

Public Company Advisory Group Quarterly — Spring 2026

April 2026

We are pleased to bring you our Spring 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; corporate governance updates; and other topics of interest to our public company clients.

SECURITIES LAW UPDATES

Shareholder Proposals: Exclusions, Inclusions, and Lawsuits in Light of Revised Rule 14a-8 Process

Background: Changes to the SEC's No-Action Process for the Current Proxy Season

As discussed in our [Winter 2025/2026 Quarterly Newsletter](#), on November 17, 2025, the SEC Division of Corporation Finance (Corp Fin) announced via a [Statement](#) (the Statement) that, with limited exceptions, the SEC staff would 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), seeking 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).

The Statement fundamentally changed the no-action process which, in prior years, had dominated the early months of the proxy season. For the current proxy season, companies were still required to notify the SEC staff of their intent to exclude a shareholder proposal from their proxy statement as required by Rule 14a-8(j) (a Rule 14a-8(j) Notice), but in a break from prior years the SEC no longer issued substantive “no-action” responses to such notices.

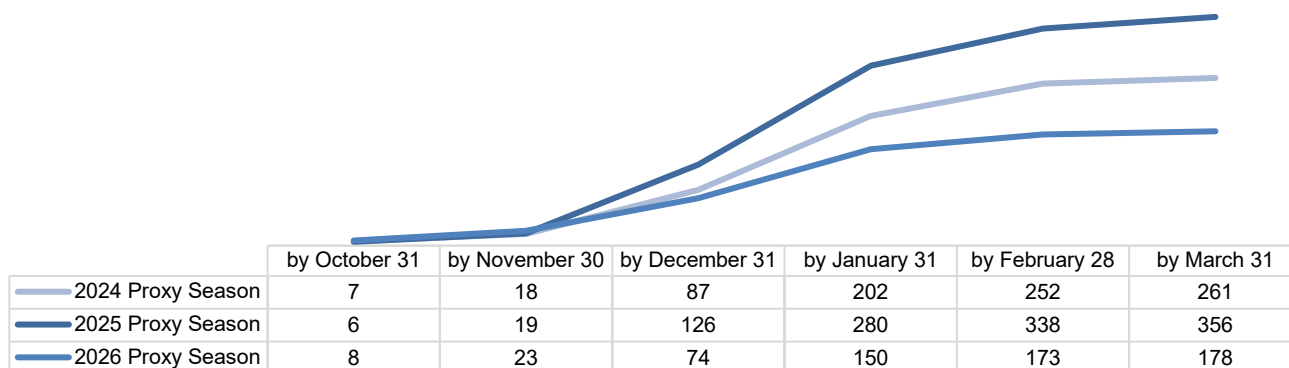
Impact of Changes on Shareholder Proposals Submitted to Date

The modifications to the SEC staff's process have driven continued shifts in the volume and subject matter of shareholder proposals for the current proxy season.

- **Decrease in Number of Rule 14a-8(j) Notices Submitted by Companies.** In October and November 2025, before the SEC staff issued the Statement, Rule 14a-8(j) Notices containing no-action requests were on track to slightly exceed those submitted by companies over the same period in the 2025 and 2024 proxy seasons.

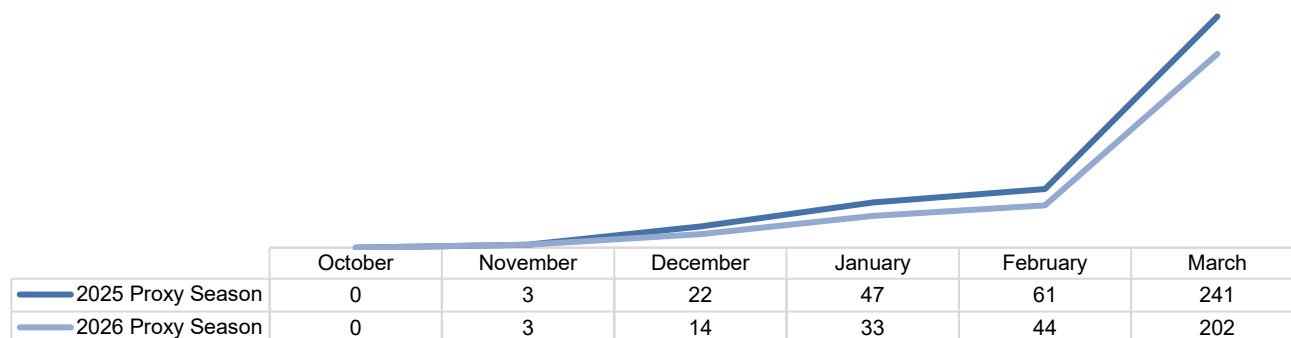
However, after the Statement, the number of Rule 14a-8(j) Notices submitted by companies noticeably declined, falling below levels from both the 2025 and the 2024 proxy season.

Number of Rule 14a-8(j) Notifications / No-Action Requests



- Decrease in Number of Shareholder Proposals in Proxy Statements.** There has also been a decline in shareholder proposals ultimately included in proxy statements in the early months of the current proxy season as compared to the same point in the 2025 proxy season. This decline – if it continues through the remainder of the 2026 proxy season – may reflect continued broader trends in the overall number of shareholder proposals received and withdrawal rates of submitted proposals.

Number of Shareholder Proposals in Proxy Statements

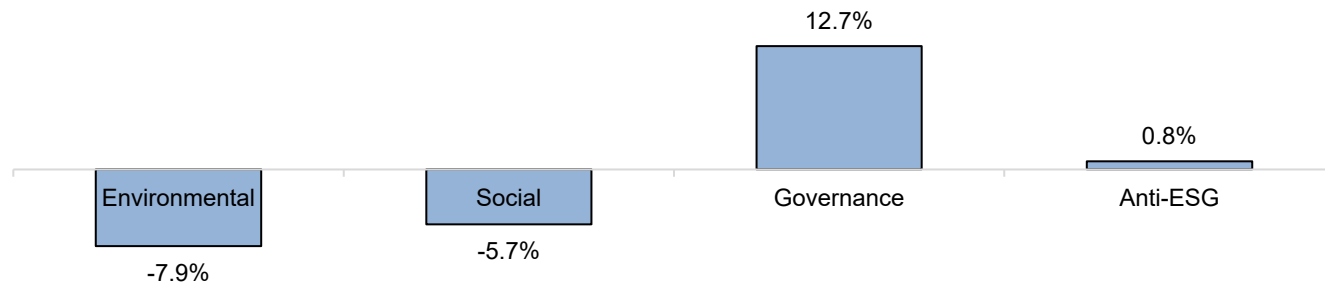


Year over Year (through March 31) Change in...	
Rule 14a-8(j) Notices / No-Action Letters	Proxy Statements with Shareholder Proposals
- 50%	- 16%

- Increase in Proportion of Governance Proposals.** In the current proxy season (through March 31, 2026) there appears to be a continuation of the prior years' shift in proposal types, with corporate governance proposals constituting a larger share of overall proposals in 2026 (through March 31, 2026) as compared to the entire 2025 proxy season, with a corresponding decline in environmental and social proposals (except for anti-environmental,

social, and governance (anti-ESG) proposals, which slightly increased as a proportion of overall proposals through the comparison period).

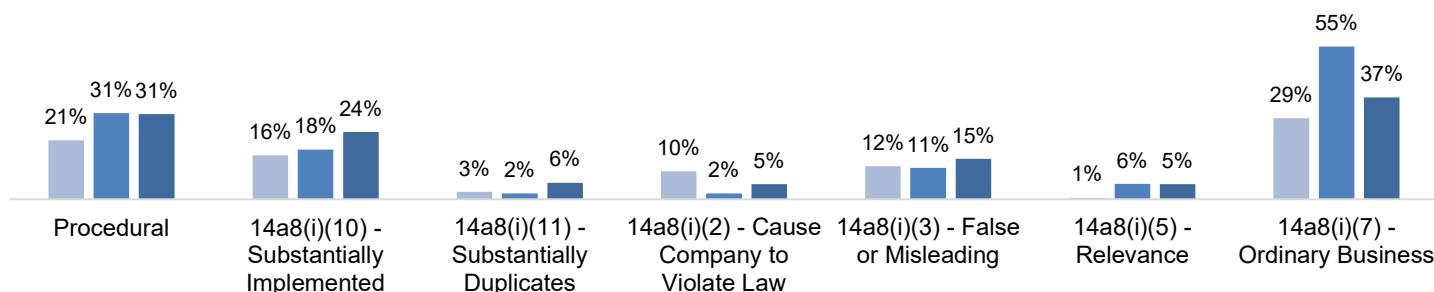
Year Over Year Change in Proposal Type
(Entire 2025 Proxy Season v. 2026 Proxy Season through March 31, 2026)



- Companies Relying Less on Ordinary Business Exclusion.** Companies submitting Rule 14a-8(j) Notices in the 2026 proxy season (through March 31, 2026) are notably relying less on the Rule 14a-8(i)(7) “ordinary business” exclusion than in the entire 2025 proxy season.

Basis of Exclusion

■ 2024 ■ 2025 ■ 2026



Other Rule 14a-8(j) Trends in the Current Proxy Season

The SEC has retained its traditional no-action process in the current proxy season for only one basis for exclusion under Rule 14a-8: the exclusion available under Rule 14a-8(i)(1) for a proposal that “is not a proper subject for action by shareholders under the laws of the jurisdiction of the company’s organization.” As of April 27, 2026, no company has submitted a Rule 14a-8(j) Notice requesting substantive no-action relief under this exclusion.

The SEC has been posting Rule 14a-8(j) Notices (and, where applicable, its non-substantive responses) on the SEC’s [shareholder proposals website](#). As of April 27, 2026:

- 153 of the Rule 14a-8(j) Notices (83% of all submitted Rule 14a-8(j) Notices) included unqualified representations on the basis of exclusion which then garnered the requested No-Objection Letter from the SEC staff;
- 16 of the Rule 14a-8(j) Notices (9% of all submitted Rule 14a-8(j) Notices) have been subsequently withdrawn, which is notably less than the 21% withdrawal rate over the entire 2025 proxy season; and
- the SEC staff provided No-Objection Letters on average 18 calendar days after receipt of a Rule 14a-8(j) Notice containing the required unqualified representations from the company.

Shareholder Litigation Challenging Company Rule 14a-8 Basis for Exclusion of Proposals

In our [Winter 2025/2026 Quarterly Newsletter](#), we flagged that exclusion of shareholder proposals could heighten a company’s litigation or reputational risk and, though still rare, there has been a notable increase in shareholder litigation challenging a company’s determination to exclude a shareholder proposal following the withdrawal of substantive SEC oversight from the Rule 14a-8 exclusion process. As of April 27, 2026, there have been six lawsuits

filed against companies by proponents challenging the company’s exclusion of their shareholder proposal from the company’s proxy statement for the company’s annual meeting. Three of those cases have settled, with the company either agreeing to include the company’s proposal in its proxy statement or agreeing to implement the proposal without putting it to a vote. Of the three cases that have not settled, the court granted the proponent’s motion for injunctive relief (to compel the company to include the proposal in its proxy statement) in one case and denied the proponent’s motion for injunctive relief in the other two cases.

	Proposal	Status / Outcome of Litigation
Rule 14a-8(i)(7) “ordinary business” exclusion		
New York City Employees’ Retirement System v. AT&T¹	Company to publicly disclose Consolidated EEO-1 Report	Company agreed to include the proposal in its proxy statement; proponent voluntarily dismissed the lawsuit. ²
Nathan Cummings Foundation v. Axon Enterprise³	Company to report on its political spending	Company agreed to provide the requested report for the next five years; proponent voluntarily dismissed the lawsuit. ⁴
DiNapoli v. BJ’s Wholesale Club Holdings⁵	Company to report on risks of deforestation on company’s supply chain	On April 22, 2026, the court granted the proponent’s motion for injunctive relief (which has the result of compelling the company to include the proposal in its proxy statement), while also denying the company’s motion to dismiss the claim. ⁶
As You Sow v. Chubb⁷	Company to report on whether it can offset climate-related losses through subrogation	On March 31, 2026, the court denied proponent’s motion for injunctive relief, while also denying the company’s motion to dismiss the claim. ⁸
Fonds des Missions v. UnitedHealth Group Inc.⁹	Company to report on healthcare consequences of acquisitions over the past decade	On April 15, 2026, the court denied the proponent’s motion for injunctive relief. ¹⁰
Procedural Deficiencies		
Masters v. PepsiCo¹¹	Company to report on animal welfare in its global supply chain	Company agreed to include the proposal in its proxy statement; parties voluntarily dismissed the lawsuit. ¹²

Shareholder Groups Sue SEC Over Changes to Rule 14a-8(j) Process for 2026 Proxy Season

On March 19, 2026, two shareholder groups filed a lawsuit against the SEC, SEC Chair Paul S. Atkins, and SEC Commissioners Hester M. Peirce and Mark T. Uyeda seeking to set aside, vacate, and/or permanently enjoin the SEC’s changes to the Rule 14a-8 process for the 2025 proxy season as violative under the Administrative Procedure Act.¹³

Proxy Advisor Developments

In our [Winter 2025/2026 Quarterly Newsletter](#), we discussed the political pressures facing proxy advisors from the federal government and the State of Texas.

Additional States Advance Laws Targeting Proxy Advisors

Texas S.B. 2337 (SB 2337), which was signed into law in June 2025 and went into effect on September 1, 2025, requires proxy advisors to explain the methodology behind and provide other disclosures related to any proxy advice based on non-financial factors (e.g., diversity, equity and inclusion (DEI) and ESG considerations), among other things.

The State of Texas is currently enjoined from enforcing SB 2337 against Institutional Shareholder Services Inc. (ISS) and Glass, Lewis & Co., LLC, following successful challenges brought by the proxy advisors against the law on First Amendment grounds.

As of April 27, 2026, similar legislation (based on model legislation titled the Proxy Advisory Transparency Act) has been considered in at least eleven other states and passed in three of them (Indiana, Kansas, and Kentucky).¹⁴¹⁵ These state laws typically would require proxy advisors to provide certain disclosures for any recommendation against company management on a company proposal or other proxy proposal “that is not based on a written financial analysis.”

On April 13, 2026, ISS sued the Attorney General of the State of Indiana seeking to enjoin enforcement of Indiana’s version of the Proxy Advisory Transparency Act on the grounds that the law violates the First Amendment and the Dormant Commerce Clause and is unconstitutionally vague.¹⁶

Arizona and Tennessee are also considering legislation that would limit proxy advisor services and recommendations provided to public retirement funds.¹⁷

Institutional Investors Continue to Break from Proxy Advisors

In our [Winter 2025/2026 Quarterly Newsletter](#), we noted that JP Morgan Chase’s asset management unit was moving away from using proxy advisors and instead utilizing an internal artificial intelligence platform to manage votes and provide proxy recommendations for portfolio managers.

Similarly, on January 28, 2026, Wells Fargo Wealth & Investment Management (WFIM) announced that it had also launched an internal proprietary proxy voting service, using a technology platform provided by Broadridge Financial Solutions Inc., which will direct proxy voting for client assets based on its own custom policy and voting instructions in cases where WFIM has investment discretion and proxy voting authority.¹⁸

With the increasing availability of artificial intelligence-driven proxy analytics tools and technological platforms (such as Broadridge’s) to implement custom voting policies and pass-through voting, we expect to see more institutional investors move away from proxy advisors and anticipate that this will create greater uncertainty for companies seeking to forecast shareholder votes.

Corp Fin Issues a Number of New Compliance Interpretations

Since January 2026, Corp Fin has issued a number of Corporation Finance Interpretations (CFIs) (formerly called Compliance & Disclosure Interpretations, or C&DIs) spanning a wide variety of topics under the Exchange Act, the Securities Act of 1933, as amended, and related rules, regulations, and forms. We have summarized below some of these CFIs relevant to public company annual reporting.

CFI Topic	CFI Details
Proxy Rules and Schedules 14A/14C	
Rule 14a-6(g)(1): Notice of Exempt Solicitation	<p>SEC Form PX14A6G provides a means for stockholders that beneficially own more than \$5 million of a company’s securities to communicate with other company stockholders on corporate governance matters.</p> <p>Pursuant to revised CFI Question 126.06, Corp Fin will object to voluntary submission of a Notice of Exempt Solicitation on PX14A6G by persons who do not own more than \$5 million of the class of securities that is the subject of the solicitation (representing a shift from Corp Fin’s prior position that it would not object to such submissions).</p> <p>Before the revision to CFI Question 126.06, the SEC staff allowed any person to submit a PX14A6G filing, even if they did not meet the ownership thresholds provided for in Rule 14a-6(g), providing an avenue for cheap publicity in a proxy fight or in support of a shareholder proposal. The SEC’s revised position eliminates this option for all but those who hold the requisite beneficial ownership.</p>
Rule 14a-13: Broker Searches	<p>Exchange Act Rule 14a-13(a)(3) requires registrants to conduct a “broker search” at least 20 business days prior to the record date of their stockholder meeting. This requires companies to carefully plan their company meeting date, record date, and stockholder notices to comply with SEC rules (including the broker search requirement), listing exchange rules, state laws, and corporate charters.</p> <p>Due to technological advancements making it easier for banks and brokers to conduct a broker search, the 20-business-day requirement is no longer considered necessary.</p> <p>Pursuant to new CFI Question 133.02 SEC staff will not object if a registrant conducts its “broker search” less than 20 business days before the record date for a meeting, provided that the registrant reasonably believes that its proxy materials will be timely disseminated to beneficial owners and otherwise complies with Rule 14a-13.</p>

CFI Topic	CFI Details
Rule 14c-2: Distributing Information Statements	Rule 14c-2 requires registrants to distribute an information statement to security holders at least 20 calendar days prior to the earliest date on which corporate action may be taken. Pursuant to new CFI Question 182.01 , if the written consents were solicited by a dissident security holder without the registrant's knowledge, SEC staff will not object to the registrant's failure to comply with the 20-calendar-day requirement as long as the registrant distributes the information statement as soon as practicable after it becomes aware of the written consents. Such delay does not invalidate the corporate action.
Regulation S-K	
Smaller Reporting Company (SRC) Status Box	New CFI Question 102.06 confirms that the failure by an issuer to check the SRC status box will not result in the issuer losing SRC status or the ability to use SRC accommodations (assuming the issuer qualifies as an SRC).

SEC Charges Public Company and Former Financial Executive with Accounting and Disclosure Fraud

On January 27, 2026, the SEC [announced](#) settled charges against Archer-Daniels-Midland Company (ADM) for accounting and disclosure violations involving the company's Nutrition segment (Nutrition), a unit the company had been touting as a key growth driver.¹⁹ The SEC also announced settled charges against two former executives²⁰ and a litigated action against a third.²¹

Background

According to the SEC's Order, the company made improper adjustments from sales to other business segments to shift operating profit from those business segments to Nutrition.²² The operating profit growth was viewed as a key business metric by ADM and analysts.

During this time, ADM disclosed in its periodic reports filed with the SEC that its intersegment transactions were treated as if they were arms' length transactions between unrelated parties.

Despite public assurances that ADM would not grant favorable treatment to any particular business segment, the SEC's Order found that the company made a series of adjustments to intersegment transactions that improved Nutrition's operating profit to the detriment of other ADM business segments. These adjustments rendered the disclosures in ADM's publicly filed periodic reports materially false and misleading because these intersegment transactions were not recorded at amounts approximating market,²³ which the executives knew or should have known.

The Settlement

ADM agreed to pay a \$40,000,000 civil penalty to settle the charges, without admitting or denying the allegations, including alleged violations of the antifraud, books and records, and internal accounting controls provisions of the Exchange Act. In accepting the settlement, the SEC highlighted the company's substantial cooperation, including that ADM conducted an internal investigation at the direction and oversight of its audit committee, voluntarily reported its findings to the SEC staff, and the company's remedial efforts, including implementing new internal accounting controls, training, and testing the effectiveness of those controls.

Takeaways

- **Intersegment Transactions Require Scrutiny.** This case turned entirely on how the company reported internal transactions between business segments. Disclosure counsel should treat intersegment accounting as a high-risk disclosure area — ensuring that the methodology is consistent, arm's-length, and that any changes to transfer pricing or intercompany arrangements are documented and disclosed. Retroactive adjustments are a particular red flag.
- **Performance Targets as a Fraud Risk Factor.** Enforcement actions frequently follow situations where management had publicly committed to hitting specific financial targets as the pressure to hit such targets can

create fraud risk. In particular, companies should be mindful of any efforts or accounting adjustments made with an intent to hit earnings or other company targets.

- **Importance of Cooperation and Remediation.** The Order places significant emphasis on the extent of ADM's cooperation and remediation. Though the SEC explicitly credited ADM's cooperation and remediation in calibrating the \$40 million penalty, it serves as a reminder that notwithstanding such efforts a company may still face fraud charges and a substantial penalty.
- **Emphasis on Individual Accountability.** This case is also noteworthy for the SEC's charges against three company executives, including its litigation against one executive in particular. The current SEC has repeatedly stated it will focus on individual accountability, and the charges against the individuals in this case reflect that enforcement focus.

SEC RULEMAKING UPDATES

SEC Appears Ready to Release Proposed Rule Rolling Back Quarterly Reporting Requirements

As discussed in our [Fall 2025 Newsletter](#), Chair Atkins previously announced that the SEC was "fast-tracking" President Trump's proposal to give companies the option of reporting financial results on a semi-annual (rather than quarterly) basis and planned to release a proposed rule implementing the proposal in 2026.

While no proposal has been published as of April 27, 2026, there are increasing indications that its release is imminent. Notably, according to the [online dashboard](#) maintained by the White House Office of Information and Regulatory Affairs (OIR) (whose pre-review of significant rules by independent agencies is required pursuant to a February 2025 Executive Order²⁴), the SEC submitted a proposed rule titled "Semiannual Reporting" to OIR on March 27, 2026.

SEC Chair Atkins and Commissioners Preview Potential Regulation S-K Reforms

As discussed in our prior newsletters, the "rationalization of disclosure practices" (which is referenced in the SEC's Spring 2025 Reg Flex Agenda²⁵ and widely understood to reference a variety of reforms to Regulation S-K) is a key regulatory priority for the current SEC leadership. Though SEC rulemaking to implement this agenda item is still pending, there are signs that the SEC is making progress on various reforms to Regulation S-K disclosures, including the opening of a [public docket](#) soliciting comments on Regulation S-K reforms (which was open through April 13, 2026) and hiring additional staff to focus on the topic.²⁶

On February 17, 2026, in remarks at the Texas A&M School of Law Corporate Symposium (the Texas A&M Corporate Symposium),²⁷ Chair Atkins categorized potential Regulation S-K disclosure reforms as falling into one of three buckets: "rationalizing, simplifying, and modernizing." Many of the reforms suggested by Commissioner Uyeda and Commissioner Peirce in their remarks appear to fit into these categories presented by Chair Atkins.

Focus of Reform and Existing Disclosure That Could be Targeted by the Reform

Rationalizing: Disclosures should be grounded with material financial information "as their north star."²⁸

- Executive compensation disclosures (for named executive officers other than the CEO)²⁹
- Related person transaction disclosures for transactions under a materiality threshold (which may result in specifying a threshold higher than the current \$120,000 *de minimis* threshold)³⁰
- Climate disclosure rule³¹

Simplifying: Disclosures should be digestible by a reasonable investor and practical for a company to comply.

- Pay-versus performance (PvP) disclosure³²
- Related person transaction policy narrative disclosures (simplify disclosure by replacing it with a requirement that company file policies)³³

Focus of Reform and Existing Disclosure That Could be Targeted by the Reform

Modernizing: Disclosure requirements should be adjusted to reflect how the world has changed since the requirements were last drafted or considered.

- Executive security prerequisite disclosures³⁴
- Item 201 stock performance graph disclosure³⁵

Chair Atkins, Commissioner Uyeda, and Commissioner Peirce have also outlined two other categories of disclosure rules which they consider ripe for reform:

- **“Comply or explain”** disclosure requirements that ask companies to explain why they have not adopted a particular policy or governance requirement. Chair Atkins and Commissioner Uyeda have described these requirements as regulation by shaming and an effort to steer or compel governance practices towards a particular outcome, whether or not it suits a company’s particular circumstances.³⁶ The insider trading policy disclosures required by Item 408(b) of Regulation S-K³⁷ and the cybersecurity disclosures required by Item 106 of Regulation S-K³⁸ are two examples of recent “comply or explain” disclosure requirements.
- **Impractical** disclosure requirements that ask companies to provide information that may be unreasonable or impractical to track down, such as the requirement that a company provide stock ownership information for a recently departed CEO, or information on transactions between the company and an extensive list of related parties that include an executive’s in-laws. Commissioner Peirce has gone as far as to query whether even the requirement to disclose material information might be inconsistent with the SEC’s statutory mandate in instances where “the direct and indirect costs (borne by investors) of producing it outweigh the benefits to investors of consuming it.”³⁹

SEC Issues Final Rules and Guidance Implementing Foreign Private Issuer Beneficial Ownership Reporting Requirements

Beginning on March 18, 2026 (the FPI Compliance Date), directors and officers of many foreign private issuers (FPIs) were required to comply with the beneficial ownership reporting requirements under Section 16(a) of the Exchange Act. 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 2026⁴⁰ and implemented via SEC rulemaking adopted on February 27, 2026.⁴¹

Order Exempts FPI Directors and Officers in Certain Jurisdictions from Section 16(a) Beneficial Ownership Requirements

On March 5, 2026, the SEC issued an [exemptive order](#) (the Exemptive Order) exempting directors and officers of FPIs incorporated or organized in Qualifying Jurisdictions (as described below) and subject to a Qualifying Jurisdiction’s beneficial ownership reporting laws or regulations (a Qualifying Regulation) from the requirement to file Section 16(a) beneficial ownership reports if certain conditions are met.⁴²

The Exemptive Order, which is discussed in greater detail in our [Client Alert](#), applies to the following Qualifying Jurisdictions.

Canada
The Republic of Korea

Chile
Switzerland

The European Economic Area⁴³
The United Kingdom

In order to qualify for the exemption, an eligible director or officer must:

- Report their transactions in the FPI’s securities pursuant to the Qualifying Regulation to which they are subject; and
- Make any report filed pursuant to a Qualifying Regulation available in English to the general public (either filed on the relevant regulator’s or listing venue’s online database or on the FPI’s website) within two business days of its public posting.

Frequently Asked Questions (FAQs) Addressing Section 16(a) Compliance for FPI Directors and Officers

On March 9, 2026 and March 12, 2026, Corp Fin published [FAQs](#) relating to the implementation of the HFIAA. Among other things, the FAQs confirm that all Section 16(a) filings must be made via EDGAR (including the requirement that filers set up accounts in EDGAR Next) and accepted by EDGAR no later than 10:00 p.m., Eastern U.S. time before the relevant filing deadline, in order to be timely filed.

Corp Fin Grants Temporary Relief for Insiders Affected by War in Middle East

On March 13, 2026 and April 17, 2026, Corp Fin granted and then extended temporary no-action relief from the requirements to comply with the HFIAA for directors and officers of FPIs “organized and headquartered in Israel or any other foreign jurisdiction in the geographical region directly affected by the” military conflict in the Middle East involving Iran, the United States, Israel, and other countries that commenced on February 28, 2026 (a Conflict-Impacted FPI).

Pursuant to Corp Fin’s [no-action letter](#), Corp Fin will not recommend enforcement against any director or officer of a Conflict-Impacted FPI for any late beneficial ownership reports otherwise mandated by the HFIAA through May 29, 2026, provided that the director or officer can “represent that their ability to comply with the March 18, 2026 filing deadline mandated by the [HFIAA] has been materially affected by the direct effects of the conflict.”⁴⁴

SEC Chair Paul S. Atkins Previews Possible Reforms to Risk Factor Disclosure Rules

Also at the Texas A&M Corporate Symposium, Chair Atkins highlighted an additional target for disclosure reform: lengthy risk factor disclosures. Chair Atkins noted that “lengthy risk factors are likely not the result of the SEC’s rule” but rather a result of company management attempting, through risk factor disclosures, to communicate with investors and/or provide a shield against shareholder litigation.

Chair Atkins proposed two novel reforms that, in his view, would reduce the length of risk factor disclosures provided by companies without limiting their effectiveness as a means for investor communication and liability protection.

Investor Communication	An entity, such as the SEC or the company, could “maintain a set of risks” published separately from the annual report, that “broadly apply to most companies across most industries,” leaving companies to address only those additional risks that are “specific and material to the company” in the risk factor section of their annual report.
Liability Shield	The SEC could adopt a rule that would provide a safe harbor from liability “for failure to disclose impacts from publicized events that are reasonably likely to affect most companies,” allowing companies to focus on risks specific to their particular business.

Courts Weigh in on Liability for Hypothetical Risk Factors

In November 2024, the U.S. Supreme Court heard oral arguments on, and then dismissed as improvidently granted, a petition seeking to address whether companies could be liable under U.S. securities laws for failing to disclose in their risk factor disclosures “that a risk has materialized in the past, even if that past event presents no known risk of ongoing or future business harm.”⁴⁵

The dismissal failed to resolve a growing circuit split that has developed regarding liability for hypothetical statements in risk factors and left in place a holding by the U.S. Court of Appeals for the Ninth Circuit which allowed shareholders to proceed with a lawsuit alleging that Facebook, Inc. (which has since been renamed Meta Platforms, Inc.) made materially misleading statements and omissions in the risk factors section of its Annual Report on Form 10-K when it described, in hypothetical terms, risks of harm that could be faced by the company if it failed “to prevent or mitigate . . . improper access to or disclosure of [its] data or user data . . .” when the company was aware that the risks described as hypotheticals had actually come to pass.

Since that dismissal, shareholders have achieved similar victories in cases before the Ninth Circuit and the Second Circuit, as briefly summarized below.

Hypothetical Risk Factor Disclosure	Allegations of Actual Events	Status of Case
Peloton Interactive (2 nd Circuit – August 2025) ⁴⁶		
Risk that excess inventory levels could “result in inventory write-downs or write-offs and the sale of excess inventory at discounted prices” ⁴⁷	At the time of the disclosures “the specific financial consequences described in these disclosures were not merely hypothetical “but had already materialized and resulted in significant disruption to [Peloton’s] business.” ⁴⁸	Remanded to the U.S. District Court for the Southern District of New York for further proceedings.
Funko, Inc. (9 th Circuit – February 2026) ⁴⁹		
Risk that inability to “successfully manage ...inventories” could result in accumulation of excess inventory that could harm business ⁵⁰	At the time of the disclosure, “serious inventory problems bloomed” ⁵¹	Funko petitioned the 9 th Circuit for a rehearing <i>en banc</i> on April 3, 2026. ⁵²
Risk that “[f]ailure to successfully operate [company’s] information systems” could disrupt company’s business ⁵³	At the time of the disclosure, company was aware that its current information system was “insufficient to support [company’s] needs and... hampering [company’s] business.” ⁵⁴	

In the *Funko* case, the company’s risk factor regarding inventory management referenced, by way of example, a 2019 incident where the company wrote down a large amount of inventory. The court found that, by invoking that 2019 incident, the company “gave investors the impression that the current state of affairs was not similar to those in 2019,” although plaintiffs alleged that the company was already aware of inventory problems leading to a “massive write-off reminiscent of” the one that occurred in 2019.



Takeaways

- Outside of SEC enforcement concerns, companies still may face shareholder lawsuits for failure to accurately describe the material risks that have actually occurred.
- Companies should regularly review their risk factors disclosures and update as necessary to provide adequate disclosure for material risks that have materialized. This is particularly important during times of rapid change, including due to global and political changes (e.g., tariffs and the military action in Iran and the Middle East) or technological developments (e.g., artificial intelligence).
- Though companies may consider adding a disclaimer regarding hypothetical risk factors at the start of their risk factor section, this may not be sufficient to prevent liability under the securities laws.

Equal Employment Opportunity Commission Sends Letter to Fortune 500 Companies Regarding DEI Initiatives

On February 26, 2026, the U.S. Equal Employment Opportunity Commission (EEOC) issued a [letter](#) to the chief executive officers, general counsels, and board chairs of Fortune 500 companies reminding them that diversity, equity, and inclusion (DEI) policies, programs, or practices could “constitute illegal race and sex-based discrimination in employment” and result in enforcement or litigation proceedings by the EEOC.



Takeaways

Companies should review their corporate governance and other human capital-related policies and procedures, as well as public disclosures describing the contents of such policies and procedures, in light of the EEOC’s letter and the federal government’s continued scrutiny of company DEI efforts.

California Climate Rules Update

As discussed in our [Winter 2025/2026 Quarterly Newsletter](#), starting in 2026, companies operating in California that meet certain financial thresholds are expected 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.

California Air Resources Board (CARB) Adopts Final Rules Implementing California Climate Disclosure Laws

On February 26, 2026, the CARB, the agency tasked with promulgating regulations under the California Climate Disclosure Laws, approved final regulations implementing the California Climate Disclosure Laws.⁵⁵ Among other things, the final regulations:

- Establish August 10, 2026, as the deadline for covered entities to submit their first emissions report (covering Scope 1 and Scope 2 emissions) under the Climate Corporate Data Accountability Act;
- Clarify that a company’s “annual revenues” used to determine whether it meets the threshold for reporting under the California Climate Disclosure Laws is based on the definition of “gross receipts” in Section 25120(f)(2) of the California Revenue and Taxation Code;
- Exempt from the regulations business entities whose only business in California is employee compensation or payroll expenses (including teleworking employees); and
- Indicate that the annual fees for the California Climate Disclosure Laws will be set by CARB on a per-entity flat-fee basis, calculated based on the total revenue required to implement each program, divided by the number of reporting entities for each program.

Update on Pending Litigation Challenging the California Climate Disclosure Laws

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

- **United States Chamber of Commerce v. Sanchez:** A First Amendment challenge to the California Climate Disclosure Laws brought by the U.S. Chamber of Commerce is still pending before the U.S. District Court for the Central District of California and the Ninth Circuit. The Ninth Circuit heard the 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. A hearing on the State of California's motion to dismiss the lawsuit was held on January 22, 2026.

The enforcement of the January 1, 2026, reporting deadline for the Climate-related Financial Risk Act has been temporarily enjoined pending the outcome of litigation challenging the California Climate Disclosure Laws. CARB will provide an alternate date for reporting once the litigation is resolved. As of March 31, 2026, 140 companies had voluntarily submitted their first reports to the [public docket](#) under the Climate-related Financial Risk Act.

- 1 Complaint, N.Y.C. Emp. Ret. Sys. v. AT&T Inc., No. 1:26-cv-01310 (S.D.N.Y. Feb. 17, 2026).
- 2 Stipulation of Settlement and Dismissal, N.Y.C. Emp. Ret. Sys. v. AT&T Inc., No. 1:26-cv-01310 (S.D.N.Y. Feb. 26, 2026).
- 3 Complaint for Declaratory and Injunctive Relief, Nathan Cummings Found., Inc. v. Axon Enter., Inc., No. 1:26-cv-00501 (D.D.C. Feb. 17, 2026).
- 4 Notice of Voluntarily Dismissal with Prejudice, Nathan Cummings Found., Inc. v. Axon Enter., Inc., No. 1:26-cv-00501 (D.D.C. Mar. 9, 2026).
- 5 Complaint, DiNapoli v. BJ's Wholesale Club Holdings, Inc., No. 1:26-cv-11075 (D. Mass. Mar. 2, 2026).
- 6 Order, DiNapoli v. BJ's Wholesale Club Holdings, Inc., No. 1:26-cv-11075 (D. Mass. Apr. 22, 2026).
- 7 Complaint for Declaratory and Injunctive Relief, As You Sow v. Chubb Ltd., No. 1:26-cv-00734 (D.D.C. Mar. 3, 2026).
- 8 Memorandum Opinion, As You Sow v. Chubb Ltd., No. 1:26-cv-00734 (D.D.C. Mar. 31, 2026); Order, As You Sow v. Chubb Ltd., No. 1:26-cv-00734 (D.D.C. Mar. 31, 2026).
- 9 Complaint for Declaratory and Injunctive Relief, Fonds des Missions v. UnitedHealth Grp. Inc., No. 1:26-cv-970 (D.D.C. Mar. 20, 2026).
- 10 Memorandum Opinion Denying Plaintiff's Motion for A Preliminary Injunction, Fonds des Missions v. UnitedHealth Grp. Inc., No. 1:26-cv-970 (D.D.C. Apr. 15, 2026).
- 11 Plaintiff's Memorandum of Law in Support of Motion for a Preliminary Injunction and Declaratory Relief, Masters v. PepsiCo, Inc., No. 7:26-cv-01432 (S.D.N.Y. Feb. 19, 2026).
- 12 Joint Stipulation of Voluntary Dismissal, Masters v. PepsiCo, Inc., No. 7:26-cv-01432 (S.D.N.Y. Apr. 8, 2026).
- 13 Complaint, Interfaith Ctr. on Corp. Resp. v. Sec. & Exch. Comm'n, No. 1:26-cv-00957 (D.D.C. Mar. 19, 2026).
- 14 H. File 2196, 91st Gen. Assemb. (Iowa 2026), <https://www.legis.iowa.gov/legislation/BillBook?qa=91&ba=HF%202196>; S.B. 2676, 2026 Reg. Sess. (Miss. 2026), <https://billstatus.ls.state.ms.us/2026/pdf/history/SB/SB2676.xml>; Legis. B. 728, 109th Leg., 2nd Sess. (Neb. 2026), https://nebraskalegislature.gov/bills/view_bill.php?DocumentID=62883&docnum=LB728&leg=109; H.B. 4429, 2026 Reg. Sess. (Okla. 2026), <https://www.oklegislature.gov/BillInfo.aspx?Bill=hb4429&Session=2600>; H. 4985, 126th Reg. Sess. (S.C. 2026), <https://www.scstatehouse.gov/billsearch.php?billnumbers=4985>; S.B. 417, 2026 Reg. Sess. (W. Va. 2026), https://www.wvlegislature.gov/Bill_Status/bills_history.cfm?year=2026&sessiontype=RS&input=417; 2025 S.B. 879, 2025-2026 Leg. (Wis. 2026), <https://docs.legis.wisconsin.gov/2025/proposals/reg/sen/bill/sb879>; H.B. 0175, 68th Leg. (Wy. 2026), <https://wyoleg.gov/Legislation/2026/HB0175>.
- 15 H. Enrolled Act 1273, 124th Gen. Assemb., 2nd Reg. Sess. (Ind. 2026), <https://legiscan.com/IN/bill/HB1273/2026>; S.B. 183, 2026 Reg. Sess. (Ky. 2026), <https://apps.legislature.ky.gov/record/26rs/sb183.html>; S.B. 375, 2025-2026 Leg. Sess. (Kan. 2026), https://www.kslegislature.gov/li/b2025_26/measures/sb375/.
- 16 Complaint for Declaratory and Injunctive Relief, Inst. S'holder Serv. Inc. v. Rokita, No. 1:26-cv-00717 (S.D. Ind. Apr. 13, 2026).
- 17 S.B. 1503, 57th Leg., 2nd Reg. Sess. (Ariz. 2026), <https://apps.azleg.gov/Bill/Status/BillOverview/85102>; S.B. 2641, 114th Gen. Assemb. (Tenn. 2026) <https://wapp.capitol.tn.gov/apps/BillInfo/Default?BillNumber=SB2641&qa=114>.
- 18 Press Release, Wells Fargo & Co., Wells Fargo Wealth & Investment Management Launches Internal Proxy Voting System (Jan. 28, 2026), <https://newsroom.wf.com/news-releases/news-details/2026/Wells-Fargo-Wealth-Investment-Management-Launches-Internal-Proxy-Voting-System/default.aspx>
- 19 The SEC's Order Instituting Cease and Desist Proceedings found that ADM (i) violated Section 17(a) of the Securities Act of 1933, as amended; (ii) Section 10(b) of the Exchange Act and rules 10b-5(a)-(c) thereunder; (iii) Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder; (iv) Section 13(b)(2)(A) of the Exchange Act; and (v) Section 13(b)(2)(B) of the Exchange Act, which ADM neither admitted nor denied. Archer-Daniels-Midland Co., Securities Act Release No. 11403, Exchange Act Release No. 104,697 (Jan. 27, 2026), <https://www.sec.gov/files/litigation/admin/2026/33-11403.pdf> (ADM Order).
- 20 ADM Order.
- 21 Jury Trial Demanded, Sec. & Exch. Comm'n v. Luthar, No. 26-cv-0927 (N.D. Ill. Jan. 27, 2026), <https://www.sec.gov/files/litigation/complaints/2026/comp-pr2026-15.pdf>.
- 22 ADM Order.
- 23 ADM Order at 4.
- 24 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>.
- 25 Semiannual Regulatory Agenda, Exchange Act Release No. 103,337, 90 Fed. Reg. 45652 (Sep. 22, 2025), https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=3235
- 26 Jessica Corso, SEC Looks To Beef Up Rulemaking Staff For Reg S-K Reforms, LAW360 (Mar. 19, 2026 7:05 PM EDT), <https://www.law360.com/corporate/articles/2455196>.
- 27 Paul S. Atkins, Chair, Sec. & Exch. Comm'n, Remarks at the Texas A&M School of Law Corporate Law Symposium (Feb. 17, 2026), <https://www.sec.gov/newsroom/speeches-statements/atkins-02-17-2026-remarks-texas-am-school-law-corporate-law-symposium> (Atkins A&M Symposium Remarks).

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- 28 Atkins A&M Symposium Remarks. See also Hester M. Peirce, Comm'r, Sec. & Exch. Comm'n, The Art and Science of Materiality (Mar. 19, 2026), <https://www.sec.gov/newsroom/speeches-statements/peirce-remarks-sec-speaks-031926> (Peirce Materiality Remarks) ("While it is not unreasonable to consider non-economic factors when investing, a person is an investor because she *does* consider economic returns. She may be thinking about other things too, but the common element of investor status derives from her consideration of economic returns. Fulfilling our 'foremost' policy objective, protecting investors, requires us to ensure that investors have access to material financial information.").
- 29 Atkins A&M Symposium Remarks ("I agree with commenters that we should reconsider the number of executives for whom compensation information is provided to appropriately calibrate the level of disclosure with the cost.")
- 30 Mark T. Uyeda, Comm'r, Sec. & Exch. Comm'n, Remarks at the 53rd Annual Securities Regulation Institute (Jan. 26, 2026), <https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-securities-regulation-institute-012626> (Uyeda SRI Remarks) ("Similarly, with regard to transactions with related persons under Item 404, we could consider adjusting the de minimis threshold of \$120,000 to a higher amount, which might better align the requirement with materiality considerations.").
- 31 Mark T. Uyeda, Comm'r, Sec. & Exch. Comm'n, Remarks at the "SEC Speaks" Conference 2025 (May 19, 2025), <https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-sec-speaks-051925> ("Despite the adopting release's claims to the contrary, I do not believe that the climate-related disclosure rule was ever about financial materiality.").
- 32 Atkins A&M Symposium Remarks ("Unfortunately, all of the time and money spent on PvP disclosure has scarcely resulted in clear information to investors...I agree with commenters that we should look for ways to make PvP disclosure simpler for companies to prepare and more straightforward for investors to understand.")
- 33 Uyeda SRI Remarks (such a change would "maintain transparency while streamlining SEC filings").
- 34 Atkins A&M Symposium Remarks ("I agree with commenters that the Commission should modernize its perks disclosure requirements to reflect how the world and security threats have evolved over the past twenty years.")
- 35 Uyeda SRI Remarks (asking whether the Item 201 stock performance graph disclosure requirement is still necessary "[g]iven the wide availability of evaluative tools on the internet and mobile devices.").
- 36 Uyeda SRI Remarks.
- 37 Uyeda SRI Remarks ("[W]ith regard to insider trading arrangements and policies under Item 408, we could consider deleting the requirement in subparagraph (b) that mandates companies explain whether they have an insider trading policy or provide reasons if they do not. This would not change any underlying federal securities law obligations or liability thereunder, but would simplify disclosures.").
- 38 Uyeda SRI Remarks ("In the cybersecurity area, we should re-consider our approach to the current mandated disclosures. We should consider whether Item 106 could be streamlined to simplify the narrative disclosures of cybersecurity policies and governance oversight. Our disclosure rules should generally not be the driver for what a company does or does not, but disclosure requirements such as these and others are likely shaming or indirectly compelling companies to change practices rather than eliciting material disclosure as to what the company is doing.").
- 39 Peirce Materiality Remarks
- 40 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>.
- 41 Holding Foreign Insiders Accountable Act Disclosure, Exchange Act Release No. 104,903, 91 Fed. Reg. 10320 (Feb. 27, 2026), <https://www.sec.gov/files/rules/final/2026/34-104903.pdf>.
- 42 Order Granting Directors and Officers of Certain Foreign Private Issuers an Exemption from the Filing Requirements of Section 16(a) of the Exchange Act, Exchange Act Release No. 104,931, 91 Fed. Reg. 11587 (Mar. 5, 2026), <https://www.sec.gov/files/rules/exorders/2026/34-104931.pdf>.
- 43 The exemptive relief will be available for any country that joins the EEA after the date of the Exemptive Order, and any country that leaves the EEA after the date of the Exemptive Order may no longer be subject to the exemptive relief.
- 44 Tower Semiconductor Ltd., SEC Staff No-Action Letter (Mar. 13, 2026), <https://www.sec.gov/rules-regulations/no-action-interpretive-exemptive-letters/division-corporation-finance-no-action/tower-semiconductor-ltd-031326>; Tower Semiconductor Ltd., SEC Staff No-Action Letter (Apr. 17, 2026), <https://www.sec.gov/rules-regulations/no-action-interpretive-exemptive-letters/division-corporation-finance-no-action/tower-semiconductor-ltd-041726>.
- 45 Petition for Writ of Certiorari, Facebook, Inc. v. Amalgamated Bank, 604 U.S. ____ (2024) (No. 22-15077), <https://www.supremecourt.gov/docket/docketfiles/html/public/23-980.html>. The petition was granted as to Question 1 presented by the petition on June 10, 2024.
- 46 Opinion, City of Hialeah Emp. Ret. Sys. v. Peloton Interactive, Inc., No. 24-2803 (2d Cir. Aug. 27, 2025).
- 47 *Id.* at 18.
- 48 *Id.* at 19.
- 49 Opinion, Constr. Lab. Pension Tr. v. Funko Inc., No. 24-4909 (9th Cir. Feb. 4, 2026).
- 50 *Id.* at 10.
- 51 *Id.* at 35.
- 52 Petition for Rehearing and Rehearing En Banc, Constr. Lab. Pension Tr. v. Funko Inc., No. 24-4909 (9th Cir. Apr. 4, 2026).
- 53 Opinion, Constr. Lab. Pension Tr. v. Funko, No. 24-4909 (9th Cir. Feb. 4, 2026) at 13.
- 54 *Id.* at 38.
- 55 Press Release, Cal. Air Res. Bd., CARB approves climate transparency regulation for entities doing business in California (Feb. 26, 2026), <https://www2.arb.ca.gov/news/carb-approves-climate-transparency-regulation-entities-doing-business-california>.

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

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