# Public Company Outlook for 2026

**January 8, 2026**

As we turn the calendar to 2026, public companies face an evolving set of legal and market dynamics that will shape governance, transactions, and engagement with stockholders.

## Interest in Alternatives to Delaware Will Continue

Following several Delaware court decisions that upheld challenges to transactions involving controlling stockholders, some companies reassessed the benefits of Delaware incorporation, as other jurisdictions, such as Nevada and Texas, sought to promote themselves as attractive alternatives for newly incorporated and reincorporating companies. While only a small number of companies have reincorporated from Delaware to other states, this remains a topic of discussion at many public companies, in part because many perceive, rightly or wrongly, that Delaware is more hospitable to stockholder litigation than other jurisdictions. We expect most reincorporations out of Delaware to continue to be by controlled companies, given that the litigation protections for controlling stockholder in some other states are likely more extensive than in Delaware.

IPO companies may likewise decide to incorporate outside of Delaware, as the IPO represents a clear opportunity for them to do so without requiring the approval of public stockholders. That said, issuers may be reluctant to do so if they think the market will apply a discount based on investor concerns about reduced stockholder protections.

Open questions include the effect of recent Delaware legislation intended to address some of the concerns about Delaware fiduciary duty litigation, including litigation relating to controlling stockholders (S.B. 21, discussed below), as well as the evolving attitude of institutional investors toward reincorporation proposals or IPOs outside of Delaware.

## Ambiguities in S.B. 21 Will Come to the Fore

In March 2025, Delaware enacted S.B. 21, which amended the Delaware General Corporation Law (the "DGCL") to provide greater clarity regarding the treatment of transactions involving conflicted directors or controlling stockholders, and to constrain the scope of materials available pursuant to stockholder books-and-records demands. While S.B. 21 is expected to promote more efficient dealmaking by providing a clearer framework for avoiding protracted deal litigation, it will not eliminate stockholder litigation over conflicted and controller transactions. As more conflicted and controller transactions are completed in reliance on the safe harbors provided in S.B. 21, we expect aspects of the statute and transactions structured under it to be challenged in litigation in 2026.

Conflicted transactions intended to fall within a safe harbor may present factual issues that will generate litigation in the appropriate transaction. For example, the safe harbor added to Section 144(a) of the DGCL requires the disclosure of the material facts concerning a director's or officer's relationship or interest in the transaction, and that the board of directors act in good faith in authorizing the transaction—both of which are factual questions about which reasonable people may disagree. Similarly, Section 144 of the DGCL is not intended to be the exclusive means by which a conflicted or controller transaction may be approved, leaving transactions outside the safe harbor subject to the same uncertainties that prevailed before S.B. 21.

## Activism Will Continue to Be Prevalent

Prior to the COVID pandemic, M&A deal volume and the number of activist campaigns were closely correlated. This correlation weakened during the pandemic and in the years following, likely due to a confluence of factors including macroeconomic and geopolitical uncertainties, rising inflation, and supply chain issues. However, the two metrics may be returning to their pre-COVID relationship—as M&A deal volume has steadily increased over the last several years, so has activist activity, with a record number of activist campaigns in the United States in 2025 through the end of the third quarter. A robust M&A market creates fertile ground for activism, for the simple reason that M&A—particularly whole-company sales—generate the near-term stock price increases that activists prize. For this reason, M&A is typically the most frequently seen item on the activist agenda. Announced deals may also attract activists seeking merger arbitrage opportunities, disagreeing with valuation, or questioning the strategic soundness of a transaction. We expect to see continued high M&A deal volumes in 2026 and activist activity is likely to remain high as well.

Activists also frequently seek board seats and will sometimes launch proxy contests to obtain them, but companies have typically been willing to settle to avoid a public and expensive fight. For 2025, settlements continued to increase, with 52 settlements in that period leading to at least one board sea compared to only 35 in the same period in 2024, and nearly half of all board seat settlements were reached without any public agitation. The universal proxy has accelerated this trend, as companies decide that proxy contests are likely to end with at least a split decision in favor of the activist. We predict that with the increase in activist campaigns, as well as increasing capital deployed to activist strategies, settlements are likely to continue to increase in number and speed.

## Proxy Advisors Will Continue to Be Important

President Trump's recent executive order, "*Protecting American Investors from Foreign-Owned and Politically-Motivated Proxy Advisors*," targets the influence of proxy advisory firms—specifically ISS and Glass Lewis—asserting they are foreign-owned, control over 90% of the market, and have advanced DEI and ESG agendas at the expense of investor returns. The stated aim of the order is to increase oversight and restore confidence in the proxy advisor industry by promoting accountability, transparency, and competition. Nevertheless, we expect proxy advisors to continue to exert significant influence in 2026, particularly given the absence of a practical alternative for fund complexes and institutional investors with widely diversified portfolios to undertake voting analysis at scale.

Several voting alternatives have emerged in recent months, including pass-through voting and retail voting programs. Pass-through voting by index funds is a way for fund investors to convey their vote preferences without the need to create a separate account or a new fund, with the fund voting its shares in proportion with those preferences. However, we do not expect pass-through voting by index funds to have a significant impact on the outcome of stockholder meetings, as we do not believe there will be substantial uptake by funds or retail shareholders. After all, one reason investors choose indexing is because they do not want to make a lot of voting decisions at individual companies.

On the other hand, retail voting programs, which allow individual companies to enroll retail stockholders in programs that allow stockholders to provide standing voting instructions aligned with management recommendation, are likely to see increased adoption after the 2026 proxy season, as service providers such as Broadridge expand their capabilities to administer the such programs and companies begin to see the benefits of having pre-committed votes from retail shareholders who historically have not participated at stockholder meetings.

## Deal-Friendly Antitrust Environment

The merger control environment in the United States is expected to remain deal-friendly. The return of remedies (both structural and behavioral) being available as a means to address competition issues raised by transactions continues to provide regulators and companies a relief valve, assuming an acceptable remedy package can be developed and implemented. Still, regulators continue to carefully scrutinize transactions that raise competition concerns, particularly in industries that have been a focus of the administration: technology, healthcare, and media.

Outside the United States, regulators have not necessarily adopted the same transaction-friendly approach. As a result, multi-national transactions will continue to face antitrust hurdles. Lastly, while the line between politics and antitrust analysis may never have been as clear as some have claimed, we expect that line to continue to blur.

## Global Minimum Tax Regimes Remain the Focus

Following the enactment of U.S. tax legislation in 2025, we expect significant focus in 2026 on the implementation of the G7's "side-by-side" framework harmonizing the interaction between the U.S. tax system and the OECD's "Pillar 2" global minimum tax regime. While both the United States and the Pillar 2 rules impose 15% minimum taxes on the financial statement income of large corporations, design differences between the two systems, including the treatment of tax credits and the taxation of foreign subsidiaries, have caused significant friction between the United States. and the many jurisdictions that have enacted Pillar 2 legislation. Tensions came to a head when Congress proposed to include in the One Big Beautiful Bill a controversial "revenge tax" on residents of countries that taxed the United States under Pillar 2. Ensuing discussions led to a G7 statement that a "side-by-side" system would be implemented which would exclude U.S.-parented multinational groups from Pillar 2 tax and the removal of the revenge tax from the One Big Beautiful Bill.

On January 5, 2026, the OECD released initial guidance on the side-by-side system, a major milestone in the project. The OECD guidance establishes a safe harbor exemption from the Pillar 2 top-up taxes for multinational groups with an ultimate parent entity in a jurisdiction with qualifying domestic and international tax regimes that meet specified criteria. The United States is so far the only country specified as meeting the criteria. The OECD's safe harbor is effective from January 1, 2026, aligning with the expiration of an important previous transitional safe harbor.

Large multinational groups will need to carefully evaluate the details of the OECD's new guidance. Notably, groups with significant operations in the United States under a non-U.S. parent generally will not be eligible for the side-by-side system, although the guidance package also includes a safe harbor for improving the treatment of expenditure and production-based credits and other tax incentives which could benefit U.S. taxpayers.

If there are future setbacks, or tensions rise on other issues such as digital services taxes, it is possible that the U.S. government could revive the threat of the revenge tax (which likely would require an additional tax reconciliation bill). A second reconciliation bill could include additional unrelated domestic tax changes, however the prospects for such legislation are uncertain at best.

## Board Governance of Artificial Intelligence High on Board Agendas

The increased use of AI across a range of functions in many public companies raises attendant risks for those companies, including business risk, regulatory risk, technological risk, cybersecurity risk, and governance risk. The use of AI in a company's core business functions raise four board oversight issues: (1) identifying important AI uses, (2) assigning specific management responsibility, (3) peer benchmarking, and (4) developing a framework to assess the risks and opportunities AI presents. Knowing about core AI projects, having one or more designated senior owners of risk, and tracking similar projects at peers will position directors to help their companies capture AI's upside while managing the risks that come with adding AI to the heart of the enterprise. The board should also ensure that significant AI-related events, especially those that create reputational or legal risk, are promptly reported to the board.

More public companies are considering implementing policies governing the use of AI by their employees and implementing guardrails to ensure best practices in the use of AI tools. Against this backdrop, boards of directors are considering how they can best oversee the company's use of AI, including whether to assign responsibility to a board committee, and if so, which one. Others are seeking to add directors with AI expertise or are including AI as a board education topic. We expect that AI governance will continue to be an important topic in 2026.

## Private Equity Active in Public Company M&A

In recent years, we have seen private equity sponsors and strategic buyers partnering to acquire target companies. In these transactions, a private equity sponsor can provide equity financing that allows a strategic buyer to pursue the acquisition, while also contributing financial, operational, and strategic expertise that is valued by the strategic buyer. While these transactions raise challenging issues as to economic rights, governance, and exit, we expect these partnership transactions to continue to proliferate in 2026 as sponsors look to put capital to work and strategics seek external financing.

In addition, over the past few years, private equity sponsors have increasingly pursued take-private transactions, driven by a combination of factors including ongoing market volatility, perceived undervaluation of certain public companies relative to their long-term prospects, the rise of private debt financing to facilitate these deals, and the perceived unattractiveness of continuing as a publicly traded company, particularly when seeking to execute major strategic changes requiring investor patience. Taking a company private can result in significant cost savings, avoid public scrutiny of quarterly results, and allow for increased leverage as the private equity sponsor pursues growth initiatives. As a result, we expected this trend to continue in 2026.

## SEC to Continue Focus on Executive Compensation Disclosures

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 Regulatory Flexibility Agenda included 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 affect the 2026 annual reporting season, we expect to see a concept release or proposed rules from the SEC focused on executive compensation disclosures in 2026.

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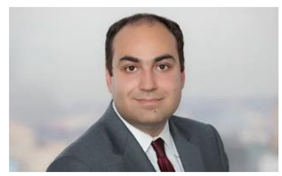

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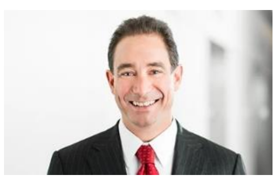

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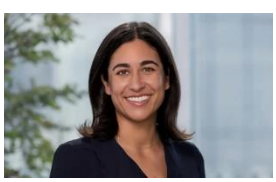

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