Things to Keep in Mind For Your Annual Report on Form 10-K and Proxy Statement

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Unlike past years, companies are not facing new disclosure requirements for their upcoming 10-Ks and proxy statements, but the change in the SEC administration during 2025 brought with it other changes companies will need to address. This update summarizes things to keep in mind as you prepare your 10-K and 2026 annual meeting proxy statement, and previews potential significant changes that may materialize in the future.

Emerging Issues and Trends

Significant Changes for Handling Rule 14a-8 Shareholder Proposals

In November 2025, the SEC issued a statement announcing significant changes to its handling of shareholder proposal exclusions under Rule 14a-8 for the 2025–2026 proxy season (October 1, 2025 – September 30, 2026 and no-action requests received before October 1, 2025). Citing current resource and timing considerations following the lengthy government shutdown, the statement said that Corp Fin will not respond to no-action requests for, and will express no views on, companies' intended reliance on any basis for exclusion of shareholder proposals under Rule 14a-8, other than no-action requests to exclude a proposal under Rule 14a-8(i)(1) (proposals violating state or federal law).

Companies that intend to exclude shareholder proposals from their proxy materials must still provide the notice required under Rule 14a-8(j) no later than 80 calendar days before filing their definitive proxy statement. In recognition that some companies may want to receive some form of response to its Rule 14a-8(j) notice, if a company includes an unqualified representation that the company has a reasonable basis to exclude the proposal based on Rule 14a-8, prior published guidance, and/or judicial decisions, Corp Fin will respond with a letter indicating that, based solely on the company's representation, it will not object if the company omits the proposal from its proxy materials.

Some have expressed concern to Chair Atkins with the SEC's approach. Treasurers, comptrollers and controllers of 17 states suggested that the approach will "suppress shareholder governance, diminish corporate transparency and accountability, and create risks to profitability and reputation for companies," "increases the likelihood that investors will escalate their concerns through more disruptive and adversarial channels," and risks "fueling board-level instability and reputational risk if companies appear to block investor voice." The Council of Institutional Investors (CII) said that the approach "could diminish the use of an important shareholder right that for decades has led to improvements in corporate governance that benefit long-term shareholder value." According to the CII, both companies and investors benefit from the SEC reviewing a company's decision to exclude a shareholder proposal, and the SEC's approach "could result in greater board-level instability through unnecessarily increasing a [company's] reputational or legal risks."

To date, many companies have excluded Rule 14a-8 shareholders proposals in accordance with the SEC's statement (and provided an unqualified representation that they have a reasonable basis to exclude the proposal). In response, the SEC Staff issued letters stating that it will not object to the exclusion of the proposal.

Nonbinding shareholder proposals and proper stockholder action	The SEC's announcement regarding its role (or absence of a role) in referring Rule 14a-8 proposals, follows Chair Atkins' remarks in October 2025 that precatory shareholder proposals (i.e., those that call for action that are not binding on a company) submitted to Delaware companies are excludable under Rule 14a-8(i)(1) because they are not "proper subject" for stockholder action (absent a right created for stockholders in the company's governing documents), and that if a company obtains an opinion of counsel that the proposal is not a "proper subject" for stockholder action, the company should prevail. If non-binding proposals are not available to stockholders, some expect that stockholders could simply submit binding proposals. Although uncommon, there has been a modest increase in binding proposal submissions (and they have received low stockholder support). Time will tell how this issue unfolds and, following a cost-benefits analysis, some companies may choose to include a non-binding proposal in its proxy materials even if it may not be proper for stockholder action.
SEC Ends Defense of Climate Rules	In March 2025, the SEC voted to ends its defense of the rules requiring disclosure of climate-related risks and greenhouse gas emissions. Companies will now need to determine if disclosure is required under a principles-based analysis of materiality. Keep in mind, however, that certain states (including California) are moving forward with their climate-related laws, and companies subject to such laws, should be preparing to comply with such laws.
D&Os of FPIs Subject to Section 16(a)	Effective March 18, 2026, directors and officers of foreign private issuers (FPIs) will be required to file 1934 Act Section 16 reports. Individuals serving as directors and officers on that date must file their Form 3 on that date; directors and officers elected or appointed after that date will have 10 days to file their Form 3. Notably, FPI directors and officers are not subject Section 16(b) (commonly referred to as the short-swing statute) and 10% beneficial owners of an FPI are not subject to either Section 16(a) or 16(b). However, the SEC could expand the scope of the rule through rulemaking. Investors with affiliated individuals serving on a FPI board of directors who are considered "directors by deputization" will be subject to Section 16(a). In addition to implementing appropriate controls to help ensure timely filing of Section 16 reports, FPI boards will need to identify their Section 16 officers, and such officers and directors will need to obtain EDGAR codes.
Proxy Advisory Practice Could be Significantly Impacted	According to this WSJ report, JPMorgan's asset-management unit (which has more than $7 trillion in client assets) is cutting all ties with proxy advisors immediately. Instead, it will start using an internal AI-powered platform (Proxy IQ) to analyze data from more than 3,000 annual company meetings and provide voting recommendations to portfolio managers. JPMorgan's decision is less than a month after the issuance of a December 2025 U.S. presidential executive order focusing on the influence that proxy advisors have on corporate governance matters, and the proxy advisors use of their power to "advance and prioritize radical politically-motivated agendas." The executive order directs the SEC Chair to "review all rules, regulations, guidance, bulletins, and memoranda relating to proxy advisors," and "consider revising or rescinding those rules, regulations, guidance, bulletins, and memoranda that are inconsistent with the purpose of [the] order, especially to the extent that they implicate "diversity, equity, and inclusion" and "environmental, social, and governance" policies." Specifically, the executive order requires that the SEC Chair: (1) enforce the federal securities laws' anti-fraud provisions with respect to material misstatements or omissions contained in proxy advisors' voting recommendations; (2) assess whether to require proxy advisors to register as registered investment advisers under the Investment Advisers Act of 1940; (3) consider requiring proxy advisors to provide increased transparency on their recommendations, methodology, and conflicts of interest; and (4) analyze whether a proxy advisor serves as a vehicle for investment advisers to coordinate and augment their voting decisions, thereby forming a group for purposes of 1934 Act Sections 13(d)(3) and 13(g)(3) (relatedly, Commissioner Uyeda expressed similar sentiments in his remarks at the 2025 Institute for Corporate Counsel). It remains to be seen if other institutional investors will follow JPMorgan's lead or what steps the SEC will take in response to the mandates given to it in the executive order.

SEC Allows Automatic Retail Voting Programs	In September 2025, the SEC issued a no action letter stating that, subject to conditions specified therein, it would not recommend enforcement action with respect to a company's proposed automatic retail voting program. According to the company, the program is an effort to increase voting participation by retail investors (both record and beneficial owners) at annual meetings. The program allows retail investors to give a standing voting instruction whereby their shares will be voted in accordance's with the company's board's recommendation on either (1) all matters or (2) all matters except contested director elections or any acquisition, merger or divestiture transaction that, under applicable state law or stock exchange rules, requires stockholder approval. Votes will automatically be submitted on the date the company's definitive proxy statement is filed with the SEC, but a stockholder can override their standing voting instruction by voting using the proxy materials for the meeting. A stockholder can also opt out of the program to cancel their vote at any time, but because votes under the program will be cast on the same day that the definitive proxy statement is filed for an upcoming meeting, cancelling a standing voting instruction will apply to future meetings (i.e., meetings for which the company has not yet filed a definitive proxy statement). Critics claim that the program will result in less shareholder engagement and strips retail investors of their rights, and that the program should also provide an option to vote against the company's board's recommendations. A suit has been filed challenging the program, alleging that the board breached their fiduciary duties in adopting it.
Earnings Calls and MD&A Disclosure	The SEC continues to issue comment letters in connection with 10-K reviews in which the SEC staff asks why a particular statement a company made on an earnings call was not also disclosed in MD&A (e.g., why a strategy mentioned on an earnings call was not discussed in MD&A, and whether metrics mentioned on an earnings call should be disclosed in MD&A). In light of the above, companies should consider whether their MD&A and other disclosure in periodic reports reflects all material information that will be discussed on their earnings call.
Somewhat New Disclosure Requirements	
Equity Award Grant Practices	Beginning last year companies were required to provide the disclosure required by Reg. S-K Item 402(x) regarding the company's policies and practices with respect to the timing of grants of certain equity awards (stock options, stock appreciation rights and similar awards) as it relates to the release of material non-public information, including how the board determines when to grant awards and whether and how MNPI is taken into account. Keep in mind that: • the *narrative* disclosure applies to the company's policies and practices with respect to the timing of grants of such equity awards to all individuals, not just NEOs (the tabular disclosure is limited to grants to NEOs); and • if the company does not grant one of the covered awards, it should nevertheless provide disclosure responsive to the rule. The rule does not state what time period is covered by the scope of the required narrative disclosure. Last year, some companies expressly limited their disclosure to the prior fiscal year, while others stated that their practice is to not time the grant of awards in connection with the release of MNPI (without saying they do not or never have). Although the required narrative disclosure is limited to stock options, SARs and similar awards, many companies discuss their policies and practices with respect to all equity awards, and include the required disclosure in CD&A, where similar disclosure has historically been provided. The final rules were adopted in December 2022 and are available here.

Insider Trading Policies	Under Reg. S-K Item 408(b), a company must disclose whether it has adopted policies and procedures governing the purchase, sale and/or other dispositions of its securities by directors, officers and employees or the company itself that are reasonably designed to promote compliance with insider trading laws and applicable listing standards, and if not, why not. The disclosure is required in Part III of the 10-K (but can be incorporated therein from the proxy statement) and must be tagged in Inline XBRL. In light of the requirement to disclose whether a company has adopted policies and procedures governing the company's purchase, sale and/or other dispositions of its securities, some companies amended their policies to cover the company itself, while others disclosed that it is the company's policy to comply with applicable securities laws, including insider trading laws, when engaging in transactions in its own securities. Insider trading policies and procedures must be filed as Exhibit 19 to the 10-K. If your policies and procedures were amended since it was last filed as an exhibit, file the current version with your upcoming 10-K. The final rules were adopted in December 2022 and are available here.
Clawback Policies	Exchange-listed companies were required to adopt clawback policies by December 1, 2023, and the policy was required to be filed as an Exhibit 97 to their 10-K. If your clawback policy was amended since it was last filed as an exhibit, file the current version with your upcoming 10-K.
Checkboxes on 10-K Facing Page	10-Ks include checkboxes on the facing page requiring the company to indicate (1) whether its financial statements reflected a correction of an error to previously issued financial statements and (2) whether any error correction resulted in a restatement requiring a clawback analysis of incentive-based compensation received by any of the company's executive officers. SEC staff issued six C&DIs in 2025 related to circumstances that require these checkboxes to be checked and when Reg. S-K Item 402(w)(2) disclosure is required in a proxy statement. See Exchange Act Form C&DIs 104.20 through 104.25.
Relevant SEC Enforcement Actions	
Trends	The change in SEC administration during 2025 brought with it a significant decline in new enforcement actions compared to the prior administration. According to Chair Atkins, the SEC is focused on pursuing matters involving "misconduct that distorts capital raising and victimizes investors," a transition from the prior administration's reliance on technical violations (e.g., alleged books and records, internal accounting controls, or disclosure controls and procedures violations). According to the Cornerstone Research report on SEC enforcement activity in 2025, the 56 actions against public companies (52 of which were initiated under former Chair Gensler) was a 30% decrease from 2024.

Misleading Statements Related to IP Ownership and the Success of AI Products	On January 14, 2025, the SEC issued an order instituting cease-and-desist proceedings against a company that used AI speech recognition technology to facilitate order taking at drive-thru restaurants. From November 2021 to September 2022, the product the company offered used technology licensed from a third-party. In September 2022, the company began to offer a similar product using internally developed technology. The SEC alleged that during the time company offered only the product that used the in-licensed technology, the company referred to such technology in various SEC filings (including investor presentations furnished as exhibits to 8-Ks) and press releases as "[the company's] voice ordering solution," "our technology" and similar statements implying that the company owned the technology. According to the order, the statements were materially misleading because they implied that the products were powered by company-owned technology and did not disclose that the technology was owned and operated by a third-party licensor. Even though the company made limited disclosures about the third-party in certain of its filings, according to the SEC, the disclosures did not contain sufficient information to inform investors about the extent of the company's reliance on the third-party to power the products (e.g., in a few instances the company said it was developing the solution in partnership with the licensor). The SEC also alleged that company statements that its products "eliminated human order taking" were materially false. According to the order, human intervention was required all the time when the product was first deployed (the technology converted the customer's voice order to text and humans entered the order into the restaurant's ordering system), and about 70% of the time with more advanced versions. The SEC also alleged that the company reported inflated performance metrics. The company made statements regarding the "automated order completion" and "non-intervention" rates for drive-thru orders, implying that the technology completed orders with no human intervention at specified rates. However, the company did not disclose that the rates referred to completed orders without *restaurant staff* involvement, not with no human involvement.
Failure of Company Personnel to Disclose Material Agreements	On January 10, 2025, the SEC issued an order instituting cease-and-desist proceedings against the former executive chairman and CEO of an entertainment company for signing two settlement agreements on behalf of himself and the company without disclosing them to the company's board of directors, personnel or auditor. According to the order, under the settlement agreements, the former executive paid $3 million and $7.5 million, respectively, to a former employee and independent contractor of the company in exchange for non-disclosure agreements and releases of claims in favor of him and the company. Because it was not aware of the agreements, the company did not evaluate their disclosure implications or how to account for them in its financial statements, and as a result the company overstated its net income and did not disclose them as related party transactions. After learning of the settlement agreements, the company restated its financial statements. The former executive agreed to a $400,000 civil penalty and to reimburse the company $1.3 million. In addition, incentive-based compensation and profits from the sale of the company's common stock the former executive received were subject to clawback.
Improper Accounting and Disclosure Controls Failures Related to Modified Stock Awards	In January 2025, the SEC announced settled charges against a company who, according to the SEC's order, improperly accounted for stock-based compensation expenses, resulting in materially inaccurate and misleading financial statements. The company modified the terms of stock awards for six departing employees and retiring board members by accelerating their vesting or allowing vesting to continue past their departure so that the awards would not be forfeited or cancelled upon departure. The order also found that the company failed to devise and maintain internal accounting controls to address modifications to stock awards and that the company did not have disclosure controls or procedures designed to ensure that non-financial information required to be disclosed in company filings with the SEC was timely reported. The company agreed to pay $3 million.

False and Misleading Statements Re a Drug Candidate's Chances of FDA Approval	In March 2025, the SEC announced settled charges against a biopharmaceutical company for failing to disclose in its public filings that the FDA recommended the company not seek marketing approval of its flagship drug candidate because the data was insufficient and instead recommended that the company conduct a new Phase III clinical trial. According to the SEC's order, the press release the company issued announcing the submission of the NDA for the drug candidate not only omitted this information, but it made false and misleading claims regarding the drug candidate's efficacy and the likelihood of being approved by the FDA, and the Company raised $20 million from an investor who was uninformed of the FDA's prior communication to the company. The FDA refused to review the NDA, resulting in the company's stock price dropping 31%. The company agreed to pay $2.5 million. The SEC also filed charges against the company's CEO, CMO and CBO seeking permanent injunctions, disgorgement with prejudgment interest, civil monetary penalties, and officer and director bars.
Fraudulent Clinical Trial Results	In September 2025, the SEC brought both a settled administrative action against a life sciences company and a civil enforcement action against its former CMO relating to false and misleading statements about clinical trial results for the company's drug candidate. The SEC alleged that the company and CMO misled investors about the cardiovascular safety of its drug candidate by presenting manipulated, post-hoc–adjusted (i.e., changes made after unblinding of the data) analyses as if they were pre-specified and validated. According to the SEC, from 2019 to 2021, the CMO (1) "reverse engineered" the cardiovascular safety data to make the product candidate appear superior to an existing treatment, despite initial analyses showing it was only comparable; (2) directed changes to analysis factors after seeing negative initial results, then presented the altered results publicly; and (3) made these misleading claims in industry presentations, SEC filings, an earnings call and a published manuscript. The company's stock fell approximately 43% in April 2021 when new management publicly corrected the record. The company agreed to pay a civil penalty of $1.25 million and to cooperate fully with the SEC on any related judicial proceeding, including against the CMO.
Misleading Statements About Manufacturing Capabilities	In April 2025, the SEC initiated administrative cease and desist proceedings against a drug manufacturing company for materially misleading public statements regarding its ability and readiness to manufacture COVID 19 vaccines. After signing agreements with two pharmaceutical companies to manufacture their vaccines, the company stated during an earnings call that it had "proven manufacturing capabilities" and was ready to "rapidly deploy" its CDMO services to meet the substantial demand for a vaccine. However, at the same time, the company was repeatedly warned about the ability of its facility to support commercial-scale manufacturing. The company eventually entered into an agreement with the FDA to halt manufacturing. The company agreed to pay a civil penalty of $1.5 million. In the order, the SEC noted that throughout the relevant period, the company offered and sold performance stock units and restricted stock units to its employees, received funds from exercise of options by employees, and sold approximately $450 million of unsecured notes.
Other Things to Keep in Mind	
Delinquent Section 16(a) Reports	The transition to EDGAR Next during 2025 may have increased the chances of late Section 16(a) reports, thereby requiring disclosure responsive to S-K Item 405 in this year's 10-K or proxy statement. The instruction to S-K Item 405 encourages companies to exclude the "Delinquent Section 16(a) Reports" caption from their filings if there is nothing to report. In light of that instruction, required disclosure may be overlooked if a company rolls over its 10-K or proxy statement from last year that did not require disclosure responsive to S-K Item 405.

All S-3s Can Be Declared Effective During 10-K Gap	All S-3s (not just those filed by WKSIs) can be declared effective after a company files its 10-K and before filing its definitive proxy statement (even if the 10-K incorporates by reference the Part III information from the proxy statement). Keep in mind, however, if the company wants to do an offering, it must be comfortable that the missing Part III information is not material. 1933 Act Form C&DI Question 123.01 (which was withdrawn in March 2025) previously stated that to have a complete Section 10(a) prospectus, before an S-3 can be declared effective, a non-WKSI company must either file its definitive proxy statement or include Part III information in its 10-K.
New SEC Guidance Related to SRC Filer Status	To help companies confirm their filer status, the SEC issued a C&DI 130.05 in 2025 relevant to SRCs. The guidance relates to when changes in a company's status as a SRC under the "revenue" test will result in the company no longer qualifying as a non-accelerated filer. The guidance provides that if an SRC determines on the last business day of its second fiscal quarter that it no longer qualifies as an SRC under the revenue test, it would be eligible to continue to file as an SRC until its Form 10-Q for the first quarter of the following year.
Board Diversity Disclosure	In December 2024, the Fifth Circuit vacated the SEC's order approving Nasdaq's board diversity disclosure rules, thereby eliminating companies' requirement to provide the disclosure required by those rules. In light of policies of proxy advisory firms and institutional investors essentially eliminating director diversity requirements, many companies have stopped providing board diversity disclosure in their proxy statements.
Check Registration Statement Eligibility	The filing of the 10-K triggers eligibility checks on outstanding registration statements. Companies will need to check that they continue to be eligible to use outstanding S-3s and WKSI shelf registration statements, and if not, file an amendment on an eligible form. Similarly, if a company has an outstanding S-1 that does not incorporate future filings by reference or Form 1-A, a post-effective amendment or post-qualification amendment may need to be filed to incorporate the 10-K.
Sufficient Authorized Capital	Companies should assess whether their authorized capital is sufficient for anticipated transactions in the upcoming year (considering both shares that are outstanding and reserved for future issuance), and if not, consider seeking stockholder approval at the annual stockholder meeting to increase their authorized capital. In making this assessment, keep in mind that SEC comment letters have requested that 5.1 legal opinions remove assumptions that there will be sufficient shares authorized and not otherwise reserved for issuance.
Risk Factors	The SEC continues to underscore the need for companies to tailor their risk factors to reflect their business and operations and to not recycle generic disclosure. In 2025, Chair Atkins commented that, when it comes to risk factors, some companies "dump in the kitchen sink," which is not helpful to investors. To the extent that what was a hypothetical risk has occurred, risk factors should be revised accordingly. Although the likelihood of an enforcement action from the current SEC administration may be lower than in past years, claims by plaintiff shareholders that risk factors were materially misleading because the disclosure stated an event could occur when it in fact had already occurred at the time of disclosure, continues to be common.
Description of Securities – Exhibit 4 to 10-K	Although not new for the upcoming 10-K, companies should revisit the exhibit filed with their 10-K that provides the information required by Reg. S-K Item 202(a) through (d) and (f) for each registered class of securities to confirm it is accurate. A company may have amended its charter or bylaws in a way that requires revised disclosure in this exhibit.
PEO/PFO Certifications – Exhibit 31 to 10-K	Keep in mind that a newly public company filing its second 10-K will phase out of the transition period that allows for the omission of certain paragraphs in Exhibit 31 to the 10-K. In particular, the certificates will need to cover the PEO/PFO assessment of the company's internal control over financial reporting. Similarly, the disclosure in Item 9A, Part II of the 10-Ks will need to include management's report on ICFR and, if applicable, a statement regarding the outside auditor's attestation report.

Expiring Confidential Treatment Orders	Companies should review their exhibits to determine if any previously granted confidential treatment will expire this year, and if so, take steps to maintain the confidential treatment if necessary. There are two options, depending on when the confidential treatment was initially granted: request an extension or transition to the streamlined process created in 2019. The SEC provided updated guidance in January 2024.
Broken Links	In June 2024, the SEC reminded companies to confirm that the links (including links in exhibits) in their EDGAR filings are working properly before submitting their filings on EDGAR.
Powers of Attorney for Section 16 Reports	Companies should review the most recent powers of attorney filed with their insiders' Section 16 reports to confirm that individuals identified as attorneys-in-fact for the insider continues to be appropriate. One or more of the individuals identified as an attorney-in-fact may no longer be with the company, and a new power of attorney or a substitute power of attorney may be useful. It may be helpful to obtain signatures on such documents in connection with the D&O questionnaire process.
Deadlines for Companies with a December 31 Fiscal Year-End*	
10-K	*Large Accelerated Filer:* March 2, 2026 (60 days after FYE) *Accelerated Filer:* March 16, 2026 (75 days after FYE) *Non-Accelerated Filer:* March 31, 2026 (90 days after FYE)
Proxy Statement	*To incorporate by reference into your 10-K:* April 30, 2026 (120 days after FYE) When finalizing your annual meeting timeline, if any matter will be submitted to stockholders for a vote at the annual meeting that requires filing a preliminary proxy statement, take into account the 10 calendar days that must lapse before the definitive proxy statement can be filed, and, ideally, provide additional cushion in case the SEC comments on the preliminary proxy statement.
Form 5	February 17, 2026
Annual ISO/ESPP Reporting	*Annual information statements to employees who exercised incentive stock options or purchased shares under an employee stock purchase plan*: February 2, 2026 *Annual information returns (Forms 3921/3922) to IRS:* March 2, 2026 (or March 31, 2026, if filed electronically) For additional information regarding these matters, see our Executive Compensation Law Blog.

* Dates reflect additional business day where deadline falls on a weekend or on a day when EDGAR is closed.

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