



Preparing for the *2025* *proxy season*

This guide discusses important themes from the 2024 proxy season and developing trends we are monitoring for 2025. It also includes a “housekeeping checklist” designed to assist you as you prepare your proxy statement.

Our companion piece, a 2025 Annual Report Quick Reference Guide, is available [here](#). Both Quick Reference Guides are designed to supplement **A&O Shearman’s 22nd Annual Corporate Governance & Executive Compensation Survey**.

SHAREHOLDER PROPOSALS

For the fourth year in a row, the total number of shareholder proposals submitted increased. Nearly 1,000 proposals were submitted this year. The most popular shareholder proposal topics in 2024 were:

- climate change, including requests to adopt emission reduction targets, disclose climate transition plans, climate-related lobbying, and climate risks;
- nondiscrimination and diversity, including proposals for third-party audits of company impact on civil rights and DEI, DEI effectiveness reporting, and disclosure of gender or racial pay gaps;
- simple majority voting (eliminate supermajority voting requirements);
- director resignation bylaws; and
- separation of chair and CEO (independent board chair).

All but two of these topics, simple majority voting and director resignation bylaws, were among the most popular shareholder proposal topics in 2023. We expect this trend to continue. Proposals relating to companies' use and development of artificial intelligence emerged as an increasingly popular topic for shareholder proposals as well and may be one to watch going forward.

Over 60% of 2024 proposals submitted were voted on, which is consistent with 2023. The percentage of proposals withdrawn in 2024 decreased slightly compared to 2023, although the percentage of standard governance proposals withdrawn increased substantially compared to 2023, primarily due to the success of no-action requests relating to director resignation proposals as noted below.

Just over 5% of proposals voted on garnered majority support in 2024, compared to just over 3% last year. Average support for shareholder proposals decreased slightly in 2024, likely driven in part by continued minimal shareholder support for anti-ESG proposals, despite the increasing number of such proposals (exceeding 100 for the first time in 2024).

No-action request volumes and outcomes rebounded from last year's significant decline related to SEC Staff Legal Bulletin 14L, in which the SEC limited the availability of the "ordinary business" basis for exclusion of proposals. More than 260 no-action requests were submitted to the SEC Staff in 2024, representing a submission rate of approximately 30%, up significantly from the submission rate of approximately 20% in 2023 and more consistent with the submission rate in 2022. The SEC also granted more than two-thirds of the requests, a substantial increase from 2023, due in part to numerous successful exclusions of director resignation bylaws proposals on the grounds of violation of state law, but also due to a rebound in the success of ordinary business exclusion arguments.

Following the Presidential election, it is unclear whether the new leadership at the SEC will direct the Division of Corporation Finance to revise its approach to the consideration of no-action requests and, if it does, whether it happen in time to impact this coming season. It is possible that the new leadership at the SEC directs the Division of Corporation Finance to rescind or revise the approach to the "ordinary business" exclusion set forth in SLB 14L.

Spotlight

NEW EQUITY GRANT TIMING DISCLOSURE

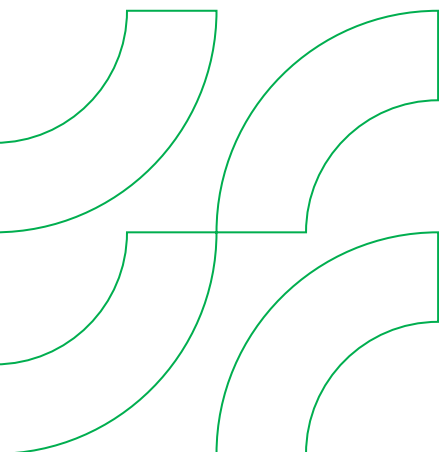
In 2023, the SEC adopted new rules requiring disclosures related to equity compensation awards granted shortly before material non-public information (MNPI) is released. The long-awaited new option table disclosure pursuant to new Item 402(x) of Regulation S-K will be required for the first time in annual reports and proxies filed with respect to the completed 2024 fiscal year (including smaller reporting companies). These rules require tabular disclosure if a named executive officer is granted options (including stock appreciation rights and similar instruments) within four business days before and ending one business day after filing a Form 10-K or 10-Q, or filing or furnishing a Form 8-K containing MNPI. The new disclosure rules also require companies to include a narrative description of the company's policies and practices on option grants in relation to the disclosure of MNPI, including how the board determines when to grant options, whether and how it considers the release of MNPI in determining the timing and terms of option awards, and whether the company has timed the release of MNPI to affect executive compensation. Companies should review their 2024 grants to see if disclosure under Item 402(x) of Regulation S-K is required w consider what review, internal and board approvals will be required and the timing of such review and approvals in light of their proxy-filing calendars.

PAY VERSUS PERFORMANCE, YEAR TWO

The 2024 proxy season represented year two of pay versus performance disclosures, and consequently, a new round of comment letters from the Division of Corporation Finance. As companies begin preparing for the next season of pay versus performance disclosures, they should keep in mind the following two comments, which appeared in letters issued by Corp Fin:

- **Use of CD&A peer group.** When using the custom peer group, the SEC Staff reminded companies that TSR information for each year in the table must be presented using the peer group for the most recent year in the table. Recall also that if a company uses a different peer group from the peer group used by it for the immediately preceding fiscal year, a footnote explaining the reason for the change and comparing the company's cumulative total return with that of both the newly selected peer group and the peer group used in the immediately preceding fiscal year must be included.
- **Use of Non-GAAP Measures.** The SEC Staff noted to companies that when non-GAAP measures are used as a "Company-Selected Measure," disclosure must be provided within the proxy statement as to how the measure is calculated from the audited financial statements (incorporation by reference to separate filing will not satisfy the disclosure requirement), but strict adherence to Regulation G or Item 10(e) of Regulation S-K is not required for pay versus performance disclosures.

In addition to the above, the comment letters indicate that the SEC Staff is taking the time to reconcile the numbers in the pay versus performance disclosure with amounts disclosed in other parts of the proxy. For example, in a number of comment letters they noted discrepancies between the average compensation paid to the non-PEO named executive officers and the compensation amounts provided for in the summary compensation table. Companies should ensure they are closely reviewing the disclosure to ensure the tables all work together.



REGULATION OF PROXY ADVISORS RIDES THE ROLLER COASTER

The roller coaster ride of proxy advisory firm regulation by the SEC began in earnest in 2020, when the SEC codified its long-held position that the recommendations provided by proxy advisory firms is considered proxy solicitation subject to SEC regulation and imposed certain conditions with which proxy firms must comply to be exempt from the SEC's proxy rules. Most significantly, the rule imposed "notice and awareness" conditions: proxy advisory firms would have to make their advice available to companies at or prior to the time it is disseminated to their institutional investor clients (notice), as well as provide these clients with a mechanism by which they can reasonably be expected to become aware of written statements made by the company subject to the proxy advisory firm's voting recommendations in a timely manner before a shareholder meeting (awareness), which will likely be a statement disputing the basis upon which the recommendations were made. The rule was challenged in court, and in February 2024, the federal District Court for the District of Columbia found that the SEC's regulatory framework for proxy advisory firms lacked statutory authority.

While the 2020 rule was making its way through the judicial system, in 2022 the SEC, following a change in the SEC Chair, partially reversed itself, rolling back the notice and awareness conditions. Legal challenges again followed. In June this year, the Court of Appeals for the Fifth Circuit found that the SEC's 2022 reversal of notice and awareness was arbitrary and remanded the matter back to the SEC. The Sixth Circuit Court of Appeals came to a different conclusion in September.

In August, the SEC has since remained largely inactive, motivated, perhaps, by the then-approaching Presidential election. The SEC withdrew its appeal of the D.C. District Court determination that it lacks the power to regulate proxy advisory firms. It also decided not to seek Supreme Court review of the Fifth Circuit decision. New SEC leadership may choose to comply with the Fifth Circuit decision and reinstate the notice and awareness conditions, though this could be thwarted by an affirmation by the D.C. Court of Appeals that the SEC lacked the power to adopt the 2020 rule in its entirety.

It is expected that both the Republican Congress and the new SEC leadership will be focused on renewing the initiatives to regulate proxy advisory firms. If the D.C. Court of Appeals finds that the SEC lacked the power to adopt the rule in its entirety, we would expect to see Congressional mandates directing the SEC to adopt a rule that could require proxy advisory firms to register with the SEC and submit to its inspection and oversight powers, in addition to reinstating the notice and awareness mechanism of the prior SEC rule. In the meantime, proxy advisory firms' own practices continue to govern. See "[Regulation of proxy advisors rides the roller coaster](#)" in our 22nd annual Corporate Governance & Executive Compensation Survey.

GLASS LEWIS KEY POLICY UPDATES

- **Artificial Intelligence.** AI is a new area of focus of [Glass Lewis for 2025](#). Where there is evidence that insufficient oversight or management of AI resulted in material harm to shareholders, it will review a company's overall governance practices to assess the Board's oversight of the use of AI-related risks, as well as closely evaluate the Board's response to issues and the quality of associated disclosures. Glass Lewis will consider recommending a vote against involved directors should it find the board's oversight, response or disclosure of AI-related issues insufficient.
- **Redomiciliation.** Glass Lewis indicated that it will review all proposals to redomicile to a different state or country on a case-by-case basis, evaluating a number of factors impacting shareholder rights, including material differences in corporate statutes, case law and fiduciary standards, changes in corporate governance provisions, and whether the new jurisdiction is considered a "tax haven." Where a controlled company is seeking to redomicile, Glass Lewis will also consider factors such as how the independent board members came to their recommendation, if the controlling shareholder had any ability to influence the board and whether the proposal is put to a vote of disinterested shareholders.
- **Board responsiveness to shareholder proposals.** Glass Lewis indicated that, when a shareholder proposal receives significant shareholder support (generally, 30% to 50% of votes cast), boards should engage with shareholders on the issue and provide disclosure addressing shareholder concerns and outreach initiatives.
- **Change-in-control provisions and executive pay programs.** Glass Lewis indicated that companies that allow for committee discretion over the treatment of unvested awards should commit to providing a clear rationale for how such awards are treated on a change in control.

PROPOSED ISS KEY POLICY UPDATES

- **Poison pills.** ISS indicated in its [2025 proxy voting guidelines](#) changes to its policy related to short-term poison pills, which are poison pills that have been in place for one year or less and are not presented for shareholder approvals. The update clarifies the factors that ISS will look at as part of its review of whether a board's actions in adopting a short-term poison pill were reasonable, or whether the adoption of the pill should be deemed a governance failure warranting a recommendation to vote against directors. The change provides more transparency to the factors that ISS already uses as part of its review.
- **Environmental shareholder proposals.** ISS also indicated a change to how it reviews environmental shareholder proposals related to requests for reports on policies and the potential social and environmental impact of a company's activities. In considering whether to support a shareholder proposal, ISS will consider, where relevant, how a company's existing disclosures of policies and risk management procedures align with relevant and broadly accepted reporting frameworks.
- **Performance-vesting equity awards.** Additionally, ISS has historically considered a predominance of time-vesting (as opposed to performance-vesting) equity awards to be a significant concern where there is a quantitative pay-for-performance misalignment. In response to investors' concerns that well-designed time-vesting awards may be preferable to highly complex and non-rigorous performance measures, ISS indicated in its [proposed policy changes](#) that it is considering, for 2026 or later, an update whereby a preponderance of time-vesting equity awards generally would not in itself raise concerns about pay programs. In the meantime, ISS indicated in its [executive compensation policies FAQs](#) that, beginning with the 2025 proxy season, ISS will more closely scrutinize performance-vesting equity disclosure and award design, particularly for companies that exhibit a quantitative pay-for-performance misalignment. If ISS identifies multiple concerns with the level of disclosure or award design, it is more likely to provide an adverse vote recommendation in the context of a quantitative pay-for-performance misalignment.

ISS GUIDANCE ON “ROBUST” CLAWBACK POLICIES

ISS has indicated it is looking for a “robust” clawback policy, which has left some companies wondering what exactly ISS means. In October, ISS published an FAQ that provides that a clawback policy will not be considered “robust” by ISS if it simply complies with the minimum requirements of the final Dodd-Frank clawback rules. To get full credit, a clawback policy must extend beyond the Dodd-Frank clawback requirements—which only apply to performance-vesting awards—to cover all time-vesting and performance-vesting awards.

Although many companies do not have clawback policies that cover compensation beyond the minimum Dodd-Frank requirements, others voluntarily maintain clawback policies that extend beyond Dodd-Frank, including policies with individual fraud or misconduct triggers and policies that cover time-vesting equity awards and cash awards.

The latest FAQ from ISS indicates that clawback policies that do not apply to time-based awards will be viewed negatively by ISS in determining say-on-pay proposal recommendations. Companies with clawback policies that do not cover time-based awards that are interested in maximizing their say-on-pay voting results would need to amend their policies to cover time-based awards.





EQUITY GRANT TIMING

Include new disclosure if equity compensation awards were granted shortly before certain material non-public information is released. [Amendments](#) to Rule 10b5-1 and Item 402(x) of Regulation S-K requiring tabular disclosure of option awards granted to NEOs within four business days before and after certain filings alongside changes in share price around the time of disclosure will take effect with respect to grants made in 2024 (with disclosure in the 2025 proxy statement). See [New equity grant timing disclosure spotlight](#).



RISK MANAGEMENT

Consider whether the disclosures in the proxy statement related to the board's oversight of risk management needs to be updated to reflect the key risks facing the company. Keep in mind that the SEC's [cybersecurity rules](#) also require disclosure about cybersecurity risk management, including the board's oversight role, so it is important to ensure consistency between these two disclosures. Consider whether the impact and adoption of artificial intelligence is a risk that should be identified.



ARTIFICIAL INTELLIGENCE

Consider whether disclosure of AI-related governance practices, risk oversight and board expertise is prudent, especially where the company's use of AI, and related risks and opportunities are significant. Glass Lewis indicated that for the 2025 proxy season, where there is evidence that insufficient oversight or management of AI technologies resulted in material harm to shareholders, it will consider voting against directors. See [Glass Lewis key policy updates](#).



PRELIMINARY PROXY STATEMENT

Remember that a preliminary proxy is required if the matters to be acted upon at the annual meeting include anything other than the election of directors, ratification of auditors, adoption of or amendments to employee benefit plans, say-on-pay and say-on-frequency votes or stockholder proposals, and that the preliminary must be filed with the SEC at least ten calendar days before distribution to shareholders.



DIRECTOR SKILLS MATRIX

Review the director skills matrix to ensure it continues to reflect the skills, qualifications and expertise relevant to the company, including, for example, experience in cybersecurity, data privacy, technology, human capital, climate and sustainability. Keep in mind that certain institutional investors and proxy advisory firms are increasingly expecting to see a director skills matrix that presents the skills, qualifications, and expertise of each director. Cybersecurity expertise, while not required to be disclosed by the SEC, has been an area of increasing focus since the introduction of the cybersecurity disclosure rules last year. Importantly, for Nasdaq-listed companies, note that on December 11, 2024, a federal court of appeals struck down the SEC's approval of Nasdaq's board-diversity rules. Nasdaq companies are no longer required to include the "Board Diversity Matrix" in the format required under the Nasdaq listing standard. Nasdaq listed companies should consider what adjustments may need to be made to existing disclosures. See our recent article [here](#).



DIRECTOR DIVERSITY

Consider how the company's board composition and diversity disclosures and targets compare to the latest proxy advisory firm guidelines and investor policies. Note that in Glass Lewis' [2025 guidelines](#) that for companies that do not meet its board diversity expectations, it may nonetheless refrain from recommending votes against relevant directors if the company discloses its plan to address lack of diversity, including a timeline reflecting when additional diverse directors will be appointed.



D&O QUESTIONNAIRES

Ensure D&O questionnaires are up to date and consider including questions regarding board demographics to be able to respond to rating surveys and assessments, as well as questions to address director skills matrices and any new skills included in them, such as cybersecurity or artificial intelligence expertise. Also ensure that the D&O questionnaire states that information, particularly demographic information, will be used for proxy statement and related disclosures. Finally, consider whether the D&O questionnaire adequately probes for information on the existence of personal relationships between a director and other directors, officers or personnel to allow the company and the board to assess whether the nature of these relationships will impair independence. These types of personal relationships have come into focus in 2024 as the result of a [recent SEC enforcement case](#).



NON-GAAP FINANCIAL MEASURES

Review any non-GAAP financial measures to ensure compliance with applicable disclosure requirements (equal prominence, explanation of usefulness and reconciliation). Use of non-GAAP financial measures continues to be an area of focus for Corp Fin staff.



VOTING STANDARDS AND QUORUM REQUIREMENTS

Update the section of the proxy that addresses voting standards, quorum requirements and the treatment of broker non-votes with respect to each matter presented to stockholders. Pay close attention to this section and do not assume it is the same from year to year, as the specific proposal can impact the associated standards and requirements.



PERQUISITE DISCLOSURE

Review perquisite disclosure to ensure compliance with the SEC's guidance on perquisite analysis. Inaccurate perquisite disclosure has resulted in an increased number of SEC enforcement actions in recent years. The mere fact that a benefit is provided for a business reason is not sufficient to conclude that the benefit is not a perquisite.



CORPORATE GOVERNANCE AND EXECUTIVE COMPENSATION HIGHLIGHTS

Consider how to frame the proxy and CD&A summaries in a manner that presents the key portions of the governance and compensation story in a compelling and visually appealing manner. Highlights may include good governance practices, recent governance changes, board and executive diversity metrics, company performance highlights, workforce relations priorities, and significant compensation actions.



SAY-ON-PAY AND SAY-ON-FREQUENCY

Determine whether the 2025 proxy statement should include either a "say-on-pay" and/or "say-on-frequency" shareholder vote.



CORPORATE GOVERNANCE GUIDELINES

Review corporate governance guidelines to assess whether they continue to align with information presented in the governance section of the proxy statement. For example, consider updating to reflect changes in approach to board diversity, risk management, and board oversight over cybersecurity, artificial intelligence, climate, sustainability and human capital.



BOARD COMMITTEE CHARTERS

Review all board committee charters to ensure that they appropriately allocate responsibility among the board committees for monitoring matters of cybersecurity and data privacy, climate and sustainability, human capital, and if relevant, artificial intelligence. Where it is intended that more than one committee cover aspects of a particular issue, make sure the committee charters do not conflict. Assess whether diversity considerations are appropriately reflected in attributes identified for director nominees in the nominating/governance committee charter.



COMPENSATION COMMITTEE INDEPENDENCE

Review the compensation committee members' independence under [NYSE](#) or [Nasdaq](#) listing standards, [ISS's non-independent non-executive director test](#), and under Section 16 of the Securities Exchange Act.



SUSTAINABILITY AND CULTURE COMPENSATION METRICS

Ensure that any sustainability metrics in incentive plans are disclosed appropriately, including a description of how qualitative sustainability performance metrics will be assessed.



EQUITY PLAN ADOPTIONS OR AMENDMENTS

Ensure that when adopting or amending an equity compensation plan, all disclosures comply with [Item 10](#) of Schedule 14A, the plan provides adequate limits on director compensation (including cash compensation) and be mindful of [changes to burn rate calculations](#) within the ISS Equity Plan Scorecard that took effect for meetings held on or after February 1, 2023, and the [updates](#) to ISS's Proxy Voting Guidelines disfavoring equity plans giving boards full discretion over the treatment of awards in the event of a change in control.



INSTITUTIONAL INVESTOR AND PROXY ADVISORY FIRM GUIDELINES

Review updates to the voting policies of applicable major institutional investors [ISS](#) and [Glass Lewis](#). See [Glass Lewis key policy updates](#) and [ISS guidance on "Robust" clawback policies](#).



ALTERNATIVE PAY DISCLOSURES

Consider whether to include (or continue to include) alternative pay disclosures—such as realized or realizable pay—in light of the disclosures in the pay versus performance table, while being mindful that shareholders may ask questions to the extent these disclosures are omitted or modified in future years.



SHAREHOLDER ENGAGEMENT

Consider how to describe shareholder engagement efforts in the proxy statement, particularly where voting results from the prior annual meeting indicate developing investor concerns or meaningful shareholder support for an initiative the company is not pursuing. Disclose any material governance updates implemented as a result of engagement with shareholders, particularly those related to shareholder proposals.



XBRL DISCLOSURES

Ensure XBRL tagging on pay versus performance disclosure.



ENSURE DISCLOSURE IS UPDATED TO REFLECT CHANGES IN APPLICABLE LOCAL LAWS

Monitor new or amended legislation developments on diversity, taxation, restrictive covenants, privacy, equal pay and pay transparency laws, and update changes to company policy and disclosure accordingly.

LINKS TO INSTITUTIONAL INVESTORS' MOST RECENTLY PUBLISHED PROXY VOTING GUIDELINES

Amundi	Fidelity	State Street
BlackRock	Goldman Sachs Asset Management	T. Rowe Price
Capital Group	J.P. Morgan Asset Management	Vanguard
Cohen & Steers	Janus Henderson Investors	Wellington

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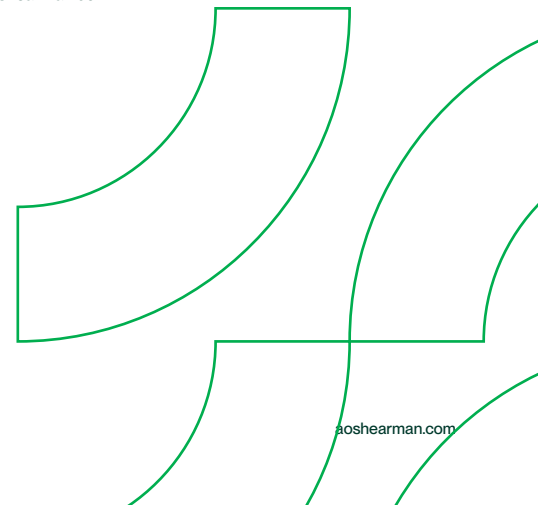
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Looking *ahead*

We will be hosting a webinar with a discussion about updates and developing trends to consider when drafting your Annual Report and preparing for the proxy season on Wednesday, January 15, 2025.

We hope you will join us. Please reach out to AOShearmanPublicCompany@aoshearman.com if you would like to attend.

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