GOVERNANCE ROUND-UP

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ExxonMobil Launches Retail Investor Voting Program

On September 15, 2025, the SEC's Division of Corporation Finance granted no-action relief to ExxonMobil's innovative retail voting program, allowing retail shareholders to provide standing instructions to vote their shares in line with board recommendations. This program represents the most significant structural innovation in proxy contest mechanics since the adoption of universal proxy rules. By converting typically passive retail shareholders into an active, management-aligned voting bloc, ExxonMobil's initiative could substantially raise the barriers for activist campaigns seeking to contest director elections or other shareholder proposals. Moreover, the SEC staff indicated that other public companies could adopt similar programs without requiring individual no-action relief, paving the way for broader adoption.

The program allows retail shareholders to opt in by authorizing ExxonMobil to vote their shares on routine matters, with the option to exclude contested director elections or extraordinary transactions. Shareholders retain the ability to opt out or override votes at any time. For management, this tool offers an effective way to mobilize retail support, especially among companies with loyal retail bases, enhancing quorum achievement and defensive positioning. Activists, on the other hand, face increased complexity and costs, as they must now persuade enrolled retail investors to override standing instructions, a dynamic that could reshape campaign economics and target selection.

While operational complexities remain, particularly in coordinating among brokers and vote processors, early adoption is expected among companies with significant retail ownership and activist histories. The response of proxy advisory firms and institutional investors will be critical in influencing broader acceptance. This development could catalyze a fundamental reconsideration of retail shareholder engagement, transforming retail investors from passive bystanders into pivotal actors in corporate governance. For companies and activists alike, the 2026 proxy season will offer the first opportunity to evaluate the program's real-world impact.

For more information, please see our Debevoise Update – From Persuasion to Enrollment – The ExxonMobil Retail Voting Program.

Debevoise's Public Companies Advisory Group will hold a webinar on **November 6, 2025 at 11:00am ET** to discuss how this development could reshape shareholder voting dynamics, proxy contest strategy and corporate governance practices heading into the 2026 proxy season. Registration is available via this link.

SEC Chairman Raises Possibility of Eliminating Rule 14a-8 Shareholder Proposals for Delaware Companies

In remarks delivered on October 9, 2025 at the John L. Weinberg Center for Corporate Governance's 25th Anniversary Gala, SEC Chairman Paul Atkins suggested that the SEC may be open to eliminating the ability of shareholders to submit precatory shareholder proposals to companies incorporated in Delaware.

In the speech, Chair Atkins referred to a forthcoming publication in the *Michigan Business & Entrepreneurial Law Review* (available here) that concludes that precatory proposals are not a "proper subject" because Delaware law does not confer on stockholders an inherent right to vote on precatory proposals. According to Chairman Atkins, such proposals should be excludable under Exchange Act Rule 14a-8(i)(1). Atkins stated that if a company submitted a no-action letter with a Delaware legal opinion indicating that the proposal is "'not a proper subject' for shareholder action under Delaware law… I have high confidence that the SEC staff will honor this position."

The Delaware courts have not directly addressed whether precatory proposals are a "proper subject." However, if a Delaware company were to submit a no-action request and receive support from the Delaware courts, such a ruling could effectively eliminate a large percentage of shareholder proposals as they currently exist.

Judge Blocks Enforcement of Texas Law Targeting Advice Provided By Proxy Advisors

On August 29, 2025, the U.S. District Court for the Western District of Texas preliminarily enjoined the State of Texas from enforcing Senate Bill 2337 against Glass Lewis and Institutional Shareholder Services. SB 2337, which was due to take effect on September 1, 2025, establishes a new regulatory framework for proxy advisors that issue advice or recommendations regarding companies incorporated or headquartered in Texas, as well as foreign entities seeking to re-domesticate in the state.

Among other requirements, SB 2337 requires proxy advisors to make certain disclosures when they provide advice or recommendations that are not provided "solely in the financial interest of shareholders." Advice is deemed not to be provided "solely in the financial interest of shareholders" when it, among other things, is wholly or partly based on "nonfinancial factors" such as DEI or ESG initiatives, supports a shareholder proposal inconsistent with the company's board of directors' recommendation and is not accompanied by a written economic analysis, or subordinates financial interests to other objectives. In such circumstances, SB 2337 requires proxy advisors to (1) disclose to each shareholder that the service is not being provided solely in the financial interests of such shareholder because it is based wholly or partly on one or more nonfinancial factors, (2) explain with particularity the basis of each recommendation and that such advice subordinates such shareholder's financial interests to nonfinancial objectives, (3) immediately provide a copy of the disclosure to the subject company and (4) post a conspicuous notice on their website that its services include advice and recommendations not based solely on shareholders' financial interests.

Violations of SB 2337 are considered a "deceptive trade practice" under Texas law and an affected party, which may include the recipient of the advice, the company that is the subject of the advice, or any shareholder of such company, may bring an action seeking declaratory judgment or injunctive relief against the proxy advisory firm and the Texas Attorney General may intervene in the matter.

In separate suits brought on July 24, 2025, Glass Lewis and ISS argued, among other things, that SB 2337 violated the First Amendment by compelling speech and that the law was unconstitutionally vague. The preliminary injunctions issued by the District Court specifically block enforcement of SB 2337 by the Texas Attorney General (though not private actions) against Glass Lewis and ISS while the cases

proceed to discovery and trial (which is set for February 2, 2026). The preliminary injunctions do not, however, block enforcement of SB 2337 with respect to other proxy advisory firms.

SEC Chairman Signals Support for Semiannual Reporting

On September 19, 2025, SEC Chairman Paul Atkins announced that the SEC will propose a rule change that would allow U.S. public companies to report earnings on a semiannual basis, rather than quarterly. The announcement follows a petition from the Long-Term Stock Exchange and echoes prior endorsements from President Trump, including one on September 15, 2025. If adopted, the change would mark a significant departure from the quarterly reporting regime that has governed U.S. public company disclosure since 1970.

A shift to semiannual reporting could have broad implications. Proponents argue it would allow companies to focus more on long-term strategy, reduce compliance costs, and bring the United States into alignment with jurisdictions such as the United Kingdom and the European Union. However, others have raised concerns about decreased transparency, less frequent cleansing of material nonpublic information, and the potential for inconsistent voluntary disclosures absent Form 10-Q standards. The SEC is expected to proceed through the regular rulemaking process, including a public comment period.

For more information, please see our Debevoise Update – The End of Quarterly Reporting in the United States? The SEC Signals Support for Shift to Semiannual Reporting.

ISS and Glass Lewis Seek Input Ahead of 2026 Proxy Season

In mid-2025, ISS and Glass Lewis launched their annual policy surveys to inform updates to their policies for the 2026 proxy season. The surveys addressed a range of topics, including shareholder proposals, governance and risk oversight, diversity, and executive and director compensation.

The ISS 2025 Global Benchmark Policy Survey received 248 responses (165 institutional investors, 83 non-investors). Notably, many respondents

expressed concern about removing ESG or DEI metrics from ongoing incentive programs without clear rationale, underscoring the expectation that such measures remain tied to strategy rather than trends. The survey results also reflected growing investor attention to director compensation practices and to triggers for negative voting recommendations, such as unusual payments, excessive perquisites, or pay that exceeds that of executive officers.

Beyond compensation, investors and companies diverged on several emerging governance areas. With respect to AI, 58% of investors supported global frameworks to guide oversight of AI, while 84% of non-investors viewed such frameworks as premature. Respondents expressed no clear consensus on whether boards require dedicated AI expertise but agreed that public disclosures relating to AI do not necessarily reflect the board's understanding of AI.

Many investors (29% compared to 6% of non-investors) remain focused on board, executive and workforce diversity, including diversity targets where applicable, whereas non-investors (34% compared to 7% of investors) favored a business-needs-based approach, expecting U.S. company boards to have a mix of professional and personal characteristics that is comparable to market norms and to each company's business needs.

The results of ISS's survey are available here. Glass Lewis expects to publish the results of its survey in November.

SEC Publishes (Spring) Reg Flex Agenda

On September 4, 2025, SEC Chairman Paul Atkins issued a statement on the Spring 2025 Unified Agenda of Regulatory and Deregulatory Actions. According to Chairman Atkins, the latest Reg Flex Agenda "reflects that it is a new day at the SEC." Among the rule proposals included on the agenda are:

- **Foreign Private Issuer Eligibility**: to seek public comment on the definition of a foreign private issuer (FPI), and to account for developments within the FPI population since the SEC last conducted a broad review of reporting FPIs and the eligibility criteria for FPI status.
- **Rule 144 Safe Harbor**: to repropose amendments to Rule 144, a non-exclusive safe harbor that permits the public resale of restricted or control securities if the conditions of the rule are met, to increase instances in which the safe harbor would be available.

- **Enhancement of EGC Accommodations & Simplification of Filer Status**: to expand accommodations that are available for Emerging Growth Companies (defined generally to include new issuers with total annual gross revenues of less than $1.235 billion), and to rationalize filer statuses to simplify the categorization of registrants and reduce their compliance burdens.
- **Shelf Registration Modernization**: to modernize the shelf registration process to reduce compliance burdens and further facilitate capital formation.
- **Updating the Exempt Offering Pathways**: to facilitate capital formation and simplify the pathways for raising capital for, and investor access to, private businesses.
- **Rationalization of Disclosure Practices**: to rationalize disclosure practices to facilitate material disclosure by companies, and shareholders' access to that information.
- **Shareholder Proposal Modernization**: to modernize the requirements of Exchange Act Rule 14a-8 to reduce compliance burdens for registrants, and account for developments since the rule was last amended.
- **Transfer Agents**: to modernize the SEC's existing regulatory regime for transfer agents, including rules relating to crypto assets and the use of distributed ledger technology by transfer agents.
- **Crypto Market Structure Amendments**: to include certain exemptions and safe harbors, to help clarify the regulatory framework for the offer and sale of crypto assets, and provide greater certainty to the market.

Each rulemaking item includes only a brief abstract of information. and the estimated timeframe for action on the proposed rules is listed as April 2026.

Companies Prepare for Compliance with California's Climate Disclosure Rules

As the compliance deadline for California's Climate Corporate Data Accountability Act (SB 261) draws near, many companies are preparing their disclosures. SB 261 requires companies "doing business in California" with over $500 million in revenue to publicly disclose their climate-related financial risks in a biennial report, with the first reports due by January 1, 2026.

In recent months, the California Air Resources Board (CARB), which is in the process of developing implementing regulations, has hosted a virtual public workshop with stakeholders to discuss SB 261 (as well as the Climate Corporate Data Accountability Act (SB 253)), posted a draft checklist for the climate-related financial risk disclosures required by SB 261, and published a preliminary list of covered entities under SB 253 and SB 261.

The implementation and enforcement of SB 253 and SB 261 will proceed even while litigation relating to the laws is pending, following the denial of the request for a preliminary injunction filed by a coalition of business groups in the U.S. District Court for the Central District of California. The plaintiffs may appeal the District Court's ruling to the United States Court of Appeals for the Ninth Circuit. The case is set for a trial in the District Court beginning on October 20, 2026.

For more information on CARB's decision to establish the preliminary list and its definition of the threshold reporting requirements, please refer to CARB's August workshop recording and presentation slides and our Debevoise Update summarizing the workshop.

Delaware Court Dismisses Claims Against Directors for Failing to Remedy Prior Misconduct

A recent decision by the Delaware Court of Chancery underscores that a director's mere knowledge of alleged past wrongdoing at the company that predates the director's tenure is insufficient to establish a breach of fiduciary duty under Delaware law.

In *Borsody v. Gibson*, the Court of Chancery dismissed claims brought by a former director and co-founder of Nervive, Inc., a medical device company, against two directors who were appointed to the board after the alleged misconduct occurred. The plaintiff, Mark Borsody, claimed that former officers of the company had orchestrated a scheme in late 2019 to remove him from the board and restrict his ability to exercise stock options. Borsody alleged that the defendants breached their fiduciary duties by failing to remedy the prior misconduct, including by (i) refusing to honor his stock option rights and (ii) declining to investigate or address the company's past actions.

On June 11, 2025, the Court of Chancery granted the defendants' motion to dismiss, finding that the claims were time-barred because the plaintiff was on inquiry notice of the alleged harm as of December 2019, when the company rejected his stock option exercise, such that the three-year statute of limitations had expired by the time he filed suit in January 2023. The court also concluded that Borsody's allegation that the directors breached their fiduciary duties by failing to investigate and redress the past conduct of other fiduciaries failed to state a claim, as Borsody's alleged contractually based rights were governed by a contract to which the directors were not parties and therefore cannot be considered fiduciary obligations solely because they involve directors. Further, Nervive's certificate of incorporation includes an exculpation provision pursuant to 8 Del. C. § 102(b)(7) protecting directors from duty of care violations, and the court found that the complaint's allegations, which included that one of the directors felt "personal animus" towards Borsody, did not rise to the level of bad faith, conflict of interest, or lack of independence necessary to sustain a fiduciary claim based on loyalty. Claims for aiding and abetting and conspiracy similarly failed for lack of particularized allegations of knowing participation.

2025 Proxy Season: Disclosure Highlights

In August, we published our annual review of the proxy season discussing, among other things, disclosure trends we observed during the 2025 proxy season. In response to changes to the regulatory landscape and evolving investor sentiment on a variety of issues, some notable changes to disclosure included the following.

- **Diversity, Equity, and Inclusion**: Many companies softened their existing disclosures, focusing on "belonging," "inclusion," and merit-based practices rather than on "diversity" or "DEI." In addition, some companies transitioned from providing standalone statistics regarding board diversity in their proxy disclosure to a skills matrix format that incorporated certain demographic attributes alongside other director experience and abilities.
- **AI and Technology Governance**: Proxy statement disclosures revealed varied approaches to the oversight of AI and technology. At some companies, oversight over technology resides with the full board, while at others, such oversight resides with either an existing committee (e.g., audit or governance), or a newly formed committee dedicated to technology. As we have discussed previously, the appropriate framework will differ for each company and should align with the company's strategic needs and relationship to technology.

- **"E&S" Governance**: In recent years, it had become commonplace for DEI and climate change to be listed among the matters overseen by board committees. This year, some companies removed such responsibilities from their committees altogether, or replaced them with alternative descriptions such as "inclusion" and "sustainability."
- **Executive and Director Perquisites**: According to Equilar, the 2025 proxy season saw increased disclosures of executive security perks, with 33.8% of the largest 500 companies by revenue providing some form of security perk in 2024, up 45.1% from 2020. Several companies also proactively disclosed new security programs planned for 2025 in their proxy statement. Executive perks such as personal security benefits and private aircraft usage, previously viewed as luxury benefits, are increasingly seen as essential risk-management and safety practices.

For more information, please see our Debevoise 2025 Proxy Season in Review.

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