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Public Company Advisory Group Quarterly — Summer 2026

September 2026

We are pleased to bring you our summer edition of the Public Company Advisory Group Quarterly, a concise summary of the latest developments relevant to public companies. In this edition, we focus on notable trends from the 2026 annual reporting season.

ANNUAL MEETING SEASON DEVELOPMENTS AND TRENDS

Background: Changes to the SEC's Rule 14a-8 No-Action Process under SEC Chair Atkins

Since 2025, the SEC under Chair Paul S. Atkins has announced a number of policy shifts that have fundamentally altered the Rule 14a-8 no-action process for shareholder proposals.

- On February 12, 2025, the SEC Division of Corporation Finance (Corp Fin) revised the SEC staff's guidance for two of the substantive bases commonly used to exclude shareholder proposals under Rule 14a-8 (Rule 14a-8) of the Securities Exchange Act of 1934, as amended (the Exchange Act): the Economic Relevance Exclusion and the Ordinary Business Exclusion (Rule 14a-8(i)(5) and Rule 14a-8(i)(7), respectively). The revised guidance, Shareholder Proposals: Staff Legal Bulletin No. 14M (CF) (SLB 14M), was widely expected to 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. The updated guidance was issued in the midst of the 2025 annual meeting season and was discussed in our Spring 2025 Quarterly Newsletter.
- On November 17, 2025, Corp Fin announced that, with limited exceptions, the SEC staff would not be responding to any no-action letters submitted under Rule 14a-8 seeking to exclude shareholder proposals received by companies in connection with the 2026 annual meeting season (defined as the period from October 1, 2025 through September 30, 2026). 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. This change was discussed in our Spring 2026 Quarterly Newsletter.

Changes for the 2027 Annual Meeting Season

Companies can expect a further withdrawal of the SEC's role in the shareholder proposal process for the 2027 annual meeting season.

On August 14, 2026, Corp Fin announced that it was permanently withdrawing from its participation in the Rule 14a-8 no-action process, including with respect to no-action requests submitted under Rule 14a-8(i)(1) (which were previously still subject to SEC staff consideration under the prior November 17, 2025 announcement). Companies intending to exclude shareholder proposals from their proxy materials will still be required to submit Rule 14a-8(j) Notices to the SEC, although the SEC will no longer offer companies the option to receive a "no-objection confirmation."

On August 28, 2026, the SEC submitted its proposed rule on Rescission of Rule 14a-8's Federal Regulation of Shareholder Proposals and Amendments to Rule 14a-4 to the Office of Information and Regulatory Affairs (OIRA) for

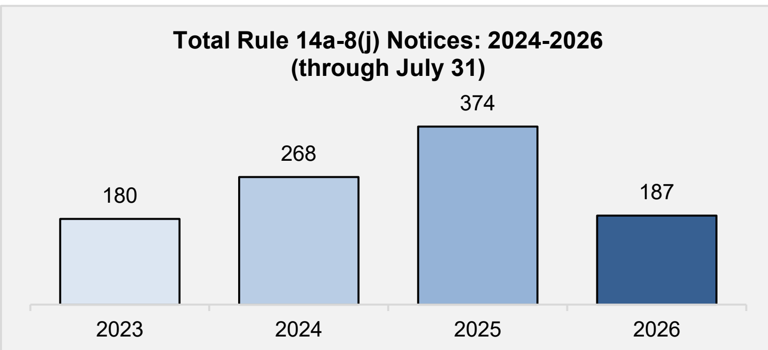
White House review.[1] The proposed rule, which is expected to "return the role of regulating shareholder proposals to the states,"[2] could be released imminently.

2026 Annual Meeting Season Snapshot

We reviewed shareholder proposals that companies proposed to exclude from proxy statements (contained in Rule 14a-8 notifications released by the Securities and Exchange Commission (SEC)) and those that were included in proxy statements for all companies for the 2026 annual meeting season.[3] Our analysis is based on shareholder proposals that were the subject of Rule 14a-8(j) Notices and/or included in proxy statements, and does not account for any shareholder proposals that were withdrawn or settled prior to either party resorting to the Rule 14a-8 process.

Decline in Rule 14a-8(j) Notices and Shareholder Proposals in Proxy Statements

Both Rule 14a-8(j) Notices and shareholder proposals in proxy statements declined between the 2025 and 2026 annual meeting seasons.

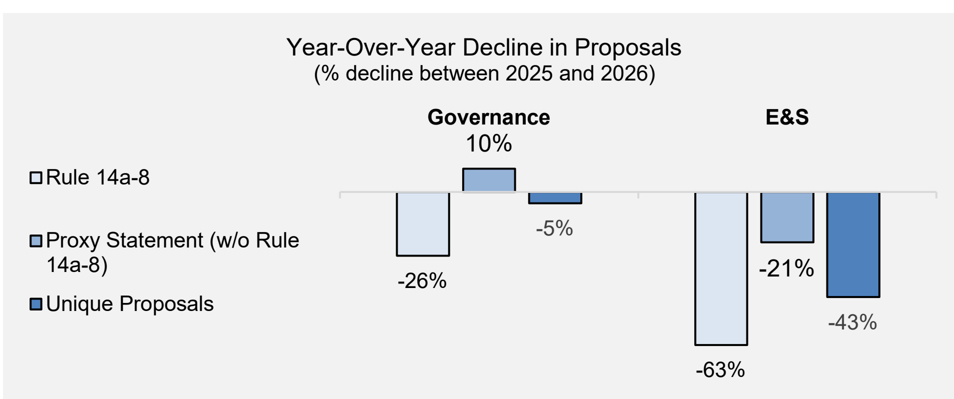


Companies submitted 50% fewer Rule 14a-8(j) Notices in the 2026 annual meeting season as compared to the corresponding period in 2025 (when such notices were sent as no-action requests).

The number of Rule 14a-8(j) Notices declined between the 2025 and 2026 annual meeting seasons across every category.

The number of shareholder proposals included in proxy statements decreased 23% year-over-year (over the same period).

It was not clear at the outset of the 2026 annual meeting season whether Corp Fin's changes to the Rule 14a-8 process would result in companies excluding a larger percentage of submitted shareholder proposals, as a decision to exclude a proposal without the benefit of a formal SEC staff position on the exclusion could heighten a company's litigation and reputational risk. The year-over-year numbers demonstrate that, while shareholders submitted fewer shareholder proposals in the 2026 annual meeting season, companies also proceeded cautiously and allowed more proposals into their proxy statements without the benefit of the Rule 14a-8 no-action process. For example, companies submitted 26% fewer Rule 14a-8(j) Notices related to governance proposals in the 2026 annual meeting season as compared to 2025, but the number of governance proposals included in proxy statements without invoking the Rule 14a-8 exclusion process over the same period increased by 10%.



Increase in Proportion of Corporate Governance Proposals; Corresponding Decrease in Environmental and Social Proposals

For purposes of this analysis, we categorized proposals as either Environmental, Social, Governance, or Anti-ESG.

- **Environmental** proposals generally aim to influence corporate impact on climate, sustainability, biodiversity, and natural resources. For purposes of this analysis, proposals regarding animal welfare were counted as environmental proposals.

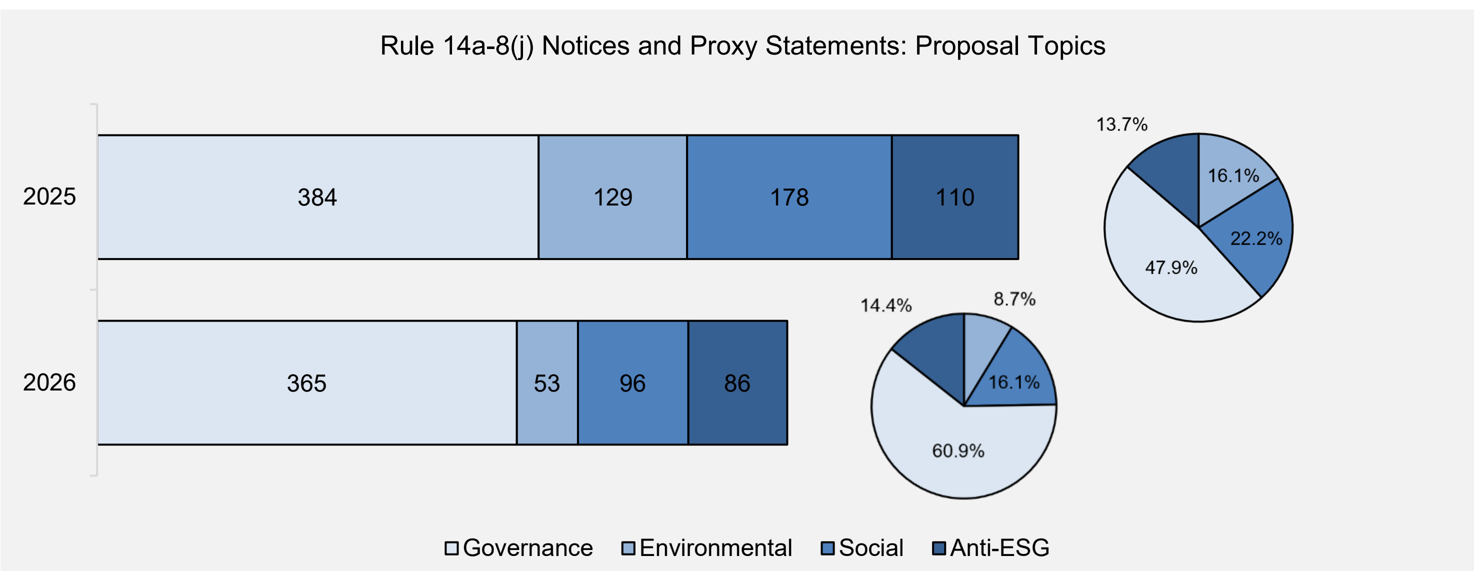
- **Social** proposals generally aim to influence corporate impact on social issues, including, for example, human rights and other human capital issues (such as labor and diversity reporting), corporate political spending, and lobbying.

- **Governance** proposals generally aim to advance shareholder rights at the company, address board structure or director accountability, or further other governance practices. For purposes of this analysis, proposals regarding executive compensation matters were typically counted as governance proposals.[4]

- **Anti-ESG** proposals cover a variety of environmental, social, and governance issues and are generally critical or skeptical of corporate initiatives advancing environmental or social goals.

It was largely expected that the volume of environmental and social (including Anti-ESG) shareholder proposals — which have been growing in prevalence and constituted more than half of shareholder proposals submitted in the 2025 annual meeting season — would decline in 2026 following SLB 14M and the SEC's withdrawal from the Rule 14a-8 no-action process, as both changes were intended to make it easier for companies to exclude non-governance-related shareholder proposals from their proxy materials.

Governance proposals remained the most common proposal type in 2026 and increased as a proportion of total shareholder proposals between the 2025 and 2026 annual meeting seasons. Anti-ESG proposals, which have been increasing in number and as a percentage of total proposals in recent years, increased slightly as a percentage of total proposals in 2026. Environmental and social proposals, which constituted nearly 40% of shareholder proposals in 2025, declined steeply to only 25% of total proposals in 2026.



Most Commonly Submitted Proposals

The most commonly submitted proposal (which includes proposals in Rule 14a-8(j) Notices and proxy statements) for the 2026 annual meeting season was a governance proposal seeking to establish a policy that the chair of the company's board of directors be an independent director (and not the company's chief executive officer). This proposal dominated the 2026 annual meeting season, constituting nearly 30% of all submitted proposals. Despite its popularity, this proposal received generally low support (less than 25% on average), and none of the proposals that were voted on at an annual meeting received a passing vote.

Other commonly submitted proposals were governance proposals seeking to expand shareholder voting rights (including by eliminating supermajority provisions, providing a right to take action by written consent, or by expanding the shareholder right to call a special meeting), and a social proposal asking companies to report on their political campaign contributions. Of these proposals, proposals for a simple majority voting standard received the highest average support.

	Total Proposals (#)	Proposals Voted at Annual Meeting (#)	Passage Rate (%)	Average Support (%)[5]
Separate CEO and Chair Positions	97	70	0%	25%
Permit Written Consent by Shareholders	52	41	7%	36%
Reduce Existing Threshold to Call Special Meeting	33	29	0%	37%
Eliminate Supermajority Voting Provisions	32	16	44%	56%
New Shareholder Right to Call Special Meeting	29	22	23%	44%
Report on Political Contributions	20	12	0%	32%

The chart below shows the top five proposals (by number of proposals submitted) during the 2026 annual meeting season and the relative change (both in ranking and number of proposals submitted) from the 2025 annual meeting season. Although there were adjustments in the list of top proposals (including two of the top five proposals being new to the top five for 2026), the results show that shareholders continue to focus primarily on key governance factors, specifically board structure, shareholder rights, and director accountability.

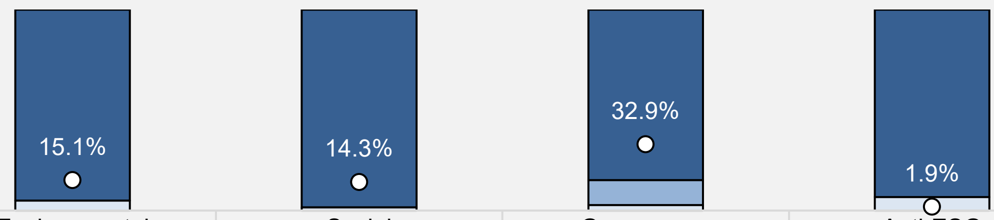
Proposal topic	Rank		# of Proposals Submitted	
	2026 Rank	Rank Movement[6]	Submitted (#)	% Change From 2025
Separate CEO and Chair	1	▲ 1	97	+177%
Permit written consent by shareholders*	2	▲ 18	52	+642%
Simple majority vote	3	▼ 2	33	-27%
Reduce threshold for shareholders to call special meeting*	3	▲ 6	33	+50%
New shareholder right to call special meeting	5	▼ 2	29	-9%

* Indicates a proposal that was new to the top 5 (by number of proposals submitted) in the 2026 annual meeting season.

Despite the significant downward trend in the volume of shareholder proposals for the 2026 annual meeting season, the number of proposals submitted for the most popular shareholder proposal topics in 2026 nearly matched or exceeded the number of such proposals submitted for the 2025 annual meeting season. This reflects an increasing concentration of proposals across key governance themes and the overall decline in environmental and social proposals noted above. For example, the top five shareholder proposals submitted in 2026 constituted 31% of total proposals submitted (244 out of 777 proposals) but only 15% of total proposals submitted in 2025 (171 of 1,143 total proposals).

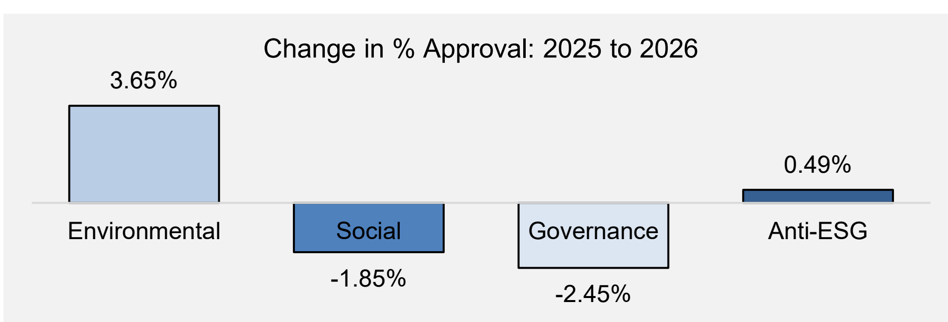
Success of Proposals by Category

Overall, only 8% of shareholder proposals voted on during the 2026 annual meeting season received sufficient support to pass under the applicable voting standard. This represents a decline from the 2025 annual meeting season in which 11% of shareholder proposals voted on at the annual meeting received majority support.



	Environmental	Social	Governance	Anti-ESG
Fail	38	64	214	55
Pass	0	0	31	0
Not voted at meeting	2	1	7	4
Avg. Support (Total)	15.11%	14.27%	32.93%	1.89%

- The only proposals that passed in the 2026 annual meeting season were proposals related to governance matters.
- Governance proposals generally received higher support than all other types of proposals, averaging 33% voting support across topics. Overall, 13% of governance proposals voted on during the 2026 annual meeting season passed.
- Anti-ESG proposals were the worst performing category of shareholder proposals, with a 0% passage rate and average voting support of less than 2%.
- Social and environmental proposals fared similarly to each other, with a 0% passage rate and a 14-15% average approval rate.
- The average support for all categories of proposals during the 2026 annual meeting season varied slightly from the 2025 annual meeting season, with no category's average support improving by more than 4 percentage points or declining by more than 3 percentage points as compared to last year.



Proposals with Highest Success Rate

The proposals with the highest success rate in the 2026 annual meeting season were governance proposals seeking to expand shareholder rights and promote director accountability.

	Declassify Board	Simple Majority Vote	New Special Meeting Right	Right to Act by Written Consent
Proposals voted at annual meetings (#)	8	16	22	41
Passage rate (%)	100%	44%	23%	7%
Average support (%)	82.2%	56.2%	43.5%	35.8%

For shareholder proposals seeking a shareholder right to call a special meeting, the voting results were significantly affected by whether the company included a competing proposal with a higher threshold.

- When companies did not include a competing management proposal, the shareholder proposal requesting a right for shareholders to call a special meeting (typically at a 10% voting threshold) had a 57% passage rate.
- When companies offered shareholders a competing proposal for a special meeting right at a higher threshold (typically 25%, sometimes also incorporating a one-year holding period), shareholders often approved that proposal. No shareholder proposals for special meeting rights passed at meetings where the company proposed a competing proposal.

	Competing Management Proposal (25%)	No Competing Management Proposal
# of Companies	14	8
Passage Rate for Shareholder Proposal	0%	50%
Passage Rate for Management Proposal	93%	—

In addition to the proposals noted above, shareholders also approved non-binding proposals asking the company's board of directors to: (i) adopt a policy requiring shareholder approval before distributing "blank check" preferred stock (two proposals); (ii) amend the company's governing documents to require a majority vote for uncontested director elections (two proposals); (iii) allow shareholders to remove directors by a simple majority of votes cast (one proposal); (iv) require shareholder approval for excess golden parachutes (one proposal); and (v) promptly effectuate a sale of the company (one proposal).

The following proposals, each of which was voted on at more than ten annual meetings, also received significant average support during the 2026 annual meeting season (although none passed).

	Reduce Existing Threshold for Shareholders to Call a Special Meeting	Separate Chair and CEO Positions	Lobbying Transparency Report
# of proposals voted at annual meetings	29	70	12
Average support (%)	37.3%	24.7%	31.5%

A proposal requesting that the board of directors take steps to ensure that the company's outstanding voting stock has an equal one-vote-per-share also received significant average support (29.3%) but was voted on at only seven annual meetings during the 2026 annual meeting season.

Update on Litigation Challenging Company Exclusion of Shareholder Proposals

In our Spring 2026 Quarterly Newsletter, we highlighted the six lawsuits filed against companies during the 2026 annual meeting season by proponents challenging the company's exclusion of a shareholder proposal from the proxy statement for its annual meeting. Three of those cases have settled, with the companies either agreeing to include the shareholder's proposal in their proxy statements or agreeing to implement the proposal without putting it to a vote. Of the three cases that had 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	Outcome of Shareholder Vote
Proponent's Motion for Injunctive Relief Granted			
DiNapoli v. BJ's Wholesale Club Holdings[7]	Report on risks of deforestation in the company's supply chain	Court granted proponent's motion for injunctive relief while also denying the company's motion to dismiss the claim.[8]	Shareholder proposal included in proxy statement but not presented or voted at annual meeting.[9]
Settled Cases			
New York City Employees' Retirement System v. AT&T[10]	Publicly disclose Consolidated EEO-1 Report	Company agreed to include the proposal in its proxy statement; proponent voluntarily dismissed the lawsuit.[11]	Did not pass; received 28.7% of votes in favor.
Nathan Cummings Foundation v. Axon Enterprise[12]	Report on political spending	Company agreed to provide the requested report for the next five years; proponent voluntarily dismissed the lawsuit.[13]	n/a
Masters v. PepsiCo[14]	Report on animal welfare in global supply chain	Company agreed to include the proposal in its proxy statement; parties voluntarily dismissed the lawsuit.[15]	Did not pass; received 8.8% of votes in favor.
Dismissed Cases			
Fonds des Missions v. UnitedHealth Group Inc.[16]	Report on healthcare consequences of acquisitions over the past decade	Court denied the proponent's motion for injunctive relief;[17] company omitted shareholder proposal from its proxy materials for the 2026 annual meeting.	Proponent voluntarily dismissed the case on April 28, 2026, noting that it "looks forward to a dialogue with the Company."[18]
Ongoing Litigation			
As You Sow v. Chubb[19]	Report on whether company can offset climate-related losses through subrogation	Court denied proponent's motion for injunctive relief, while also denying the company's motion to dismiss the claim;[20] company omitted shareholder proposal from its proxy materials for the 2026 annual meeting.	On April 8, 2026, proponent filed an amended complaint seeking a declaration that the exclusion of the proposal violated securities laws and seeking an injunction barring the company from excluding a substantively identical proposal from its 2027 proxy materials.[21] The company filed a motion to dismiss the complaint,[22] which has now been fully briefed by both parties.

Update on Lawsuit Challenging SEC's Changes to Rule 14a-8(j) Process for 2026 Annual Meeting Season

On March 19, 2026, two shareholder groups filed a lawsuit against the SEC, Chair 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 2026 annual meeting season as violative under the Administrative Procedure Act.[23] The lawsuit is still at the motion for summary judgment stage. Although briefing was initially expected to be completed by the end of October 2026,[24] on September 3, 2026, the court granted the parties' joint motion to hold the litigation in abeyance while they determine how to proceed in light of Corp Fin's August 2026 decision to permanently withdraw from its participation in the Rule 14a-8 no-action process.[25]

For additional information on Corp Fin's withdrawal from the Rule 14a-8 no-action process, see above under Annual Meeting Season Developments and Trends – Changes for the 2027 Annual Meeting Season.

SEC DISCLOSURE TRENDS

Below we analyze emerging trends in disclosures relating to artificial intelligence (AI) and board diversity.

The analysis in this section is based on O'Melveny's review of disclosures in Form 10-Ks and proxy statements made by more than 340 companies with a market capitalization greater than $25 billion as of December 31, 2025 (referred to herein as large companies). For purposes of this newsletter, we analyzed filings based on the year they were filed with the SEC, rather than the fiscal year covered by the disclosures in the filing.

AI Disclosures

Artificial intelligence (AI) continues to drive rapid change across industries as companies integrate AI technology into their business and seek to manage the growing human capital, cybersecurity, and regulatory risks associated with their own and third parties' use of AI. Below we analyze trends in AI disclosures in Forms 10-K and proxy statements filed by large companies in 2026.[26]

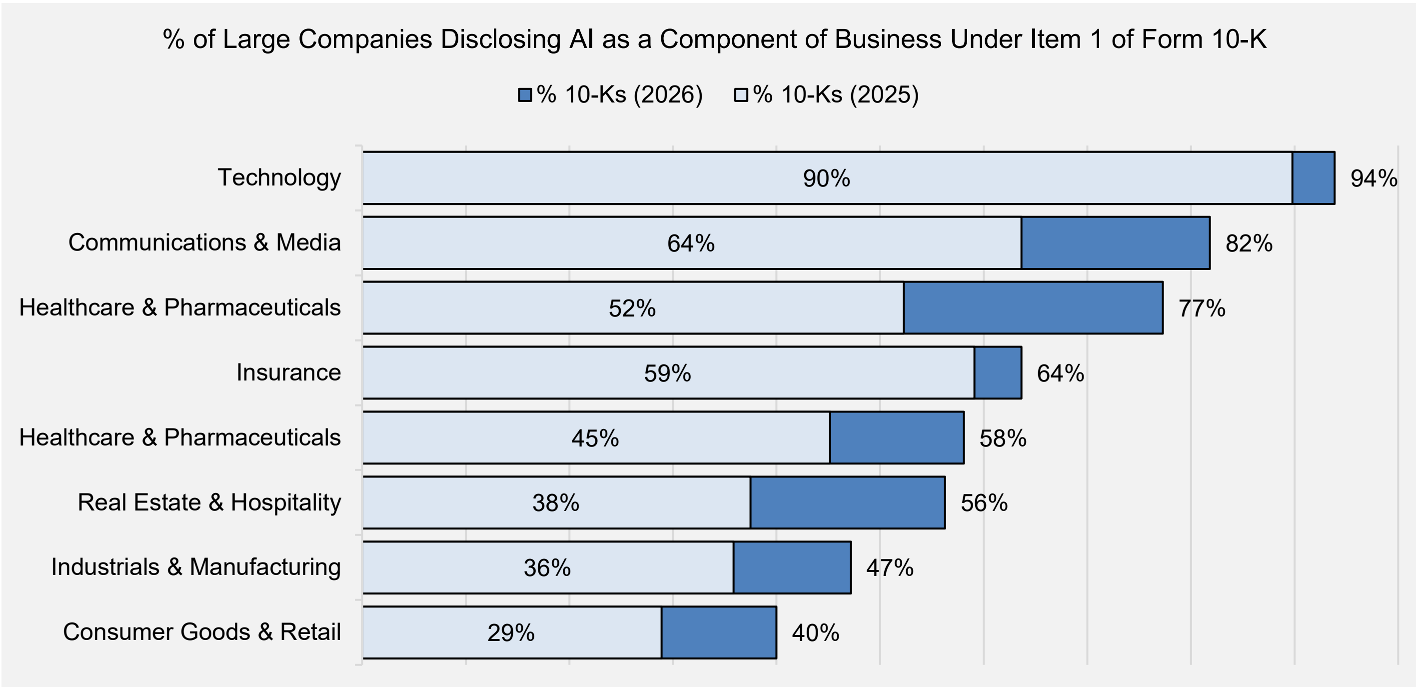
For purposes of the analysis below, we have grouped large companies into the following industries.

Technology	Software, computer services, computer hardware, and semiconductor industries.
Healthcare & Pharmaceuticals	Pharmaceuticals, diagnostics and biologics, medical device, laboratory instrument, and biological research industries.
Financial Services	Banking, payment services, asset management, and broker-dealer industries, as well as stock exchanges.
Insurance	Insurance industry as well as insurance brokers.
Energy	Oil and gas industries (including extraction, refining, and distribution, and energy-equipment manufacturing), as well as electric, water, and waste utilities.
Industrials & Manufacturing	Aerospace, defense, auto, metal, electrical equipment, and machinery industries.
Consumer Goods & Retail	Retail, wholesale, grocery, consumer e-commerce, and consumer manufacturing industries (including food, beverage, tobacco, apparel, and personal products).
Communications and Media	Telecom, cable, broadcast, and communications industries.
Transportation & Logistics	Railroad, trucking, and airline industries, as well as couriers and transportation operators.
Real Estate & Hospitality	Real estate companies (including REITs) and homebuilders, as well as various travel, entertainment and recreation providers, and booking platforms

AI Business Disclosures

In 2026, approximately 58% of all large companies mentioned AI in the Business section of their Forms 10-K, representing an overall increase of more than 10% since 2025.

AI business disclosures increased across all industries but were most prevalent among technology companies, which includes companies in the semiconductor and software industries.



In 2026, large companies that included AI in the Form 10-K Business section most commonly described AI as a component of their customer-facing products or services (50%), followed by disclosure of regulations relating to AI that affect the company's business (35%), and a description of AI as a component of the company's competitive business environment (25%). Nearly one quarter of companies that disclosed AI in the Form 10-K Business section described their internal use of AI to facilitate or streamline business processes.

The nature of AI business disclosures varied by industry category. For example, companies in the technology industry were most likely to describe AI as being incorporated into their products and services (identified in 74% of technology companies with AI in their business disclosures), and also commonly as an aspect of the company's competitive landscape (44%), as part of their research and development activities (35%) and as an end-market driver (30%), while companies in the insurance industry were most likely to describe laws governing AI in their business section (79% of insurance companies with AI in their business disclosures). Some industry groups—namely, consumer goods and retail, transportation and logistics, and real estate and hospitality—were just as likely to describe AI as a component of their internal business processes (driving efficiencies and supporting internal teams) as they were to describe how they incorporated AI in their products and services.

AI Risk Factor Disclosures

In 2026, approximately 96% of all large companies addressed AI in the Risk Factors section of their Forms 10-K, representing an overall increase of 7% since 2025 and 20% since 2024. This figure includes a supermajority of large companies in each industry described above.

The AI risks described by large companies can generally be broken down into ten categories.

Cyber threat actors using AI to commit cyber crimes	**Human Capital** retaining a sufficiently skilled workforce	**Regulatory** complying with expanding governmental oversight of AI	**Competitive** keeping pace with technological advancements of competitors	**Use and Misuse** misuse of AI by employees, contractors, and bad actors
Execution launching new tools without vulnerabilities, bugs, or defects	**Strategic** responding to rapid changes in technology and customer preferences	**Intellectual Property (IP)** AI use leading to infringement of company IP or IP claims made against company	**Research & Development** recovering investments in new technologies	**Reputation** bad publicity or liability arising from company's use of AI

In addition, almost half of large companies now also include a "standalone AI risk factor" that consolidates the various risks associated with the company's use of AI into one separate risk factor.

In risk factor disclosures filed in 2026, large companies…	
…most commonly described AI as a component of cybersecurity risk.	68% of large companies mentioned AI in their cybersecurity risk factors, usually with reference to the use of AI by threat actors to develop increasingly sophisticated methods of gaining access to companies' systems. 33% of large companies also mentioned the risk that their use of AI tools, or integration of AI capabilities into their products or systems, could increase the risk of system failures or expose them to vulnerabilities.
…increasingly include a standalone AI risk factor.	45% of all large companies included a standalone risk factor consolidating many of the risks of their and third-party use of AI on their business and financial condition, an increase of 15% from 2025. A further 12% disclosed consolidated AI risks integrated into another risk factor, such as one relating to use of emerging technology.
…expanded the categories of AI risk.	Though still representing a small minority of large company risk factor disclosures, an increasing number of large companies are considering new areas of AI risk, including the availability of memory chips or other processors necessary to process AI tools (disclosed by 10% of technology companies and 9% of communications and media companies), the availability of power necessary to drive AI usage (disclosed by 10% of technology companies), and the risk that the use of agentic AI to drive online shoppers could divert customers away from the companies' business (disclosed by 27% of consumer goods and retail companies, 16% of real estate and hospitality companies, and 10% of transportation and logistics companies).

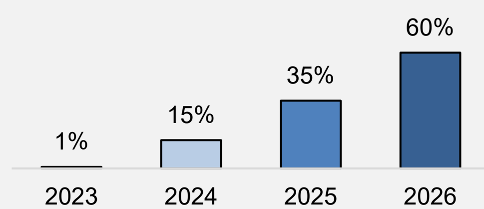
Disclosure of AI Oversight

Building on last year's advances in AI and related disclosures, large companies are continuing to increasingly discuss board oversight of AI strategy and risk in their proxy disclosures.

Increasing Disclosure of Board or Committee Oversight of AI

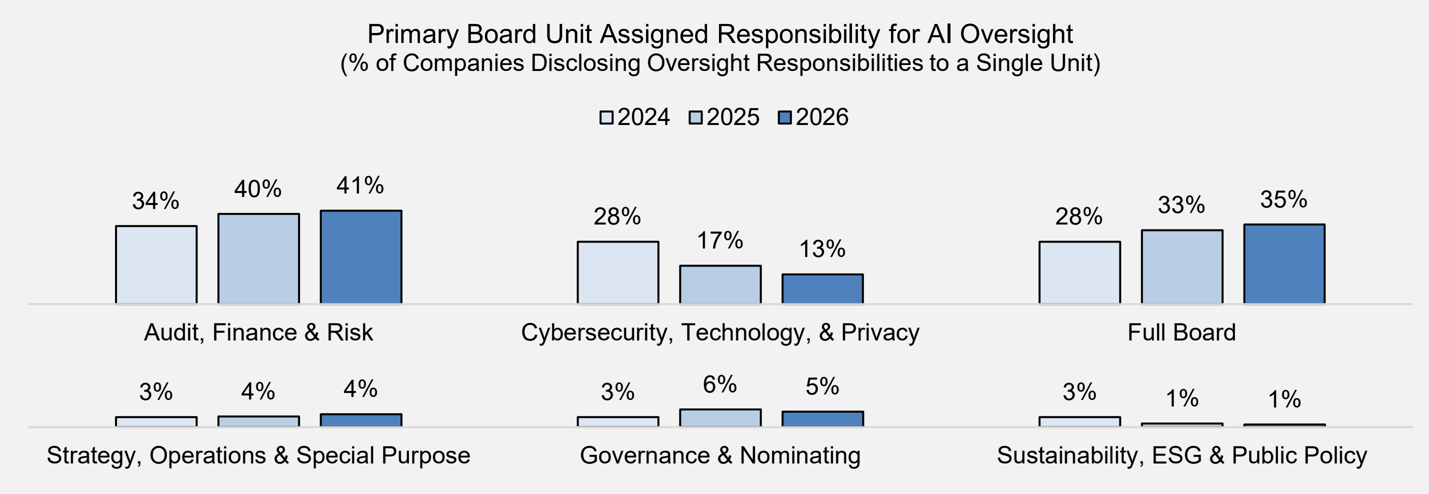
The percentage of large companies that disclosed that the full board or a board committee oversees the risks arising from the company's or third parties' use of AI is continuing to increase steadily. In 2026, 60% of large companies disclosed that the full board or a committee thereof was responsible for overseeing AI and its attendant risks.

Large Companies Disclosing Board or Committee Oversight of AI (%)



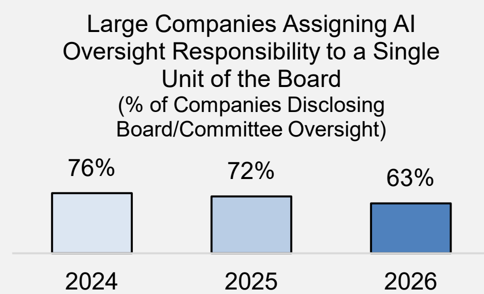
Large Companies Continue to Predominantly Assign AI Oversight Duties to the Full Board or the Audit Committee

Large company boards continue to primarily allocate AI oversight responsibility to either the full board or the audit committee. Although still common, boards are moving away from primarily allocating AI oversight responsibility to the committee responsible for oversight of cybersecurity, technology, and privacy risks.



Companies Slowly Spread AI Oversight Responsibility to Different Committees of the Board

Companies that disclose board or committee oversight typically assign responsibility to a single committee of the board (or to the full board). However, companies are increasingly distributing oversight responsibility to more than one committee of the board, with each committee responsible for an aspect of AI governance that is within its risk oversight responsibilities.



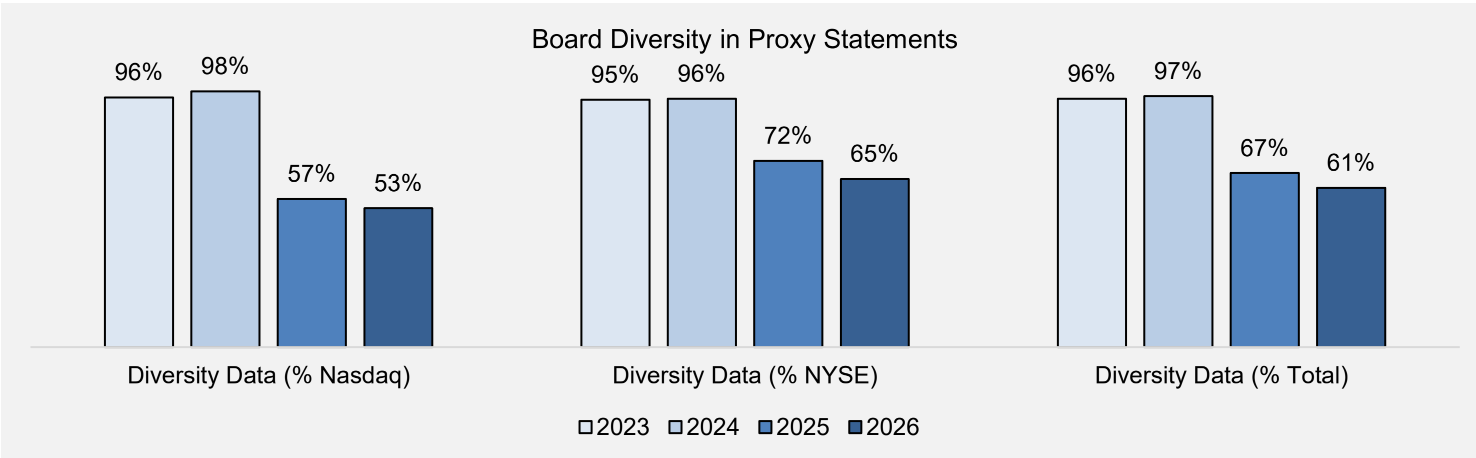
AI Expertise

In proxy statements filed in 2026, large companies…	
…increasingly disclosed that they seek and value director AI proficiency.	24% of all large companies identified AI proficiency as a desired director qualification, a twofold increase from 2025 and a fivefold increase from 2024. The percentage of large companies including AI as a topic covered in director education rose to 16%, up from 10% in 2025.
…increasingly engage directors with AI experience.	35% of all large companies disclosed that they have at least one director with AI industry expertise, up from 29% in 2024.[27]
…increasingly engage with shareholders on AI.	17% of all large companies disclosed that they included discussions of AI in their engagement with shareholders, up from 12% in 2025.

Board Diversity Disclosures

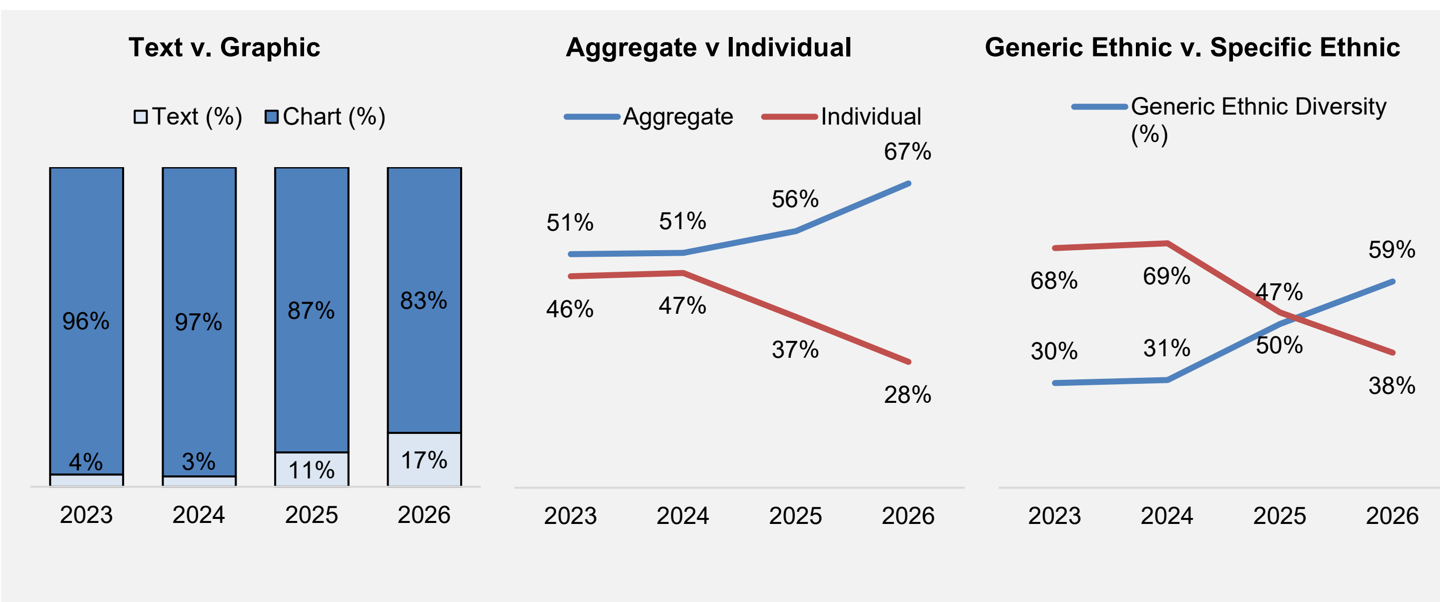
Since 2025, various federal agencies, including the Department of Justice (DOJ), Equal Employment Opportunity Commission, and the Department of Labor, have increased pressure on companies to cease or roll back diversity efforts, with companies facing the prospect of investigations, litigation, grant revocations, or the loss of government contracts. This pressure, together with investor-group opposition to diversity initiatives and the invalidation and subsequent repeal of the Nasdaq board diversity disclosure rule in December 2024 and January 2025, respectively, has contributed to reduced public disclosure of diversity efforts.

Companies dramatically scaled back their diversity disclosures in the 2025 annual meeting season. Data from the 2026 annual meeting season shows that companies have continued to scale back board diversity disclosures.

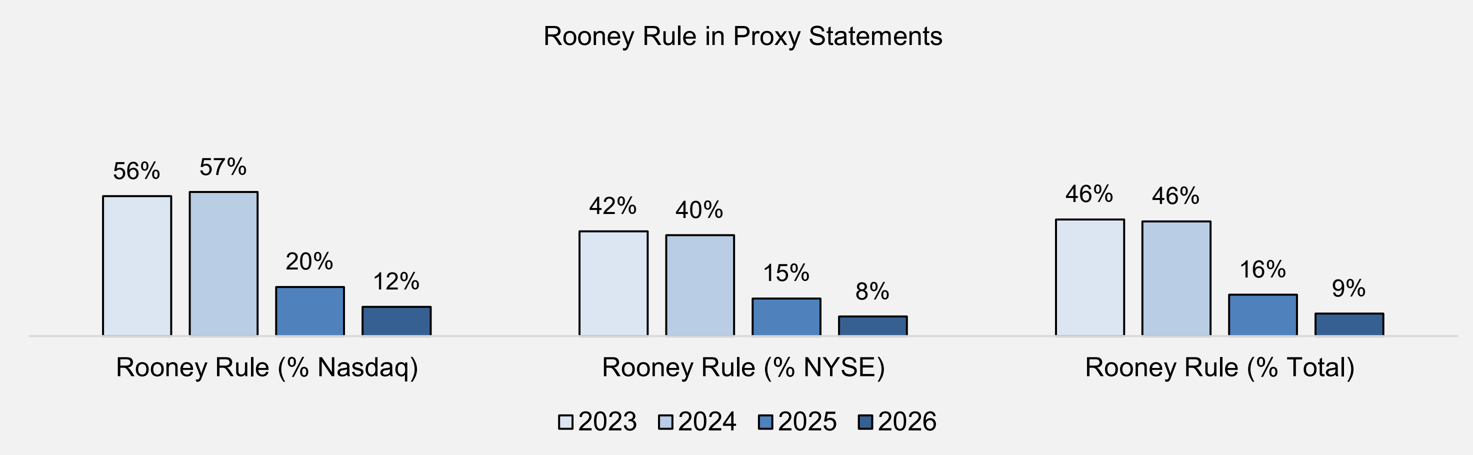


Despite the pressure to scale back board diversity disclosures, more than 50% of companies have retained board diversity disclosures in their proxy statement.

Of the companies that have retained board diversity disclosures, many are responding to external pressure by reducing the prominence and granularity of such disclosures. For example, between the 2023 and 2026 annual meeting season, the percentage of companies providing their board diversity disclosures in less prominent text format (as opposed to a graphic, chart, or table) increased from 4% to 17%, and the percentage of companies that provided board diversity information on an aggregate basis (as opposed to identifying the gender and ethnic identification of each director individually) increased from 50% to 67%. Of the companies that retained board ethnic diversity information, the majority now provide generic identifiers (e.g., “ethnic,” “diverse,” or “underrepresented”) rather than identifying the directors’ specific ethnic identity (e.g., Asian, Black, Caucasian, Middle Eastern, etc.).



Disclosures of board diversity efforts of the type referred to as the "Rooney Rule" – where the company discloses that it has a policy to include gender- and ethnic-diverse candidates in any search to fill a vacancy on its board of directors – have also declined since 2025.



SECURITIES LAW UPDATES

Benchmarking Updates to Insider Trading Policies

All public companies, regardless of fiscal year end, were required to comply with the insider trading policy exhibit filings requirement in Item 601(b)(19) of Regulation S-K (referred to herein as the Exhibit Disclosure) for their Form 10-K covering their fiscal year ending in the year 2025. Any updates to insider trading policies are filed in subsequent Form 10-K filings, allowing us to discern trends in filed insider trading policies.

In 2026, 37% of large companies (126 companies) refiled a previously filed insider trading policy as an exhibit to their Form 10-K. While a small number of companies refiled policies that were identical (or had only *de minimis* changes from the prior version), 83% of companies that refiled their insider trading policy (105 companies) included substantive updates to their policy.

Many of the edits represent an expansion of the company's insider trading policy to cover developing topics such as prediction markets, "shadow trading," and compliance with the insider trading policy disclosure requirements found in Item 408(b) of Regulation S-K.

- **Transactions in Third-Party Securities:** As discussed in our Summer 2024 Quarterly Newsletter, in April 2024 a jury found a public company executive guilty of insider trading in the first case to apply a novel application of the misappropriation theory of insider trading known as "shadow trading." The case is on appeal before the U.S. Court of Appeals for the Ninth Circuit, where it is still pending. Although the SEC has not brought any further actions based on this theory, 15% of large companies that substantively updated their insider trading policies in 2026 (16 companies) addressed transactions in third-party company securities in their update and 6% of large companies (six companies) addressed shadow trading directly.
- **Company Transactions:** As discussed in our Winter 2024/2025 Quarterly Newsletter, Item 408(b) of Regulation S-K requires companies to disclose whether or not they have adopted policies and procedures "governing the purchase, sale, and/or other dispositions" of company securities that are "reasonably designed to promote compliance" by directors, officers and employees, as well as by the company, with applicable insider trading laws, rules, and regulations, and if not, to explain why they have not done so. Approximately 10% of large companies that substantively updated their insider trading policy in 2026 (10 companies) added language expressly applying their insider trading policy's prohibitions to transactions undertaken by the company itself, while one company removed this language from its policy. Four companies took a nuanced approach and added provisions related to administration of company-level Rule 10b5-1 plans.
- **Prediction Markets:** In light of recent developments in prediction market trading (which are discussed below under Securities Law Updates — Prediction Markets Developments), approximately 10% of large companies

that substantively updated their insider trading policy in 2026 (11 companies) included language to address trading in prediction markets or other event contracts related to the company or nonpublic information learned from service to the company. All but one of these companies applied a stricter standard to prediction-market or event-contract trading than trading in traditional equity securities and restricted trading in those markets or contracts on the basis of nonpublic or confidential information (rather than material nonpublic information, or MNPI). Six companies additionally restricted trading in any company-related event contracts. Prediction market language in insider trading policies is discussed in greater detail below. As described in greater detail below, many companies are including these changes directly in their codes of conduct, although we are continuing to monitor whether this is in addition to or in lieu of changes to insider trading policies due to the lag in the timing of filed insider trading policies.

Prediction Markets Developments

Prediction markets allow investors to trade contracts (commonly referred to as event contracts) on whether or not any particular real-world event will occur. Prediction markets are not new,[28] but Commodity Futures Trading Commission (CFTC)-regulated prediction market exchanges date only to 2020 and have since seen massive growth: in the first half of 2026 alone, the two largest prediction markets, Kalshi and Polymarket, saw more than $60 billion in trades.[29]

With this rise comes growing concern that individuals are using nonpublic information to purchase contracts on prediction markets.

On February 25, 2026, following the release of two enforcement cases involving misuse of nonpublic information and fraud with respect to event contracts traded on KalshiEX (both of which are summarized below), the CFTC Division of Enforcement issued an advisory (the CFTC Advisory) related to CFTC oversight of trading on prediction markets.[30]

Internal Kalshi Prediction Market Enforcement Actions (as described in the CFTC Advisory
Kalshi imposed a financial penalty and suspension on a political candidate who appeared to be trading on his own candidacy in May 2025. The CFTC noted that the individual potentially violated provisions of the CEA and CFTC regulations which prohibit using “a manipulative scheme or artifice to defraud, or engaging or attempting to engage in an act, practice or course of business that operates as a fraud on any other person.”
Kalshi imposed a financial penalty and a suspension on an individual who likely used material nonpublic information regarding the subject of a contract acquired through an “employment relationship or other formal affiliation” with the relevant source to trade in the contract in August and September 2025. The CFTC noted that the individual potentially violated provisions of the CEA and CFTC regulations by misappropriating “confidential information in breach of a pre-existing duty of trust and confidence to the source of the information.”

Although both of the matters noted above were handled by Kalshi’s internal enforcement program and did not result in any CFTC enforcement action, the CFTC affirmed in the CFTC Advisory that it retains “full authority [under the Commodity Exchange Act (CEA)] to police illegal trading practices occurring” on any regulated prediction market exchange, including but not limited to “misappropriation of confidential information in breach of a pre-existing duty of trust and confidence to the source of the information” (i.e., insider trading).

In April and May 2026 the CFTC filed charges against two individuals for allegedly using nonpublic information to “engage in insider trading” on event contract platforms. The CFTC enforcement actions are summarized in the table below.

CFTC Enforcement Actions
On April 23, 2026, the CFTC filed a complaint against an active-duty service member for allegedly using classified nonpublic information to engage in insider trading on prediction market contracts related to the capture of former Venezuelan President Nicolás Maduro.[31]
On May 27, 2026, the CFTC filed a complaint against a Google employee for allegedly using sensitive nonpublic information acquired through his employment to engage in insider trading on prediction market contracts relating to popular search terms.[32]

Prediction Markets Coverage in Company Codes of Conduct and Insider Trading Policies

In 2026 through September 2, 2026, 54 companies (including 12 large companies) updated their publicly available codes of conduct and 30 companies (including 12 large companies) updated their insider trading policies to include prediction markets language.

Companies typically took a more restrictive approach to prediction markets than that which it applied to securities transactions generally, although this was more common in codes of conduct (81% of companies with prediction markets language in their codes of conduct) than in insider trading policies (69% of companies with prediction markets language in their insider trading policies).

- **Prohibition on engaging in <u>any</u> prediction market transaction involving the company.** Approximately 24% of companies that included prediction markets language in their codes of conduct restricted employees from engaging in <u>any</u> prediction market transaction involving the company. A similar number of companies included that prohibition in their updated insider trading policies, but due to the smaller number of filed policies containing prediction markets language, this constituted 41% of insider trading policies.
- **Application of a lower standard for restricting participation in prediction markets.** Approximately 56% of companies that included prediction markets language in their codes of conduct restricted participation based on a lower standard of information (possession of confidential or nonpublic information, rather than material nonpublic information), while 14% of companies that included prediction-markets language in their insider trading policies applied this lower standard. One company took a different approach in its insider trading policy and prohibited trading by individuals in event contracts where they had the ability to affect the outcome of the contract.

Of the 54 companies addressing event contracts in their publicly available codes of conduct, nearly half (46%, or 25 companies) included language regarding prediction markets in the section of their codes of conduct covering insider trading, while one-third of companies (33%, or 18 companies) included the language in the section of their codes of conduct covering confidentiality obligations. A significant minority of companies (15%, or 8 companies) included language regarding event contracts as a standalone section of their code of conduct. Companies also included prediction market language in the sections of their codes of conduct covering conflicts of interest (9%) or compliance with laws (4%).

Meanwhile, more than three-quarters of companies (76%, or 22 companies) that addressed prediction markets in their insider trading policies described trading in event contracts as distinct from trading in securities, often acknowledging that such trading may not be covered by traditional securities restrictions. Many of these companies included restrictions on trading in event contracts in the same section as other prohibited transactions, such as hedging and pledging of securities or entering into derivatives contracts.

Although at this time we can report on company trends in codes of conduct and insider trading policies, a comprehensive analysis of company practices is not available at this time. This is due to two factors: (i) public disclosure of insider trading policies may lag behind the adoption of policy updates, because companies are not required to file those policies until their next Form 10-K, while codes of conduct may become publicly available more promptly—through a Form 8-K filing or a company website posting within four business days, where applicable; and

(ii) once filed, insider trading policies are readily searchable on EDGAR, while website-posted codes of conduct and amendments are not readily searchable on the SEC's or any other public database.

Still, due to the differences between event-based contracts and a company's equity securities, as well as the uneasy application of securities laws and traditional insider trading rules to event-based contracts (including, but not limited to, questions about the concept of materiality), some companies may elect to include event contract language in their codes of conduct instead of in their insider trading policies. This is also a rapidly changing area of law, and any change to prediction markets legislation, regulation or enforcement (at the state or federal level) may cause companies to further change their practices.

Proxy Advisor Developments

Update on State Laws Mandating Certain Disclosures by Proxy Advisors

In our Spring 2026 Quarterly Newsletter, we discussed the growing number of state laws requiring proxy advisors to make specified disclosures in connection with recommendations against management on company or other proxy proposals when such recommendation "is not based on a written financial analysis" (commonly referred to as the Proxy Advisor Transparency Act). Variations of the Proxy Advisor Transparency Act have passed in Texas (SB 2337), Indiana (HB 1273), Kansas (SB 375), Kentucky (SB 183), and Oklahoma (HB 4429).

Institutional Shareholder Services Inc. (ISS) and Glass, Lewis & Co., LLC (Glass Lewis) have sued to challenge the laws in each state on First Amendment and Fourteenth Amendment grounds and have succeeded at the preliminary injunction stage in Texas, Indiana and Kansas.[33] Courts have not yet ruled on ISS's and Glass Lewis's motions for preliminary injunction to block enforcement of the Oklahoma and Kentucky laws.

Arizona and Tennessee have also passed legislation that would limit proxy advisor services and recommendations provided to public retirement funds.[34]

U.S. Department of Justice Withdraws Antitrust Guidance for Proxy Advisors

On August 5, 2026, the DOJ's Antitrust Division withdrew the Business Review Letter which it had issued to ISS in 1987 (the 1987 BRL).[35] In the 1987 BRL, the DOJ stated that it "ha[d] no current intention to bring action under the antitrust laws to enjoin the establishment and operation of ISS" with respect to ISS's services in offering "advice only on matters relating to the exercise of voting rights on issues of corporate governance."

Although the 1987 BRL did not confer on ISS protection from antitrust action, the withdrawal could indicate an increased risk of DOJ antitrust action against ISS, a possibility already suggested by President Trump's December 2025 executive order targeting proxy advisors (which was discussed in greater detail in our Winter 2025/2026 Quarterly Newsletter).[36]

SEC Sues ISS to Compel Compliance with Administrative Subpoena

On September 4, 2026, the SEC filed a subpoena enforcement action against ISS in the U.S. District Court for the Eastern District of Pennsylvania seeking to compel ISS to comply with an administrative subpoena first issued by the SEC to ISS in July 2026.

The SEC stated that the purpose of the subpoena is to seek "documents highly relevant to its investigation of ISS's compliance with the federal securities laws." ISS had argued that the subpoena raised First Amendment concerns.[37]

SEC RULEMAKING UPDATES

SEC Issues Proposed Rules in Support of its Rulemaking Agenda

Since May 2026, the SEC has released several proposed rules advancing its agenda.

Proposed Rule on Semiannual Reporting

On May 7, 2026, the SEC released its proposed rule on Semiannual Reporting (the Proposed Semiannual Reporting Rule) that, if adopted, would permit public companies to report on a semiannual, rather than quarterly, basis.

Under the Proposed Semiannual Reporting Rule, companies that are currently required to file Quarterly Reports on Form 10-Q pursuant to Rule 13a-13 and Rule 15d-13 under the Exchange Act would have the option to instead file a Semiannual Report on Form 10-S. The new Form 10-S would require the same narrative disclosures and financial information as the existing Form 10-Q, but the disclosures would cover a semiannual, rather than quarterly, period. The new Form 10-S would be due within 40 or 45 days (depending on the company's filer status) after the end of the company's applicable semiannual period, consistent with the current timing requirements for Form 10-Q.

Companies wishing to report on a semiannual basis (Semiannual Filers) would indicate their election to do so with a new check box on the cover page of their Annual Report on Form 10-K, and such election would then apply to the company's entire fiscal year in which the Form 10-K was filed. Although companies may freely switch from semiannual to quarterly reporting from year to year, under the Proposed Semiannual Reporting Rule, a company switching from semiannual to quarterly reporting would be required to include, in its Form 10-Q, year-over-year quarterly comparisons of "statements of comprehensive income, cash flows, and changes in stockholder's equity," which the company may not have readily available if it did not prepare quarterly financial statements during the relevant periods.

The Proposed Semiannual Reporting Rule also includes technical amendments to a number of rules and forms under the Exchange Act and the Securities Act of 1933, as amended (the Securities Act), including amending several provisions of Regulation S-X to ensure that when Semiannual Filers file registration statements, their financial statements in those registration statements are not considered "stale."

If adopted, the Proposed Semiannual Reporting Rule would require companies to decide whether quarterly or semiannual reporting is more appropriate. In making that decision, a company would need to weigh any perceived benefits against the potential effects of less frequent reporting on investor perceptions, capital-raising flexibility, and corporate insiders' ability to trade in company securities during the interval between semiannual reports, among other considerations.

The Proposed Semiannual Reporting Rule is discussed in greater detail in our May 7, 2026 Client Alert.

The comment period for the Proposed Semiannual Reporting Rule closed on July 6, 2026. As of August 29, 2026, the SEC had posted more than 180,000 comments received on the Proposed Semiannual Reporting Rule.[38] Of the comments posted to date, the vast majority (more than 99%) of the comments that expressed a position on the Proposed Semiannual Reporting Rule were opposed to the proposal.[39]

Proposed Rule on Registered Offering Reform

On May 19, 2026, the SEC released its proposed rule on Registered Offering Reform (the Proposed Registered Offering Reform Rule) that contains a number of proposed changes intended to ease the burdens and costs for public companies to raise capital "quickly and when market conditions are most favorable."[40]

If adopted, the Proposed Registered Offering Reform Rule would, among other things, expand to a broader set of issuers the ability to:

- conduct shelf offerings (including automatic shelf offerings) registered under the Securities Act of 1933 on Form S-3;
- take advantage of the benefits (including the ability to conduct automatic shelf offerings) currently available only to well-known seasoned issuers (WKSIs);
- forward and backward incorporate information by reference into Form S-1; and
- conduct registered offerings without being required to comply with state "blue sky" laws.

The Proposed Registered Offering Reform Rule is discussed in greater detail in our May 22, 2026 Client Alert.

The comment period for the Proposed Registered Offering Reform Rule closed on July 27, 2026. As of September 9, 2026, the SEC had posted 112 unique comments received on the Proposed Registered Offering Reform Rule.[41] Of the comments posted to date, a majority (62%) generally supported the proposal (either as proposed or subject to minor requested modifications or amendments), while 26% stated unconditional opposition (primarily based on disagreement with the proposed federal preemption of State "blue sky" laws). The SEC also received fifteen submissions on a standardized form urging the SEC to adopt the Proposed Registered Offering Reform Rule.

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

On May 19, 2026, the SEC released its proposed rule on Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies (the Proposed Accommodations and Filer Status Rule) that, if adopted, would, among other things, make many of the scaled disclosures currently available to smaller reporting companies (SRCs) and emerging growth companies (EGCs) available to a broader group of filers.

Specifically, the Proposed Accommodations and Filer Status Rule would:

- increase the public float threshold and seasoning period before companies can qualify as Large Accelerated Filers (LAFs);
- require a company to change filer status based on public float only if it remains above or below the public float threshold for two consecutive years;
- extend the disclosure accommodations currently available to SRCs and EGCs to all filers other than LAFs (these filers would be referred to as Non-Accelerated Filers, or NAFs);
- create a sub-category of NAFs called Small Non-Accelerated Filers, defined as NAFs that "report total assets of $35 million or less in [their] financial statements as of the end of each of [their] two most recent second fiscal quarters" and which would be granted additional time to file their periodic reports as compared to NAFs and LAFs; and
- extend to NAFs the requirement currently applicable only to LAFs and AFs to provide disclosure regarding any material unresolved comments received from SEC staff at least 180 days before the company's fiscal year end on its periodic or current reports pursuant to Item 1B of Form 10-K (Unresolved Staff Comments).

Notably for many companies, if adopted, the Proposed Accommodations and Filer Status Rule would extend the scaled executive compensation disclosure requirements currently only available to EGCs to all companies except those that qualify as LAFs under the revised thresholds.

The Proposed Accommodations and Filer Status Rule is discussed in greater detail in our May 22, 2026 Client Alert.

The comment period for the Proposed Accommodations and Filer Status Rule closed on July 20, 2026. As of August 29, 2026, the SEC had posted 175 unique comments received on the Proposed Accommodations and Filer Status Rule,[42] more than half of which (55%) were either opposed to the rule or viewed it disfavorably, while only 14% expressed unconditional support.[43] Two-thirds of the comments expressed an opinion on the element of the Proposed Accommodations and Filer Status Rule that would remove the auditor attestation requirement and were generally opposed that element of the proposal.[44]

Proposed Rule Rescinding the SEC's Climate Disclosure Rules

On May 29, 2026, the SEC released its proposed rule on Rescission of Climate-Related Disclosure Rules (the Proposed Climate Disclosure Rescission Rule) that, if adopted, would rescind the SEC's March 2024 approval of rules imposing climate-related disclosure requirements on public companies (the SEC Climate Rule).

The Proposed Climate Disclosure Rescission Rule is discussed in greater detail in our June 1, 2026 Client Alert.

As discussed in our Spring 2025 Newsletter and Summer 2025 Newsletter, the SEC Climate Rule has been indefinitely stayed pending the completion of consolidated litigation challenging the rule in the Eighth Circuit Court of Appeals and the litigation itself has been held in abeyance since April 2025, following the SEC's withdrawal of its defense in the litigation. The Eighth Circuit has indicated that the litigation will continue to be held in abeyance until the SEC issues its final rule rescinding the SEC Climate Rule.[45]

The comment period for the Proposed Climate Disclosure Rescission Rule closed on August 3, 2026. As of August 29, 2026, the SEC had posted 713 comments received on the Proposed Climate Disclosure Rescission Rule, the vast majority of which (87%) were opposed to the proposal.[46]

Proposed Rule on Regulation E-Delivery

On July 21, 2026, the SEC released its proposed rule on Electronic Delivery of Information Under the Federal Securities Laws (the Proposed E-Delivery Rule) that, if adopted, would supersede the SEC's current "opt-in" framework for electronic delivery and make electronic delivery of certain required materials to investors and other covered parties the default (but not mandatory) delivery option under Federal securities laws, if certain delivery conditions are met.

The Proposed E-Delivery Rule would apply to the "electronic delivery" of "covered information" required to be delivered by "covered entities" to "covered recipients" (each as defined in the Proposed E-Delivery Rule), where:

- **electronic delivery** is the delivery of covered information to a covered recipient's "electronic address" (which is defined broadly to include an email address, a mobile phone number, or any other means of electronic communication that is capable of receiving and alerting the covered recipient about the delivery of covered information;
- **covered information** generally includes any information required to be delivered to a covered recipient under federal securities laws;
- **covered recipients** include any current or prospective investor, security holder, customer, client, counterparty, or similar recipient of covered information; and
- **covered entities** include any person that has an obligation to deliver covered information to a covered recipient under federal securities laws.

The Proposed E-Delivery Rule would permit, but not require, covered entities to provide covered information to covered recipients by electronic delivery only if the following conditions are met:

Electronic Address	Prominent Disclosure	No Opt-out
The covered recipient has provided an electronic address to the covered entity.	The covered entity has provided prominent disclosure to the covered recipient that it will send covered information to the electronic address provided.	The covered recipient has not opted out of electronic delivery.

Electronic delivery may be satisfied by either direct delivery of covered information to a covered recipient's electronic address (e.g., attaching the relevant document or disclosure to an email or including the text in the body of an email) or by sending a statement of availability to the covered recipient's electronic address (e.g., sending an email with a link to a website address where a covered recipient can access the covered information).

The Proposed E-Delivery Rule does not require an "all-or-nothing" approach to electronic delivery and would allow covered entities to choose whether default e-delivery applies only to certain covered information or certain covered recipients.

The Proposed E-Delivery Rule would require companies to provide shareholders the ability to "opt out" of electronic delivery and receive paper copies of the relevant materials free of charge. The Proposed E-Delivery Rule contains other requirements relating to policies and procedures and special notices to be provided by companies transitioning to electronic delivery after the rule's effectiveness.

Because the Proposed E-Delivery Rule defines electronic delivery as the direct transmission of covered materials to a covered recipient's "electronic address," the Proposed E-Delivery Rule, if adopted, would fundamentally change how public companies electronically deliver proxy materials to shareholders.

Exchange Act Rule 14a-16 currently permits companies to satisfy proxy-delivery requirements by mailing a Notice of Internet Availability of Proxy Materials that explains how shareholders may access the materials online. The Proposed E-Delivery Rule would no longer treat that process as electronic delivery[47] and would amend Rule 14a-16 so that the methods specified in the Proposed E-Delivery Rule are the only permissible methods of electronically delivering proxy materials. Significantly, if the Proposed E-Delivery Rule is adopted, mailing a notice of internet availability to shareholders to instruct them how to access proxy materials for the meeting of shareholders will no longer be permitted. Public companies would only be able to satisfy their proxy delivery obligations electronically by electronic delivery of the proxy materials or a statement of availability of proxy materials, and only if the shareholder has provided the company with its electronic address. This is a significant departure from the current notice and access process. Under the Proposed E-Delivery Rule, companies would no longer be required to mail a notice of internet availability at least 40 days before the meeting of shareholders, which could enable a company to shorten the proxy solicitation period before its meeting. Conversely, because the new E-Delivery Rule depends on companies having access to electronic address information for their shareholders (and those shareholders not opting out of electronic delivery), companies may now face increased costs in printing and mailing full-set paper copies of their proxy statements to shareholders to whom they previously could mail only a notice of internet availability. These increased costs are expected to disproportionately burden companies with a higher percentage of retail shareholders.

The comment period for the Proposed E-Delivery Rule will close on September 21, 2026. As of September 9, 2026, the SEC had posted 62 unique comments received on the Proposed E-Delivery Rule, plus six separate form comments that were collectively submitted more than 40,000 times.[48] Of the unique comments posted to date, the majority (56%) were opposed to the SEC's proposal to require shareholders to opt out of electronic delivery and wanted to maintain the SEC's current "opt-in" system, while only 11% were fully supportive.

A handful of comments (seven commenters, or 11% of unique comments) mentioned the impact of the Proposed E-Delivery Rule's replacement of the SEC's current notice-and-access electronic proxy delivery framework, although they all had different views on the change. Opinions ranged from strongly supportive (on the basis that paper proxies are a deadweight cost without meaningful engagement) to strongly opposed (on the basis that paper proxies drive shareholder engagement), with most suggesting minor changes such as an increased phase-in period or additional e-delivery safeguards.

SEC Releases 2026 RegFlex Agenda

On July 7, 2026, the SEC released its 2026 Unified Agenda of Regulatory and Deregulatory Actions (the 2026 Reg Flex Agenda), an annual version of what is typically a semiannual report of significant rules that the SEC expects to consider (but is not required to consider) in the next 12 months. The 2026 Reg Flex Agenda includes what SEC Chair Atkins describes as proposals that are intended to "revers[e] the decline of public companies and revitaliz[e] our public markets… by transforming our disclosure regime" in a way that reduces compliance burdens while maintaining investor protections.[49] The 2026 Reg Flex Agenda includes 11 proposed actions of interest to public companies, broken down as follows:

	New to the 2026 Reg Flex Agenda	Continued from the Spring 2025 Reg Flex Agenda
SEC Proposed Rule	4	1
SEC Rulemaking Pending	2	4

Agenda Items for Which the SEC Has Already Issued Proposed Rules

The 2026 Reg Flex Agenda includes five items for which the SEC has already issued proposed rules.

Enhancement of EGC Accommodations and Simplification of Filer Status for Reporting Companies	Registered Offerings Reform	Semiannual Reporting	Rescission of Climate-Related Disclosure Rules	Electronic Delivery of Information Under the Federal Securities Laws

These proposed rules are each discussed above under SEC Rulemaking Updates — SEC Issues Proposed Rules in Support of its Rulemaking Agenda.

Agenda Items Continued from the Spring 2025 Reg Flex Agenda

The SEC has continued to include four items from the Spring 2025 Reg Flex Agenda without taking meaningful action on them, although the issuance or proposed rules addressing some of these items appears imminent.

Rationalization of Disclosure Practices	Shareholder Proposal Modernization.	Rule 144 Safe Harbor	Foreign Private Issuer Eligibility Enhancements

Rationalization of Disclosure Practices	Recommend that the SEC “rationalize disclosure practices to facilitate material disclosure by companies and shareholders' access to that information.”

In our Fall 2025 Quarterly Newsletter, we speculated on three topics that could be covered under the SEC’s Spring 2025 Reg Flex Agenda item on “Rationalization of Disclosure Practices”: scaled public company disclosures, focus on financial materiality, and executive compensation disclosures. Of these three, only one – focus on financial materiality – has yet to be addressed in the SEC’s current proposed rulemaking pipeline.

In statements throughout 2026, Chair Atkins has stated that rationalizing disclosure requirements requires the SEC to review its disclosure requirements “with materiality as its north star.”[50] He has also indicated frustration with the current disclosure regime’s requirements to disclose “a plethora of undisputably immaterial information”[51] that a curious investor or regulator may like to know.[52] In July 2026 Remarks at the Society for Corporate Governance, Chair Atkins indicated that his “chief aim of revising Regulation S-K is for these rules to elicit material information, without overly prescriptive line-item requirements that frequently elicit immaterial information” but acknowledged that “even with the best intentions and execution, the [SEC] may be unable to ensure that information called for by every line item will be material to investors of every public company.”

SEC Commissioner Hester Peirce has also emphasized the importance of *financial* materiality, describing “[t]he ‘reasonable investor’ who shows up in the Supreme Court’s classic materiality cases” as one who “has her eyes trained in an unwavering Mona Lisa like stare on risk-based financial returns.”[53]

On January 13, 2026, the SEC opened up a public docket encouraging the public to “provide their views on how the Commission can amend Regulation S-K, with the goal of revising the requirements to focus on eliciting disclosure of material information and avoid compelling the disclosure of immaterial information.”[54] Comments were due to the public docket by April 13, 2026. As of September 9, 2026, more than 100 unique comments had been posted to the public docket, covering all aspects of Regulation S-K. Almost all commenters focused at least in part on the compliance cost of Regulation S-K disclosures, echoing the SEC Chair and Commissioner Peirce’s desire to focus on “material” disclosures, although some favored retaining the current disclosures while adopting measures to reduce boilerplate or allow use of cross-references to reduce duplicative disclosures. Many commenters also focused on specific Regulation S-K disclosure items, such as the description of the company’s business required by Item 101 of Regulation S-K, or Item 105 of Regulation S-K, with commenters split between requesting narrower disclosures, supporting the current disclosure regime, or asking for broader disclosures on specific topics, for example, human capital or AI utilization.

Shareholder Proposal Modernization	Recommend that the SEC "modernize the requirements of Exchange Act Rule 14a-8 to reduce compliance burdens for registrants and account for developments since the rule was last amended."

Since the change of administration in January 2025, the SEC staff has, through statements rather than formal SEC rulemaking, made fundamental changes to the shareholder proposal process, including by (i) issuing Shareholder Proposals: Staff Legal Bulletin No. 14M (CF) (SLB 14M) to largely restore the SEC's pre-Biden positions on the Economic Relevance Exclusion and the Ordinary Business Exclusion under Rule 14a-8 (Rule 14a-8(i)(5) and Rule 14a-8(i)(7), respectively) in a way that is intended to make it easier for companies to exclude shareholder proposals; and (ii) temporarily pausing, and then permanently withdrawing, Corp Fin from its role of overseeing the shareholder proposal no-action letter process.

Although Chair Atkins and Commissioners Peirce and Uyeda have expressed their dissatisfaction with shareholder use of the Rule 14a-8 process to advance environmental and social issues, concrete policy proposals are scarce. In his October 2025 Keynote Address at the John L. Weinberg Center for Corporate Governance's 25th Anniversary Gala, Chair Atkins stated generally that he had "asked the staff to evaluate whether the [SEC's] original rationale for adopting Rule 14a-8 in 1942 still applies today, especially in light of developments in the proxy solicitation process and shareholder communications generally over the last 80 plus years" and cited an article by retired Chief Justice of the Delaware Supreme Court, Leo Strine Jr. that asked whether investors should now be asked to pay their own solicitation costs given the ease of sending information electronically. Meanwhile, in a December 2025 Meeting of the SEC Investor Advisory Committee, Commissioner Peirce said that "eligibility to submit a shareholder proposal under Rule 14a-8 should be limited to shareholders whose interests align with those of the corporation" rather than shareholders who intend to "extract special interest concessions from the company."

On August 28, 2026, the SEC submitted its proposed rule on Rescission of Rule 14a-8's Federal Regulation of Shareholder Proposals and Amendments to Rule 14a-4 to OIRA for White House review,[55] which indicates that the proposed rule could be released imminently.

Rule 144 Safe Harbor	Recommend that the SEC amend "Rule 144, a non-exclusive safe harbor that permits the public resale of restricted or control securities if the conditions of the rule are met, to increase instances in which the safe harbor would be available."

In our Fall 2025 Quarterly Newsletter, we speculated that the SEC's Reg Flex Agenda item on "Rule 144 Safe Harbor" would be in support of Chair Atkins' purported goals of supporting capital formation and could relate to a reduction in the Rule 144 holding period or an increase in the Rule 144 volume limitation. Although neither Chair Atkins nor Commissioners Peirce or Uyeda have mentioned in their public statements any specific proposals to amend Rule 144, in February 2026 remarks before the Small Business Capital Formation Advisory Committee, Chair Atkins acknowledged the liquidity challenges faced by private companies whose "securities remain restricted from resale under our rules for at least a period of time."[56]

Foreign Private Issuer Eligibility Enhancements	Recommend that the SEC "enhance the regulatory framework governing foreign private issuers."

As discussed in our Fall 2025 Quarterly Newsletter, in June 2025 the SEC issued a concept release seeking feedback on whether the current FPI definition properly balances the SEC's interest in allowing foreign companies access to U.S. markets against its interest in providing investors with "information equal as nearly as possible and practicable as that provided to investors in securities of domestic issuers."[57]

In a February 2026 Keynote Address at the AFME's Annual Financial Services Policy Dinner, Chair Atkins stated that the SEC staff had received "over 80 comment letters submitted by trade associations, law firms, public companies, individual investors, and others." Although Chair Atkins did not indicate any potential reforms on FPI eligibility, he confirmed that his "focus is not to limit the number of foreign companies that access the U.S. capital markets."[58]

Agenda Items Newly Added in the 2026 Reg Flex Agenda

Executive Compensation Disclosure Reform	Recommend that the SEC amend "Item 402 of Regulation S-K to rationalize executive compensation disclosure requirements."

In our Fall 2025 Quarterly Newsletter, we discussed executive compensation disclosure reforms as a piece of the SEC's broader Reg Flex Agenda item titled "Rationalization of Disclosure practices." At the time, we noted that Chair Atkins decried the "volume and complexity" of the SEC's executive compensation disclosure regime.[59]

Since then, Chair Atkins and SEC Commissioners Peirce and Uyeda have addressed various aspects of executive compensation disclosure that they believe is ripe for reform under the SEC's "rationalizing, simplifying, and modernizing" agenda. These potential reforms include, among other things: (i) reducing the number of executive officers whose compensation is required to be disclosed, (ii) amending pay versus performance disclosure to make it simpler and more understandable, and (iii) reconsidering whether the costs of an executive's personal security should still be considered a perquisite.[60] Commissioner Peirce also highlighted extensive executive compensation disclosures as an example of disclosures that "obfuscate rather than add to the mix of information on which investors rely," noting that some executive compensation tables "are about as interesting to investors as the chart on the bounties paid on herring from 1771 to 1781 appended to the end of the Wealth of Nations."[61]

On August 26, 2026, the SEC submitted its proposed rule on Executive Compensation Disclosure Reform to OIRA for White House review,[62] which indicates that the proposed rule could be released imminently.

Amendments to Certain Proxy Rules	Recommend that the SEC "modernize certain rules regarding the proxy solicitation process, including certain filing and procedural requirements relating to proxy solicitations and shareholder meetings, to reduce costs and compliance burdens."

SEC Commissioners Peirce and Uyeda have discussed proxy solicitation rules in the context of fund proxy campaigns, but not in the context of public company annual meetings. In December 2025 speeches before the SEC Investor Advisory Committee, Commissioners Peirce and Uyeda mentioned topics that could fall under this Reg Flex Agenda item, including permitting shareholders to establish standard proxy voting instructions (which the SEC allowed in September 2025 via no-action letter to Exxon Mobil) and facilitating pass-through voting (both of which were discussed in our Fall 2025 Quarterly Newsletter).[63]

On August 28, 2026, the SEC submitted its proposed rule on Proxy Solicitation Modernization to OIRA for White House review,[64] which indicates that the proposed rule could be released within the month.

OTHER UPDATES

California Climate Rules Update

As discussed in our Spring 2026 Quarterly Newsletter, beginning in November 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) Defers 2026 Reporting Deadline and Announces Upcoming Regulatory Changes

As discussed in our June 26, 2026 Client Alert, on June 24, 2026, CARB, the agency tasked with promulgating regulations under the California Climate Disclosure Laws, announced that it is delaying the initial reporting deadline for Scope 1 and Scope 2 greenhouse gas (GHG) emissions under the Climate Corporate Data Accountability Act from August 10, 2026, to November 10, 2026. There has been no change to companies' obligations to begin disclosing Scope 3 emissions starting in 2027.

CARB also indicated that it will propose limited changes to the draft regulations to clarify certain reporting requirements. CARB has not yet identified these additional changes, which will be made available for review as part of a forthcoming 15-day public comment period. CARB will resubmit the regulations for finalization following the public comment period.

On September 1, 2026, CARB released a voluntary report intake platform that reporting entities may, but are not required to, use to streamline reporting and implementation of assessment fees.

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 plaintiffs' appeal from 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 the Climate-related Financial Risk Act on the grounds that it is preempted by the National Securities Markets Improvement Act of 1996 (NSMIA). On August 10, 2026, the District Court granted the State of California's motion to dismiss Exxon's NSMIA preemption claim, leaving only the as-applied First Amendment challenges to the California Climate Disclosure Laws.[65]

Enforcement of the January 1, 2026, reporting deadline for the Climate-related Financial Risk Act remains temporarily enjoined pending the outcome of litigation challenging the California Climate Disclosure Laws. CARB will provide an alternate date for reporting once the litigation is resolved. As of September 9, 2026, more than 180 companies had voluntarily submitted their first reports to the public docket under the Climate-related Financial Risk Act.

1 *Reginof.gov: List of Regulatory Actions Currently Under Review*, OFF. OF INFO. & REGUL. AFF., https://www.reginfo.gov/public/jsp/EO/eoDashboard.myjsp (last visited Sep. 10, 2026) (on file with O'Melveny & Myers) [[hereinafter *OIRA Dashboard*].

2 Ross Kerber, *SEC chairman moves to give US states power over shareholder resolutions*, REUTERS (Aug. 31, 2026 12:30 PM PDT), https://www.reuters.com/legal/government/sec-chairman-moves-give-us-states-power-over-shareholder-resolutions-2026-08-31/.

3 To capture shareholder proposals for the 2026 annual meeting season we reviewed Rule 14a-8(j) notifications released by the SEC between September 2025 and September 9, 2026 and proxy statements posted by companies between January 2026 and September 9, 2026.

4 Executive compensation-related proposals constituted approximately 5% of all governance-related proposals submitted in connection with the 2026 annual meeting season. The most popular executive compensation-related proposal requested that companies give shareholders the right to approve excessive golden parachute payments (8 proposals submitted).

5 For purposes of this analysis, average support was calculated based on the voting standard applied to each proposal at the relevant company's annual meeting.

6 Two of the most popular proposals in the 2025 annual meeting season – a proposal to require shareholder approval of excess golden parachutes and a proposal to require the company to report on its lobbying activities – declined sharply in 2026 (by 76% and 87% respectively) and fell out of the top five.

7 Complaint, DiNapoli v. BJ's Wholesale Club Holdings, Inc., No. 1:26-cv-11075 (D. Mass. Mar. 2, 2026).

8 Order, DiNapoli v. BJ's Wholesale Club Holdings, Inc., No. 1:26-cv-11075 (D. Mass. Apr. 22, 2026).

9 BJ's Wholesale Club Holdings, Inc. (Form 8-K) (June 18, 2026).

10 Complaint, N.Y.C. Emp. Ret. Sys. v. AT&T Inc., No. 1:26-cv-01310 (S.D.N.Y. Feb. 17, 2026).

11 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).

12 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).

13 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).

14 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).

15 Joint Stipulation of Voluntary Dismissal, Masters v. PepsiCo, Inc., No. 7:26-cv-01432 (S.D.N.Y. Apr. 8, 2026).

16 Complaint for Declaratory and Injunctive Relief, Fonds des Missions v. UnitedHealth Grp. Inc., No. 1:26-cv-970 (D.D.C. Mar. 20, 2026).

17 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).

18 Notice of Dismissal, Fonds des Missions v. UnitedHealth Grp. Inc., No. 1:26-cv-970 (D.D.C. Apr. 28, 2026).

19 Complaint for Declaratory and Injunctive Relief, As You Sow v. Chubb Ltd., No. 1:26-cv-00734 (D.D.C. Mar. 3, 2026).

20 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).

21 First Amended Complaint for Declaratory and Injunctive Relief, As You Sow v. Chubb Ltd., No. 1:26-cv-00734 (D.D.C. May 8, 2026).

22 Motion to Dismiss Amended Complaint, As You Sow v. Chubb Ltd., No. 1:26-cv-00734 (D.D.C. June 12, 2026).

23 Complaint, Interfaith Ctr. on Corp. Resp. v. Sec. & Exch. Comm'n, No. 1:26-cv-00957 (D.D.C. Mar. 19, 2026).

24 Joint Motion to Enter a Briefing Schedule, Interfaith Ctr. on Corp. Resp. v. Sec. & Exch. Comm'n, No. 1:26-cv-00957 (D.D.C. Apr. 28, 2026).

25 Joint Motion to Hold Briefing Schedule in Abeyance, Interfaith Ctr. on Corp. Resp. v. Sec. & Exch. Comm'n, No. 1:26-cv-00957 (D.D.C. Sep. 2, 2026).

26 For purposes of year-over-year analysis in this section, we only considered companies that had filed their Form 10-K for 2026 as of August 31, 2026 (and had also filed Forms 10-K in 2025 and 2024).

27 Companies are counted as disclosing a director with AI industry expertise if they (i) expressly identified a company in the AI industry in the director's employment history, (ii) expressly identified a director as having a degree or certification in AI, or (iii) mentioned AI experience or expertise in the narrative description of the director's qualifications for service on the company's board.

28 *See Transcript of Throughline: Prediction markets are making a 150-year comeback*, NAT'L PUB. RADIO (May 21, 2026 3:05 AM ET), https://www.npr.org/transcripts/nx-s1-5828906 [hereinafter *NPR Throughline Transcript*]; *see also Understanding Prediction Markets and Event Contracts: Timeline of Prediction Markets*, COMMODITY FUTURES TRADING COMM'N, https://www.cftc.gov/LearnandProtect/PredictionMarkets (visited Sep. 9, 2026).

29 *NPR Throughline Transcript*, *supra* note 28.

30 Press Release, Commodity Futures Trading Comm'n, CFTC Enforcement Division Issues Prediction Markets Advisory (Feb. 25, 2026), https://www.cftc.gov/PressRoom/PressReleases/9185-26.

31 Press Release, Commodity Futures Trading Comm'n, CFTC Charges U.S. Service Member with Insider Trading in Nicolás Maduro-Related Event Contracts (Apr. 23, 2026), https://www.cftc.gov/PressRoom/PressReleases/9217-26.

32 Press Release, Commodity Futures Trading Comm'n, CFTC Charges Google Employee with Insider Trading in Search Result-Related Event Contracts (May 27, 2026), https://www.cftc.gov/PressRoom/PressReleases/9237-26.

33 Order Granting Plaintiffs' Motions for Preliminary Injunction, Institutional S'holder Serv. Inc. v. Rokita, No. 1:26-cv-00862 (S.D. Ind. June 26, 2026); Defendants' Notice of Appeal, Institutional S'holder Serv. Inc. v. Rokita, 1:26-cv-00862 (S.D. Ind. July 20, 2026); Memorandum and Order, Institutional S'holder Serv. Inc. v. Kobach, No. 2:26-cv-02254 (D. Kan. June 24, 2026); Institutional S'holder Serv. Inc. v. Paxton, No. 1:25-cv-01153 (W.D. Tex. Aug. 29, 2025) (text-only order).

34 S.B. 1503, 57th Leg., 2nd Reg. Sess. (Ariz. 2026), https://apps.azleg.gov/BillStatus/BillOverview/85102; S.B. 2641, 114th Gen. Assemb. (Tenn. 2026) https://wapp.capitol.tn.gov/apps/BillInfo/Default?BillNumber=SB2641&ga=114.

35 Press Release, U.S. Dept. of Justice, Justice Department Withdraws Business Review Letter Issued to Proxy Advisory Firm (Aug. 5, 2026), https://www.justice.gov/opa/pr/justice-department-withdraws-business-review-letter-issued-proxy-advisory-firm.

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

37 Luke Fountain, *SEC sues ISS as Trump administration ramps up scrutiny of proxy advisers*, CNBC (Sep. 6, 2026 11:35 AM EDT), https://www.cnbc.com/2026/09/06/sec-iss-proxy-adviser-subpoena.html.

38 Tzachi Zach, SEC Semi-Annual Reporting Proposal Tracker (last visited Sep. 10, 2026), https://tzachizach.github.io/sec-semi-annual-proposal-tracker/ (on file with O'Melveny & Myers); *see also* Comments on Proposed Rule on Semiannual Reporting, Sec. & Exch. Comm'n (last visited Sep. 10, 2026), https://www.sec.gov/rules-regulations/public-comments/s7-2026-15.

39 *Id*.

40 Paul S. Atkins, Chair, Sec. & Exch. Comm'n, Keynote Remarks at the 2026 Reagan National Economic Forum (May 9, 2026), https://www.sec.gov/newsroom/speeches-statements/atkins-keynote-remarks-2026-reagan-national-economic-forum.

41 Comment on Registered Offering Reform, SEC. & EXCH. COMM'N: RULES AND REGULATIONS (last visited Sep. 10, 2026), https://www.sec.gov/rules-regulations/public-comments/s7-2026-17 (on file with O'Melveny & Myers). For purposes of this analysis, we have omitted seven comment letters that were posted in the docket but are not relevant to the Proposed Rule on Registered Offering Reform.

42 Comments on Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies, SEC. & EXCH. COMM'N: RULES AND REGULATIONS (last visited Sep. 10, 2026), https://www.sec.gov/rules-regulations/public-comments/s7-2026-18 (on file with O'Melveny & Myers). For purposes of this analysis, we have omitted seven comment letters that were posted in the docket but are not relevant to the Proposed Rule on Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies.

43 Tzachi Zach, SEC Rulemaking Comment Tracker: Filer Status and EGC Accommodations (last visited Sep. 10, 2026), https://tzachizach.github.io/sec-filer-status-tracker/ (on file with O'Melveny & Myers).

44 *Id.*

45 Order, Iowa v. Sec. & Exch. Comm'n, No. 24-1522 (8th Cir. Sep. 12, 2025).

46 Tzachi Zach, SEC Rulemaking Comment Tracker: SEC S7-2026-19 — Rescission of Climate-Related Disclosure Rules (last visited Sep. 10, 2026), https://tzachizach.github.io/sec-climate-rescission-tracker/ (on file with O'Melveny & Myers). *See also* Comments on Rescission of Climate-Related Disclosure Rules, SEC. & EXCH. COMM'N: RULES AND REGULATIONS (last visited Sep. 10, 2026), https://www.sec.gov/rules-regulations/public-comments/s7-2026-19 (on file with O'Melveny & Myers).

47 Electronic Delivery of Information Under the Federal Securities Laws, 91 Fed. Reg. 45884 (July 21, 2026), https://www.govinfo.gov/content/pkg/FR-2026-07-21/pdf/2026-14679.pdf at 45896 ("[T]he proposed rule does not, for example, include as a method of e-delivery an approach where, for a covered recipient who has not provided an electronic address, the covered entity could send a paper postcard with instructions about how to access information electronically (such as by including a QR code or a URL where information is available online).").

48 Electronic Delivery of Information under the Federal Securities Laws, SEC. & EXCH. COMM'N: RULES AND REGULATIONS (last visited Sep. 10, 2026), https://www.sec.gov/rules-regulations/public-comments/s7-2026-25 (on file with O'Melveny & Myers).

49 Paul S. Atkins, Chair, Sec. & Exch. Comm'n, Statement on the 2026 Regulatory Agenda (July 7, 2026), https://www.sec.gov/newsroom/speeches-statements/atkins-statement-2026-regulatory-agenda-070726.

50 *See* Paul S. Atkins, Chair, Sec. & Exch. Comm'n, Keynote Remarks at The Economic Club of Washington (Apr. 21, 2026), https://www.sec.gov/newsroom/speeches-statements/atkins-keynote-remarks-economic-club-washington-042126; Paul S. Atkins, Chair, Sec. & Exch. Comm'n, Remarks at the Texas Stock Exchange Event: Welcome to the Boom Belt: A Return to First Principles in Public Markets (Apr. 7, 2026), https://www.sec.gov/newsroom/speeches-statements/atkins-remarks-boom-belt-040726 [hereinafter *Atkins TXSE Remarks*]; Paul S. Atkins, Chair, Sec. & Exch. Comm'n, Prepared Remarks Before SEC Speaks (Mar. 19, 2026), https://www.sec.gov/newsroom/speeches-statements/atkins-remarks-sec-speaks-031926-prepared-remarks-sec-speaks [hereinafter *Atkins SEC Speaks*]; Paul S. Atkins, Chair, Sec. & Exch. Comm'n, Remarks at the Investor Advisory Committee Meeting (Mar. 12, 2026), https://www.sec.gov/newsroom/speeches-statements/atkins-remarks-iac-031226; 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 [hereinafter *Atkins A&M Remarks*].

51 Paul S. Atkins, Chair, Sec. & Exch. Comm'n, Statement on Reforming Regulation S-K (Jan. 13, 2026), https://www.sec.gov/newsroom/speeches-statements/atkins-statement-reforming-regulation-s-k-011326 [hereinafter *Atkins Statement on Reforming Regulation S-K*].

52 *Atkins TXSE Remarks*, *supra* note 50 ("And in losing sight of our north star of materiality, we have drifted from what a reasonable investor would consider important, to what a regulator might find interesting."); *Atkins SEC Speaks*, *supra* note 50 ("Along the way, we have drifted from the immutable objective standard of materiality, as enunciated by no less than the U.S. Supreme Court—that is, what a reasonable investor would consider important in deciding whether to buy, sell, or hold a security. Unfortunately, this standard seems to have devolved in the past few years into a subjective standard of what any particular investor may be curious to know.").

53 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.

54 *Atkins Statement on Reforming Regulation S-K*, *supra* note 51.

55 *OIRA Dashboard*, *supra* note 1.

56 Paul S. Atkins, Chair, Sec. & Exch. Comm'n, Remarks at the Small Business Capital Formation Advisory Committee Meeting (Feb. 24, 2026), https://www.sec.gov/newsroom/speeches-statements/atkins-sbcfac-022426-remarks-small-business-capital-formation-advisory-committee-meeting.

57 Concept Release on Foreign Private Issuer Eligibility, Securities Act Release No. 11,376, Exchange Act Release No. 103,176, 90 Fed. Reg. 24232 (published June 9, 2025), https://www.sec.gov/files/rules/concept/2025/33-11376.pdf at 23.

58 Paul S. Atkins, Chair, Sec. & Exch. Comm'n, Keynote Address at AFME's Annual Financial Services Policy Dinner (Feb. 4, 2026), https://www.sec.gov/newsroom/speeches-statements/atkins-remarks-afme-020426.

59 Paul S. Atkins, Chair, Sec. & Exch. Comm'n, Remarks at the Executive Compensation Roundtable (June 26, 2025), https://www.sec.gov/newsroom/speeches-statements/remarksatkins-executive-compensation-roundtable-062625.

60 *Atkins A&M Remarks*, *supra* note 50.

61 Hester M. Peirce, Commissioner, Sec. & Exch. Comm'n, Adam's Lib: Remarks at the Meeting of the SEC Investor Advisory Committee (Mar. 12, 2026), https://www.sec.gov/newsroom/speeches-statements/peirce-remarks-iac-031226.

62 *OIRA Dashboard*, supra note 1.

63 Hester M. Peirce, Comm'r, Sec. & Exch. Comm'n, Iceboxes and Soapboxes: Remarks at the Meeting of the SEC Investor Advisory Committee (Dec. 4, 2025), https://www.sec.gov/newsroom/speeches-statements/peirce-remarks-meeting-sec-investor-advisory-committee-120425 ("A well-calibrated ruleset gives shareholders a voice in proportion to their alignment with the corporation. Therefore, I support broad shareholder engagement by enabling all shareholders to enter standing proxy voting instructions."); Mark T. Uyeda, Comm'r, Sec. & Exch. Comm'n, Remarks at the Investor Advisory Committee Meeting (June 4, 2026), https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-iac-060426 (noting that the panelists will discuss "various proposals such as pass-through voting and mirror voting" to address the concentration of voting power in passive index funds).

64 *OIRA Dashboard*, *supra* note 1.

65 Exxon Mobil v. Sanchez, No. 2:25-cv-03104-DJC-JDP (E.D. Cal. Aug. 10, 2026) (Order).

**

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; and Aliza Cohen, an O'Melveny resource attorney 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.