2025. EDGAR Next fundamentally changes how filers (including both companies and individual filers, such as Section 16 filers) manage their EDGAR accounts and make filings on EDGAR.

The SEC has provided two transition periods to phase in compliance with EDGAR Next: (i) a filing transition period (which ends on September 12, 2025) during which filers have the option to continue using the legacy EDGAR system for SEC filings instead of being required to use EDGAR Next; and (ii) an enrollment transition period (which ends on December 19, 2025) during which existing filers (those who had access to a Central Index Key (CIK) account prior to March 24, 2025) may use a streamlined enrollment process to transition to EDGAR Next instead of being required to apply for access on the new Form ID (which, as described in New Form ID Requirments below, requires filers to, among other things, submit a notarized power of attorney authorizing any third party to submit the Form ID and/or serve as administrator of the filer's EDGAR Next account).

Existing Filers

If not already enrolled, we recommend that existing filers take the following steps to prepare for and transition to EDGAR Next during the enrollment transition period to avoid needing to reapply for access on the new Form ID. Section 16 filers, many of whom have beneficial ownership reporting obligations with respect to multiple companies (e.g., a director who serves on multiple public company boards or an executive officer who also serves on multiple public company boards) require additional considerations which are also included below.

	All Filers	Special Considerations for Section 16 Filers
Confirm that the filer's EDGAR access codes are current.	Existing filers will need to have a current CIK, CIK Confirmation Code (CCC) and passphrase in order to enroll in EDGAR Next. Existing filers who are missing their CCC and/or passphrase may reset these codes prior to enrolling as long as they have access to the email address listed as the filer point of contact on EDGAR Filing (otherwise they will need to apply for EDGAR access on the new Form ID).	None, although individual filers are more likely than entity filers to be missing one or more of their EDGAR access codes and/or not have access to the point of contact email address.
Instruct relevant individuals to obtain login.gov accounts.	Any individual involved in the management of a filer's EDGAR account (including submitting SEC filings and/or enrolling the filer in EDGAR Next) must have personal login.gov credentials to access EDGAR. Individuals who already have a login.gov account associated with their personal email address should create a **new** login.gov account with the business email address they will use to log in to EDGAR.	Though not required, we recommend that companies advise their Section 16 filers to obtain login.gov account credentials so they can eventually be added as an administrator to their own EDGAR account. This helps ensure continuity of access in case of changes in responsibilities.
Identify who will be enrolling the filer in EDGAR Next.	Any individual may enroll an existing filer in EDGAR Next, but each filer may only enroll once. The SEC does not require the person enrolling an existing filer in EDGAR Next to provide documentation (e.g., a Power of Attorney (POA)) showing that they have legal authority to complete the enrollment, although this documentation is required for any filer applying for EDGAR access on Form ID.	Companies should coordinate with responsible parties at any other entity associated with their Section 16 filers (Associated Filers) to ensure all parties are aligned on who will enroll the Section 16 filer.
Identify which individuals will serve as administrators of the filer's EDGAR account.	Entity filers are required to have at least two administrators, while individual filers may choose to have only one administrator. The minimum number of administrators must be designated at the time the account is enrolled. The EDGAR system will send an email invitation to anyone designated as an account administrator, and such individuals must accept the invitation promptly before they will be added to the filer's EDGAR account (the invitations do expire). After enrollment the initial appointed administrator(s) may designate additional administrators.	Associated Filers should align on how to manage their Section 16 filers' EDGAR accounts before starting the enrollment process. Section 16 filers may either (i) have individual administrators designated from each Associated Filer; or (ii) limit administrator responsibilities to individuals from one Associated Filer and have the administrators add the other Associated Filers as individual users or delegated entities.
Manually reset EDGAR access codes.	For security reasons, an existing filer's CCC will be automatically reset and their passphrase will be deactivated following enrollment in EDGAR Next. We recommend manually resetting the CCC, passphrase and password to restore them to what they were prior to enrollment in order to avoid confusion during the filing transition period.	None, although this step is particularly important for Section 16 filers who have multiple Associated Filers. Otherwise, the individual enrolling the Section 16 filer must share the new codes with all Associated Filers.

New Filers

New filers will need to comply with the requirements of the new Form ID when applying for EDGAR access.

New Form ID requirements.	The new Form ID requires new filers to (i) provide a notarized POA if the person submitting the Form ID is not otherwise legally authorized to submit the Form ID (notarization was not previously required); (ii) provide a notarized POA to specifically authorize an individual (other than the filer or an employee of the filer) to serve as an account administrator of the EDGAR account; and (iii) specify (by means of "Yes" or "No" questions) whether the filer, the person submitting the Form ID, the person signing a POA (if applicable), the account administrator(s), or the billing contact has been criminally convicted or civilly or administratively enjoined, barred, suspended, or banned in any capacity as a result of a Federal or State securities law violation.
EDGAR filings during the filing transition period.	The EDGAR password, which was previously required (in combination with the filer's CIK and CCC) to submit an EDGAR filing, is not required to file on EDGAR Next. Accordingly, new filers will not automatically receive an EDGAR password when they submit a new Form ID. During the filing transition period, administrators can generate a new password to be used in combination with other EDGAR codes to submit SEC filings under the legacy EDGAR system. The passwords for all filers will be decommissioned upon the expiration of the filing transition period.

Coordinating with Third Party Service Providers

Third party service providers (e.g., filing services firms, law firms, etc.) will generally have their own EDGAR Next accounts and provide instructions on how to be added as a delegated entity on the filer's EDGAR account. Entity filers who do not have administrative privileges with respect to their Section 16 filers' EDGAR accounts will need to coordinate with the administrators of those accounts to ensure that all third party service providers are properly authorized.

We are here to assist you in the transition to EDGAR Next. Please refer to our Reference Guide and feel free to reach out if you have any additional questions.

SEC Changes: Where Are We Now?

In our Winter 2024/2025 Newsletter, we summarized our expectations of what to expect from the SEC during the second Trump administration. Here is an update on where things stand three months later.

- **Leadership Changes.** As expected, on April 21, 2025, Paul Atkins was sworn in as the 34th Chair of the SEC.[3] Following the planned departure of Democrat-appointed Commissioner Jaime Lizárraga on January 17, 2024, the SEC now consists of Chair Atkins and three commissioners: Republican-appointed Mark Uyeda and Hester Pierce, and Democrat-appointed Caroline Crenshaw.
- **Rulemaking Priorities.** Although the SEC has not yet issued any new disclosure rules during the second Trump administration, Commissioner Uyeda (then serving as Acting Chair) and Commissioner Pierce have made public statements since January 2025 signaling an expected shift away from the expanded disclosure regime under former SEC Chair Gary Gensler.
  - Commissioner Pierce emphasized the SEC's "limited mission" and criticized the SEC's expanded climate and human capital disclosures as examples of unwarranted "efforts to commandeer the SEC's disclosure regime… to serve non-investor constituencies,"[4] while then-Acting Chair Uyeda advocated for enhanced engagement with stakeholders on rulemaking, extending the comment period for proposed rules, and taking a "pause" on recently adopted rules.[5]
  - Then-Acting Chair Uyeda has suggested reducing disclosure burdens on public companies by among other things, reviewing "accelerated filer" and "large accelerated filer" thresholds, expanding relief from certain disclosure requirements available to emerging growth companies (including revisiting qualification thresholds), and considering whether some disclosure requirements should apply only to the largest companies.[6]

Chair Atkins made similar statements during his confirmation hearing in front of the Senate Banking Committee, where he warned against "[u]nclear, overly politicized, complicated, and burdensome regulations" and "disclosures that do the opposite of helping [investors] understand the true risks of an investment."[7] In line with these statements, and as discussed in the Climate Rule Updates section below, in February and March 2025 the SEC (under then-Acting Chair Uyeda) paused and then withdrew its defense of the Biden-era SEC rule imposing climate-related disclosure requirements on public companies (the Climate Rule).

SEC Independence. On February 18, 2025, President Trump issued Executive Order 14,215 (EO 14215) which gives the President increased control over "independent regulatory agencies," such as the SEC.[8] Among other things, EO 14215 requires all executive departments and agencies (including independent regulatory agencies) to submit all "significant regulatory actions" to the White House for review before publication in the Federal Register. This is the first time the executive branch has asserted authority to review government regulations over independent regulatory agencies.

SEC Staffing Cuts. The Trump Administration and Elon Musk, through the Department of Government Efficiency (DOGE) have been mandating drastic cuts at federal agencies that have resulted in many agencies firing large numbers of federal employees. While the SEC has not yet been subject to DOGE's personnel cuts, DOGE is now focusing on the SEC,[9] and Chair Atkins indicated during his Senate confirmation hearing that he would "definitely" work with DOGE.[10] Hundreds of SEC Staff members across all SEC Divisions (including the Division of Corporation Finance and Division of Enforcement), accounting for more than 10% of the SEC Staff, have accepted buyout offers to voluntarily depart the agency.[11] At this time, although the full extent of the cuts and the impact on the SEC and its priorities are unclear, we expect to see continued reductions in the SEC Staff, additional actions to streamline or centralize the SEC and a decline in disclosure-mandated rulemaking compared to the SEC under former Chair Gensler.

Clawback C&DIs

On April 11, 2025, the SEC's Division of Corporation Finance issued six new C&DIs addressing triggers for when to mark the clawback-related checkboxes on the cover page of Form 10-K and when to provide the disclosures regarding clawback recovery analysis required by Item 402(w)(2) of Regulation S-K. The checkbox and disclosure requirements are part of the SEC's final rules regarding recovery of erroneously awarded compensation (the Clawback Rules) and are described in greater detail below:

Checkbox Requirement (Cover Page of Form 10-K)	Disclosure Requirement (Item 402(w)(2) of Regulation S-K)
Company must indicate by marking checkboxes on the cover page of Form 10K (i) whether the financial statements included in the Form 10-K reflect the correction of an error from a previous financial statement (Checkbox 1) and (ii) if Checkbox 1 is marked, whether the correction is a restatement that required the company to conduct a clawback recovery analysis (Checkbox 2).	Company must provide specific disclosures under Part III, Item 11 of Form 10-K[12] and in its annual proxy statement if (i) the company was required to prepare a covered accounting restatement at any time during the last completed fiscal year or (ii) there was an outstanding balance of erroneously awarded compensation as of the end of the last completed fiscal year to be recovered in connection with any prior restatement.

For additional information on the Clawback Rules, please see our Winter 2024/2025 Newsletter. The C&DIs are summarized below.

Clarification on How Companies Should Comply with the Clawback Checkbox Requirement
Checkbox 1
Question 104.20: A company must mark Checkbox 1 when the financial statements in the Form 10-K have been revised to reflect the correction of an error to previously issued financial statements, regardless of whether a restatement is required or not.[13] Whether a change is the "correction of an error" is to be determined based on guidance under generally accepted accounting principles applicable to the financial statements. "Out of period adjustments" (which are corrections of immaterial prior period errors recorded in the current year) do not require the check box to be marked.
Checkbox 2
Question 104.21: A company reporting a restatement that required it to conduct a clawback recovery analysis should mark Checkbox 2 even if the company determines, after application of the recovery analysis, that no recovery of erroneously awarded compensation was required. This includes circumstances when: (i) no incentive-based compensation was received by any executive officers at all during the relevant time frame; or (ii) incentive-based compensation was received by an issuer's executive officers during the relevant time frame, but that incentive-based compensation was not based on a financial reporting measure impacted by the restatement.
Checkbox Requirements Generally
Question 104.22: A company is only required to comply with the Checkbox Requirement on the cover page of the first annual report containing corrected financial statements, not subsequent annual reports. **Question 104.24:** A company is required to comply with the Checkbox Requirement on the cover page of its first annual report containing corrected financial statements, even if the correction was previously reported on a different form (e.g., Form 8-K or Securities Act registration statement) that does not include any checkboxes. **Question 104.25:** The Checkbox Requirement does not apply to interim period restatements, even if the company discloses an interim restatement in a footnote to its annual period financial statements.

Clarification on When Companies Should Provide the Required Clawback Disclosure
Question 104.22: A company that was required to prepare an accounting restatement for any annual period must comply with the Disclosure Requirement in any proxy statement containing that fiscal year's executive compensation information, even if the company determines, after application of the recovery analysis, that no recovery of erroneously awarded compensation was required. This applies even if the company amended its prior year's annual report to explain why the application of the recovery policy resulted in no recovery or provided the required disclosure in its annual report (and did not incorporate by reference to disclosure in a proxy statement).
Question 104.23: The SEC Staff will not object to a company omitting from its annual report the required Item 402(w) disclosure for a restatement if the company already complied with the Disclosure Requirement with respect to the restatement in an earlier annual report (and assuming there are no additional facts that would affect the conclusion of the previously conducted recovery analysis). For example, a company that restated its fiscal year 2023 financials in fiscal year 2024 and complied with the Disclosure Requirement in its fiscal year 2024 annual report is not also required to provide the Item 402(w)(2) disclosures in its fiscal year 2025 annual report, even though the restatement occurred in the company's last completed fiscal year.
Question 104.25: Although the Checkbox Requirement does not apply to interim period restatements, a company is still required to comply with the Disclosure Requirement in any annual report (which may be incorporated by reference to its proxy statement) for any accounting restatement (including interim period restatements) that occurred during the prior fiscal year.

CORPORATE GOVERNANCE

SEC Division of Corporation Finance Issues Staff Legal Bulletin Regarding Shareholder Proposals

On February 12, 2025, the SEC Division of Corporation Finance issued Shareholder Proposals: Staff Legal Bulletin No. 14M (CF) (SLB 14M) revising SEC Staff guidance for two bases to exclude shareholder proposals under Rule 14a-8 of the Exchange Act: the Economic Relevance Exclusion and the Ordinary Business Exclusion (Rule 14a-8(i)(5) and Rule 14a-8(i)(7), respectively). SLB 14M rescinds guidance issued under former Chair Gensler and largely restores the SEC's earlier positions. It is expected that SLB 14M will make it easier for companies to exclude shareholder proposals by, among other things, requiring that any proposal that raises significant social and environmental policy issues have a nexus to the company's business.

Applies to any shareholder proposal that...	**Economic Relevance Exclusion**	**Ordinary Business Exclusion**
	... (i) relates to operations which account for less than 5% of the company's total assets, net earnings and gross sales, and (ii) is not otherwise significantly related to the company's business	... deals with a matter relating to the company's ordinary business operations on the basis of either its subject matter (the Subject Matter Consideration)[14] or the manner in which it seeks to address a particular issue (the Micromanagement Consideration)[15]

The SEC Staff's Approach to Proposals That Raise Significant Policy Issues

The SEC Staff has historically provided an exception to the Economic Relevance and Ordinary Business Exclusions for proposals that raise significant policy issues, but the Staff has taken different positions over time on the question of whether any such proposal must also have a significant nexus to the company's business.[16] The table below shows the changes to the SEC Staff's position on such shareholder proposals between the Gensler-era Shareholder Proposals: Staff Legal Bulletin No. 14L (CF) (SLB 14L) and SLB 14M.

SLB 14L (November 3, 2021)	SLB 14M (February 12, 2025)
Significant Relationship Test of Economic Relevance Exclusion	
SEC Staff "focus[es] on the social policy significance of the issue that is the subject of the shareholder proposal" rather than "determining the nexus between a policy issue and the company."	SEC Staff considers the proposal's significance to the company when determining whether the proposal is "significantly related to the company's business."
Subject Matter Consideration of Ordinary Business Exclusion	
SEC Staff considers "whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company"[17] and does not analyze the proposal's relationship to the company's business.	SEC Staff considers whether the proposal is "significantly related to the company's business."

In a departure from earlier SEC Staff guidance, the SEC Staff will not expect a company's no-action request under the Economic Relevance Exclusion or the Ordinary Business Exclusion to include a board's analysis of the particular policy issue raised and its significance to the company, although a company may still submit such analysis if it believes it will be helpful for the SEC Staff's consideration of the no-action request.

The SEC Staff's Approach to Proposals That Seek to "Micromanage" the Company

The Micromanagement Consideration allows a company to exclude any shareholder proposal that seeks to "micromanage" the company "by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment."[18] A proposal may seek to micromanage the company if, for example, it "involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies."[19] The table below shows the changes to the SEC Staff's position on shareholder proposals that seek to micromanage the company between SLB 14L and SLB 14M.

SLB 14L (November 3, 2021)	SLB 14M (February 12, 2025)
SEC Staff focuses "on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management."[20]	SEC Staff considers whether a proposal requires details, strategies, methods, actions, outcomes, or timelines that "supplant the judgment of management and the board."[21]

SLB 14M Guidance on Procedural Matters

SLB 14M also included guidance on certain other procedural bases for exclusions of shareholder proposals, including:

Inclusion of Images in Shareholder Proposals	Proof of Ownership Letters	Use of Email for Communications
The 500-word limit on shareholder proposals (Rule 14a-8(d)) does not preclude shareholders from using graphics to convey information about their proposals, but words in graphics will count towards the rule's word limit.	The SEC Staff will take a "plain meaning approach" to reviewing letters provided by a proponent to demonstrate that they meet the minimum share ownership requirements of Rule 14a-8(b) and will not require proponents to provide the information in any specific format.	The SEC Staff encourages senders of email communications related to shareholder proposals to seek a reply email from the recipient in which the recipient acknowledges receipt of the email. The SEC Staff also encourages both companies and shareholder proponents to acknowledge receipt of emails when requested.

Impact of SLB 14M on the 2025 Proxy Season

Although changes that limit the success of shareholder proposals may have been foreseen, the timing of SLB 14M's release injected some unexpected chaos into the 2025 proxy season.[22] When SLB 14M was released, companies had already filed more than 200 requests for no-action relief to exclude shareholder proposals from their proxy statements, and more than half of those requests sought relief pursuant to the Ordinary Business Exclusion. The SEC Staff immediately began applying the new guidance to previously-submitted no action requests and advised companies to submit supplemental correspondence if they wished to show that they were "entitled to exclude the proposal under operative rules." The SEC Staff also considered the publication of SLB 14M to be "good cause" for a company missing the deadline to file a no-action request within 80 days of filing its definitive proxy statement "if [SLB 14M] relates to legal arguments made by the new request."

As of April 30, 2025, SLB 14M has had the following observable impacts on the 2025 proxy season:

- Shareholders and companies reassessed outstanding shareholder proposals following the release of SLB 14M. Following the release of SLB 14M, nearly 30 proposals that were the subject of earlier submitted Ordinary Business Exclusion no-action requests were withdrawn by the proponent.[23] This represents a three-fold increase from the number of Ordinary Business Exclusion no-action requests withdrawn over the course of the entire 2024 proxy season and likely reflects shareholders' assessments of the likelihood of successfully obtaining no-action relief under the new guidance and new SEC leadership. Similarly following the release of SLB 14M, more than 30 companies filed letters supplementing prior no-action requests or submitted new no-action requests for exclusion of previously submitted shareholder proposals. These letters were submitted within 80 days of a company

filing their proxy statement (reflecting the release of SLB 14M so late in the proxy season) and required the companies to request a waiver from the requirement of Rule 14a-8(j) under the Exchange Act.

- SEC Staff still deny no-action requests for proposals raising significant policy issues under the new guidance. Even though SLB 14M is expected to make it easier for companies to exclude shareholder proposals raising significant policy issues, the SEC Staff nevertheless has continued to deny no-action relief to companies seeking to exclude a proposal under the new guidance. For example, the SEC denied no-action requests from two hospitality companies (Boyd Gaming and Wynn Resorts) seeking to exclude shareholder proposals requesting that they report on "potential cost savings through the adoption of a smokefree policy for company properties,"[24] two multinational banks (Wells Fargo and Bank of America) seeking to exclude shareholder proposals requesting that they annually disclose a ratio showing their total financing in low-carbon energy supply relative to that in fossil-fuel energy supply,"[25] and three multinational companies (American Express, Coca-Cola, and Johnson & Johnson) seeking to exclude shareholder proposals requesting that they disclose "a report evaluating how [they oversee] risks related to discrimination against ad buyers and sellers based on their political or religious status or views."[26]

Going forward, we expect to see an increased number of shareholder proposals excluded through no-action relief in reliance on the Ordinary Business and Economic Relevance Exclusions. We also expect to see a lower number of shareholder proposals put forth by shareholders on environmental, social and anti-ESG issues as both shareholders and companies respond to the guidance in SLB 14M.

SELF-REGULATORY ORGANIZATION RULEMAKING UPDATES

New York Stock Exchange (NYSE) and Nasdaq Stock Market LLC (Nasdaq) Limit Use of Multiple Reverse Stock Splits to Maintain Compliance with Minimum Bid Price Listing Criteria

In January 2025, the SEC approved NYSE and Nasdaq proposals limiting the ability of companies to effect reverse stock splits to regain compliance with the exchanges' minimum average closing price and bid price requirements (the Price Rule Updates).[27]

NYSE and Nasdaq require exchange-listed securities to maintain a price at or above $1.00 per share for a period of 30 consecutive trading days (based on an average closing price for NYSE-listed companies and a minimum bid price for Nasdaq-listed companies).[28]

NYSE and Nasdaq each provide for a six-month cure period (with limited exceptions)[29] to provide time for a listed company to regain compliance with the minimum closing or bid price requirement, as applicable, before the relevant exchange commences delisting procedures. Reverse stock splits are a common mechanism used by issuers to boost their stock price, although doing so can cause companies to fall out of compliance with other exchange continued listing requirements, such as the requirement that listed companies maintain a minimum number of stockholders or publicly-held shares.[30]

The Price Rule Updates impose the follow restrictions on an issuer's ability to effect reverse splits to regain compliance with an exchange's minimum price criteria. This is in addition to existing rules which make the cure period unavailable if the company has effected a reverse stock split over the prior one-year period.

NYSE	Nasdaq
Limitation on Multiple Reverse Stock Splits	
Cure period unavailable if the company has effected one or more reverse stock splits over the prior two-year period with a cumulative ratio of 200 shares or more to one.	Existing Nasdaq rules already made the cure period unavailable for a company that has effected one or more reverse stock splits over the prior two-year period with a cumulative ratio of 250 shares or more to one.
Limitations on Reverse Stock Splits That Cause Noncompliance with Another Continued Listing Criteria	
Cure period unavailable if a reverse stock split causes non-compliance with requirements that a company maintain a minimum total number of stockholders and publicly-held shares.[31]	Existing Nasdaq rules already made the cure period unavailable if a reverse stock split causes non-compliance with a numeric threshold for another listing requirement.

Nasdaq Amends Deadline for a Listed Company to Notify Nasdaq of a Reverse Stock Split

Effective January 30, 2025, Nasdaq amended Nasdaq Rule 5250(e)(7) and IM-5250-3 to require listed companies to notify Nasdaq of a reverse stock split 10 calendar days prior to the anticipated market effective date of the reverse stock split, which is earlier than the previous five business requirement. In its adopting release, Nasdaq noted that the new rule would harmonize Nasdaq rules with the notice required by Rule 10b-17 under the Exchange Act. NYSE rules already require 10 calendar days notice of a reverse stock split.[32]

CLIMATE RULE UPDATES

SEC Climate Rule Update

As discussed in our Summer 2024 Newsletter, since April 2024 the SEC's Climate Rule has been indefinitely stayed pending the completion of litigation challenging the rule in the Eighth Circuit Court of Appeals. The case has been fully briefed before the Eighth Circuit.

On March 27, 2025, upon request of then-Acting Chair Uyeda (who noted that the briefs previously submitted by the SEC in the Climate Rule litigation did not reflect his views)[33], the SEC formally withdrew its defense of the Climate Rule.[34] However, the withdrawal of the SEC's defense does not mean the SEC's Climate Rule litigation is over. On April 4, 2025, 18 states and the District of Columbia filed a motion to hold the litigation in abeyance, arguing that the SEC could not constructively repeal the Climate Rule by withdrawing its defense but must instead either "rescind or amend the [Climate Rule]… via notice-and-comment rulemaking."[35] The Eighth Circuit granted the motion on April 24, 2025.[36] In its order, the Eighth Circuit directed the SEC to file a status report advising how it intended to proceed with respect to the Climate Rules. If the SEC determines to take no action with respect to the Climate Rules, the SEC must address in its report whether it will adhere to the Climate Rules "if the petitions for review are denied" and, if not, why it will not review or reconsider the Climate Rules at this time.

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

California Climate Rule Updates

As discussed in our Winter 2024/2025 Quarterly Newsletter, companies operating in California that meet certain financial thresholds will need to comply with the climate-related reporting requirements under SB 253 (the Climate Corporate Data Accountability Act) and SB 261 (the Climate-related Financial Risk Reporting Program) (together, the California Climate Disclosure Laws) starting in 2026.

The California Air Resource Board (CARB), which is the agency tasked with promulgating regulations under the California Climate Disclosure Laws, has not yet issued regulations.[37] CARB closed its comment period for soliciting feedback to help inform its work to implement the California Climate Disclosure Rules closed on March 21, 2025. Meanwhile, as discussed in our Client Alert, CARB has issued an Enforcement Notice stating that it will not take enforcement action under SB 253 for incomplete reporting against entities for the first report due in 2026 as long as the companies made a good faith effort to retain all data relevant to emissions reporting for the entity's prior fiscal year.

Constitutional challenges to the California Climate Disclosure Laws are still pending in the U.S. District Court for the Central District of California in a case brought by the U.S. Chamber of Commerce and other parties.[38] On February 3, 2025, the District Court dismissed two out of the plaintiffs' three claims, leaving only the claim that the California Climate Disclosure Laws violate the First Amendment.[39]

The plaintiffs have since filed a motion for a preliminary injunction to enjoin the State of California from enforcing the California Climate Disclosure Laws.[40] The District Court has scheduled a hearing on the motion for preliminary injunction on May 27, 2025 with a trial on the merits expected to take place in November 2026.[41]

Other State-Level Climate Legislation

A number of other states are considering passing legislation similar to the California Climate Disclosure Laws. These include New York Senate Bill 3456 (the Climate Corporate Accountability Act), Colorado House Bill 25-1119 (the Greenhouse Gas Emissions Act), New Jersey Senate Bill 4117 (the Climate Corporate Data Accountability Act), and Illinois House Bill 3673 (the Climate Corporate Accountability Act). These laws typically apply to large companies (with total revenues in excess of one billion U.S. dollars) doing business in the state and would require disclosure of Scope 1, Scope 2, and Scope 3 greenhouse gas (GHG) emissions starting as early as 2027.

1. Ross Kerber: *Vanguard pauses corporate meetings over new ESG guidance*, Reuters (Feb. 19, 2025, 1:09 PM PST), https://www.reuters.com/business/finance/vanguard-pauses-corporate-meetings-over-new-esg-guidance-2025-02-19/; Ross Kerber, BlackRock resumes stewardship talks after reviewing new ESG guidance, Reuters (Feb. 20, 2025, 7:03 PM PST), https://www.reuters.com/sustainability/blackrock-resumes-stewardship-talks-after-reviewing-new-esg-guidance-2025-02-21/. Ross Kerber, *Vanguard resumes stewardship meetings after reviewing SEC guidance*, Reuters (Mar. 3, 2025, 12:14 PM PST), https://www.reuters.com/business/finance/vanguard-resumes-stewardship-meetings-after-reviewing-sec-guidance-2025-03-03/.
2. *See* Vanguard, *2025 proxy voting policy for U.S. portfolio companies* (February 2025), https://corporate.vanguard.com/content/dam/corp/advocate/investment-stewardship/pdf/policies-and-reports/us_proxy_voting_policy_2025.pdf (the application of the firm's proxy voting policies "to specific voting matters are predicated on the Vanguard-advised funds' acquisition and ownership of securities in the ordinary course of business, without the intent of influencing company strategy or changing the control of the issuer" and "the application of the policies to specific voting matters will also adhere to any passivity requirements"); *see also* State Street Global Advisors, *Global Proxy Voting and Engagement Policy* (March 2025), https://www.ssga.com/library-content/assets/pdf/global/asset-stewardship/proxy-voting-and-engagement-policy.pdf ("When engaging with and voting proxies with respect to the portfolio companies in which we invest our clients' assets, we do so on behalf of and in the best interests of the client accounts we manage and do not seek to change or influence control of any such portfolio companies… State Street Global Advisors will not apply any policies contained herein in any jurisdictions where State Street Global Advisors believes that implementing or following such policies would be deemed to constitute seeking to change or influence control of a portfolio company.").
3. Press Release, Sec. & Exch. Comm'n, Paul S. Atkins Sworn in as SEC Chairman (Apr. 21, 2025), https://www.sec.gov/newsroom/press-releases/2025-68.
4. SEC Commissioner Hester M. Pierce, 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.
5. SEC Acting Chairman Mark T. Uyeda, Remarks to the Investment Company Institute's 2025 Investment Management Conference (Mar. 17, 2025), https://www.sec.gov/newsroom/speeches-statements/uyeda-ici-031725.
6. SEC Acting Chairman Mark T. Uyeda, Remarks at the 44th Annual Small Business Forum (Apr. 10, 2025), https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-small-business-forum-041025.
7. *Opening Statement of Paul Atkins: Nomination Hearing Before the S. Banking Comm.*, 119th Cong. (2025), https://www.banking.senate.gov/imo/media/doc/atkins_testimony_3-27-25.pdf.
8. Exec. Order No. 14,215, 90 Fed. Reg. 10447 (Feb. 24, 2025), https://www.federalregister.gov/documents/2025/02/24/2025-03063/ensuring-accountability-for-all-agencies.
9. Andrew Ramonas and Ben Miller, *DOGE Targets SEC Next for Job Cuts, Priority Shifts: Explained*, Bloomberg Law (Feb. 20, 2025 2:00 AM PST), https://news.bloomberglaw.com/esg/doge-targets-sec-next-for-job-cuts-priority-shifts-explained; Chris Prentice, *US SEC leaders push back as Musk's DOGE seeks broad access, source says*, Reuters (Apr. 15, 2025 12:35 PM PST), https://www.reuters.com/world/us/us-sec-leaders-push-back-musks-doge-seeks-broad-access-source-says-2025-04-15/.
10. Jessica Corso and Jon Hill, *Atkins Suggests He May Open SEC's Doors to DOGE*, Law360 (Mar. 27, 2025, 4:51 PM EDT), https://www.law360.com/articles/2316005/atkins-suggests-he-may-open-sec-s-doors-to-doge.
11. Chris Prentice and Douglas Gillison, *US SEC to see exodus as hundreds take Trump's buyout offers, sources say*, Reuters (Mar. 21, 2025), https://www.reuters.com/world/us/us-sec-see-exodus-hundreds-take-trumps-buyout-offers-sources-say-2025-03-21/; Declan Harty, *SEC set to see hundreds leave through buyout, retirement offers*, Politico (Mar. 21, 2025, 6:05 PM EDT) https://www.politico.com/news/2025/03/21/sec-buyouts-retirement-offers-departures-00243673.
12. This disclosure may be incorporated by reference to a company's annual proxy statement if it is filed within 120 days of the end of its fiscal year end as permitted by Instruction G.3 of Form 10-K.
13. Required restatements include: (i) "Big R" restatements, which are accounting restatements that correct an error in previously issued financial statements that is material to those financial statements; and (ii) "Little r" restatements, which are accounting restatements that correct an error immaterial to those financial statements but would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period.
14. Amendments to Rules on Shareholder Proposals, Exchange Act Release No. 40,018, 63 Fed. Reg. 50622 (May 21, 1998), https://www.sec.gov/rules-regulations/1998/05/amendments-rules-shareholder-proposals?.
15. The Micromanagement Consideration relates to whether the proposal "seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." Amendments to Rules on Shareholder Proposals, Exchange Act Release No. 40,018, 63 Fed. Reg. 50622 (May 21, 1998), https://www.sec.gov/rules-regulations/1998/05/amendments-rules-shareholder-proposals?.
16. *See* Shareholder Proposals: Staff Legal Bulletin No. 14E (CF) (Oct. 27, 2009), https://www.sec.gov/rules-regulations/staff-guidance/staff-legal-bulletins/shareholder-proposals-staff-legal-bulletin-no-14e-cf? ("In those cases in which a proposal's underlying subject matter transcends the day-to-day business matters of the company and raises policy issues so significant that it would be appropriate for a shareholder vote, the proposal generally will not be excludable under Rule 14a-8(i)(7) as long as a sufficient nexus exists between the nature of the proposal and the company.").
17. Shareholder Proposals: Staff Legal Bulletin No. 14L (CF) (SLB 14L) (Nov. 3, 2021), https://www.sec.gov/rules-regulations/staff-guidance/staff-legal-bulletins/shareholder-proposals-staff-legal-bulletin-no-14l-cf?.
18. Amendments to Rules on Shareholder Proposals, Exchange Act Release No. 40,018, 63 Fed. Reg. 50622 (May 21, 1998), https://www.sec.gov/rules-regulations/1998/05/amendments-rules-shareholder-proposals?.
19. Id.
20. Shareholder Proposals: Staff Legal Bulletin No. 14L (CF) (SLB 14L) (Nov. 3, 2021), https://www.sec.gov/rules-regulations/staff-guidance/staff-legal-bulletins/shareholder-proposals-staff-legal-bulletin-no-14l-cf?.
21. Shareholder Proposals: Staff Legal Bulletin No. 14M (CF) (Feb. 12, 2025), https://www.sec.gov/about/shareholder-proposals-staff-legal-bulletin-no-14m-cf? (excerpting Staff Legal Bulletin No. 14K Section B.4).
22. *See* Caroline A. Crenshaw, Statement on Staff Legal Bulletin 14M (Feb. 12, 2025), https://www.sec.gov/newsroom/speeches-statements/crenshaw-statement-staff-legal-bulletin-14m-021225 (calling timing of SLB 14M "arbitrary and inequitable" and noting that shareholders that submitted proposals earlier in the proxy season, and issuers responding to those proposals, would receive "disparate treatment" compared to those engaging under the SEC's revised guidance).
23. 25 proposals withdrawn as of April 30, 2025.
24. Wynn Resorts Limited, SEC Staff No-Action Letter (Mar. 17, 2025), https://www.sec.gov/files/corpfin/no-action/14a-8/trinitywynn31725-14a8.pdf; Boyd Gaming Corporation, SEC Staff No-Action Letter (Mar. 20, 2025), https://www.sec.gov/files/corpfin/no-action/14a-8/trinityboyd32025-14a8.pdf.
25. Bank of America Corporation, SEC Staff No-Action Letter (Mar. 3, 2025), https://www.sec.gov/files/corpfin/no-action/14a-8/nyctrsbao3325-14a8.pdf; Wells Fargo & Company, SEC Staff No. Action Letter (Mar. 5, 2025), https://www.sec.gov/files/corpfin/no-action/14a-8/nyctrswells3525-14a8.pdf.
26. Johnson & Johnson, SEC Staff No-Action Letter (Feb. 28, 2025), https://www.sec.gov/files/corpfin/no-action/14a-8/bahnsenjohnson22825-14a8.pdf; The Coca-Cola Company, SEC Staff No-Action Letter (Mar. 10, 2025), https://www.sec.gov/files/corpfin/no-action/14a-8/gracecocacola31025-14a8.pdf; American Express Company, SEC Staff No-Action Letter (Mar. 12, 2025), https://www.sec.gov/files/corpfin/no-action/14a-8/bowyeramerican31225-14a8.pdf ("Under the approach described in Staff Legal Bulletin No. 14M (Feb. 12, 2025), the Company has not explained whether the policy issue raised by the Proposal is significant to the Company. Therefore, in our view, the Company has not demonstrated that the Proposal relates to its ordinary business operations.")
27. Order Granting Accelerated Approval of Proposal to Amend Section 802.01C of the NYSE Listed Company Manual to Limit the Use of Reverse Stock Splits to Regain Compliance with the Price Criteria in Certain Circumstances, Exchange Act Release No. 102,201, 90 Fed. Reg. 7715 (Jan. 15, 2025), https://www.sec.gov/files/rules/sro/nyse/2025/34-102201.pdf; Order Granting Approval of Proposed Rule Change to Modify the Application of the Minimum Bid Price Compliance Periods and the Delisting Appeals Process for Bid Price Non-Compliance in Listing Rules 5810 and 5815 Under Certain Circumstances, Exchange Act Release No. 102,245, 90 Fed. Reg. 8081 (Jan. 17, 2025), https://www.sec.gov/files/rules/sro/nasdaq/2025/34-102245.pdf. A mark-up showing the changes made to the NYSE Listed Company Manual pursuant to the NYSE Price Rule Update is available here.
28. NYSE Listed Company Manual 802.01C (Price Criteria for Capital or Common Stock) (requires NYSE-listed security to maintain an average closing price at or above $1.00 per share over a consecutive 30-day trading period); Nasdaq Listing Rule 5450(a)(1) (requires Nasdaq-listed security to have a minimum bid price at or above $1.00 per share for a period of 30 consecutive trading days).
29. *See* NYSE Listed Company Manual 802.01C (a company regains compliance with the NYSE Minimum Closing Price Criteria if on the last trading day of any calendar month during the six-month cure period the company has a closing share price of at least $1.00 and an average closing share price of at least $1.00 over the 30 trading-day period ending on the last trading day of that month).
30. NYSE Listed Company Manual 802.01A (Distribution Criteria for Capital or Common Stock); Nasdaq Listing Rule 5450(b) (Continued Listing Standards for Primary Equity Securities).
31. NYSE Listed Company Manual 802.01A.
32. NYSE Listed Company Manual 204.12.
33. Acting SEC Chairman Mark T. Uyeda, Acting Chairman Statement on Climate-Related Disclosure Rules (Feb. 11, 2025), https://www.sec.gov/newsroom/speeches-statements/uyeda-statement-climate-change-021025.
34. Iowa v. SEC, No. 24-1522 (8th Cir. Mar. 27, 2025) (Status report filed by SEC).
35. Iowa v. SEC, No. 24-1522 (8th Cir. Apr. 4, 2025) (Intervenor States' Motion to Hold Cases in Abeyance).
36. Iowa v. SEC, No. 24-1522 (8th Cir. Apr. 24, 2025) (Order Granting Motion to Hold Cases in Abeyance.).
37. CARB closed its comment period soliciting feedback on the implementing regulations on March 21, 2025. https://ww2.arb.ca.gov/our-work/programs/california-corporate-greenhouse-gas-ghg-reporting-and-climate-related-financial.
38. Complaint, Chamber of Com. of the U.S.A. v. Cal. Air Resources Bd., No. 2:24-cv-00801 (C.D. Cal. Jan. 30, 2024).
39. Order Granting Defendants' motion to Dismiss Plaintiffs' Second and Third Causes of Action, Chamber of Com. of the U.S.A. v. Cal. Air Resources Bd., No. 2:24-cv-00801 (C.D. Cal. Feb. 3, 2025).
40. Plaintiffs' Notice of Motion and 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. Feb. 25, 2025).
41. Rule 26(f) Report and Discovery Plan, Chamber of Com. of the U.S.A. v. Cal. Air Resources Bd., No. 2:24-cv-00801 (C.D. Cal. Apr. 1, 2025).

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