



# Fenwick Securities Law Update

– August 5, 2025 –

Welcome to the latest edition of Fenwick’s Securities Law Update. This issue contains updates and important reminders on:

- Risk Factor and Management’s Discussion and Analysis considerations for upcoming Form 10-Q filings
- The latest development in the ongoing litigation around the SEC’s climate disclosure rules
- New Regulation 13D/G CDIs
- Other matters of interest, including updates on the GENIUS Act and CLARITY Act

## Risk Factor and MD&A Considerations for Upcoming Form 10-Q

- **Trade Issues and Tariffs:** The Trump administration said it would impose reciprocal tariffs on a large number of countries with which the U.S. trades unless deals are struck by August 1. As of July 31, agreements had reportedly been reached with the EU, Japan, South Korea, and the Philippines among other countries. However, discussions with key trade partners like China and India are still ongoing. The U.S. Secretary of the Treasury indicated that he expects the U.S. and China to agree to extend the previously announced August 1 deadline that the two countries had established to reach a deal on trade. The potential impacts of increased tariffs and trade uncertainty are discussed in our April 24, 2025, and May 10, 2025, Securities Law Updates.
- **U.S. Budget and Tax Policy:** President Donald Trump signed the One Big Beautiful Bill Act into law on July 4. The act makes permanent the 21% corporate tax rate established under the 2017 Tax Cuts and Jobs Act. Among other things, the act also [substantially expands provisions](#) that exclude from federal income tax all or a portion of gains from sales of qualified small business stock (QSBS).
- **Foreign Currency Exchange Risk:** As of July 31, the U.S. dollar index was down ~ 8% this year. Please see the discussion of foreign currency exchange risk in our July 7 Update.

## Rules and Regulations

- **SEC Climate Disclosure Rules:** The SEC voted in March 2025 to [cease the defense of its climate disclosure rules](#) in litigation seeking to overturn those rules. However, the litigation continues with certain states intervening to defend the rules in place of the SEC. In April 2025, the Eighth Circuit Court of Appeals directed the SEC to file a status report regarding its intentions with respect to the litigation. On July 23, 2025, the SEC filed its status report,

making clear that it does not intend to review or reconsider the rules at this time and asking the court to continue to consider arguments and exercise its judgment to decide the case.

## Other SEC Developments and Announcements

- **Regulation 13D/G CDIs:** On July 11, 2025, the SEC’s Division of Corporation Finance [amended 18 CDIs relating to Regulation 13D-G](#), the beneficial ownership reporting rules. These amendments align the CDIs with amendments to Regulations 13D-G adopted in October 2023. Those amendments accelerated the filing deadlines for Schedules 13D and 13G and provided additional guidance on formation of a “group” and other beneficial ownership-related issues. The revised CDIs now reflect the new deadlines from the Regulation 13D-G amendments and the guidance referred to above. None of the revised CDIs changed the SEC’s response to the hypothetical question that was posed in opening each CDI.
- **SEC Filing Status:** The filing status for calendar year-end reporting companies is based on the company’s market capitalization on June 30. With that date having passed, companies can now determine their status as a large accelerated filer, accelerated filer, or non-accelerated filer for their Form 10-K and Forms 10-Q due in 2026.
- **Public Float Filing Tags:** The SEC’s Division of Economic and Risk Analysis [posted a reminder about checking the accuracy of XBRL tagging](#) of public float figures. As a reminder, the cover page of a Form 10-K requires the disclosure of the aggregate market value of the voting and non-voting common equity held by non-affiliates as of the last business day of a filer’s most recently completed second fiscal quarter. The staff recently conducted an assessment on the public float data in Forms 10-K for the fiscal year ending in 2024 and continued to observe scaling errors in certain filings.

## Other Matters of Interest

- **GENIUS Act:** On July 18, 2025, The GENIUS Act, or Guiding and Establishing National Innovation for U.S. Stablecoins Act, was enacted. This legislation seeks to provide clear [rules for the issuance and use of stablecoins](#), which are digital assets designed to maintain a stable value, often pegged to a national currency like the U.S. dollar.
- **CLARITY Act:** The [Digital Asset Market Clarity Act of 2025](#) was passed by the U.S. House of Representatives on July 17, 2025. The bill would establish a regulatory framework for digital assets, clarifying the roles of the SEC and the Commodity Futures Trading Commission (CFTC) in regulating digital commodities.
- **SEC Permits In-Kind Creations and Redemptions for Crypto ETPs:** On July 29, 2025, the SEC approved orders to permit creations and redemptions by authorized participants for crypto asset exchange-traded product (ETP) shares. The [SEC’s press release](#) noted that its latest orders reflect a departure from recently approved spot bitcoin and Ether ETPs, which were limited to creations and redemptions on an in-cash basis. With its latest actions, bitcoin and ether ETPs, consistent with other commodity-based ETPs approved by the commission, will be permitted to create and redeem shares on an in-kind basis.
- **California Supreme Court Upholds Forum-Selection Bylaws:** On July 21, 2025, the California Supreme Court ruled that a lawsuit pursued by a minority investor against a San Diego-based company and its officers [belongs in the Delaware Court of Chancery](#), rejecting arguments that enforcing the company’s forum selection clause violated

California's jury trial protections. In a unanimous opinion, the court determined the forum selection clause in the company's bylaws requiring most stockholder suits against the company be brought in Delaware's Court of Chancery is enforceable, rejecting lower courts' reasoning that because the Court of Chancery does not recognize a right to a jury trial, the forum selection clause would effectively deprive the plaintiff of its right to a trial before a jury.

- **ISS and Glass Lewis Litigation Against Texas Proxy Advisory Law:** On July 24, ISS and Glass Lewis [filed suits in federal district court](#) in Texas seeking to declare unlawful Texas Senate Bill 2337 and seeking an injunction against its enforcement. SB 2337 was signed into law on June 20, 2025, and requires proxy advisers like ISS and Glass Lewis to provide detailed disclosures when their voting recommendations respecting Texas corporations are based on non-financial factors, such as environmental, social, and governance (ESG) and diversity, equity, and inclusion (DEI) considerations.
- **Drop in Sustainability Reporting:** The Conference Board recently reported that the number of Russell 3000 companies issuing sustainability reports in the first half of 2025 [fell 52% compared to the first half of 2024](#). The report attributes much of this drop to the complex and shifting global regulatory landscape, citing the European Union's Corporate Sustainability Reporting Directors (CSRD) and California's climate disclosure laws (SB 253 and SB 261), which are set to take effect in the next one to two years. According to the report, many companies are delaying voluntary reporting while they assess how to comply with these mandatory regulations. The report also cites the evolving policy environment in the U.S. as a factor contributing to the pause, noting that some companies, particularly those in politically charged sectors, are scrutinizing their language and subjecting their disclosures to more rigorous legal and compliance reviews.
- **Attorney General's Guidance to Entities Receiving Federal Funding Regarding Illegal Discrimination:** The office of the U.S. Attorney General issued guidance dated July 29, 2025, to entities that receive federal funding, including "public and private employers." This guidance [clarifies the application of federal antidiscrimination laws](#) to programs or initiatives that may involve discriminatory practices, including those labeled as DEI programs. The guidance identifies "best practices" as non-binding suggestions to help entities comply with federal antidiscrimination laws and avoid legal pitfalls. It states that these are not mandatory requirements but rather practical recommendations to minimize the risk of violations.

## Notable Resources

This update was created by Fenwick's [corporate governance](#) and [capital markets](#) practices.

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As a leading technology and life sciences law firm, Fenwick advises companies on the full suite of corporate governance matters. We partner with our clients to anticipate and navigate issues arising in an evolving corporate governance landscape, including SEC reporting and governance requirements of relevant securities exchanges, board and committee structure, corporate purpose and sustainability, shareholder engagement, and executive compensation.