Governance & Securities Alert

Weil

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Looking to the 2026 Proxy Season: Key Corporate Governance, Engagement, Disclosure and Annual Meeting Topics

This Alert outlines key corporate governance, disclosure and shareholder engagement topics for public companies preparing for their 2026 annual meetings. We offer practical guidance on "what to do now" for companies and their boards as they navigate evolving regulatory expectations.

Under new leadership, the Securities and Exchange Commission (SEC) has announced a revised regulatory agenda, including the withdrawal of several rulemaking initiatives from the prior administration focused on environmental, social and governance (ESG) topics—such as proposals on human capital management disclosure, board diversity and conflict minerals reporting—and the introduction of new areas of focus for rulemaking.

As companies enter the annual meeting season, they should remain attentive to shifting SEC priorities and related regulatory developments. For a discussion of disclosure developments for annual reports see our Need to Know for 2026: 10 Tips for the Form 10-K here (the "10-K Alert").

1. HOT TOPICS IN BOARD RISK OVERSIGHT

Companies and their boards of directors face an increasingly complex risk landscape. Although core risks relating to company strategy and business operations continue to be the primary areas of board focus, geopolitical uncertainty, rapid technology developments, and shifting stakeholder expectations demand sustained attention by the board. Regulatory compliance has become more challenging, with companies navigating conflicting requirements across jurisdictions. In the U.S., federal rulemaking has slowed amid a broader move towards regulatory simplification, but enforcement and litigation risk remain, particularly for companies misaligned with the administration's priorities reflected in executive orders on immigration, DEI, trade policy, and artificial intelligence (AI). Companies need to steer the course between the federal regulatory environment and that in applicable states. This landscape creates a precarious legal and regulatory environment, especially in areas such as technological innovation, energy and environmental policy, trade and national security, the administrative state, and certain social initiatives, and reinforces the need for strong board-level risk oversight.

What to Do Now:

- **Focus on Core Risks.** As companies continue to face a complex risk environment, boards must have a strong grasp of the most significant risks to the business. Boards should ensure that processes and policies for identifying, assessing, managing, and disclosing key risks are regularly reviewed and updated. Board and committee minutes should appropriately document discussions and decisions made regarding key risks and the company's enterprise risk management framework.
- **Update Board and Committee Responsibilities.** Regulators are also increasingly focused on how boards oversee key risks and whether oversight sits with the full board or a specific committee. Once responsibilities are allocated, committee charters should clearly reflect those oversight roles, and board and committee agendas should provide sufficient time for meaningful risk oversight.
- **Mind the AI**

  Oversight Framework. AI is now a central topic in boardrooms and public disclosures. Effective oversight requires directors to understand how AI is used across the business, how it affects strategy, and what governance and risk-management structures are needed. Although the recent Executive Order seeks to avoid a patchwork of state-level rules, the absence of a comprehensive regulatory framework in the U.S. continues to create uncertainty for companies trying to anticipate and manage the fast-moving risks associated with AI development and deployment. Companies with international operations should also ensure compliance with applicable laws such as the EU's Artificial Intelligence Act.

  Board Use of AI. Beyond overseeing AI, boards are also beginning to use AI tools in their own work. Common uses include meeting preparation, summarizing materials, and benchmarking. Given the risks associated with AI use in the board context (including the potential for inadvertently inputting confidential and highly sensitive information into an open access AI tool), boards should work with management to establish clear policies governing when and how directors may use these tools.

  Disclosure. Companies are increasingly disclosing how boards oversee AI-related risks and opportunities, including the adoption of responsible AI frameworks, ethical guidelines, and integration of AI into core operations. According to a recent E&Y survey, roughly 40% of Fortune 100 companies have created board-level committees or working groups dedicated to AI governance, while others have assigned AI oversight responsibilities to existing committees. AI disclosure is now also routinely discussed in the Business and Risk Factors sections of the Form 10-K (*See* 10-K Alert). Disclosures also increasingly highlight AI expertise as a desired or actual director qualification, often noting director participation in AI-focused training and certification programs.
- **Review and Update Crisis Plans.** Given the complexity of today's risk environment, boards need a well-defined crisis management plan to ensure an effective response that protects the company's reputation and preserves stakeholder value. Close coordination between management and the board is essential to establish clear escalation and, when necessary, disclosure processes. As part of its oversight role, the board should regularly revisit crisis protocols, conduct tabletop exercises, and integrate periodic reviews of crisis preparedness into the board agenda. These practices help directors clarify roles and responsibilities and anticipate potential reputational, disclosure, and strategic implications. Reputational risk oversight is especially critical in an era where social media can rapidly amplify a crisis. Boards should ensure that management has processes in place (and an advisory team on standby) to identify, assess, and appropriately respond to reputational challenges.
- **Review Sustainability Targets**. As regulatory expectations and stakeholder scrutiny around sustainability and ESG continue to evolve, companies should regularly review their ESG disclosures across all platforms—SEC filings, sustainability reports, corporate websites, packaging, advertising and other public statements—to ensure consistency, accuracy and alignment with current assumptions and methodologies. Board should pressure test management about whether stated goals and targets remain operationally achievable in terms of technological feasibility and dedicated resources, aligned with corporate strategy and risk management, and supported by

credible data and governance processes. Companies that determine that a target continues to be reasonably achievable and aligned with corporate strategy and risk appetite may stay the course or make adjustments to the target and/or related disclosure. Companies may decide to continue with a target but stop making public statements about the target or progress towards achievement (i.e., "greenhushing"). Different considerations may be relevant in different markets and at different times. Companies should be cognizant of the risks involved in continuing with a target as compared to withdrawing it or revising it.

2. FOCUS ON BOARD COMPOSITION

A skilled and adaptable board is essential to effective governance. Board composition and accountability remain under close scrutiny, with investors, customers, regulators, and other stakeholders assessing whether directors have the expertise, structure, and leadership needed to support strategic goals and drive performance. Directors with strong track records (particularly those with CEO experience) are especially valued in periods of uncertainty.

What to Do Now:

- **Evaluate Board and Committee Composition, and Leadership.** Boards should regularly assess their leadership structure, competencies, independence, tenure, and overall effectiveness to ensure that board and committee composition aligns with the company's long-term strategy and emerging risks. Boards that do not evolve may miss emerging trends, hinder innovation, or provide inadequate oversight. As business risks shift—particularly in areas such as technology—companies increasingly seek directors with specialized expertise who can contribute meaningfully at board and committee levels. Board and committee chairs (and lead independent directors) now play a critical role in supporting management, engaging with external stakeholders, and fostering clear, consistent communication between the board, management, and key stakeholders.
- **Consider Board Diversity Disclosures.** The elimination of the Nasdaq board diversity rules and the chilling effect of the new administration's policies and threats of legal action on corporate DEI initiatives led to a significant reduction in board diversity disclosure in 2025. A November 2025 report by The Conference Board found that S&P 500 companies disclosing data on director race and ethnicity dropped from 98% in 2024 to 66% in 2025. While this trend towards less board diversity-related disclosure is expected to continue into 2026, companies should be aware of potential impacts on proxy advisory firm recommendations and key institutional investor votes. *See* our Annex for a "Roundup of U.S. Proxy Voting Policies at Proxy Advisory Firms and "Big Three" Institutional Investors" relating to board diversity.
- **Refresh Board Self-Evaluation Methodology.** Given rising levels of director dissatisfaction, public companies should consider whether it is time to take a hard look at their board assessment processes. According to the PwC 2025 Annual Corporate Directors Survey, few boards conduct individual director evaluations, and even fewer use an external facilitator. Companies may benefit from reviewing their current practices and assessing whether existing processes are achieving their intended purpose. A more holistic review of each director facilitated by a third-party can help identify whether individual skills, performance, and contributions align with the company's evolving needs.
- **Consider Director Commitments.** As external risks and evolving market conditions demand greater diligence from public company directors, companies should remain attentive to the risks of director overcommitment. In response to investor and proxy advisor concerns about overboarding, most S&P 500 boards have adopted limits on the number of public company directorships a director may hold at one time or strengthened their existing policies. Companies should continue to assess their guidelines, while maintaining flexibility to account for individual director performance and company needs.

3. HUMAN CAPITAL AND EXECUTIVE AND DIRECTOR COMPENSATION

Over the past year, issues such as talent development, company culture, DEI initiatives, pay equity, and workforce management have receded from public focus as companies continue to prioritize and rebrand "inclusivity" while navigating evolving federal and state enforcement risks and related private litigation. At the same time, companies are anticipating potentially significant changes in the executive compensation disclosure landscape. In June 2025, the SEC convened a roundtable to consider a series of updates to executive compensation disclosure rules. These discussions, combined with the administration's efforts to scale back DEI programs and scrutinize the influence of proxy advisors (and shifts in proxy advisory firm policies), signal possible shifts in how executive pay, as well as key employment terms, are structured, disclosed, and monitored.

What to Do Now:

- **Review DEI Disclosure and Inclusion Efforts.** Many companies have significantly scaled back disclosure of workforce diversity and equity efforts in light of the administration's flurry of anti-DEI executive orders and guidance from federal agencies including the Department of Justice and the Equal Employment Opportunity Commission. Companies have embraced "inclusion" to rebrand and focus their human capital programs on ensuring everyone feels welcome and included. Companies should ensure that disclosures are consistent across various sources, including SEC filings, sustainability reports and the corporate website.
- **Review Key Institutional Investor and Proxy Advisory Firm Policies.** Companies should review their pay practices and related disclosures through the lens of proxy voting policies of their top institutional investors and the proxy advisory firms. Companies should also be prepared to engage with key investors and proxy advisory firms around issues that could potentially result in negative votes or recommendations against say-on-pay, compensation plans and/or director elections. For example, among the most common factors cited by investors when voting against say-on-pay proposals in 2025 from Semler Brossy's 2025 Say on Pay and Proxy Vote Results were the grant of special and/or mega incentive awards, inadequate shareholder outreach and disclosure, nonperformance-based equity, problematic pay practices, the relationship between pay and performance and the rigor of performance awards.
- **Responsiveness to Low Say-on-Pay Support.** In light of recent SEC guidance on Schedules 13G and 13D, ISS updated its framework for evaluating company responsiveness to a low say-on-pay vote (i.e., less than 70% of the votes cast). ISS will not penalize companies for the absence of specific shareholder feedback if they disclose meaningful efforts to solicit input and outline actions taken in response to the low support. ISS will also take into account significant corporate events—such as mergers or proxy contests—recognizing that such circumstances can sometimes contribute to reduced shareholder support.
- **Consider Non-Employee Director Pay.** ISS has expanded its policy on high non-employee director (NED) pay to permit adverse recommendations against committee members responsible for approving or setting NED compensation in the first year of occurrence for director pay issues that ISS considers "egregious." In addition, adverse recommendations may be issued where a pattern of excessive or problematic pay appears across two or more consecutive or even nonconsecutive years (*i.e.*, in year 1 and year 3, but not in year 2). Examples of egregious NED practices may include performance-based awards, retirement benefits or problematic perquisites.
- **Understand Changes to Glass Lewis Policies.** As previewed earlier in 2025, starting for 2026, Glass Lewis adopted a new pay-for-performance assessment scorecard to replace its "A" through "F" grading system. The assessment scores executive compensation on a scale of 0 to 100 by rating a company's executive compensation program against six tests comparing various CEO and NEO payouts to total shareholder return and financial performance, as well as qualitative factors: (i) granted CEO pay vs. TSR; (ii) granted CEO pay vs. financial performance; (iii) CEO STI payouts vs. TSR; (iv) total granted NEO pay vs. financial performance; (v) CEO compensation-actually-paid (CAP) vs. TSR; and (vi) qualitative factors as a downward modifier. Generally, companies with a weaker pay for performance alignment based on their score at a "Severe Concern" (0 to 20

points) or "High Concern" (20 to 40 points) level will receive a negative say-on-pay recommendation from Glass Lewis.

- **Anticipate SEC Compensation Disclosure Rationalization.** The SEC Staff is currently examining whether its executive compensation disclosure regime still meets the goal of "clear, concise and understandable" information that is material to investors and what changes should be made to the disclosure rules. While proposed rulemaking is expected as part of the "rationalization of disclosure practices" on the SEC's regulatory agenda for April 2026, any formal adoption of new or revised rules likely will not be implemented until well after the 2026 proxy season. Until then, companies can evaluate how they approach disclosures in areas of focus for the SEC (such as those addressed during the June 2025 roundtable discussed here) and remain vigilant about reviewing interpretations and other guidance from the SEC Staff.
- **Review Perquisites.** Perquisites continue to be a complex area of disclosure. Although personal use of a corporate aircraft is generally the most scrutinized CEO perquisite, security services, including personal, residential, and cyber-related security services have received attention, particularly following the tragic December 2024 fatal shooting of the UnitedHealth Group CEO and other instances of workplace violence. A majority of S&P 100 companies require their CEO to fly private as part of the company's broader security policy (*See* FW Cook's 2025 Executive Perquisites Report). Amid growing pressure including at the SEC Roundtable on Executive Compensation Disclosure (discussed here), the SEC Staff appears to be reconsidering its prior guidance that costs relating to executive security, including use of private aircraft, are not "directly and integrally related to the executive's duties" (and therefore perquisites). BlackRock's voting guidelines now explicitly reference executive perquisites, noting that it seeks to understand the rationale for certain benefits, such as security, and whether the compensation committee regularly evaluates their appropriateness.
- **Plan for CEO Succession.** With CEO turnover reaching record levels, boards face heightened pressure to reinforce succession planning processes and build deeper leadership pipelines. A November 2025 report by The Conference Board, Egon Zehnder, ESGAUGE and Semler Brossy notes that CEO succession announcements by S&P 500 companies over the last year increased to 13% as of October 2025 (up from 10% in 2024). This trend reflects broader market volatility, activist pressure, and shifting investor expectations around leadership stability. In this environment, effective succession planning requires boards to evaluate a wider slate of candidates, prepare for both long-term and emergency transitions, and identify the mix of skills and strategic priorities that will reassure investors that strong leadership is both in place and actively being developed. Robust planning not only supports continuity but also mitigates the risk of disruption to strategy, operations, and overall performance.
- **Consider Equity Grant Policy Disclosure.** 2026 marks the second year in which companies must comply with Item 402(x), which requires companies to disclose policies and practices relating to stock option and stock appreciation right (SAR) awards granted in relation to the disclosure of material non-public information (MNPI). Companies that grant options, SARs, or similar awards should closely coordinate board and compensation committee calendars to avoid scheduling grant dates near expected MNPI releases—such as earnings announcements or periodic report filings. Companies may also wish to adopt policies that prohibit equity award grants during the window starting four business days before the disclosure of MNPI and one business day after such disclosure consistent with Item 402(x) and align disclosure accordingly.
- **Clawback Reminder.** For companies that had restatements in the last year, be mindful of required clawback obligations and disclosure. As discussed in the 10-K Alert, disclosure is required in the annual meeting proxy statement and Form 10-K (which may be incorporated by reference from the proxy statement) of actions to recover erroneously awarded compensation. Where the issuer was required to prepare an accounting restatement during or after the last completed fiscal year, Item 402(w) of Regulation S-K requires disclosure where (i) the issuer was required to recover erroneously awarded compensation pursuant to the issuer's NYSE/Nasdaq mandated clawback policy, or (ii) the issuer has concluded that such recovery was not required.

4. SHIFT IN SHAREHOLDER ENGAGEMENT LANDSCAPE FOR 2026

Shareholder engagement has long been the cornerstone of a public company's annual meeting calendar. More recently, the SEC's February 2025 guidance regarding circumstances where shareholders may be deemed to be "influencing" control of the company – thereby requiring a more burdensome Schedule 13D filing rather than a 13G – prompted many institutional investors to reassess and, in some cases, pause or narrow the scope of their engagement. As a result, issuers have reported more cautious and issuer-driven engagement dynamics throughout the 2025 proxy season, with some investors withholding feedback on voting items that companies had traditionally relied upon. At the same time, investor focus has shifted away from ESG and DEI issues, which dominated recent years, and toward traditional governance fundamentals such as board quality, strategic oversight, and capital allocation. Together, these regulatory, political, and market-driven shifts signify a meaningful recalibration of the shareholder-engagement environment.

What to Do Now

- **Revisit Engagement Playbook**. Companies should continue engaging proactively with investors but recalibrate expectations, recognizing that some investors may now be less willing to discuss specific voting positions or governance commitments. Companies should start their engagement efforts earlier in the year to maximize the likelihood of meaningful dialogue and ensure they are prepared to address investor concerns within the boundaries of permissible discussion. Because some investors may be less likely to initiate engagement, companies may need to take the lead in inviting dialogue, creating discussion agendas, and remaining mindful of Regulation FD and the limits on sharing material non-public information.
- **Decreased Influence of Proxy Advisory Firms.** The regulatory shifts in shareholder engagement coincide with broader political scrutiny of proxy advisory firms. A December 11, 2025 executive order and state-level efforts targeting the influence, ownership structures, and ESG-related methodologies of ISS and Glass Lewis raised new questions about the relevance and authority of these firms—whose policies historically shaped governance practices and public-company proxy strategies. Market uncertainty about the future of the proxy advisory framework has been compounded by evolving investor behavior. In January 2026, JPMorgan announced that it would no longer rely on ISS or Glass Lewis for U.S. proxy voting advice. Instead, its asset-management arm will use "Proxy IQ," an AI-driven internal decision system that fully replaces external proxy-advisor input. This shift marks the first time a major investment firm has completely eliminated reliance on external proxy-advisory services—a development that may reshape expectations for investor-company engagement going forward. Subsequently, Wells Fargo's wealth and investment management division also stated that it severed ties with ISS and that it will now make voting decisions using its internal system.
- **Use Proxy Statement as Engagement Tool.** In the current engagement environment, companies should reinforce their outreach efforts through a clear, well-crafted proxy statement and by integrating investor feedback into ongoing governance practices. The proxy statement remains a critical communication tool—one that allows companies to highlight strategic governance initiatives, emphasize priority topics, and demonstrate responsiveness to shareholder interests. To maximize usability, companies should ensure that the document is easy to navigate by incorporating concise summaries, charts, and intuitive headings, recognizing that many investors now review only targeted sections of the filing (perhaps assisted by AI tools).
- **Understand the Shift in Investor Priorities: Emphasis on "Financial" Value Creation.** In its 2026 proxy voting guidelines, BlackRock Investment Stewardship builds on last year's movement toward a more materiality-driven framework, focusing on long-term financial performance. Similarly, Vanguard's 2026 proxy voting guidelines emphasize financial materiality in the context of whether to support environmental and social shareholder proposals. Updates to voting policies from both BlackRock and Vanguard appear to focus on financial materiality and deemphasize personal-characteristics and diversity-based considerations when assessing board composition. Further, BIS replaced "vote against" with "not support" when describing potential voting actions.

- **Evaluate Retail Voting Programs.** Following the SEC Staff's September 15, 2025 no-action letter endorsing ExxonMobil's proposed retail voting program, many companies began to explore the feasibility of adopting a similar program. The program allows shareholders to opt-in to provide standing instructions directing the company to vote their shares in accordance with the board's recommendations at all future shareholder meetings. With nearly 40% of ExxonMobil's shares held by retail investors but historically low retail voting participation, the program was stated to be designed to convert a largely passive shareholder segment into a more predictable voting bloc aligned with management. Most companies are adopting a wait-and-see approach—monitoring litigation, the SEC's posture, and investor reaction before considering implementation of a similar program. For companies with a significant retail shareholder base, it remains prudent to keep this development on the agenda for consideration, and to assess feasibility, operational considerations, and potential legal risks. In any event, companies may wish to review communication strategies designed to target and influence voters and investors, particularly with more retail shareholders having access to pass-through voting.

New Shareholder Proposal Landscape

Companies evaluating whether to include a shareholder proposal in their annual proxy statement will need to navigate uncharted territory this proxy season. As we previously discussed here, the Staff of the SEC's Division of Corporation Finance (Division) announced in a Statement on November 17, 2025 that they would not respond to no-action requests for, nor express substantive views on, companies' intent to exclude shareholder proposals under Rule 14a-8 from their proxy materials, other than no-action requests to exclude a proposal under Rule 14a-8(i)(1)(proposals that are not a proper subject for action by shareholders under state law). To date, no letter has been submitted under Rule 14a-8(i)(1), although SEC Chair Paul Atkins indicated in an October 2025 speech that arguments could be made that precatory shareholder proposals are not a proper subject for actions by shareholders under Delaware law.

Companies must still notify both the SEC and the proponent of their intent to exclude proposals from their proxy materials at least 80 calendar days before filing a definitive proxy statement. Further, companies may request an acknowledgement from the Staff of their intent to exclude a proposal by providing an "unqualified representation" that the company as a reasonable basis to exclude the proposal, based on Rule 14a-8, prior published guidance, and/or judicial decisions (with prior Staff responses to no-action requests not a barrier to a company forming a reasonable basis to exclude the proposal because they are non-binding and "reflect only informal staff views").

This policy shift places greater responsibility on companies to make their own exclusion determinations, potentially increasing litigation risk and negative shareholder reactions (and proxy advisory firm recommendations) for excluding shareholder proposals without the Staff's input. The Staff's limited involvement in the Rule 14a-8 process also means that companies may want to consider a broader audience beyond the Staff for any notification provided to the Staff and the proponent for excluding the proposal.

Notably, Chair Atkins has signaled further changes to Rule 14a-8 asking 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." As we discussed in our prior Alert, the SEC's 2026 rulemaking agenda indicates expected rulemaking aimed at modernizing Rule 14a-8 in April 2026.

- **Be Prepared for "Vote No" Campaign.** The 2025 proxy season saw a notable increase rise in "vote-no" campaigns, in which shareholders withhold support for incumbent directors to register dissatisfaction without proposing an alternative slate. These efforts aim primarily to trigger director resignations for failing to achieve a majority of the votes cast, while also signaling broader concerns about company performance. Recent campaigns show that even unsuccessful efforts can result in meaningful governance changes and help avert a full proxy contest the following year. Boards that identify and address underlying concerns early through transparent communication and responsive governance practices will be better positioned to maintain investor confidence. With companies increasingly excluding shareholder proposals in light of the SEC's Rule 14a-8 guidance, the

frequency of vote-no campaigns is likely to grow in the coming proxy season but these may take different forms given new limitations on the ability to use exempt solicitations as a tool for "vote no" campaigns (discussed below).

- **Regularly Consider Shareholder Base.** With the emergence of new activist investors seeking to influence corporate strategy and governance, companies should regularly review their shareholder base in coordination with their proxy solicitor or other market-intelligence providers. Ongoing, detailed monitoring helps ensure there are no surprises and enables companies to better gauge investor sentiment, anticipate voting patterns, and prepare for potential activist activity.
- **Review Advance Notice Bylaws on a "Clear Day."** Given heightened levels of shareholder activism coming into the fourth year of universal proxy, and the related increased scrutiny of advance notice bylaws by courts, companies should periodically review their advance notice bylaws to ensure that the terms are reasonable, unambiguous and narrowly tailored. Ideally, revisions should be adopted on a "clear day" in the absence of activist approach to reduce the risk of a court applying an "enhanced scrutiny" standard of review.

5. PROXY SEASON NUTS & BOLTS AND REMINDERS

Below is a potpourri of housekeeping considerations and other reminders for upcoming 2026 annual meetings.

- **Update D&O Questionnaires.** Consider updates to address skills and experience particularly as it relates to hot-button topics such as AI. Further, companies should provide clear guidance to directors and executives emphasizing how social interactions and personal relationships could impair director independence or objectivity. Consider whether current D&O questionnaires adequately capture relevant information pertaining to related person transactions, controlling shareholder relationships, conflicts, perquisites, and the adoption, modifications or termination of Rule 10b5-1 plans (and non-Rule 10b5-1 arrangements). Companies should also be vigilant about avoiding interlocks in violation of antitrust laws resulting from simultaneous service as an officer or director at competing companies based on specific competitive thresholds set by the Federal Trade Commission annually (*See* latest guidance here).
- ***EDGAR NEXT.*** Companies may want to include questions in the D&O Questionnaire (at least for new officers and directors that will become EDGAR filers) related to the new EDGAR Next requirements to disclose whether an applicant has been convicted of or civilly or administratively enjoined, barred, suspended, or banned as a result of a federal or state securities violation.
- **SEC Now Objects to Voluntary Exempt Solicitations by Shareholders.** Notices of Exempt Solicitations must be filed on EDGAR when a person engaging in an exempt solicitation owns more than $5 million of the relevant class of securities. Historically, the SEC did not object to voluntary filings by persons below that threshold. In recent years, however, repeat shareholder proponents have increasingly used voluntary filings to draw attention to their proposals. The SEC has now reversed its position and will object to voluntary submissions that appear to be intended primarily to generate publicity, requiring proponents to rely on other, potentially more costly, means to publicize their voting positions. *See* SEC Compliance and Disclosure Interpretations, Proxy Rules and Schedules 14A/14C, Question 126.06.
- **New Broker Search Timing Flexibility.** Companies are required by SEC Rule 14a-13(a) to conduct a "broker search" at least 20 business days prior to the record date for the applicable stockholder meeting or action. Given the advances in technology since the rule's adoption nearly 40 years ago, the SEC Staff has expressed that the process can be completed in a shorter period of time and will not object if the broker search is completed less than 20 business days before the record date, provided that the company reasonably believes that its proxy materials will be able to be distributed to beneficial owners and comply with rules regarding communications with beneficial owners (i.e., Rule 14a-13). *See* SEC Compliance and Disclosure Interpretations, Proxy Rules and Schedules 14A/14C No. 133.02.

- **Considerations for Advance Recording of Annual Meetings.** Companies conducting virtual-only or hybrid annual meetings should carefully assess what information is appropriate to pre-record, balancing legal considerations with the need to preserve meaningful shareholder participation. Pre-recorded content can create complications if circumstances change after recording, and scripts should be drafted with the possibility of last-minute updates that could render recorded segments inaccurate or unusable. If the meeting recording is posted on the company's website or shared on social media, companies must ensure that the content complies with Regulation FD and all other applicable securities laws.
- **Evaluate Impact of Changes to Filer Status.** Review and assess whether you continue to qualify as an emerging growth company or smaller reporting company, as a change in status may require the company to provide additional compensation disclosures, among other items. *See* the Form 10-K Alert discussion on filer status and the SEC's recent guidance here.
- **Review Latest Information for Beneficial Ownership Table**. Because passive investors filing on Schedule 13G are now required to amend their filings only upon a material change—rather than annually—updates to a passive investor's ownership may not be available for years. Instruction 3 to Item 403 of Regulation S-K confirms that an issuer may rely on, and accept as accurate, the information reported in an investor's Schedule 13G unless the issuer knows or has reason to know that the filing should have been amended due to a material change.
- **Bundled Proposals.** Glass Lewis will now evaluate proposed amendments to the certificate of incorporation and bylaws on a case-by-case basis, with strong opposition to "bundled" proposals (*i.e.*, multiple amendments under one vote). In general, Glass Lewis will recommend voting "for" amendments that do not materially harm shareholder interests. As a reminder, generally, the SEC does not object to the bundling of immaterial matters that do not affect shareholder rights with a single material matter.
- **Review Shareholder Voting Standards.** Review and confirm the accuracy of voting standards included in company proxy materials to ensure alignment with organizational documents and applicable state/country law and stock exchange requirements. A close review could avoid disclosure claims from shareholder plaintiffs, SEC comments or potential SEC enforcement. Pay especially close attention to the treatment of abstentions and broker non-votes, and situations where default standards under state law apply where the charter and/or bylaws are silent. Similarly, be mindful of compliance with applicable NYSE and Nasdaq shareholder approval rules to ensure that shareholders appropriately approve company actions.

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Annex

Board Diversity: Roundup of U.S. Proxy Voting Policies at Proxy Advisory Firms and "Big Three" Institutional Investors

- **ISS.** Beginning in February 2025, ISS "indefinitely" halted consideration of diversity factors when making voting recommendations for directors (here). ISS shareholder meeting reports no longer consider gender, racial, or ethnic diversity on a company's board. For a summary of the various ISS policies affecting director elections, see our chart (here).
- **Glass Lewis.** Beginning in March 2025, Glass Lewis marks directors of U.S. companies that receive "against" or "withhold" recommendations for board diversity-related reasons with a "For Your Attention" flag that points to a supporting rationale investors can consider if they prefer to vote differently from the recommendation (here and here). In its voting reports, Glass Lewis generally will indicate to investors that if they do not wish to vote based on diversity-related considerations, they should vote "for" directors, absent any other concern. Glass Lewis' expectations for board diversity differ depending on company size; with some exceptions, it expects Russell 1000 companies to have at least one director from an underrepresented community, Russell 3000 companies to have at least 30% gender diverse directors, and companies outside the Russell 3000 to have at least one gender diverse director. Glass Lewis also expects board diversity-related disclosure, with the level of detail dependent on company size. For a summary of the various Glass Lewis policies affecting director elections, including the latest diversity policy, see our chart (here).
- **BlackRock.** BlackRock's updated proxy voting guidelines for 2026 (here) no longer refer to board diversity or "personal characteristics" of directors. BlackRock may not support the election of members of the nominating and governance committee of an S&P 500 company if the company is a "sustained outlier compared to market practice in terms of its variety of experiences, perspectives and skillsets;" the 2026 policy deletes the 2025 policy footnote that referred to 98% of S&P 500 companies having at least 30% diversity.
- **Vanguard.** Vanguard's 2026 proxy voting guidelines (here) no longer refer to the gender, racial/ethnic diversity or other "personal characteristics" of directors. Vanguard reviews if the board has an appropriate mix of skills, experiences and perspectives to reflect expertise related to the company's strategy and risks. As in 2025, Vanguard may recommend votes against nominating and governance committee chairs if board composition or related disclosures are inconsistent with market norms.
- **State Street.** In 2025, State Street updated its proxy voting guidelines (here) to remove its quantitative board diversity voting guideline as a reason for voting against directors. State Street believes that "effective board oversight of a company's long-term business strategy necessitates a diversity of backgrounds, experiences, and perspectives, which may include a range of characteristics such as skills, gender, race, ethnicity, and age" and that "nominating committees are best placed to determine the most effective board composition and degree of diverse experiences and perspectives represented in the boardroom." State Street typically releases updated proxy voting policies in March each year; its policy for 2026 is not available at the time of writing.

If you have questions concerning the contents of this Alert, or would like more information, please speak to your regular contact at Weil or to any of the following authors:

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