Key Considerations for the 2026 Proxy Season

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The beginning of the proxy season is underway for many public companies. In this companion to our recent Debevoise In Depth on the annual reporting season we outline key considerations for public companies preparing for the 2026 proxy season.

Key Takeaways

- **Prepare for a less predictable 2026 proxy season.** Proxy advisor policy changes, evolving Rule 14a-8 processes, and shifts in investor stewardship are likely to affect shareholder engagement, voting dynamics and disclosure expectations.

- **Review shareholder proposal and engagement strategies** in light of the Securities and Exchange Commission's ("SEC") decision not to substantively respond to most Rule 14a-8 no-action requests and the potential litigation, reputational, and activism risks associated with excluding proposals without no-action relief.

- **Revisit proxy disclosures with a "2026 lens."** Refresh CD&A narratives (including non-GAAP metrics and security-related perquisites), insider trading policy and governance disclosures to ensure clear and up-to-date disclosures that align with evolving investor and proxy advisor expectations.

Proxy Advisor Policy Updates

Institutional Shareholder Services

ISS made the following updates to its U.S. 2026 Proxy Voting Guidelines, which become effective for shareholder meetings held on or after February 1, 2026.

- **Social and environmental shareholder proposals.** ISS will adopt a case-by-case approach—rather than a presumptive "vote for" approach—for shareholder proposals relating to climate change, diversity, political contributions and human rights. According to ISS, this change reflects feedback gathered during client engagements and policy roundtables.

- **Unequal voting rights.** ISS will generally vote "withhold" or "against" directors individually, committee members or the entire board (except new nominees, who will be considered case-by-case) if the company employs a multi-class capital structure with unequal voting rights—regardless of whether the enhanced voting shares are classified as "common" or "preferred." There are two new exceptions to this policy: (1) convertible preferred shares that vote on an "as-converted" basis; and (2) situations where the enhanced voting rights are limited in duration and applicability, such as where they are intended to overcome low voting turnout and ensure approval of a specific non-controversial agenda item and "mirrored voting" applies.

- **Compensation.** ISS made several changes to compensation policies, including relating to pay-for-performance lookback periods, the treatment of time-based equity in the pay mix and responsiveness expectations after low say-on-pay votes. ISS also posted revisions to its U.S. Executive Compensation FAQs on these topics, along with security-related perquisites, the evaluation of carried interest/profit-sharing programs and annual bonuses based on the compensation committee's discretionary assessment of company and individual performance. For our analysis on ISS's compensation policy changes, see our Debevoise In Depth.

Glass Lewis

Glass Lewis made the following revisions and clarifications in its 2026 US Benchmark Policy Guidelines, which become effective for shareholder meetings held after January 1, 2026.

- **Shareholder proposals generally.** Glass Lewis updated some of its language regarding shareholder proposals in light of recent and anticipated changes to the Rule 14a-8 shareholder proposal process. Glass Lewis maintains that shareholders should have the opportunity to vote on matters of material importance but has removed prior guidance on the treatment of the SEC's no-action process. Glass Lewis notes that its approach to shareholder proposals may be revised prior to or during the 2026 proxy season if regulatory developments warrant additional updates.

- **Mandatory arbitration provisions.** When evaluating governing documents following an IPO, spin-off or direct listing, Glass Lewis will review any mandatory arbitration provisions and may recommend voting against the chair of the governance committee or, in certain cases, the entire committee. Glass Lewis will generally recommend against bylaw or charter amendments that seek to adopt mandatory arbitration absent clear and sufficient rationale and disclosure.

- **Limitations of shareholder rights.** Glass Lewis expanded its criteria for recommending votes against governance committee chairs (or the entire committee) if the board unilaterally amends governing documents to limit shareholder rights. Examples include restricting shareholder proposals; blocking derivative lawsuits; and replacing majority voting with plurality voting.

- **Amendments to governing documents.** Glass Lewis will evaluate proposals to amend governing documents on a case-by-case basis. In general, Glass Lewis will recommend supporting amendments that do not materially harm shareholder interests. Glass Lewis strongly opposes "bundled" proposals (i.e., multiple amendments in one vote).

- **Supermajority voting provisions.** Proposals to eliminate supermajority voting provisions will be assessed on a case-by-case basis. Glass Lewis generally supports removing supermajority thresholds but recognizes that such provisions may protect minority shareholders when a company has a large or controlling shareholder (in which case Glass Lewis may oppose their elimination).

- **Pay-for-Performance Methodology**. Glass Lewis introduced a new scorecard-based pay-for-performance methodology. Replacing the prior A–F letter-grade system, Glass Lewis now evaluates pay alignment using six separately rated tests, which are aggregated into an overall 0–100 score mapped to concern levels ranging from "severe" to "negligible." This is a methodological shift intended to provide more nuance and transparency. For our analysis on Glass Lewis's compensation policy changes, see our Debevoise In Depth.

Glass Lewis to End Benchmark Proxy Voting Policy in 2027

Starting in 2027, Glass Lewis will no longer publish a single set of "benchmark" voting recommendations. Instead, it will create voting frameworks that reflect individual client investment philosophies and stewardship priorities. Glass Lewis will also move away from providing research and recommendations based on its benchmark policy in favor of offering multiple perspectives that would capture the varied viewpoints of its clients.

Rule 14a-8 Shareholder Proposals

In November 2025, the Division of Corporation Finance of the SEC (the "Division") announced that it will not respond substantively to no-action requests regarding companies' intent to exclude shareholder proposals under Rule 14a-8 of the Exchange Act, other than no-action requests related to Rule 14a-8(i)(1). The announcement applies to the current proxy season (October 1, 2025 through September 30, 2026) as well as to no-action requests received before October 1, 2025, to which the Staff has not yet responded.

In the absence of no-action relief, a company seeking to exclude a shareholder proposal must determine whether there is a reasonable basis for exclusion under Rule 14a-8. The Division noted in its announcement that the absence of a prior response concurring with a basis for exclusion or a prior response indicating that the Staff could not concur with a basis for exclusion does not prevent companies from determining that they have a reasonable basis to exclude the same or a similar proposal.

Companies should carefully assess the attendant risks when determining whether to exclude a proposal on a basis that is no longer eligible for no-action relief as proponents may initiate litigation to compel inclusion of a proposal, and investors may adopt more aggressive strategies to convey their views—for example, voting against incumbent directors, submitting binding proposals, seeking amendments to bylaws or engaging in "vote no" campaigns or coordinated social media efforts. Further, although unprecedented, it is possible that the SEC may disagree with a company's stated basis for exclusion and pursue an enforcement action.

Companies that intend to exclude Rule 14a-8 shareholder proposals from their proxy materials must still notify the SEC and proponents no later than 80 calendar days before filing a definitive proxy statement.

Companies that intend to exclude Rule 14a-8 shareholder proposals other than under Rule 14a-8(i)(1) may request an acknowledgment from the SEC by submitting a Rule 14a-8(j) notice to the SEC along with an unqualified representation from the company or its counsel that the company has a reasonable basis to exclude the proposal based on the provisions of Rule 14a-8, prior published guidance or applicable case law. The procedures for submitting notices or requests to the Division pursuant to Rule 14a-8(j) remain unchanged; such submissions should continue to be made through the SEC's Shareholder Proposal Form. In these cases, the Staff will issue a letter stating that, based solely on the company's representation, it will not object if the company omits the proposal, but it will not evaluate the merits of the exclusion.

For more information, see the SEC's Announcement and our Debevoise Debrief.

Shareholder Engagement

Schedule 13G Eligibility

In February 2025, the Division revised a Compliance and Disclosure Interpretation ("C&DI") addressing the circumstances in which a shareholder's engagement with a company's management would cause the shareholder to be deemed to hold the subject securities with the "purpose or effect of changing or influencing control of the issuer"—thereby losing its eligibility to report on the short-form Schedule 13G.

Following the SEC's recent guidance, many institutional investors have adjusted their shareholder-engagement practices. Some have ended proactive outreach and will meet only at a company's request; others have adopted a listen-only posture or limited participation to discussions the company initiates or clearly frames. More broadly, investors are opening meetings with disclaimers emphasizing that they are not exercising control and are less willing to preview voting intentions. We expect further refinements to these approaches over the coming proxy season.

Contested situations remain an exception. Engagement practices in proxy contests are largely unchanged, and the guidance has not, to date, given activists greater access to institutional investors than companies. Many investors continue to follow structured processes—often involving multiple conversations at key stages—while avoiding advance disclosure of voting decisions and preserving room for substantive dialogue.

Investor Stewardship and Voting Policies

In 2025, BlackRock and State Street split their investment stewardship functions into two separate teams, each governed by distinct decision-makers, policies and methodologies that could accommodate differing priorities on issues such as ESG. BlackRock's stewardship group has been divided into BlackRock Investment Stewardship for index portfolios and BlackRock Active Investment Stewardship for active investment teams. State Street has split its governance work into a core Asset Stewardship Team and a new Sustainability Stewardship Service for investors who prioritize sustainability across four areas—climate change, nature, human rights and diversity. Vanguard announced that it will split its investment stewardship functions into two distinct teams—Vanguard Capital Management and Vanguard Portfolio Management—effective in 2026.

BlackRock, State Street and Vanguard also offer "pass-through" voting, an emerging practice that allows investors to influence how asset managers vote their interests at shareholder meetings, either by voting directly or by selecting third-party policy options.

As a result of the evolving stewardship landscape, boards and management teams should review their shareholder register, map decision-making authority within major institutions and use meetings with large institutional investors to understand how shares are held and how votes are cast. Building these relationships and clarifying process expectations on a clear day—when there is no immediate pressure or threat of activism—will provide better visibility into investor dynamics and support more thoughtful scenario planning if a contested situation emerges.

Select Executive Compensation Reminders

In our recent Debevoise In Depth, we highlight several reminders to help compensation committees, in-house legal teams and HR leaders plan for 2026 program design and executive compensation proxy disclosure. Below we summarize some of those reminders:

- **Executive Security Practices and Related Disclosures**. Executive security programs are generally treated as perquisites for disclosure purposes, even if the company views them as necessary business expenses. Under Item 402 of Regulation S-K, companies must disclose in the "All Other Compensation" column of the Summary Compensation Table the aggregate incremental cost to the company of providing the perk or personal benefit and provide appropriate narrative disclosure in the footnotes to the table and in the Compensation Discussion & Analysis (the "CD&A").

  To ensure continued compliance, legal and HR teams should review their internal controls for approving and tracking security-related costs and related disclosures. An increasing number of companies also disclose in their CD&As the rationale for security programs and the types of services provided to explain increasing costs to investors.

- **Non-GAAP Measures in Incentive Plans**. Public companies should inventory all non-GAAP financial measures used in 2025 incentive plans and confirm that each is explained and reconciled in the CD&A at an appropriate level of detail. Where adjustments materially increased payouts, companies should consider disclosing the nature of the adjustments, their approximate effect (in dollars or percentage terms) and the committee's rationale, including how the outcome aligns with overall shareholder experience.

- **2025 Say-on-Pay Voting Trends**. Public companies should review their 2025 voting results (including disaggregated by major shareholders where available) and any proxy advisor reports to identify themes that may raise concerns under ISS's and

Glass Lewis's updated pay-for-performance frameworks. Companies that received an "Against" recommendation or support below typical thresholds should consider enhanced disclosure around program changes, rationale for pay decisions and shareholder engagement.

- **CEO Succession and Related Disclosures.** CEO transitions remain an area of significant investor attention and media scrutiny. When undergoing a CEO transition, companies should ensure that compensation arrangements for incoming, outgoing and interim CEOs (and other key executives) are aligned with market practice and clearly tied to transition objectives. From a disclosure perspective, companies should provide transparent disclosure in the CD&A and related tables of transition-related awards, severance arrangements and any special one-time grants, including the board's rationale and how these arrangements align with shareholder interests. For more information, see our Debevoise In Depth.

Practical Tips

- **AI Governance Frameworks and Related Disclosures**. Public companies should consider updating their disclosures to reflect any changes to AI (or other) governance frameworks, particularly where board oversight, committee mandates or management responsibilities have evolved and may warrant clarification in the proxy statement. If material for a company, proxy disclosure should make clear how oversight is structured, how responsibilities are allocated between the board and management, and how the company monitors, mitigates and reports on AI-related risks and opportunities. Any proxy disclosure should be aligned with the company's most recent Form 10-K risk factors and other disclosures. For further discussion, register to join our upcoming Public Companies Webcast.

- **Mind Your Board Diversity Disclosures**. Companies should reassess their proxy disclosures in light of the divergent approaches taken by the proxy advisors. In 2025, ISS ceased considering board gender or racial/ethnic diversity when making U.S. director election recommendations, while Glass Lewis maintained strict diversity targets and added a "*For Your Attention*" flag to proxy reports with negative diversity-related director recommendations. When reviewing board diversity disclosures, companies should ensure they comply with Item 407(c)(2)(iv) of Regulation S-K, which requires disclosure if the nominating committee (or the board) has a policy with regard to the consideration of diversity in identifying director nominees.

- **Insider Trading Policies**. Under Item 408(b) of Regulation S-K, public companies must disclose whether they have adopted insider trading policies and procedures governing trading in the company's securities by employees, officers or directors, or by the company itself, that are reasonably designed to promote compliance with insider trading laws, rules and regulations and any applicable listing standards. Companies that have not adopted such policies and procedures are required to explain why they have not done so. Although this disclosure is required by Form 10-K, it may be incorporated by reference from a definitive proxy statement if the proxy statement is filed within 120 days of the end of the fiscal year. However, insider trading policies will still need to be filed as an exhibit to the annual report on Form 10-K.

- **D&O Questionnaires**. Companies should review their director and officer ("D&O") questionnaires annually. In 2024, the SEC settled charges against the former Church & Dwight Co., Inc. CEO and Chairman who failed to disclose a close personal relationship with an executive and consequently, caused the company's proxy statements to contain materially misleading statements. In early 2025, the FTC updated the Clayton Act thresholds, which included raising the threshold for interlocking directorates. Recent FTC actions for violations of the Clayton Act thresholds highlight the FTC's interest in enforcing the interlocking directorate provision. Companies should consider including questions that prompt disclosure of personal relationships between directors and management that may affect the determination of director independence, confirm the company's internal process for reviewing and flagging follow-up questions to D&O questionnaire responses and consider noting in the cover of the D&O questionnaire that any answers pre-filled by the company must be carefully reviewed by the director or officer.

What to Watch

Executive Order on Proxy Advisors

On December 11, 2025, President Trump signed an Executive Order directing the SEC, Federal Trade Commission (the "FTC") and Department of Labor to take various actions "to end the outsized influence of proxy advisors that prioritize radical political agendas over investor returns." The Executive Order instructs these agencies to revise or rescind guidance, bulletins and other interpretive materials that are deemed inconsistent with the stated rationale and objectives of the order. Although the Executive Order does not have an immediate effect on the current proxy season, it is likely to increase regulatory scrutiny of, and pressure on, the practices of ISS and Glass Lewis and creates the possibility of near-term agency action that could affect proxy voting and advisory practices.

The Executive Order is the latest in a series of regulatory and legal actions directed at the policies and practices of proxy advisory firms, including Texas legislation seeking to impose certain requirements on proxy advisory firms; Florida's attorney general filing a lawsuit against ISS and Glass Lewis; congressional action, including proposed legislation seeking to regulate proxy advisors and institutional investors' use of the proxy advisors' services; the FTC's investigation into whether ISS and Glass Lewis have violated antitrust laws; and various actions by state attorneys general, including investigations into whether ISS and Glass Lewis violated state consumer protection statutes.

Retail Voting Programs

In 2025, the Division granted no-action relief to ExxonMobil in connection with its retail voting program, which allows retail shareholders to provide standing instructions to vote their shares in line with board recommendations. 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.

We understand several companies are working to stand up retail voting programs. For companies and activists alike, the 2026 proxy season will offer the first opportunity to evaluate the program's real-world impact. To date, none of the major proxy advisors or institutional investors have commented on retail voting programs.

For more information see our Debevoise Update and our Public Companies Webcast, available on demand.

SEC Signals Executive Compensation Disclosure Reform

In June 2025, the SEC convened a public roundtable to assess whether the current executive compensation disclosure regime continues to provide investors with clear, decision-useful information. Several panelists from issuers, investors, law firms and compensation consultants observed that the length and complexity of current disclosures can obscure the key factors driving compensation decisions and make it harder for investors to identify what is material. Comment letters submitted following the roundtable have urged the SEC to consider simplifying Item 402 of Regulation S-K, streamlining narrative disclosures and focusing disclosures on material information.

The SEC's Spring 2025 Unified Agenda of Regulatory and Deregulatory Actions (the "Spring 2025 Agenda") includes an item titled "*Rationalization of Disclosure Practices*," which the SEC has described as encompassing, among other things, potential reforms to executive compensation disclosure requirements. In December 2025 remarks, SEC Chair Paul Atkins reiterated that executive compensation disclosure reform, grounded in materiality, remains a priority for the SEC.

While timing of any reforms remains uncertain and will not impact the 2026 reporting season, the SEC's roundtable and related commentary signal continued regulatory and investor focus on the clarity and usefulness of executive compensation disclosures.

Future of Rule 14a-8 Proposals

The SEC has indicated that it intends to review Rule 14a-8 generally and, in doing so, will take into account the impact of the recent announcement on the 2026 proxy season. This announcement is consistent with broader signals from the Staff and with the Spring 2025 Agenda, which contemplates amendments to Rule 14a-8 designed to "reduce compliance burdens for registrants and account for developments since the rule was last amended."

In October 2025, Chair Atkins delivered remarks at the John L. Weinberg Center for Corporate Governance suggesting that the SEC may be open to eliminating the ability of shareholders to submit precatory, or non-binding, shareholder proposals to companies incorporated in Delaware. In the speech, Chair Atkins referred to a forthcoming publication in the *Michigan Business & Entrepreneurial Law Review* 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 and should be excludable under Rule 14a-8(i)(1).

The Delaware courts have not directly addressed whether shareholders have a fundamental right to bring precatory proposals or whether such proposals are a "proper subject." If the courts were to hold that no such right exists, or that precatory proposals are not a proper subject, then that decision could potentially eliminate a substantial portion of the Rule 14a-8 proposals that companies currently receive.

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Please do not hesitate to contact us with any questions.

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