

PREPARING FOR YOUR 2025 FORM 10-K AND 2026 PROXY SEASON

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US Corporate Alert

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While the pace of amendments and rule changes from the US Securities and Exchange Commission (SEC) slowed in 2025 with the change in presidential administration and the appointment of new SEC Chair Paul S. Atkins, we have seen fundamental changes in policy and other developments that public companies will need to understand as they prepare for their 2025 Form 10-K and 2026 proxy season. This alert describes these developments and other considerations that may be relevant to shareholder proposals for your 2026 annual meeting of shareholders, shareholder engagement for your 2026 proxy season, and disclosures for your 2025 Form 10-K and 2026 proxy statement.

SHAREHOLDER PROPOSALS FOR 2026 PROXY STATEMENT

No-Action Letter Process for Exclusion of Shareholder Proposals

One of the most significant developments for the 2026 proxy season has been the pause in the no-action letter process for companies seeking to exclude shareholder proposals from their proxy materials. On 17 November 2025, the SEC's Division of Corporation Finance (Division) announced that it will generally not respond to or express views on no-action requests to exclude shareholder proposals under Rule 14a-8 under the Securities Exchange Act of 1934, as amended (Exchange Act), except for those based on Rule 14a-8(i)(1) (that a proposal is improper under state law). Nevertheless, companies must still provide an "informational only" notice of exclusion to the shareholder proponent and the SEC no later than 80 calendar days before filing their proxy materials. Any company wishing to receive a response from the Division must include in its notice an unqualified representation that it has a reasonable basis for exclusion, but the Division's nonobjection response will be based solely on the company's representations. As an exception, the Division will continue to express its views on requests to exclude shareholder proposals under Rule 14a-8(i)(1), which concerns proposals that are improper subjects for shareholder action under state law.

For the upcoming proxy season, this procedural shift increases flexibility and lowers the burden for companies seeking to exclude shareholder proposals. However, it may also increase uncertainty, as companies must now rely on their own assessments, prior Division guidance, and judicial decisions when determining whether to exclude shareholder proposals.

Rule 14a-8 Exclusions for Shareholder Proposals

On 12 February 2025, the Division issued guidance under Staff Legal Bulletin No. 14M (SLB 14M) that increases flexibility for companies seeking to exclude shareholder proposals under the economic relevance exclusion under Exchange Act Rule 14a-8(i)(5) and the ordinary business exclusion under Exchange Act Rule 14a-8(i)(7) by tying

these exclusions more directly to the relevant company's business. SLB 14M rescinds prior Division guidance in Staff Legal Bulletin No. 14L of 3 November 2021 and outlines a new framework for the Division's assessment of these exclusions, as follows:

Economic Relevance Exclusion

This exclusion permits a company to exclude a proposal that “relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business.” In SLB 14M, the Division states that, if the proposal relates to less than 5% of a company's total assets, net earnings, and gross sales, the Division will now focus on the proposal's significance to the company's business depending on the company's particular circumstances. Therefore, proposals that raise issues of social or ethical significance “in the abstract” but that are not significantly related to the company's business may be excluded.

Ordinary Business Exclusion

This exclusion permits a company to exclude a proposal that “deals with a matter relating to the company's ordinary business operations.” The Division, however, had historically found that proposals concerning day-to-day matters were not excludable if they “raise[d] policy issues so significant that it would be appropriate for a shareholder vote.” The Division will now take a company-specific approach when evaluating significance rather than looking to “broad societal impact” or universal significance.

Board Analysis

The Division will not expect a company's no-action request under the economic relevance exclusion or the ordinary business exclusion to address its board's analysis of the policy issue raised and its significance to the company. Instead, a company may decide whether or not the board's analysis would be helpful in assessing its request.

SLB 14M also provides guidance related to the use of images in shareholder proposals, proof of ownership letters, and use of email for correspondence with shareholder proponents that will be relevant for the upcoming proxy season.

SHAREHOLDER ENGAGEMENT

Introduction of Retail Voting Program

On 15 September 2025, Exxon Mobil Corporation (Exxon) received concurrence from the Division that it would not recommend enforcement action under the Exchange Act if Exxon implements its proposed “Retail Voting Program.” Designed to address historically low retail shareholder participation, this program facilitates standing instructions from Exxon's retail investors to vote in accordance with the Exxon board's recommendations. The Division identified several features of the program in support of its position, including the availability at no cost to all retail investors, investors' ability to opt in and out of the program, the annual reminder to investors about their opt-in status, the continued distribution of proxy materials, the ability of investors to override standing instructions on voting, and Exxon's full disclosure of the program on its website and in its proxy materials.

Exxon's program and the Division's concurrence provide a potential avenue for companies seeking to rejuvenate support from their retail investors, particularly in the face of contentious institutional or active investors.

Beneficial Ownership Reporting

Recent clarification from the SEC regarding eligibility for Schedule 13G reporting (as opposed to the more detailed Schedule 13D reporting) has impacted, and may continue to impact, how shareholders are willing to engage with companies. In February 2025, the SEC staff published updated and new Compliance and Disclosure Interpretations (each, a C&DI) under Regulation 13D-G, Question 103.11 and Question 103.12, respectively, expanding the circumstances under which a shareholder's engagement with management would cause its securities to be held with the "purpose or effect of changing or influencing control of the issuer" and thereby prevent the shareholder from reporting on Schedule 13G.

New C&DI 103.12 includes the SEC's prior guidance that engagement with a company on a particular topic (e.g., sale of the company or its assets, restructuring of the company, or a contested election of directors) may be dispositive in determining whether the engagement has the purpose or effect of changing or influencing control of the company but that the context of such engagement is also highly relevant. New C&DI 103.12 then builds upon this prior guidance by providing specific examples of where a shareholder may be considered to move beyond a "passive investor" in its engagement. These examples include where a shareholder:

- Explicitly or implicitly conditions its support of one or more of the company's director nominees on adoption of the shareholder's recommendation for the company to "remove its staggered board, switch to a majority voting standard in uncontested director elections, eliminate its poison pill plan, change its executive compensation practices, or undertake specific actions on a social, environmental, or political policy."
- States or implies that the shareholder will not support one or more of the company's director nominees if the company does not make changes to align with the shareholder's voting policy on a particular topic.

Several institutional investors reduced their engagement with public companies in light of this guidance during the 2025 proxy season, with some investors canceling engagement meetings. We expect this hesitancy to continue in the 2026 proxy season, which may make shareholder engagement efforts more difficult to navigate.

CONSIDERATIONS FOR DISCLOSURES IN YOUR FORM 10-K AND PROXY STATEMENT

DEI and Board Diversity Disclosures

On 11 December 2024, the US Court of Appeals for the Fifth Circuit struck down the requirement that companies listed on The Nasdaq Stock Market LLC disclose director diversity characteristics and identify at least one female director and at least one director who self-identifies as an underrepresented minority or LGBTQ+ person (or explain why there are none).

Institutional Shareholder Services then announced that, beginning on 25 February 2025, it will no longer consider board gender or racial/ethnic diversity when making director-election recommendations. Glass, Lewis & Co. notified clients that it would continue to apply its existing diversity-related voting policy for the 2025 proxy season.

but would also provide alternative recommendation options on diversity-related matters—offering clients both a recommendation that considers diversity factors and a recommendation that does not incorporate those considerations—in order to accommodate differing client preferences.

Many companies also proceeded to scale back their diversity, equity, and inclusion (DEI)-related disclosures in 2025. As observed by DragonGC's report “Navigating DEI Disclosure Amid Regulatory Shifts: Insights from Select S&P 100 Companies' 10-Ks and Proxy Statements” of 13 March 2025, among a sample of large US public companies, the prevalence, length, and specificity of DEI statements in Form 10-K and proxy statement filings declined sharply in 2025 compared to prior years.¹ This trend reflects sensitivity to heightened risks related to litigation, regulatory developments, and investor expectations, as well as a reframing of DEI-related disclosures to reflect companies' shifting human-capital priorities. Companies should ensure that any changes to DEI or diversity-related disclosures throughout 2025 are carried into 2026, as appropriate, and consider more broadly how these developments around DEI topics should be reflected in their broader governance, risk, and human-capital disclosure frameworks.

Artificial Intelligence

As companies increasingly focus on leveraging artificial intelligence (AI)—in particular, generative AI—into their operations, strategy, and product development, the potential impact of AI and the related legal, ethical, and operational risks must be carefully considered in preparing disclosures for their Form 10-Ks and proxy statements. Potentially relevant disclosures include, among others:

- Descriptions of AI-driven products or services and how AI supports or enhances core product or service lines in the business discussion under Item 101 of Regulation S-K.
- Discussions of skills, training, headcount changes, or re-skilling initiatives and how AI adoption impacts talent strategy and workforce planning under Item 101 of Regulation S-K.
- AI-related risk factors under Item 105 of Regulation S-K (e.g., data privacy, AI governance, AI model risk, regulatory uncertainty, reputational risk) with greater specificity where AI is integral to key business functions or customer offerings.
- Quantitative and qualitative disclosures regarding AI investments, costs, or disruptions, including the potential impact of capital expenditures for AI infrastructure and efficiencies generated by automation, in the Management's Discussion and Analysis under Item 303 of Regulation S-K.
- Disclosures addressing board and committee responsibility for AI-related risk and strategy and how management reports on AI initiatives or emerging regulatory developments under Item 407 of Regulation S-K.

Global Trade and Geopolitical Conflicts

Global tariff volatility, shifting trade dynamics, and geopolitical conflict in 2025 have contributed to significant economic uncertainty, and their impacts and related risks should be considered when updating disclosures for upcoming Form 10-Ks. In particular, the following developments in 2025 may be relevant:

- The arrest of Nicolás Maduro and United States involvement in Venezuela.

- The tentative ceasefire and ongoing instability in the Israel-Hamas conflict.
- Continued escalation and recalibration of US-China trade measures, including expanded tariffs, export controls, and investment restrictions.
- The imposition of additional tariffs and trade remedies by the presidential administration targeting select imports and industries.

Companies with international supply chains, substantial import or export exposure, or global sourcing in particular should consider whether tariffs, trade restrictions, or trade policy changes could meaningfully affect their business or results of operations. This evaluation may be especially important for companies that depend on concentrated supplier networks or that operate in jurisdictions impacted by geopolitical tension. Even where the impacts of tariffs are not currently material, companies should monitor and disclose the risk of future tariff-driven volatility and should assess whether existing disclosures appropriately capture exposure to evolving political, economic, or regulatory developments in key markets.

FILER STATUS—SPECIAL NOTE FOR SMALLER REPORTING COMPANIES

On 27 August 2025, the SEC published a new C&DI 130.05 clarifying the timeline of filer status transition for a company determining that it no longer qualifies as a “smaller reporting company” (SRC) under the “revenue test” of Exchange Act Rule 12b-2. This guidance provides that, once a company no longer qualifies as an SRC under the revenue test at the end of its second fiscal quarter, it will first transition to (or continue to be) a “non-accelerated filer” only for the following fiscal year. The SEC reasons that the definitions of “accelerated filer” and “large accelerated filer” specifically exclude those companies qualifying as SRCs at the end of the fiscal year and that companies transitioning out of SRC status are still entitled to report as SRCs for their Form 10-Ks in the fiscal year in which this transition occurs. Accordingly, a company still reporting as an SRC for its Form 10-K is explicitly excluded from qualifying as an “accelerated filer” or “large accelerated filer.” This guidance will lessen the compliance burdens for former SRCs under the revenue test in their first fiscal year following transition out of SRC status.

PENDING AND ANTICIPATED SEC RULEMAKING

Climate-Related Disclosure

In March 2025, the SEC announced that it would end its defense of its March 2024 climate-related disclosure rules being challenged before the US Court of Appeals for the Eighth Circuit. The rules would have required many companies to include significantly expanded disclosures about emissions and climate-related risks in their SEC filings. The court has since ordered the litigation to be effectively suspended until the SEC decides whether to reconsider the rules through a notice-and-comment rulemaking process or renew its defense of the rules in court. While the future of these proposed rules remains unclear, it is important for companies to continue following guidance under the SEC's Interpretive Release, “Commission Guidance Regarding Disclosure related to Climate Change” of 8 February 2010.

In addition, New York,² New Jersey,³ and Illinois⁴ have proposed similar legislation to California's Climate Corporate Data Accountability Act (California Senate Bill 253 (SB 253)) and the Climate-Related Financial Risk

Act (California Senate Bill 261 (SB 261)),⁵ requiring disclosures related to greenhouse gas emissions and related risks. Considering the increasing pressure for such disclosures outside of federally mandated disclosures, companies would be prudent to prepare for future disclosures of emissions and climate-related risks before formal rules, even if on a more limited scale, are implemented.

Spring 2025 Regulatory Agenda

In September 2025, the SEC released its Spring 2025 Regulatory Flex Agenda, reflecting a focus on deregulation and streamlining disclosure. Most notably, the agenda introduced the following topics at the “proposed rule stage”:

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

The Division is considering amendments to expand accommodations for emerging growth companies and “to rationalize filer statuses to simplify the categorization of registrants and reduce their compliance burdens.”

Rationalization of Disclosure Practices

The Division is considering amendments to “rationalize disclosure practices to facilitate material disclosure by companies and shareholders' access to that information.” This topic may relate to the SEC chair's goal of deregulation, particularly with respect to executive compensation disclosure requirements. It is expected that, as with the modernization and simplification amendments adopted by the SEC during President Donald Trump's first term, these proposed rules may encompass more than just executive compensation disclosure rules.

Shareholder Proposal Modernization

The Division is considering amendments to modernize Exchange Act Rule 14a-8 to reduce compliance burdens on companies and introduce rule updates since its last amendments. These proposed amendments, together with the pause in the Rule 14a-8 no-action letter process in the 2026 proxy season and SLB 14M, as discussed above, may signal a fundamental shift in the process for excluding shareholder proposals as well as the permissible content of such shareholder proposals.

The agenda identified the expected timeline for these proposed rules as April 2026, but this timeline does not guarantee when the SEC will act on these matters, if at all. However, even if the SEC acts on these proposals in April 2026, any proposed rules would not likely become final until late 2026 or 2027. Companies should continue to monitor developments in the SEC's rulemaking, as 2026 will likely be a pivotal year for deregulation and rule changes.

FOOTNOTES

¹ DragonGC, *Navigating DEI Disclosure Amid Regulatory Shifts: Insights from Select S&P 100 Companies' 10-Ks and Proxy Statements* (Mar. 13, 2025), <https://corpgov.law.harvard.edu/wp-content/uploads/2025/03/DragonGC-Report-Navigating-DEI-Disclosure-Amid-Regulatory-Shifts-1.pdf>.

² S.B. 3456, 2025 Leg. Sess. (N.Y. 2025), <https://www.nysenate.gov/legislation/bills/2025/S3456> (last visited Jan. 5, 2026).

³ S.B. 4117, 221st Leg., Reg. Sess. (N.J. 2025), https://www.njleg.gov/bill-search/2024/S4117/bill-text?f=S4500&n=4117_S1 (last visited Jan. 5, 2026).

⁴ H.B. 3673, 104th Gen. Assemb., Reg. Sess. (Ill. 2025), <https://www.ilga.gov/Legislation/BillStatus/FullText?GAID=18&DocNum=3673&DocTypeID=HB&LegId=0&SessionID=114> (last visited Jan. 5, 2026).

⁵ On 18 November 2025, the US Court of Appeals for the Ninth Circuit granted a temporary injunction for the enforcement of SB 261 but denied a temporary injunction with respect to the enforcement of SB 253, which requires reporting beginning on 10 August 2026.

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