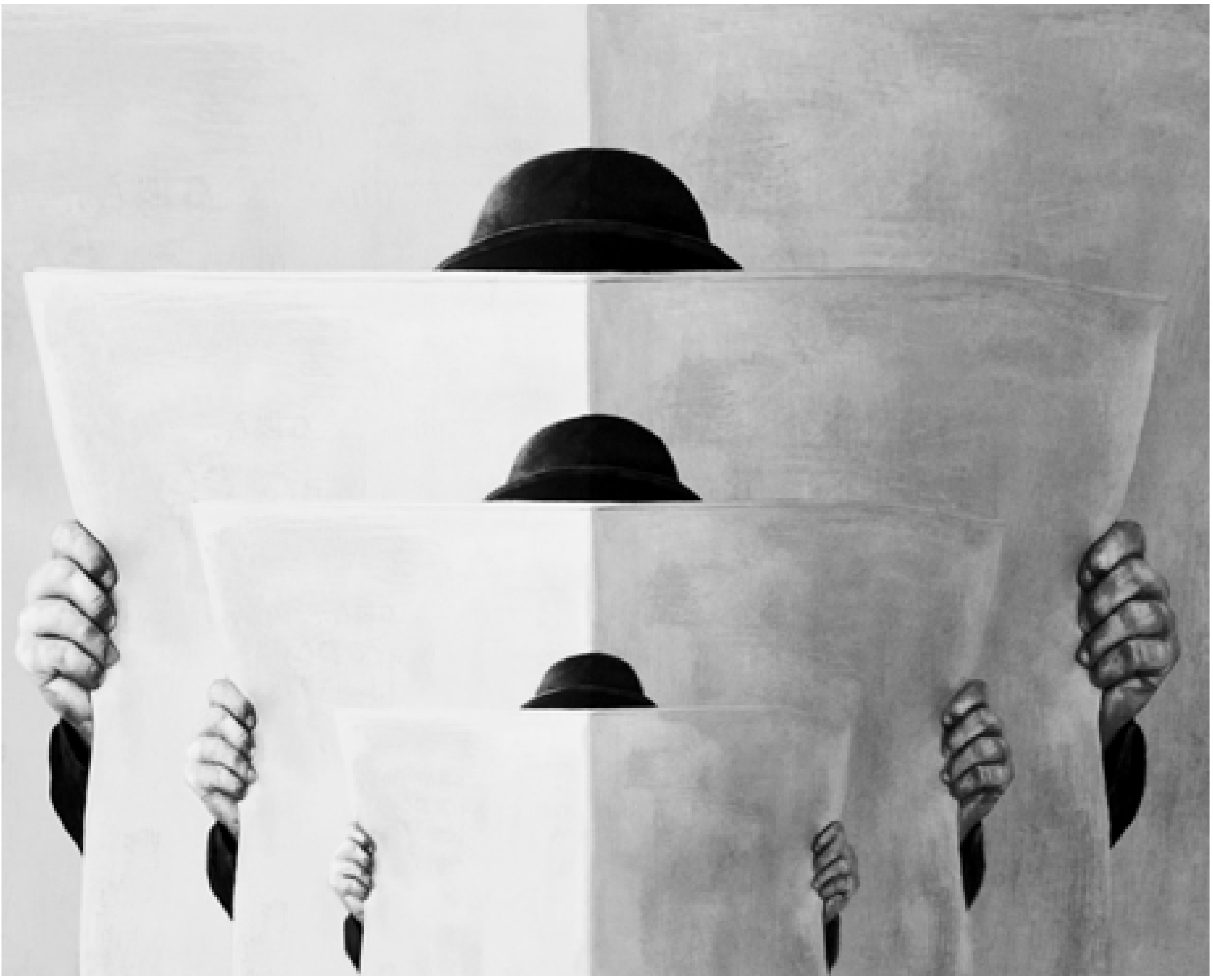
A&O SHEARMAN



Preparing for the *2026 annual reporting and proxy season*

This guide discusses important themes and trends impacting the coming annual reporting and proxy season. It also includes a checklist designed to assist you as you prepare your annual report and proxy statement.

Our Quick Reference Guide is designed to supplement **A&O Shearman's 23rd Annual Corporate Governance and Executive Compensation Survey**.

ESG, DEI AND HUMAN CAPITAL DISCLOSURES

The prevalence of public company human capital practices and disclosures ebbs and flows. Over the last two years, DEI-related metrics in incentive plans and references in annual reports and proxy statements receded amid legal headwinds, shifting policies and recalibrated investor voting guidelines.

As the next reporting season approaches, companies should ensure that disclosures reflect any updates to DEI policies and align with current practices, reconcile policies with evolving regulatory and legal guidance, and calibrate to increasingly divergent stakeholder expectations. Nasdaq-listed issuers should consider removing the prescriptive board-diversity table, which is no longer required after the Fifth Circuit's December 2024 ruling. Risk factors in the 2026 annual report should be updated to match current commitments and oversight practices, and companies that revised or omitted DEI metrics in 2025 annual compensation plans should ensure disclosures in their annual report and proxy statement reflect those amendments. Companies should also monitor further developments in proxy advisory firm and institutional investor voting guidelines on DEI matters.

Bottom line: ensure practices, governance documents, and public disclosures are consistent and responsive to investor regulatory and other stakeholder expectations which may not be straightforward to do because of conflicting perspectives. For more information about 2025 trends in the use of DEI metrics in incentive plans and DEI references in human capital and proxy disclosures, see our article, Evolving Trends in Human Capital Practices and Disclosures, published in A&O Shearman's 23rd Annual Corporate Governance & Executive Compensation Survey.

FURTHER DEVELOPMENTS AND PREDICTIONS REGARDING AMENDMENTS TO THE EXECUTIVE COMPENSATION DISCLOSURE RULES

The SEC is considering its first major overhaul of executive compensation disclosure rules in 20 years. In June, 2025, the SEC hosted a roundtable discussion focused on whether current rules effectively balance investor protection and cost-effectiveness. A few key themes emerged:

- the overcomplexity and "patch-work" nature of the current executive compensation disclosure rules
- mandated rules like the CEO pay ratio, pay versus performance and clawback rules, are costly to prepare with limited investor benefit
- the degree to which the existing rules are overly burdensome, increasingly boilerplate but also opaque on areas like the life cycle of equity awards, and
- perquisite disclosure warrants reform. While eliminating disclosure mandated by Dodd-Frank is beyond its authority, SEC Chairman Paul Atkins signaled strong interest in using rule-making authority to streamline these disclosures. This indication is consistent with the SEC's recent agenda , which includes rationalizing disclosures more generally.

Following the round table, the SEC received a deluge of feedback from different constituents—more than 60 substantive and over 1,000 form comment letter submissions. Clearly, stakeholders want change. You can read the comment letter that A&O Shearman submitted to the SEC on executive compensation disclosure reform here.

In a statement by SEC Chairman Paul Atkins on January 13, 2026, he indicated that the executive compensation disclosure rule review was the first step in a broader comprehensive review of Regulation S-K. The SEC's next step will likely be a formal rulemaking proposal in 2026, with new rules not likely to be effective in the 2027 proxy season, although that timeline may be delayed by the recent government shutdown.

SEC AND GOVERNMENT ACTIONS ADD CHALLENGES FOR SHAREHOLDER PROPOSALS

The 2026 proxy season will play out against the background of major changes, both actual and impending, for the Rule 14a-8 shareholder proposal process and the broader system of voting determinations that drive it. First and foremost, in November 2025, the SEC's Division of Corporation Finance announced an unprecedented policy (the "2026 Policy") that it will not respond to requests submitted by companies seeking SEC staff concurrence of their decision to exclude shareholder proposals under Rule 14a-8 during the 2026 proxy season, except in the case of exclusions that are based on the proposal being improper under state law. This policy and its implications are discussed in more detail below.

Adding to the uncertainty of the future of the shareholder proposal process are two other developments. More recently, in December 2025, President Trump signed an Executive Order entitled "Protecting American Investors From Foreign-Owned and Politically-Motivated Proxy Advisors," (the "Executive Order") which, among other things, requires the SEC to consider revising or rescinding all rules, regulations, guidance, bulletins, and memoranda relating to shareholder proposals, including Rule 14a-8, that are inconsistent with the purpose of the Executive Order. In September 2025, SEC Chairman Paul Atkins released a rulemaking agenda that listed among its objectives a rule proposal described as amendments to Rule 14a-8 to "reduce compliance burdens for registrants".

For the current proxy season, the 2026 Policy leaves companies who face shareholder proposals with the potentially challenging task of navigating potential exclusion on complex ordinary business or economic relevance grounds without the security of SEC staff confirmation. The 2026 Policy reminds companies that they must send a notice to the shareholder proponent and the SEC of the intention to exclude the proposal and goes on to say that if a company wishes to receive a response from the SEC to any such notice, the company or its counsel must include, as part of its required notification to the SEC, an unqualified representation that the company has a reasonable basis to exclude the proposal based on the provisions of Rule 14a-8, prior published guidance and/or judicial decisions. In that case, the company will receive a response from the Division of Corporation Finance indicating that, based solely on the company's or counsel's representation, it will not object if the company omits the proposal from its proxy materials.

We do believe there is merit to companies making the effort to obtain the no-objection confirmation to an excluded shareholder proposal, and that many, if not most, companies that exclude proposals this season will do so. In supporting the unqualified representation, we believe companies should perform and document a rigorous analysis based on Rule 14a-8, SEC staff guidance, precedent no-action letters and court decisions, where applicable, and carefully document the relevant arguments as part of the notice sent to the Division of Corporation Finance and the proponent. Companies should not take the SEC staff's decision to not issue no-action letters as a free pass to exclude any shareholder proposals without careful consideration and a reasonable basis to do so under existing "precedent." Companies should not dispense with the rigor that they brought to analyzing the available bases of exclusion in the past. If anything, this assessment is more critical now than before, as companies will not have the benefit of a substantive SEC review of their rationales. Importantly other constituencies, including serial shareholder proposal proponents, shareholder advocates, the financial media, institutional investors and proxy advisory firms, will be watching how this unique process unfolds and we expect them to call out companies that try to aggressively take advantage of the interpretive vacuum created by the 2026 Policy.

NEW EXECUTIVE ORDER ADDS TO PRESSURE ON PROXY ADVISORY FIRMS AND INSTITUTIONAL INVESTORS

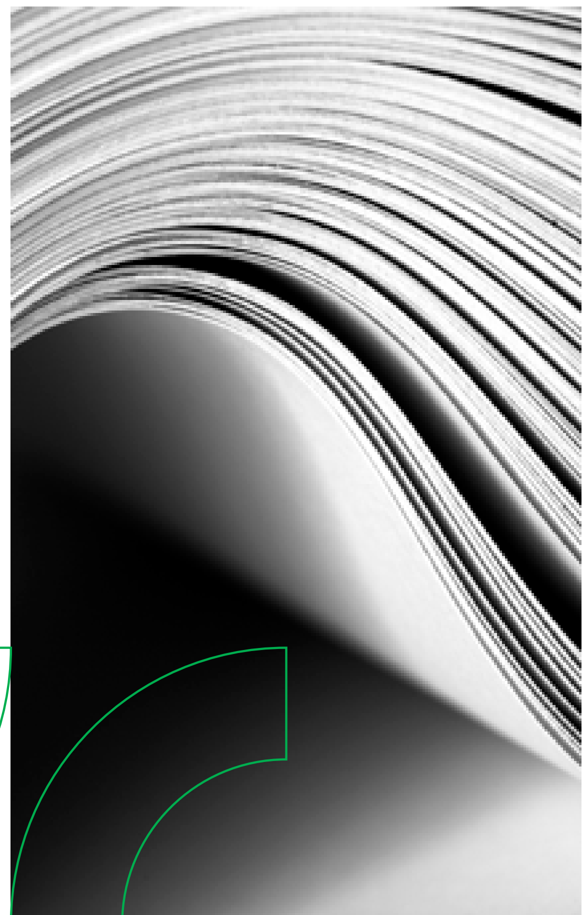
President Trump's Executive Order (discussed earlier) issued in December 2025 specifically targets proxy advisory firms, escalating the traditional rhetoric against them and scapegoating the services as foreign-owned agents of radical political influence in corporate governance who have a particular focus on ESG and diversity, equity and inclusion. The Executive Order creates a number of expectations of the SEC and other agencies, many of which have been discussed or attempted by the SEC in the past. Among other things, the Executive order directs the SEC Chair to:

- review all SEC rules and guidance relating to proxy advisors and consider revising or rescinding them, especially to the extent they implicate DEI and ESG policies
- consider requiring proxy advisors to provide increased transparency regarding recommendations, methodology and conflicts of interest, especially related to DEI and ESG factors, and
- to enforce anti-fraud provisions of the federal securities laws with respect to material misstatements or omissions in proxy voting recommendations.

The SEC Chair is also directed to evaluate:

- whether proxy advisors should be required to be registered under the Investment Advisors Act of 1940;
- whether and under what circumstances proxy advisors may serve as a vehicle for investors to coordinate and augment voting decisions in a manner that constitutes a "group" for purposes of Schedule 130 and 13G filing; and
- whether the practice of registered investment advisors hiring proxy advisors to on non-pecuniary factors, including DEI and ESG factors, is inconsistent with their fiduciary duties.

The Executive Order enhances what has already been a significant assault on proxy advisors from other quarters, including Congressional hearings, state legislation and investigations from state attorneys general, mainly focused on ESG related recommendations. All of this, coupled with the focus on investor behavior and fiduciary duties, is bound to have a chilling effect on investor reliance on proxy advisors, investor capacity for outreach and communication with issuers and the willingness of investors to engage. This, coupled with the change in SEC Staff guidance that has impacted investor engagement behavior, which we discuss in this guide, is expected to lead to a situation where companies have less information and predictability with respect to shareholder voting matters.



RISK FACTOR DISCLOSURES

Over the past year, public companies have navigated the rapid evolution of artificial intelligence (AI), a volatile U.S. trade policy and the persistence of geopolitical conflict and a record-breaking U.S. government shutdown.

Identified below are ways in which companies have updated their risk factors to account for developments in these areas, which companies should consider as they assess potential risk factor updates.

ARTIFICIAL INTELLIGENCE

As AI usage accelerates among consumers and businesses, public companies are increasingly disclosing AI-related risks. Depending on the extent to which a company uses AI in its business and operations, companies should consider including risk factors that address the business, compliance governance and reputational risks presented by their use of AI, as well as potential impacts of AI usage on privacy and cybersecurity matters by the company and third party service providers. Certain companies also disclose AI-related competitive risks, such as the risk that the company will fail to keep pace with the latest developments in AI.

CYBERSECURITY

Companies increasingly reference the sophistication and evolving nature of cybersecurity threats in their risk factor disclosures. Compliance costs and the risks of noncompliance with data protection laws are commonly cited, and companies also note that growing AI usage may exacerbate existing cybersecurity risks. Do not forget to assess what, if any, changes need to be made to reflect incidents or events over the past year.

TRADE POLICY

Companies with material exposure to international trade should review risk factors addressing the imposition of tariffs and the uncertainty surrounding international trade policy. Companies with operations, supply chains, or customers located in countries subject to U.S. tariffs should consider whether the possibility of retaliatory tariffs would have a material impact on their financial condition and results of operations.

GEOPOLITICAL RISKS

The ongoing war between Russia and Ukraine, the conflict between Israel and Hamas, broader instability in the Middle East, and the possibility of conflict between China and Taiwan are commonly cited in risk factor disclosures. Companies with exposure to conflict regions should tailor their geopolitical risk disclosures to specify how such risks are likely to impact the company's financial condition, strategy, and outlook.

GOVERNMENT INTERVENTION

In the past year, the Trump administration signed executive orders focused on DEI as well as ESG matters, and several states and Congress have proposed or enacted "anti-ESG" policies or initiatives. While these actions indicate increased scrutiny of DEI or ESG initiatives by the federal government and certain states, companies may face competing demands by stakeholders who continue to expect greater transparency and action in these areas. Companies should assess their risk factor disclosures to consider whether updates should be made to account for conflicting stakeholder perspectives. Companies have cited the growing momentum of "anti-ESG" sentiment in the U.S. political environment as a business risk, while also noting that a variety of investors and other stakeholders continue to measure the performance of companies based on ESG metrics. Companies have explained these competing demands in their risk factor disclosures and have noted that their actions in response to increased political scrutiny of DEI or ESG practices could impact their reputation, business and financial condition in ways that are difficult to anticipate.

SEC FLOATS BIG CHANGES TO FOREIGN COMPANY REGULATION

Foreign private issuers (FPIs) are back on the SEC's agenda. In June 2025, the SEC published its Concept Release on Foreign Private Issuer Eligibility to solicit feedback on the FPI definition, suggesting something more than extending incremental disclosure mandates to FPIs in favor of an overhaul of the entire FPI regime.

The SEC identified significant changes in the composition of home country jurisdictions of FPIs and a growing cohort of FPIs whose securities trade almost exclusively in the United States without any meaningful foreign disclosure or corporate governance requirements, raising concerns that this evolution may have undermined investor protection and may also have put U.S. domestic companies at a competitive disadvantage.

Potential approaches include:

- revising eligibility criteria
- adding a foreign trading volume or a "major foreign exchange" listing requirement
- imposing a minimum foreign regulatory requirement that relies on mutual regulatory recognition.

Many commenters asserted the regime is not broken, warning a narrowed definition could deter listings and shift liquidity away from U.S. regulatory oversight. Commenters also proposed amending Form 6-K requirements to move it closer to Form 8-K, accelerating the Form 20-F deadline and imposing Regulation FD on FPIs. They also flagged transition and accounting complexities if companies lose FPI status, including the shift from IFRS to U.S. GAAP. Many urged the SEC to focus on the identifiable risks rather than overhaul a framework that has largely struck the right balance between ensuring U.S. investors are protected and encouraging foreign companies to list in the United States.

The next step for the SEC will be to form a rule proposal based on feedback from the Concept Release.

SEC SECTION 16 REPORTING REQUIREMENTS FOR FOREIGN PRIVATE ISSUERS

The U.S. Congress recently enacted the "Holding Foreign Insiders Accountable Act" that will require directors and officers of foreign private issuers (FPIs) with SEC-registered equity securities to publicly report transactions in their companies' securities in same way that directors and officers of U.S. domestic listed companies do under U.S. rules. The new law grants the SEC authority to exempt directors and officers from the new law for transactions that are subject to "substantially similar" reporting requirements under non-U.S. law. We believe it is likely that the SEC will exempt FPIs listed in Canada, the European Union and the United Kingdom, but the scope and timing of any such exemption is currently uncertain.

As a result of this law, directors and executive officers of an FPI must report their initial individual holdings at the time of an IPO and, for FPIs that are already public in the United States, on March 18, 2026. Directors and officers are also obligated to disclose a range of transactions in the public company's equity securities within two business days of the transaction. Transactions include purchases, sales and gifts of equity securities, and when the insider receives equity as compensation. Failure to submit these reports constitutes a violation of the securities laws by the insider and may also create exposure for the FPI. We would expect enforcement of these new requirements will be a focus of the SEC. U.S-listed FPIs and their directors and executive officers will need to establish appropriate systems and controls to:

- identify relevant Section 16 insiders
- identify and collect relevant information about reportable transactions
- ensure timely reporting.

PREPARING FOR ENGAGEMENT THIS PROXY SEASON

In February 2025, Staff in the SEC's Division of Corporation Finance updated guidance on beneficial ownership reporting on Schedule 13D and 13G. The guidance revises the Staff views on the engagement activities that would prevent a shareholder from reporting on a short form Schedule 13G. , Investors owning more than 5% of a public company's voting securities must report holdings on a detailed Schedule 13D, unless the investor is considered a "passive" investor—the investor is not intending to influence the control of the company. The revised guidance suggests that "passive" status for Schedule 13G eligibility may be inconsistent with activities historically viewed as ordinary-course investor engagement. For example, sharing views on an issue and how those views may inform voting decisions could jeopardize passive status if such discussions go beyond information sharing and include explicit or implicit pressure on management to implement specific measures regarding executive compensation, board composition, environmental and social policies or other governance matters.

While the immediate impact of this guidance on engagement meetings last proxy season was moderated, engagement meetings this season will be impacted. Here is what to expect and steps companies can take:

- Initiation and Preparation. Certain investors may not request a meeting, so be prepared to ask for one and to lead it.
- Prepare an Agenda. Investors may not send questions or agenda topics in advance, so prepare topics that are expected to be of interest to the investor, based on past engagement, published positions and significant business, board/management and compensation developments.
- Expect a Disclaimer. Investors may start the meeting with a prepared statement indicating that the investor does not intend to influence the control of the company. That is okay.
- Be Prepared for a "Listen Only" Mode. Certain investors may avoid asking questions to prevent any appearance of exerting pressure. Anticipate their areas of interest and address them proactively.
- Voting Intentions. Do not expect investors to disclose specific voting intentions or specific actions to take. Use their public positions as a guide.
- Post Meeting Recap. The engagement team should meet soon after the session to discuss feedback, identify follow-ups and plan next steps.
- Do Not Forget About the Proxy Statement. The proxy statement remains an important engagement and advocacy tool. Consider enhancing disclosures on key investor interests.
- Goals. The form of engagement may be different, but the company's goal remains the same—clearly communicating the company's position on key issues of investor interest.

CONFIRM FILER STATUS

Your filer status is determined as of the end of your fiscal year, although it will largely be dependent on your public float as of the end of the second fiscal quarter. Note that newly public companies which have been public for less than twelve calendar months and have not yet filed an annual report will be non-accelerated filers regardless of their float size or other parameters. If you are already an accelerated or large accelerated filer, note that public float requirements that must be met to downgrade the status are lower than those which must be met to initially attain it. If your company is an "emerging growth company," you may lose availability of exemptions from filing an auditor attestation of ICFR and the ability to rely on certain other scaled financial and other disclosure requirements. This will require substantial advance preparation.

CONSIDER ANY RESTATEMENTS AND "CHECKING THE BOX"

In the event a "Big R" or "little r" restatement to correct an error is reflected in financial statements for 2025, check the relevant box on the cover of the annual report and conduct a compensation recoupment analysis under your Dodd-Frank clawback policy, if required. The date of restatement, amount of erroneously awarded compensation and amounts due from any executive officer (if any), as well as details of reliance on any recovery exceptions, will need to be disclosed in the annual report.

CONSIDER IF ANY ADDITIONAL MATERIAL CONTRACTS ARE REQUIRED TO BE FILED

For U.S. companies, consider all material contracts entered into over the year, including those filed on Forms 10-Q and 8-K throughout the year. For FPIs, if you do not voluntarily file material contracts on Form 6-K throughout the year, be sure to leave enough time to consider which contracts are material and consider if any counterparty consents or redactions are needed.

FILE YOUR INSIDER TRADING POLICY

You can incorporate by reference into the annual report the insider trading policy if it remains unchanged from the policy filed with the prior year's annual report.

REFRESH YOUR LIST OF SIGNIFICANT SUBSIDIARIES AS OF YEAR-END

You can incorporate a previously filed list of significant subsidiaries by reference into the annual report if the list has not changed, but be sure to run the analysis as of year end to confirm that this is the case.

CONSIDER IF ANY UPDATES ARE REQUIRED TO THE "DESCRIPTION OF SECURITIES" EXHIBIT

This exhibit can be incorporated by reference from prior filings each year, but be mindful of any updates, including to organizational documents or authorized capital stock that may require the exhibit to be refreshed.

REMEMBER A "GLOSSY" ANNUAL REPORT GETS FURNISHED ON EDGAR

Remember companies are required to furnish "glossy" annual reports on EDGAR as a PDF, in the same format as delivered to shareholders. For U.S. companies, the filing is made on Form ARS, and for FPIs the filing is made as Exhibit 99 to a Form 6-K. A "glossy" annual report could be, for example, the 10-K or the 20-F with a "wrap" that includes graphics and a shareholder letter.

CONSIDER IF THE EARLIEST-YEAR MD&A CAN BE CROSS-REFERENCED TO A PRIOR ANNUAL REPORT

SEC rules permit the earliest-year period-over-period comparison discussion in the MD&A to be cross-referenced to another SEC filing, without incorporating such discussion by reference into the current year annual report, if this discussion is not necessary to an understanding of the company's financial condition, changes in financial condition and results of operations. Consider if you want to take advantage of this provision or, if you have historically done so, whether continued reliance on it this year is appropriate.

REMEMBER TO "FORWARD" INCORPORATE PROXY STATEMENT DISCLOSURES

The Form 10-K includes governance, compensation, security ownership, related party transactions and other disclosure requirements that can be satisfied by reference to the proxy statement. See our Proxy Report Checklist for more information.

CONSIDER IMPACT OF AI
Consider how, if at all, AI has presented opportunities or risks. AI-related disclosures could be especially relevant for the company's business description, MD&A, and risk factors. Ensure annual report disclosures are consistent with public statements about AI made in other forums and present a balanced view of AI opportunities and risks.

REFLECT ON CHANGES IN THE BUSINESS
Review recent or emerging material changes in the business, such as new business lines, markets or acquisitions, and holistically consider their impacts on the entire annual report. For example, a material recent acquisition may, among other things, necessitate changes to the business description, a discussion of financial and capital impacts in the MD&A, a thoughtful consideration of new risks, and the filing of new material contracts.

REFLECT ON CHANGES IN THE EXTERNAL ENVIRONMENT
This year, consider, among other things, the impact of tariffs imposed by the U.S. and the change in U.S. trade policy; geopolitical developments; potential government shutdowns; falling interest rates and tailor the business description and MD&A to align with risk factors.

TAKE A FRESH LOOK AT THE RISK FACTORS
Consider whether the internal or external changes in the business require a discussion of new material risk factors and whether the order of significance and organization of existing risks remains appropriate. If any risks materialized, disclose related events so the risk is not discussed hypothetically. Remember that a two-page summary of risk is required if the risk factor section exceeds 15 pages. See Risk factor disclosures.

REVISIT DISCLOSURES ABOUT CYBERSECURITY RISK MANAGEMENT AND GOVERNANCE
Reflect updates and changes in policies and procedures.

CRITICALLY REVIEW THE MD&A
Ensure that disclosures are complete, company-specific and provide a view of the business "through the eyes of management." Consider direct and indirect impacts of current economic and industry trends on the company's current and future financial condition. Be sure that your MD&A, including trends, developments and uncertainties in the business, is consistent with other public statements, including earnings calls.

CONSIDER IF THERE HAVE BEEN ANY SUBSEQUENT EVENTS
Significant changes since year end will be disclosed in the annual financial statements. Consider whether comparable disclosure is required in the body of the annual report. Changes can include financing transactions, director or executive officer appointments or resignations, acquisitions or dispositions and material partnerships and other transactions, among others.

REVISIT DISCLOSURE CONTROLS
Review existing processes to ensure disclosure controls capture new and developing events, information related to key areas of disclosures, particularly those related to strategic priorities, business objectives and risk factors.

REVIEW HUMAN CAPITAL DISCLOSURES
Ensure disclosures accurately reflect the company's practices, and ensure practices take into account stakeholder viewpoints, including resulting from the shift in the federal governments policy objectives related to DEI/ ESG matters since the 2024 Presidential election.

UPDATE THE STOCK PERFORMANCE GRAPH

Confirm or update the benchmarks to which your returns will be compared. To the extent you opted to present returns of a peer group, consider if any updates to the group are required and ensure it is the same group as is used in your pay versus performance disclosures. If updates to the index or peer group are required, explain the reasons for the change and ensure that you present a comparison of total returns to those of the new index or group and the one used last year.

NON-GAAP FINANCIAL MEASURES

Review non-GAAP measures, particularly new ones, to determine if any changes should be made to ensure compliance with applicable rules. In terms of presentation, non-GAAP financial measures must be identified as such, clearly labeled in a way that distinguishes them from GAAP equivalents, reconciled, and must not be given greater prominence to the most directly comparable GAAP measure.

CONSIDER IMPLICATIONS OF MATERIAL ACCOUNTING CHANGES

For example, if your company has recently undertaken (or plans to undertake) a resegmentation, consider proactively preparing for Corp Fin Staff queries by documenting specific details of your analysis of the characteristics of an operating segment under ASC280, critically reviewing segment measures, and ensuring that the way the business is described in segment footnotes is consistent with how it is described in public statements. Similarly, it is advisable to proactively document significant judgments and estimates relating to newly adopted revenue recognition policies. Consider whether the adoption of new accounting standards or policies necessitates a reclassification of prior year financial results to ensure comparability.

DISCLOSE THE RESULTS OF CONTROLS ASSESSMENTS AND ANY CHANGES IN ICFR

If you determined a material weakness existed during the fiscal year, ensure it is appropriately disclosed in appropriate areas of the annual report, including the risk factors. Note as well that disclosure controls and procedures encompass ICFR and cannot be assessed as effective in the presence of a material weakness. Describe the steps undertaken and steps to remediate any material weakness in ICFR.

CONSIDER THE 10B5-1 PLAN DISCLOSURE REQUIRED IN THE FORM 10-K

Like the disclosures required in the Form 10-Q, remember the same disclosure is required in Part II-Item 9B of the Form 10-K if a director or officer adopted or terminated a 10b5-1 trading plan during the fourth quarter. Consider adding a question to the D&O questionnaire to obtain this information or implementing another mechanism to collect it directly from relevant individuals.

CONFIRM FOREIGN PRIVATE ISSUER (FPI) STATUS

If the majority of your executive officers or directors are U.S. citizens or residents, 50% or more of your assets are located in the U.S. or your business is administered principally in the U.S., it is important to keep an eye on how much of your outstanding voting securities are directly or indirectly owned of record by U.S. residents. If, in these circumstances, such U.S. ownership is 50% or more as of the end of your most recent second fiscal quarter, you will lose FPI status. As U.S. ownership inches closer to 50%, consider preparing for the transition to domestic company status in advance. As a domestic company, you will, among other things, be required to apply U.S. GAAP and file U.S. proxy statements and other domestic forms, as well as become subject to the 8-K current reporting regime, Section 16 trade reporting, and short swing profit disgorgement by directors and officers.

REFRESH PASSIVE FOREIGN INVESTMENT COMPANY (PFIC) ANALYSIS

A non-U.S. corporation is a PFIC for any taxable year if either at least 75% of its gross income for such year is passive income, or at least 50% of the value of its assets during such year is attributable to assets that produce or are held for the production of passive income. PFIC status results in certain adverse U.S. federal income tax consequences that could apply to U.S. holders, which would need to be appropriately disclosed in the annual report.

CONSIDER ANY CHANGES IN HOME COUNTRY COMPENSATION DISCLOSURE REQUIREMENTS

The SEC permits FPIs to include only aggregate compensation disclosure in the annual report, unless individualized disclosure is required in the home country or is otherwise publicly made. Consider if any revisions to compensation disclosure are required in light of home country regulatory updates or disclosures made throughout the year.

RISK MANAGEMENT
Consider whether the disclosures in the proxy statement related to the board's oversight of risk management need to be updated to reflect the key risks facing the company.

ARTIFICIAL INTELLIGENCE
Consider whether disclosure of AI-related governance practices, risk oversight and board expertise is appropriate, especially where the company's use of AI and related risks and opportunities are significant, and evaluate any existing AI-related disclosures in light of the rapidly evolving AI landscape.

DIRECTOR DIVERSITY
Consider any changes in a company's practices in light of policy changes related to DEI announced by the Trump administration, and ensure that the company's disclosure accurately reflects these practices. Consider how revised disclosures compare to stakeholder expectations, including the latest proxy advisory firm guidelines and investor policies.

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.

SHAREHOLDER PROPOSALS
Check the deadlines for shareholder proposal submissions in Rule 14a-8 as well as for proxy access and advance notice in the company's bylaws to track whether any shareholder proposals received are timely. The SEC has announced that, for the 2025-2026 proxy season, it will not express views on a company's no-action request seeking to exclude a shareholder proposal other than requests to exclude a proposal under Rule 14a-8(i)(1). If planning to exclude a proposal, companies must notify the SEC no later than 80 days prior to the filing of the definitive proxy statement to comply with Rule 14a-8(j) and may in such notification include an unqualified representation that the company has a reasonable basis to exclude the shareholder proposal based on the provisions of Rule 14a-8, prior published guidance and/or judicial decisions. If such representation is included, the Division of Corporation Finance will provide a letter stating that "based solely on the company's or counsel's representation, the Division will not object if the company omits the proposal from its proxy materials." See SEC and government actions add challenges for shareholder proposals.

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.

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.

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.

CHANGES TO BOARD COMPOSITION

Consider the timing of any anticipated director departures or additions to the Board in light of your anticipated proxy statement filing date and the deadlines for proxy access and advance notice director nominations in your bylaws. Determine how the disclosures regarding the Board and its committees will need to be revised to reflect any such changes in composition, and ensure that such disclosures comply with the requirements of Schedule 14A.

D&O QUESTIONNAIRES

Ensure D&O questionnaires are up to date and consider whether questions should be included regarding board demographics, as well as questions to address director skills disclosures and any new skills disclosures you aim to include, such as artificial intelligence or cybersecurity expertise. Also ensure that the D&O questionnaire states that information, particularly demographic information, will be used for proxy statement and related disclosures. Consider supplementing beneficial ownership questions to explicitly ask about margin loans when requesting information from D&Os about pledged company shares. 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 and for potential exposure to sanctions.

NON-GAAP FINANCIAL MEASURES

Review any non-GAAP financial measures to ensure compliance with applicable disclosure requirements particularly when used in the CDRA.

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).

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, company performance highlights, workforce relations priorities, and significant compensation actions.

SAY-ON-PAY AND SAY-ON-FREQUENCY

Determine whether the 2026 proxy statement should include either a "say-on-pay" and/or "say-on-frequency" shareholder vote.

Checklist—Proxy statement

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 and have been updated to reflect changes in public disclosures related to DEI/ ESG. For example, consider updating to reflect changes in approach to board diversity, risk management, and board oversight over artificial intelligence, cybersecurity, 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, human capital, and, if relevant, artificial intelligence and have been updated to reflect changes in public disclosures related to DEI/ ESG matters. Where it is intended that more than one committee cover aspects of a particular issue, make sure the committee charters do not conflict.

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.

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.

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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