

Form 20-F for Fiscal Year 2025: What Foreign Private Issuers Should Keep in Mind

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01 / 23 / 26



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There have been a number of notable recent developments in U.S. Securities and Exchange Commission (SEC) regulation of foreign private issuers (FPIs), including disclosure trends that impact the annual report on Form 20-F for fiscal year 2025, rule changes and rulemaking priorities.

We discuss in the guide that follows recent areas of SEC staff focus, new and updated filing requirements, disclosure developments, SEC rulemaking activity and other developments that are relevant to FPIs.

Checklist for FPIs Filing Form 20-F for Fiscal Year 2025



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Areas of SEC Focus and Updated SEC Filing Requirements

Consider Trends in SEC Filing Reviews

The Staff of the Division of Corporation Finance (Staff) of the SEC continues to review public company disclosures. Based on a recent survey,¹ during the 12-month period ended June 30, 2025, the volume of Staff comment letters and the number of companies receiving comments declined, which reversed the trend of increased comment letters issued in the prior two years.

Below is an outline of recent comment letter trends and the Staff's areas of focus in its review of filings and submissions by FPIs. Companies should consider these topics when preparing annual reports.

Comment Trends

Management's discussion and analysis of financial condition and results of operations (MD&A)² and **non-GAAP and non-IFRS financial measures** remained the two most frequent areas generating Staff comments. Although the number of companies receiving comments declined, the number of companies that received Staff comments on MD&A and non-GAAP and non-IFRS financial measures each increased by more than 10% compared to the prior year. **Segment reporting** and **revenue recognition** ranked third and fourth, respectively, once again in the top four most frequent sources for comment.

Other areas attracting frequent comment over the 12-month period ended June 30, 2025, included (i) goodwill and intangible assets, (ii) inventory, (iii) costs of sales and (iv) business combinations.

Recent Areas of Focus

Below is a summary of the Staff's noteworthy focal points.

MD&A

The Staff continues to focus on MD&A disclosures, most commonly about results of operations. The Staff's comments on results of operations have continued to **request that companies explain MD&A disclosures with greater specificity**, including identifying and quantifying the impact of each positive or negative factor, and any offsetting factors, that had a material effect on results of operations.

Staff comments also focused on (i) liquidity and capital resources, including the effects of the macroeconomic environment, and (ii) critical accounting estimates. Staff comments on liquidity and capital resources often requested **enhanced disclosures of (a) the availability of cash to fund liquidity needs, (b) underlying drivers contributing to changes in cash flows and (c) the trends and uncertainties related to meeting known or reasonably likely future cash requirements**. Staff comments regarding critical accounting estimates frequently noted that companies' disclosures were too general, and requested that companies provide a more robust analysis, consistent with the requirements set forth in Item 5.E of Form 20-F. The Staff often emphasized that **critical accounting estimates disclosures should supplement, not duplicate, the disclosures in footnotes to financial statements**.

¹ See Ernst & Young's *SEC Reporting Update "Highlights of Trends in 2025 SEC Staff Comment Letters"* (Sept. 11, 2025).

² Item 5 of Form 20-F requires a discussion of the registrant's "Operating and Financial Review and Prospects," which is substantially similar to the MD&A requirements applicable to non-foreign private issuers. For ease of reference, we refer to the narrative disclosures required by Item 5 as "MD&A."

The Staff also continued to question the presentation of key performance indicators (KPIs) and operating metrics, including how they are calculated and period-over-period comparisons. Staff comments regularly **scrutinized KPIs discussed in earnings releases and investor presentations** and questioned how these compare to the information disclosed in MD&A. Moreover, if estimates or assumptions underlie a reported metric or its calculation, companies should consider whether additional disclosure of that information is necessary for the disclosure of the metric to not be misleading.

Staff comments on MD&A reporting also addressed known trends or uncertainties, particularly those related to current or emerging developments in the **macroeconomic environment such as inflation, tariffs, interest rates, geopolitical conflicts and supply chain issues**.

Comments often requested additional disclosures to enhance an investor's understanding of the impact of these developments on the company and the company's actions in response thereto. As changing macroeconomic factors and other developments emerge, **companies will need to provide transparent, company-specific disclosures about the anticipated impacts** to help investors understand how and when companies may be affected.

Companies should:

- Regularly reassess and update their MD&A disclosures to include current or emerging trends and uncertainties in the macroeconomic environment.
- Continue to consider the [2020 Commission Guidance on Management's Discussion and Analysis of Financial Condition and Results of Operations](#), particularly as it pertains to the disclosure and use of KPIs.

Non-GAAP and Non-IFRS Financial Measures

The Staff continues to focus on non-GAAP and non-IFRS financial measures and compliance with the Staff's Compliance and Disclosure Interpretations (C&DIs) on non-GAAP financial measures, in certain cases resulting in requests to remove or substantially modify non-GAAP and non-IFRS financial measures.

For example, Staff comments addressed the undue prominence of non-GAAP and non-IFRS financial measures that provide a discussion of non-GAAP and non-IFRS financial measures at the beginning of the MD&A before any discussion of results of operations have been reported using GAAP or IFRS. Consistent with C&DI Question 102.10(a), Staff comments have also objected to companies presenting a full non-GAAP or non-IFRS income statement as a form of reconciliation because such presentation gives the non-GAAP or non-IFRS information undue prominence.

Staff comments also addressed adjustments to non-GAAP or non-IFRS financial measures that remove or exclude **cash operating expenses that the Staff considers "normal" or "recurring"** in the operation of a company's business, and that in the Staff's view, presented a misleading measure under C&DI Question 100.01.

Additionally, Staff comments focused on non-GAAP or non-IFRS adjustments related to frequent restructuring and acquisition-related costs, where the Staff's comments asked companies to (i) detail the facts and circumstances supporting an adjustment for what could be a recurring cost and (ii) explain and quantify the components of these adjustments.

The Staff also continued to issue comments to determine whether certain KPIs are in fact non-GAAP or non-IFRS financial measures and to request that companies present the most directly comparable GAAP or IFRS financial measure with equal or greater prominence relative to the non-GAAP or non-IFRS financial measure.

FPIs should ensure that any disclosures of non-GAAP and non-IFRS financial measures included in Forms 20-F, registration statements or Forms 6-K incorporated by reference into a Form 20-F or registration statement comply with Item 10(e) of Regulation S-K and the related C&DIs.

Disclosure for China-Based Companies

As the Staff refers to the SEC's "[Sample Letter to China-Based Companies](#)" published in December 2021, [CF Disclosure Guidance: Topic No. 10](#) and "[Sample Letter to Companies Regarding China-Specific Disclosures](#)" published in July 2023: companies that are based in or have the majority of their operations in China (China-based companies) should continue to review and update Form 20-F reporting on China-specific risk factors to make clear, nuanced and prominent disclosure.

In October 2024, the U.S. Department of the Treasury released the final rule imposing restrictions on U.S. outbound investment in Chinese companies, which has been referred to as a "**reverse CFIOUS**" program. Effective on January 2, 2025, the program imposes additional diligence responsibilities, recordkeeping and notification requirements, and restrictions on U.S. persons and their controlled foreign entities engaging in certain transactions with foreign persons in "countries of concern" (including China) that perform defined activities (covered foreign person) related to semiconductors and microelectronics, quantum information technologies or artificial intelligence (AI) (together, sensitive sectors). In December 2025, the Comprehensive Outbound Investment National Security Act of 2025 (the COINS Act) was signed into law. The COINS Act provides explicit legislative endorsement of

the reverse CFIUS program while providing guidance for its future development to expand the scope of sensitive sectors to include hypersonic systems and supercomputing and to amend certain key definitions such as “covered foreign person.”

Depending on the extent of involvement in sensitive sectors, China-based companies should continue to evaluate and update relevant disclosure in their Form 20-F filings on the impact of the reverse CFIUS program **in relation to their business operations, financing viability and other risk factors**, addressing both the current impact of the regime and the potential for further regulatory action or increased enforcement in this area.

Expected Areas of Focus in 2026

In 2026, we expect Staff comments to continue to focus on the reporting areas discussed above. The Staff may also expand the scope of its comments to address artificial intelligence or any new or amended SEC rules adopted in the upcoming year.³ For additional discussion and governance considerations related to artificial intelligence, see the “[Review and Update AI and Cybersecurity Disclosures to Align With Emerging Trends](#)” section of this guide.

Review New Section 16 Reporting for FPIs

As discussed in further detail in our December 23, 2025, client alert “[Foreign Private Issuers’ D&Os Will No Longer Be Exempt From Section 16\(a\) Insider Reporting Obligations](#),” on December 18, 2025, as part of the FY 2026 National Defense Authorization Act, the Holding Foreign Insiders Accountable Act (HFIAA) was signed into law. The HFIAA amended Section 16(a) of the Securities Exchange Act of 1934 (Exchange Act) to require directors and officers (D&Os) of FPIs to comply with the Section 16(a) insider reporting requirements **beginning March 18, 2026**.

Notably, FPI D&Os remain exempt from the short-swing profits rule under Section 16(b) and the short sale prohibition under Section 16(c). Ten percent beneficial owners of FPIs will remain exempt from Section 16 in its entirety.

Key aspects of the rule change and compliance considerations for FPIs are summarized below.

Section 16(a) Reporting Obligations

Beginning March 18, 2026, FPI D&Os will become subject to the following reporting obligations under Section 16(a):

- Initial ownership reports:

- Any individual who is a director or officer of an FPI as of March 18, 2026, will need to file a Form 3 by 10 p.m. Eastern Time (ET; *i.e.*, Washington, D.C. time) on the same day, disclosing their ownership of company equity securities (and any derivatives thereof).
- New D&Os joining after this date must file a Form 3 within 10 calendar days of assuming their role.
- For FPIs going public after March 18, 2026, their D&Os must file a Form 3 by 10 p.m. ET on the date the company’s Exchange Act Section 12 registration of its securities becomes effective (typically the pricing date in an IPO).

- Transaction reports: After filing Form 3, FPI D&Os must report transactions in company equity securities on Form 4 by 10 p.m. ET on the second business day following the transaction.

- Transactions requiring the filing of a Form 4 include purchases or sales of equity securities (and any derivatives thereof), many types of grants of equity-based compensation awards, vesting and settlement of equity-based compensation awards, exercise of stock options, sales or withholding of shares for tax payments on equity-based compensation awards, and gifts of securities.

- Annual reports: In certain cases, a catch-up Form 5 may be required within 45 days after the end of the company’s fiscal year.

Next Steps for FPIs

While individual D&Os are ultimately responsible for their own Section 16 reports, public companies generally assist with the preparation and filing of these reports for their D&Os, given the complexity of reporting rules and short deadlines. FPIs should assess their internal procedures and prepare to implement Section 16(a) reporting for D&Os by the March 18, 2026, effective date, including the following considerations:

- **Confirm which officers are subject to the reporting requirements.** Note that FPIs should have already identified their Section 16 “officers” because the definition of “executive officers” subject to the SEC’s Rule 10D-1 implementing the Dodd-Frank claw-back rules (in effect since late 2023) is the same as the “officer” definition under Exchange Act Rule 16a-1(f).⁴

³ See SEC’s [Agency Rule List – Spring 2025](#).

⁴ For Section 16 purposes, Rule 16a-1(f) of the Exchange Act defines the term “officer” to mean certain senior officers of an issuer who perform a policy-making function, including president; principal financial officer; principal accounting officer (or, if there is no such accounting officer, the controller); any vice president of the issuer in charge of a principal business unit, division or function (such as sales, administration or finance); any other officer who performs a policy-making function; or any other person who performs similar policy-making functions for the issuer.

- **Confirm which directors are subject to the reporting requirements.** While applying the term “director”⁵ in certain non-U.S. jurisdictions may require careful analysis, FPIs are expected to use consistent criteria for their director rosters for both Section 16(a) and the FPI eligibility test under Exchange Act Rule 3b-4.
- **Collect and verify company security ownership information for all D&Os** to prepare the initial Form 3 reports.
- **Confirm or obtain the necessary EDGAR filing credentials for all current and incoming D&Os.** FPI D&Os who are also insiders of a domestic issuer or have filed at least one Schedule 13D or 13G or Form 144 should already have filing credentials, but those credentials may be outdated, or the account may not have been enrolled in EDGAR Next. Obtaining new filing credentials or renewing any legacy credentials (including EDGAR Next enrollment) would require the filing of a notarized Form ID with the SEC, a process that can take a few weeks.
- **Confirm internal or external capacity to make Section 16 filings on behalf of the D&Os,** including through arrangements with outside counsel and/or a financial printer.
- **Confirm appropriate communication channels with D&Os’ securities brokers** for timely reporting of D&Os’ transactions in company securities.
- **Revisit the company’s insider trading policy** to reflect any necessary updates in light of the application of Section 16(a) reporting requirements to D&Os.⁶
- **Consider the implications of having to disclose all D&Os’ ownership of company securities and the details of each equity-based compensation award to D&Os in real time,** beyond the current limited disclosure requirements on insider compensation on Form 20-F or other applicable SEC filings.

SEC Authority for Potential Exemptions

The HFIAA provides that the SEC may exempt any persons, securities or transactions from the requirements of Section 16(a) if the SEC determines that the laws of a foreign jurisdiction apply “substantially similar requirements” to that person, security or transaction. The SEC has not yet created any exemptions as of this date, but jurisdictions such as the U.K., European Union (EU) and Canada are seen as possible candidates.

⁵ Exchange Act Section 3(a)(7) defines the term “director” to mean any director of a corporation or any person performing similar functions with respect to any organization, whether incorporated or unincorporated.

⁶ For more information, see the “[Revisit Insider Trading Policies](#)” section of this guide.

Consider SEC Staff Rulemaking Priorities

After a change in SEC leadership, rulemaking priorities shifted in 2025. Under SEC Chairman Paul Atkins, the SEC announced a new regulatory agenda intended to represent the agency’s “renewed focus on **supporting innovation, capital formation, market efficiency and investor protection.**” Notably, the new agenda removed a number of proposals related to environmental, social and governance (ESG) considerations from the prior administration, including human capital management disclosure, corporate board diversity and conflict minerals reporting, and introduced several new areas of focus for rulemaking.

The following is a summary of key rulemaking initiatives relevant to FPIs, which will require the SEC to propose rules, seek public comment and then adopt final rules before they become applicable to public companies. Additionally, the effectiveness of any new rules that may be adopted is not expected until late 2026, at the earliest.

Defining foreign private issuers: The SEC is considering potential amendments to the definition of FPIs following the agency’s June 2025 publication of a concept release soliciting public input in response to developments in the FPI population.⁷

Semiannual financial reporting: Chairman Atkins has expressed support for President Donald Trump’s renewed call to end mandatory quarterly reporting for U.S. issuers in favor of semi-annual disclosures and announced that the SEC is “fast-tracking” rulemaking in this area. During President Trump’s first administration, the SEC published a request for comment on earnings releases and quarterly reports and hosted a roundtable, but declined to pursue further reforms. This shift would establish more uniform reporting requirements between FPIs and U.S. issuers, consistent the SEC’s renewed focus on ensuring that FPIs do not receive preferential regulatory treatment over domestic issuers.

Rationalization of disclosure practices: The SEC is considering potential rule changes that rationalize disclosure practices to facilitate (i) material disclosure by companies and (ii) shareholders’ access to that information.

Capital formation: Proposed rulemakings are expected to include new rules to (i) simplify the pathways for private companies to raise capital, (ii) modernize the shelf registration process to reduce compliance burdens, (iii) expand accommodations for emerging growth companies (EGCs) to include more issuers and (iv) simplify filer status categories to reduce complexity.

⁷ For more information, see the “[Track Evolving FPI Definition](#)” section of this guide.

Cryptoassets and market structure: New rules are expected to clarify the regulatory framework for cryptoassets, including new and amended rules related to the offer and sale of cryptoassets that serve as exemptions and safe harbors.⁸

Rule 144 safe harbor: The SEC is considering reproposing amendments to the Rule 144 safe harbor for resales of restricted and control securities to increase instances in which the safe harbor would be available. The SEC most recently formally addressed this topic through potential amendments to Rule 144, initially proposed on January 19, 2021. Although the scope of any potential regulatory action is uncertain, the SEC's proposed amendments from 2021 (discussed in further detail in our client alert "SEC Proposes Amendments to Rule 144 and Form 144") may provide insight about what to expect.

Track Evolving FPI Definition

As detailed in our June 6, 2025, client alert "SEC Requests Public Comment on the Definition of Foreign Private Issuer," the SEC issued a concept release soliciting public input on whether the definition of FPIs should be amended, particularly given the significant changes in the population of FPIs since 2003.

As described in the concept release, the current regulatory accommodations for FPIs were based partly on the expectation that most FPIs would be subject to meaningful disclosure and other regulatory requirements in their home country jurisdictions. However, in the SEC's view, this is not the case for a significant number of FPIs today. According to the SEC, the changes in the characteristics of the FPI population reflected in the SEC's analysis raise questions about whether the current FPI definition is appropriately tailored.

As a result, the concept release sought public input on several possible approaches to amending the FPI definition to ensure it reflects the current FPI population, as summarized below:

- **FPI eligibility criteria:** Updating the FPI definition's bifurcated test, such as by (i) decreasing the U.S. ownership threshold from 50% to a lower percentage or (ii) adding new criteria or revising the existing criteria under the business contacts test, such as changing the U.S. assets threshold.

⁸ For more information on the SEC's cryptoasset-related developments and potential rulemakings, see our August 8, 2025, client alert "A Closer Look at the Trump Administration's Comprehensive Report on Digital Assets" and April 30, 2025, client alert "SEC Moves Quickly To Create a Regulatory Framework for Cryptocurrencies and Reconsider Its Rules and Guidance."

- **Foreign trading volume requirement:** Adopting a foreign trading volume test, either as an alternative or addition to updating the existing eligibility criteria. For example, the test could be conducted on an annual basis and require an FPI to have a certain percentage of securities trading volume attributable to non-U.S. markets over the preceding 12-month period.
- **Major foreign exchange listing requirement:** Requiring FPIs to be listed on a "major foreign exchange" — and what specific criteria to consider in evaluating whether a foreign exchange is "major."⁹ This requirement could be implemented in conjunction with a foreign trading volume test.
- **SEC assessment of foreign regulation:** (i) Requiring FPIs to be incorporated or headquartered in a jurisdiction with a robust regulatory and oversight framework, and (ii) subjecting FPIs to such securities regulations and oversight without modification or exemption. This approach would involve developing criteria for determining which foreign jurisdictions have regulatory regimes that are sufficiently protective of U.S. investors and would require cooperation with foreign authorities.
- **Mutual recognition systems:** Establishing mutual recognition systems that would allow FPIs from certain jurisdictions to meet U.S. disclosure and registration requirements by complying with their home country regulations. Participating jurisdictions would be expected to meet certain standards in their regulatory approaches, but their requirements would not need to be exactly the same as the SEC's requirements for domestic issuers. For example, the SEC currently applies a limited mutual recognition approach for Canadian issuers under the Multijurisdictional Disclosure System, which allows U.S. and Canadian issuers to conduct cross-border securities offerings and fulfill their reporting requirements primarily by complying with home country securities regulations.
- **International cooperation arrangements:** Requiring FPIs to certify they are incorporated or headquartered in, and subject to the oversight of the signatory authority of, a jurisdiction in which the foreign securities authority has signed the International Organization of Securities Commissions Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (MMoU) or the Enhanced MMoU. These multilateral arrangements are intended to facilitate international cooperation in enforcement matters, such as by providing bank, brokerage and beneficial ownership records. According to the SEC's concept release, this requirement would be in addition to the other requirements discussed above.

⁹ Per the concept release, in determining which exchanges fit the definition of a "major foreign exchange," one approach would be for the SEC to maintain a list of foreign exchanges with listing requirements that meet certain criteria.

The public comment period expired on September 8, 2025, and there is currently no indication of timing on any proposed rulemaking. As of the date of this guide, the SEC posted approximately 83 comment letters to the concept release on its [website](#), largely representing FPIs, law firms and industry groups. Many of the comment letters encourage the SEC to explore alternatives, ask the SEC to substantiate potential proposed changes with further data on FPIs, and express that the current definition of FPIs is effective and that changes to the definition could have unintended consequences.

Takeaway

The issuance of a concept release signals a significant step forward in the SEC's process to revisit the FPI definition. However, whether the SEC's examination of these matters will give rise to rulemaking or other initiatives remains to be seen.

Consider SEC Staff Guidance on Disclosure of Accountant Changes

On March 20, 2025, the Staff published Exchange Act Forms C&DI 110.10 on Item 16F(a) of Form 20-F, which requires FPIs to disclose a change in their certifying accountant that occurred during the two most recent fiscal years or during any subsequent interim period. The C&DI clarified that, per Instruction 2 to Item 16F, the required disclosure may be satisfied as "previously reported" (as defined in Exchange Act Rule 12b-2) if a previously filed Form 6-K contains disclosure that satisfied the requirements of Item 16F(a). This C&DI reflects the SEC's intent to avoid duplicative reporting while maintaining transparency in disclosures about auditor transitions.

Consider Changes to Shareholder Engagement Process

As companies prepare for engagement with their shareholders in connection with the 2026 annual meeting season, they should be mindful of how certain institutional investors have changed their approach to recommendations. These changes were prompted by recent Staff guidance addressing the ability of certain investors to report their beneficial ownership of more than 5% of a company's voting equity securities to the SEC on Schedule 13G.

On February 11, 2025, as discussed in detail in our client alert "[Prepare for Changes to the Shareholder Engagement Process](#)," the Staff issued [updated and new guidance](#) regarding the eligibility of shareholders to file Schedule 13G instead of Schedule 13D beneficial ownership reports. The Staff also withdrew prior guidance that generally allowed engagement with management regarding issues such as executive compensation, environmental, social or other public interest issues, or corporate governance topics unrelated to a change of control without affecting Schedule 13G eligibility.

The new guidance articulates a broader notion of the actions that would constitute an attempt to influence control, thus disqualifying the shareholder from reporting on Schedule 13G.

Specifically, where a shareholder's engagement with an issuer's management goes beyond a discussion and exerts pressure to implement specific measures or changes to a policy, the shareholder may be influencing control over the issuer. The list of the measures or policy changes that could trigger a change in filing status under the new guidance if the shareholder exerts pressure on management includes recommending that an issuer "remove its staggered board, switch to a majority voting standard in uncontested director elections, eliminate its poison pill plan, change its executive compensation practices, or undertake specific actions on a social, environmental, or political policy."

The change has made institutional investors circumspect about raising policy issues in discussions with a company's management. And, in response, companies are having to change their approach to interactions with major shareholders in an effort to provide their biggest shareholders the information they want but may now be reluctant to ask for explicitly. In this evolving landscape, companies should carefully assess the following before engaging with their shareholders:

- Investors are exercising caution about requesting an engagement and, in many cases, may engage only when companies initiate the request. When agreeing to a meeting, investors will likely consider the proposed date of the meeting in relation to the date of the shareholder meeting and the proposals on the agenda at the meeting. Meetings with contested agenda items will likely prompt particular caution.
 - *Companies that want to speak to an investor should proactively arrange the meeting. Investors could be more willing to share their views during off-season engagements well in advance of the next annual meeting, which reduces the likelihood that such an engagement might be viewed as an attempt to influence control over the issuer.*
- In the past, investors have weighed in on the agenda for engagement meetings. Many investors may no longer do that and, if they do, any suggested agenda topics are expected to be less prescriptive.
 - *Companies should prepare to discuss the topics that they expect the investor will likely want to cover and not wait for the investor to raise particular topics.*
- Investors at engagement meetings will likely present more open-ended and less targeted questions. For instance, companies should expect more broadly worded inquiries, such as: "We would appreciate if you could share your thoughts on..."

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- *Companies should prepare to answer the questions and add explanations and details that they expect the investor will want/need to make informed investment decisions.*
 - Similarly, investors will likely not answer pointed questions, including and most specifically any questions about how the investor intends to vote.
 - *Companies should prepare to ask investors more broad-based questions, such as: “Did you get enough information to make an informed voting and/or investment decision?”*
 - Investors may read disclaimers at the beginning of engagement meetings. The use of these disclaimers will not necessarily eliminate the possible implications under the new Staff guidance. Nonetheless, investors will likely want to make clear that they

do not intend to exert pressure or take the discussion beyond what the Staff currently thinks is allowed for companies filing on the shorter Schedule 13G.

- *Companies may want to respond that they understand the plan for the discussion and they similarly do not intend for the discussion to go beyond what is required.*

Many companies have significantly expanded their shareholder engagement efforts over the past few years, and companies typically benefit from building productive relationships with their long-term investors, notwithstanding these recent changes to potential engagement meetings. To optimize these discussions, companies should consider the constraints institutional investors are adapting to as a result of the new guidance.

Disclosure Developments

Assess Emerging Disclosure Trends

Overview

In recent years, the complexity and materiality of risks associated with tariffs, trade policies and U.S. government shutdowns has escalated. In 2025, these issues became increasingly relevant for many public companies, driven by ongoing geopolitical tensions, shifting U.S. trade policy and recurring threats of a U.S. federal government shutdown. Investors, regulators and other stakeholders expect company-specific information about how these external factors are impacting business operations, financial results and strategic planning.

Tariffs and Trade Policy: Evolving Disclosure Practices

A September 2025 survey of quarterly reports filed by *Fortune* 500 companies from April 1, 2025, through August 31, 2025, revealed a dramatic increase in the frequency and depth of disclosures related to tariffs and trade policy.¹⁰ **Nearly 90% of these filings referenced tariff- and trade-related concerns** — almost double the amount of filings referencing these factors from the prior year. This surge reflects both the heightened impact of global trade tensions and companies' efforts to provide investors with meaningful, “decision-useful” information.

US Government Shutdown: Heightened Focus and Disclosure Expectations

The risk of a U.S. federal government shutdown has become a recurring trend, with significant potential implications for companies that rely on U.S. government contracts, regulatory approvals or federal agency operations. The SEC and investors expect companies to address the potential and actual impacts of a shutdown in their disclosures, particularly where such events already have or could materially affect business operations, liquidity or financial condition.

Disclosure Trends

- **Integration across multiple disclosure sections:** Companies are increasingly disclosing tariff-, trade policy- and U.S. government shutdown-related information as risk factors, in forward-looking statement disclaimers, and in the Business and MD&A sections of Forms 20-F and 6-K, as applicable.
- **Tailored, company-specific narratives:** Several impacted companies have replaced boilerplate language with customized narratives that help investors better understand the unique risks and opportunities facing the company.

Disclosure Considerations

- **Materiality assessment:** Companies should periodically assess the materiality of a U.S. government shutdown and tariff and trade policy developments on the company's business, including both direct and indirect effects (*e.g.*, **supplier cost increases; customer demand shifts; and delays in contract awards, regulatory approvals or access to government services**).
- **Forward-looking statements:** Companies may want to include enhanced cautionary language regarding the uncertainty and potential variability of impacts from changes in trade policies and future U.S. government shutdowns.

¹⁰ See KPMG report “[Effects of Tariffs on SEC Quarterly Disclosures](#)” (Sept. 2025).

- **Operational response and mitigation strategies:** When relevant, companies should disclose specific actions taken or planned to mitigate adverse effects, **such as supply chain adjustments, contract renegotiations or changes in product pricing.**
- **Consistency across filings and investor communications:** Disclosures in **Forms 20-F, Forms 6-K, earnings releases, investor presentations and statements made in earnings calls should be consistent** and aligned, particularly when discussing the impact of a U.S. government shutdown and tariff and trade policy developments.
- **Outlook:** Companies should also consider whether any assumptions made regarding forecasted results and future outlook are impacted by tariffs, trade policies or a future U.S. government shutdown.

Takeaway

As the regulatory and geopolitical environment continues to evolve, companies should carefully review their existing disclosures, expect continued scrutiny of their disclosures in these areas and prepare to provide company-specific information to meet investor expectations.

Review and Update AI and Cybersecurity Disclosures to Align With Emerging Trends

Overview

The accelerated evolution of artificial intelligence (AI) and the increasing sophistication of cybersecurity threats have made these topics more central to public company disclosure and governance. Over the past year, regulatory expectations, investor scrutiny and stakeholder demands have driven pointed changes in how companies approach, oversee and disclose AI and cybersecurity risks and opportunities.

AI Disclosure Trends

Board and Committee Oversight of AI

AI now prominently features in boardroom discussions and public disclosures. In 2025, nearly half of *Fortune* 100 companies specifically cited AI risk as part of the board's oversight of enterprise risk, a threefold increase from the prior year.¹¹ Disclosures increasingly highlight the board's role in overseeing both the risks and opportunities associated with AI, including the adoption of responsible AI frameworks, ethical guidelines and the integration of AI into core business processes. **Some**

¹¹ See EY report "Cyber and AI Oversight Disclosures: What Companies Shared in 2025" (Oct. 2025).

companies have established dedicated board-level committees or working groups to address AI governance, and some have formalized AI oversight responsibilities in committee charters.

Also, disclosure of AI expertise as a desired or actual qualification for directors has significantly increased. In 2025, 44% of *Fortune* 100 companies referenced AI in director biographies or board skills matrices, up from 26% the previous year.¹² Some companies are recruiting directors with commercial experience in AI development and others are investing in ongoing board education on AI topics. Related disclosures often describe director participation in AI-focused trainings and external certifications.

For additional board considerations underlying these disclosures that companies should consider, see the "[Assess Board Oversight of AI-Related Risk](#)" section of this guide.

Annual and Interim Reports

AI is now routinely discussed in the Business section of annual reports, with approximately 84% of *Fortune* 500 companies discussing AI in their annual reports and 42% of such disclosures appearing in the Business section.¹³ Disclosures cover a range of topics, including the use of AI to enhance efficiency, drive innovation and improve customer experience, as well as the challenges of integrating AI into legacy systems and business models.

Risk factor disclosures related to AI have become nearly universal among large public companies. In 2025, 87% of large companies included AI-related risks in their annual reports, with nearly 30% providing a stand-alone AI risk factor.¹⁴ For example, commonly disclosed risks include:

- **Cybersecurity threats:** the use of AI by threat actors to develop sophisticated cyberattacks, including deepfakes and social engineering.
- **Regulatory and legal compliance evolution:** uncertainty regarding evolving AI regulations at the federal, state and international levels.
- **Operational and strategic risks:** challenges in executing AI initiatives, potential defects or vulnerabilities in AI tools, and the risk of falling behind competitors.
- **Reputational and ethical risks:** potential for biased or erroneous AI outputs, misuse of AI by employees or third parties, and public backlash.

¹² *Id.*

¹³ See Deloitte report "[Disclosure Trends From the 2024 Reporting Season](#)" (April 2025).

¹⁴ *Id.*

- **Intellectual property risks:** infringement claims arising from AI-generated content or the use of third-party data in AI models.

Cybersecurity Disclosure Trends

Board and Committee Oversight of Cybersecurity

Cybersecurity oversight remains a top board and audit committee priority. In 2025, 96% of *Fortune* 100 companies disclosed that at least one board-level committee was charged with cybersecurity oversight, with the audit committee serving as the primary committee in 78% of cases.¹⁵ Disclosures increasingly describe the frequency and format of management reporting to the board, the roles of the chief information security officer (CISO) and other executives, and the use of external advisers or consultants.

Disclosing cybersecurity as a desired or actual area of board expertise is also a popular trend. In 2025, **86% of *Fortune* 100 companies referenced cybersecurity expertise in director biographies** or board skills matrices.¹⁶

Annual and Interim Reports

The SEC's final rules on cybersecurity disclosures, effective since late 2023, require FPIs to furnish on Form 6-K information about material cybersecurity incidents and to provide on Form 20-F detailed information about their cybersecurity risk management, strategy and governance. In 2024, companies expanded their disclosures to address the following:¹⁷

- **Risk management processes:** 67% of *Fortune* 500 companies included a description of cybersecurity frameworks (*i.e.*, NIST CSF, ISO 27001) used to assess and manage cybersecurity risks.
- **Incident response and preparedness:** 65% of *Fortune* 500 companies reference response readiness plans.
- **Employee training and awareness:** 64% of *Fortune* 500 companies disclosed education and training efforts to mitigate cybersecurity risks.

SEC Developments

On February 20, 2025, the SEC announced the **creation of the Cyber and Emerging Technologies Unit to help combat cyber-related misconduct and to protect retail investors** from bad actors in the emerging technologies space. According to Commissioner Mark Uyeda, who was acting chair of the SEC

at the time, “The new unit will also allow the SEC to deploy enforcement resources judiciously” and “will not only protect investors but will also facilitate capital formation and market efficiency by clearing the way for innovation to grow. It will root out those seeking to misuse innovation to harm investors and diminish confidence in new technologies.” This unit refocuses the former Crypto Assets and Cyber Unit, which the SEC expanded in size in May 2022. Former Chairman Gary Gensler explained that “[b]y nearly doubling the size of this key unit, the SEC will be better equipped to police wrongdoing in the crypto markets while continuing to identify disclosure and controls issues with respect to cybersecurity.”

Additionally, on April 9, 2025, the SEC and the U.S. Department of Justice filed parallel actions against the founder and former CEO of a company that develops mobile apps, alleging that he made **false and misleading statements to investors about the company's purported AI technology**.

According to the SEC's complaint, between spring 2019 and December 2022, the former CEO marketed the company as a mobile shopping application that used AI to process transactions, allegedly telling investors that the company's application used automated technology that relied on AI to complete purchases made through the app without human involvement. In reality, the company relied in large part on contract employees to manually input orders placed by users on the app; the company's success rate in completing transactions was lower than what he represented to investors; and the company's app was not able to use AI to complete purchases. The SEC's complaint charged the former CEO with violations of Section 17(a) of the Securities Act of 1933 and of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

Given this enforcement action, companies should avoid overstating the benefits of AI in their businesses and should carefully assess whether any of their claims about their development or reliance on AI could be considered misleading.

Practical Considerations and Best Practices

Disclosure Controls and Procedures

Companies should review and enhance their disclosure controls and procedures to ensure that AI and cybersecurity risks are identified, assessed and disclosed in a timely and accurate manner. This should include coordination among legal, IT, risk and business teams, **as well as regular updates** to reflect evolving risks and regulatory expectations.

¹⁵ See EY report “Cyber and AI Oversight Disclosures: What Companies Shared in 2025” (Oct. 2025).

¹⁶ *Id.*

¹⁷ See Deloitte report “Disclosure Trends From the 2024 Reporting Season” (April 2025).

Tailored, Useful Disclosures

Disclosures should be tailored to the company's specific facts and circumstances, avoiding boilerplate language and providing sufficient detail for investors to understand the company's approach to AI and cybersecurity. Companies should **explain the rationale for board and committee oversight structures, the integration of AI and cybersecurity into business strategy and the steps taken to mitigate material risks.**

Ongoing Board Education and Stakeholder Engagement

Boards should consider implementing (or prioritize existing) education on AI and cybersecurity topics, leveraging internal and external expertise. Companies should also engage with shareholders and other stakeholders to understand their expectations and concerns regarding technology governance and risk management.

Effective AI Governance

Companies should establish a robust, principles-based governance framework that enables innovation while managing legal, regulatory and ethical risks. Effective AI governance should be pragmatic — supporting business objectives and innovation — while remaining flexible to adapt to rapidly evolving technologies and regulatory landscapes. Key elements of responsible AI use include:

- **Transparency and recordkeeping.** Maintaining detailed records of AI-related activities is essential. This includes documenting prompts, sources and documents used in AI-powered research, as well as tracking human oversight in drafting and disclosure processes. Transparency supports accountability and facilitates regulatory compliance, especially in the event of audits or investigations.
- **Human oversight and validation.** AI-generated outputs should never be relied upon without human review. Companies remain liable for any misrepresentations or inaccuracies in public disclosures, regardless of whether the inaccuracies originated from AI tools. Human oversight is critical, particularly for legally sensitive statements or disclosures that could impact the company's risk profile or reputation.
- **Data security and confidentiality.** Companies should maintain strict controls over the input and handling of confidential or sensitive information. Only enterprise-approved, secure AI tools should be used, and confidential data should never be entered into unvetted platforms. This reduces the risk of data breaches, inadvertent disclosure of material nonpublic information and regulatory violations.

- **Accuracy and reliability.** AI outputs must be validated for accuracy, especially when used in research, drafting or note-taking. Users should not assume that AI-generated information is correct — plausible-sounding content can be inaccurate or misleading. Companies should pay special attention to industry-specific terminology, names and acronyms, which AI tools may misinterpret.
- **Compliance with retention and notice policies.** When using AI for tasks such as meeting transcription or note-taking, companies should adhere to established data retention policies and provide appropriate notice to participants. Storing AI-generated records beyond permitted periods or failing to inform stakeholders of AI use can create legal and compliance risks.

Takeaway

AI and cybersecurity are becoming more prominent in public company disclosure and governance. As regulatory requirements and stakeholder expectations continue to evolve, companies should proactively assess and enhance their oversight structures, risk management practices and public disclosures in these areas. Robust, transparent and tailored disclosures help maintain investor confidence as companies seek to meet the challenges of the digital age.

Revisit Insider Trading Policies

In December 2022, the SEC adopted amendments intended to address what the agency perceived as abusive practices relating to Rule 10b5-1 trading plans, certain equity awards and gifts of securities. Notably, the amended rules require FPIs to file copies of their insider trading policies and procedures as exhibits to annual reports on Form 20-F. The rules became effective during last year's reporting cycle and **FPIs filed their insider trading policies as exhibits for the first time.**

For the next annual reporting cycle, FPIs should consider any necessary updates to their insider trading policies, taking into account market practices and the company's individual circumstances. Below are key provisions FPIs should revisit when reviewing their policies.

Blackout Periods

Because the announcement of a company's interim (quarterly or semiannual) financial results almost always has the potential to materially impact the market for the company's securities, companies should consider implementing a blackout period during which persons subject to the blackout may not trade in the company's securities. In setting a blackout period, companies must consider both the appropriate time frame and scope of individuals to include.

Based on insider trading policies filed by companies in the S&P 500 index, companies that report on a quarterly basis typically start their quarterly blackout periods on or between the first and 15th day of the last month of the quarter, and commonly open the trading window after the first trading day following release of the company's earnings. However, trading windows vary from industry to industry, and companies ultimately should consider what window is most appropriate for their individual circumstances. Generally, the blackout period should begin when the company's interim results become sufficiently certain and visible internally.

Blackout periods typically apply to (i) directors, (ii) definitional executive officers and (iii) designated employees who frequently have access to material nonpublic information about the company. However, in certain circumstances, **applying blackout periods to all employees may be appropriate** — this is common where there is broad access internally to financial information or the company has a small number of employees.

Shadow Trading

In April 2024, a jury in U.S. federal court found a former executive civilly liable for insider trading. In the first-of-its kind case, the SEC argued that the executive engaged in “shadow trading.” More specifically, the SEC argued that the executive used material nonpublic information about the not-yet-public acquisition of his employer to trade in securities of another company with which he had no relationship, on the assumption that the acquisition of his employer would increase the stock price of the other company. In September 2024, a federal court upheld the jury's verdict, and the case is currently on appeal to the U.S. Court of Appeals for the Ninth Circuit.

In light of this case, companies should consider addressing in their insider trading policies trading in other companies' securities on the basis of material nonpublic information obtained in the course of an individual's position with the company. This prohibition could be applicable to all other companies or a narrower set, such as the company's business partners and competitors. Alternatively, rather than state that shadow trading is a violation of the company's *policy*, **the policy can emphasize that shadow trading is a violation of the law.**

Treatment of Gifts

In connection with amending Rule 10b5-1, the SEC cited concerns with potentially problematic practices involving gifts of securities, such as making stock gifts while in possession

of material nonpublic information or backdating stock gifts to maximize the associated tax benefits. The SEC noted that a scenario in which an insider gifts stock while aware of material nonpublic information and the recipient sells the gifted securities while the information remains nonpublic and material is economically equivalent to a scenario in which the insider trades on the basis of material nonpublic information and gifts the trading proceeds to the recipient.

Accordingly, companies should consider including specific parameters on gifts in their insider trading policies. For example, companies can require advance clearance for gifts by persons who are subject to quarterly blackout periods since those individuals are generally more likely to be in possession of material nonpublic information. Alternatively, **a company can treat gifts in the same manner it treats ordinary open market purchases and sales**, which would prohibit gifts of securities by anyone subject to the policy while subject to a blackout period or in possession of material nonpublic information. Based on insider trading policies filed by companies in the S&P 500 index, companies commonly take this second approach, treating gifts the same way the company treats open market transactions.

Section 16(a) Compliance

As discussed above, beginning March 18, 2026, FPI D&Os will be required under Exchange Act Section 16(a) to disclose their initial ownership of company equity securities and report any subsequent transactions in company equity securities generally within two business days. While individual D&Os are ultimately responsible for their own Section 16 reports, public companies generally assist with the preparation and filing of these reports for their D&Os, given the complexity of reporting rules and short deadlines.

To that end, companies should consider updating their insider trading policies to help ensure their D&Os' timely and accurate filing of Section 16(a) reports. **Areas for consideration include requiring advance clearance or notification for any transactions by D&Os in company securities, including gifts, estate planning and other types of transactions that D&Os may incorrectly assume would not require disclosure.** Any transactions in company securities by related insiders of D&Os, such as immediate family members living in the same household or any other person or entity over which the D&O has investment control or influence, should also be subject to the same clearance or notification process. These measures would help companies identify and prepare timely reports for all transactions by D&Os in accordance with the Section 16(a) requirements.

Consider Recent Developments in Preparing Climate-Related Disclosures

Although companies no longer need to prepare for implementation of the SEC climate disclosure rules¹⁸ following the SEC's withdrawal of defense in the related litigation,¹⁹ companies should continue to consider the evolving regulatory landscape in preparing climate-related disclosures.

Climate-Related Disclosure and Sustainability Reports Trends

While the current U.S. regulatory environment no longer prioritizes climate-related disclosures at the federal level, many companies still publish stand-alone ESG or sustainability reports and other climate-related disclosures outside of SEC filings, including in response to state or other countries' disclosure requirements.

However, **the nature and timing of sustainability reports has changed.** For example, 74% (368) of S&P 500 companies published sustainability reports in both 2024 and 2025, and nearly half (48%) released their 2025 reports at a later date in the year than they did in 2024. The average delay was around five months.²⁰ Further, the titles of such reports shifted away from "ESG" toward "Sustainability." Also, companies either removed or reframed the term "DEI" throughout such reports.²¹ For example, only 9.1% of S&P 500 companies that published a report this year included "ESG" in the title, compared with 24.8% in 2024 and 35% in 2023.²² These trends are largely due to companies adjusting disclosures to respond to shifts in the regulatory and political landscape. For additional considerations in preparing climate-related disclosures, see our November 5, 2024, publication "[Enhancing Controls and Procedures for Climate-Related Disclosures](#)."

Within annual reports filed with the SEC, most S&P 500 companies mentioned climate-related information, consistent with the number in both 2023 and 2024.²³ While most companies continue to mention climate-related information in the Business and Risk Factors sections, increased disclosures of such information also appeared in the MD&A and notes to the financial statements.²⁴

¹⁸ See our March 8, 2024, client alert "[SEC Adopts New Rules for Climate-Related Disclosures](#)."

¹⁹ On March 27, 2025, the SEC voted to end its defense of the climate disclosure rules in the ongoing litigation in the U.S. Court of Appeals for the Eighth Circuit. In April 2024, the SEC voluntarily stayed the effectiveness of these pending judicial review.

²⁰ See DiversIQ, "2025 Sustainability and Human Capital Disclosure Trends."

²¹ *Id.*

²² *Id.*

²³ See CAO, "[Analysis of Climate-Related Information in S&P 500 Companies' 10-Ks](#)."

²⁴ *Id.*

California Climate Disclosure Rules

Companies that are subject to California's [Senate Bill 261, Greenhouse Gases: Climate-Related Financial Risk \(SB 261\)](#) are no longer required to publish their climate-related financial risk reports by the January 1, 2026, deadline. SB 261 was enjoined by the U.S. Court of Appeals for the Ninth Circuit, pending ongoing litigation (as discussed in our November 21, 2025, client alert "[Ninth Circuit Enjoins California Corporate Climate Risk Disclosure Law, but the Waiting Game Continues](#)"). A company may now *voluntarily* post its report on the California Air Resources Board's (CARB's) [online database](#). If a company chooses to post to the CARB database, the company should also post the report on the company's corporate website. CARB also [formally announced](#) that it would not enforce SB 261 in light of the injunction and that the board will provide further information, including an alternative date for reporting, as appropriate, after the appeal is resolved.²⁵

The Ninth Circuit declined, however, to enjoin [Senate Bill 253, Climate Corporate Data Accountability Act \(SB 253\)](#), which will require certain companies to publicly disclose greenhouse gas (GHG) emissions data, starting in 2026.²⁶

In December 2025, CARB published draft regulations implementing SB 253 and SB 261, clarifying requirements for climate disclosures, revenue thresholds, recordkeeping, fees, penalties and exemption. The draft regulations are subject to a public comment period until February 9, 2026. See our December 19, 2025, client alert, "[CARB Issues Draft Regulations Implementing Climate Disclosure Law](#)."

In addition, [Assembly Bill 1305, Voluntary Carbon Market Disclosures Act \(AB 1305\)](#) remains in effect for a company making climate-related claims or purchasing/using carbon offsets sold in California to publicly disclose on the company website detailed information related to the methodology, verification and/or carbon offsets used to support climate-related claims. For additional information comparing the three California disclosure laws, see our October 28, 2024, client alert "[State of Play: California Amends Climate Disclosure Rules](#)."

CSRD

The first cycle of filings under the EU's disclosure rules under the Corporate Sustainability Reporting Directive (CSRD) for applicable EU-incorporated companies has been completed. In late 2025, the EU also finalized its revised proposals for CSRD

²⁵ For additional information of CARB resources, see [the board's website](#).

²⁶ We discussed the proposed legislation in our October 28, 2024, client alert "[State of Play: California Amends Climate Disclosure Rules](#)" and our September 26, 2023, client alert "[California Poised to Adopt Sweeping Climate Disclosure Rules](#)."

reporting, including for non-EU companies. Final changes to the CSRD are expected to significantly reduce the number of companies that are in scope for reporting in 2028 and 2029.

The thresholds for large EU companies and undertakings reporting in 2028 will be significantly increased. The new proposals cover EU companies with over 1,000 employees and €450 million in net turnover, which exceeds what the European Commission originally proposed as the existing thresholds for these “second wave” companies (€50 million in net turnover or €25 million on the balance sheet). The European Commission’s original proposal for a reporting company to have at least 1,000 employees was adopted.

The applicability threshold for 2029 global reporting for non-EU parent companies will be increased to over **€450 million in net turnover earned in the EU**, in line with the European Commission’s proposal to raise it from the original €150 million. The second “limb” of the test — **the threshold for EU subsidiaries and branches of such non-EU parent companies — will increase to €200 million in net turnover**. The European Commission’s proposed thresholds were originally €150 million and €50 million for subsidiaries and branches, respectively.

In addition, the European Financial Reporting Advisory Group (EFRAG) published revised drafts of the European Sustainability Reporting Standards (ESRS), which are materially simplified compared to the previously published versions, which reflects the EU’s overall approach to reducing the burdens and costs associated with the CSRD.

EFRAG provided clarity on Double Materiality Assessments (DMAs) to enable companies to better prepare for audits. EFRAG advised that **companies will not need to undertake a DMA each year**. A DMA will only need to be recast where significant changes have occurred since the company last conducted its DMA, *e.g.*, **changes to company operations,**

structure or business relationships. If such changes occur, companies will need to update their DMA. EFRAG also stated that companies are not required to carry out extensive searches when preparing their DMAs; instead companies can rely on “reasonable and supportable information that is available without undue cost or effort.”

Corporate Sustainability Due Diligence Directive

The EU has proposed changes to the Corporate Sustainability Due Diligence Directive (CS3D), with the provisional agreement increasing the threshold for the CS3D to apply to undertakings with 1,000 employees and €450 million in net turnover to **5,000 employees and €1.5 billion in net turnover**.

Other important changes include:

- Narrowing of the scope of the exercise required to identify and assess adverse impacts.
- Removal of the obligation for in-scope companies to adopt a transition plan for climate change mitigation.
- Postponement of the CS3D’s transposition deadline by another year to **July 26, 2028**.

The co-legislators have also agreed to introduce a maximum cap on penalties of 3% of a company’s net worldwide turnover, a decrease on the 5% cap initially proposed, and the European Commission plans to issue related guidelines.

EU Deforestation Regulation

The EU also deferred the implementation of the EU Deforestation Regulation (EUDR). Large and medium-sized companies will have **until December 30, 2026, to comply** (*i.e.*, extending the deadline by a year) while small companies will have until June 30, 2027, to comply.

Other Matters of Interest

Consider SEC Enforcement Trends

In September 2025, the SEC announced the creation of a Cross-Border Task Force to investigate violations of U.S. securities laws by foreign-based companies. In its announcement, the SEC noted that it will examine companies from jurisdictions (such as China) where government control and other factors pose unique investor risks. The SEC **highlighted the role of gatekeepers, such as auditors and underwriters**, who help foreign companies access U.S. capital markets. FPIs should evaluate the implications of each new enforcement action as they surface in light of the company's existing internal processes, procedures and related disclosures to determine whether any changes to their own internal processes may be needed.

Assess Board Oversight of AI-Related Risk

Boards play an increasingly important role in the oversight of AI-related risk. As companies continue to expand their use of AI, it is essential that boards proactively identify, understand and address the challenges that AI may pose to their organizations by establishing effective governance frameworks and risk management strategies.

Board oversight of AI: The landscape of board oversight of AI is increasingly evolving. For example, in an NACD survey, more than 62% of the director respondents stated they now set aside agenda time for full-board AI discussions.²⁷ In addition, the survey found that boards are not only making key inquiries of management regarding AI technologies, including requests for updates on a company's data governance practices, but also questioning how AI could impact future workforce needs.

Effective oversight of AI is crucial due to technological advancements and rapid business adoption. Boards should closely assess the risks associated with AI, consider adopting an AI governance framework and **consider conducting an audit** to determine where AI is currently in use within the company.

Full board and committee oversight: Disclosure of AI oversight, either by the full board or a specific board committee, has increased. Boards should consider advantages of the different frameworks to address oversight. Among *Fortune* 100 companies:²⁸

- 40% disclosed that at least one board-level committee was charged with oversight of AI matters in 2025, compared to 11% in 2024.
- 21% disclosed AI oversight by the audit committee in 2025, compared to 8% in 2024.
- 25% disclosed AI oversight by a non-audit committee, compared to 8% in 2024.

Additionally, boards should reflect the assignment of such oversight and responsibilities by revising the relevant committee charter or the company's corporate governance guidelines.

Director expertise: Boards should consider the knowledge and experience of their directors to oversee, assess and manage AI-related risks and opportunities. Among S&P 500 companies, 20% have at least one director with AI expertise on the board.²⁹ As companies navigate the risks associated with AI, AI competency should be a priority for boards in seeking directors with a certain level of expertise; receiving regular updates on AI trends, risks and best practices; and providing continuing education opportunities.

²⁷NACD, Survey Analysis: AI (July 28, 2025).

²⁸EY, "Cyber and AI Oversight Disclosures: What Companies Shared in 2025" (Oct. 14, 2025).

²⁹ISS-Corporate, "AI in Focus in 2025: Boards and Shareholders Set Their Sights on AI" (Mar. 19, 2025).

Board use of AI: In addition to oversight of AI, boards should also consider how the application of AI can reshape their own practices. For example, a Diligent survey found that more than 65% of directors were using or experimenting with AI.³⁰ The most common areas where directors are using AI for board work include meeting preparation, summarizing board materials and benchmarking. Given the risks associated with this use, boards should consider working with management to develop clear policies on their own use of AI.³¹

Review Clawback Policies

Background

As required by the Dodd-Frank Act, in October 2022, the SEC adopted final rules (Rule 10D-1 of the Exchange Act) that directed the stock exchanges to establish clawback listing standards. The rule called for listed companies to develop and implement a policy providing for (i) the recovery of erroneously awarded incentive-based compensation received by current or former executive officers, as defined under Rule 16a-1(f) under Section 16 of the Exchange Act, and (ii) related disclosure obligations, even if there was no misconduct or failure of oversight on the part of an individual executive officer.³²

While clawback policies that track to the clawback listing standards appear straightforward, companies are discovering that **implementation of the policies may be more challenging than anticipated**. Publicly listed companies should periodically assess whether to take the short-term, medium-term and long-term actions set forth below. Companies should also monitor potential changes to the clawback listing standards and clawback disclosure obligations. At the SEC Executive Compensation Roundtable on June 26, 2025, certain remarks indicated that the SEC may reevaluate the clawback rules in light of their complexity and the relative absence of companies' analysis of their accounting errors in response to the clawback rules to date.³³

³⁰ See Diligent Institute's *Corporate Board Member*, "A Pulse Check on AI in the Boardroom" (Sept. 2025).

³¹ See our September 14, 2025, client alert "[Do's and Don'ts of Using AI: A Director's Guide](#)."

³² For a review of the Dodd-Frank Act clawback rules and related disclosure requirements, see our November 2, 2022, client alert "[SEC Adopts Final Clawback Rules and Disclosure Requirements](#)" and our June 16, 2023, client alert "[SEC Approves Stock Exchange Rules for Dodd-Frank Clawbacks](#)."

³³ See the SEC's [Statement: Remarks at the Executive Compensation Roundtable from Commissioner Mark T. Uyeda](#) (June 26, 2025).

Operational Matters for Dodd-Frank Clawback Policies

Short-Term Action Items

- **File the clawback policy as an annual report exhibit and ensure the annual report cover page is updated.** The Dodd-Frank clawback rules require listed companies to file their clawback policies as exhibits to their annual reports on Form 20-F or 40-F, as applicable. Companies should consider whether to voluntarily file any stand-alone supplemental clawback policies that exceed the Dodd-Frank clawback rules' requirements.
- **Review the look-back period.** While the rules provide for the recovery of erroneously awarded incentive-based compensation during the three years prior to the date of the accounting restatement, such look-back period is only required to apply to incentive-based compensation received on or after October 2, 2023. Therefore, the look-back period for 2026 may be less than the three-year requirement. For newly public companies, the look-back period is the later of October 2, 2023, or the date the company listed its securities on Nasdaq or the NYSE.

Medium-Term Action Items

- **Determine which executive officer compensation is incentive-based compensation.** The Dodd-Frank clawback rules apply to "incentive-based compensation," which is "any compensation that is granted, earned, or vested based wholly or in part upon the attainment of any financial reporting measure."³⁴ Before a potential accounting restatement arises, listed companies should ascertain which of their executive officer compensation arrangements qualify as incentive-based compensation.
- **Reflect on the rationale for and documentation of forms of executive compensation.** The scope of the "incentive-based compensation" definition in the SEC's clawback rules means that time-based equity awards, bonuses and other forms of compensation that do not contain performance metrics can fall into the category of "incentive-based compensation" if they are granted in consideration of attainment of a past financial reporting measure. Therefore, companies should be aware that if they are documenting the rationale for executive compensation as based on prior financial reporting measure performance (whether implicitly or explicitly) in compensation committee resolutions, their executive offer letters or otherwise, that rationale could bring compensation under the umbrella of incentive-based compensation that would have otherwise been excluded from clawback policies, which could meaningfully increase the scope of recoverable compensation if a clawback policy is triggered.

³⁴ See the SEC's final [Listing Standards for Recovery of Erroneously Awarded Compensation](#) (Oct. 26, 2022).

- **Reinforce the importance of an open line of communication between the accounting, finance, HR and legal functions.** If an accounting restatement occurs, various functions such as accounting, finance, HR and legal, along with the company's audit committee and compensation committee, will need to collaborate to determine (i) whether, and the extent to which, the accounting restatement triggers application of the clawback policy and (ii) the process for compensation recovery, if applicable.

Long-Term/As-Needed Action Items

- **If stock price or total shareholder return (TSR) is an input to incentive-based compensation, consider which adviser(s) to engage.** The Dodd-Frank clawback rules do not prescribe how to determine the amount of incentive-based compensation to recover if the underlying financial performance metric is stock price or TSR. Determining how an accounting restatement impacts stock price and TSR may entail technical expertise, specialized knowledge and significant assumptions. Given the complexity of the analysis and the fact that aspects of the analysis will be disclosed externally, companies that have incentive-based compensation tied to stock price or TSR that experience an accounting restatement that triggers the company's clawback policy should consider engaging a third-party valuation expert to assist with evaluation and review.
- **Determine the means of recovering erroneously awarded incentive-based compensation.** Once erroneously awarded incentive-based compensation has been quantified, a company will need to assess how it intends to recover the amount, including the means and timing of recovery, as well as how the company plans to communicate any repayment obligation to its executive officers. Listed companies should keep in mind that certain states, such as California, have laws that generally prohibit the recovery of wages that have already been paid.³⁵ While the Dodd-Frank clawback rules are currently expected to preempt conflicting state law, litigation in the coming years may confirm whether and when the Dodd-Frank clawback rules apply and could indicate which means of recovery may reduce legal risk.
- **If the clawback policy is triggered, consider the tax consequences to the company and executive officers.** The Dodd-Frank clawback rules require recovery of erroneously awarded incentive-based compensation on a pretax basis. Therefore, if a company's clawback policy is triggered, the company will need to carefully assess how much of that compensation is or was properly deductible, and may be required to refund the Internal Revenue Service for deductions taken in previous years. Similarly, executive officers should work closely with tax advisers to determine how the officers' taxes are impacted by the clawback policy's application.
- **Disclose how the clawback policy has been applied during or after the last completed fiscal year.** The following disclosure requirements apply under Item 6.F of Form 20-F or paragraph B.19 of Form 40-F, as applicable, and the disclosure must be tagged in eXtensible Business Reporting Language (XBRL) format:
 - If during or after the last completed fiscal year, the listed company was required to prepare a restatement that required recovery of erroneously awarded incentive-based compensation under the company's clawback policy, or there was an outstanding balance as of fiscal year-end of erroneously awarded incentive-based compensation to be recovered from a previous application of the policy, the listed company is required to disclose:
 - The date it was required to prepare the restatement.
 - The aggregate dollar amount of erroneously awarded incentive-based compensation, including an analysis of how the amount was calculated (with enhanced disclosure if the financial reporting measure related to stock price or TSR).
 - The aggregate dollar amount of erroneously awarded incentive-based compensation that remains outstanding at the end of the last completed fiscal year; provided that alternative disclosure would be required if the aggregate dollar amount of erroneously awarded incentive-based compensation had not yet been determined.
 - If recovery would be impracticable in accordance with the narrow exceptions in the Dodd-Frank clawback rules, the company is required to briefly disclose why recovery was not pursued and the amount of recovery foregone for each current and former named executive officer and for all other current and former executive officers as a group.
 - For each current and former named executive officer for whom, as of the end of the last completed fiscal year, erroneously awarded incentive-based compensation has been outstanding for 180 days or longer since the date the listed company determined the amount owed, the company should disclose the dollar amount of outstanding erroneously awarded incentive-based compensation due from each such individual.
 - If the company was required to prepare a restatement during or after its last completed fiscal year and concluded that recovery of erroneously awarded incentive-based compensation was not required under the clawback policy, the company is required to briefly disclose the reasoning behind that conclusion.

³⁵See California Labor Code § 221.

Additionally, on April 11, 2025, the SEC published C&DIs 104.20-104.25, which clarify disclosure requirements in unique circumstances involving the application of a clawback policy.³⁶ Companies should refer to these C&DIs if they are contemplating **whether they need to mark the annual report's restatement checkboxes or to include disclosure in their annual reports** under Item 6.F of Form 20-F or paragraph B.19 of Form 40-F, as applicable, similar to such disclosure provided in the previous year's annual report.

Checkboxes on the Cover Page of Annual Reports

Companies must determine whether the checkboxes on the cover page of the annual report (copied below) are applicable regarding (i) the correction of accounting errors and (ii) a clawback analysis. These disclosures on the cover page of the Form 20-F or 40-F must be tagged in XBRL format.

- If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements.
- Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b).

Box 1: Companies should perform a two-step process to determine whether to check Box 1:

1. Did the company correct any errors or make revisions to a previously issued financial statement or footnotes? The term "revision" encompasses (i) "Big R restatements," which correct a material error in the previously issued financial statement; (ii) "little r revisions or restatements," which correct an error that was immaterial to the previously issued financial statement (but correcting the error in the current period would materially misstate the current period); *and* (iii) any other changes.
2. Were such corrections or revisions due to accounting errors under Accounting Standards Codification (ASC) 250 or International Accounting Standard 8, as applicable?
 - Revisions due to the adoption of an accounting principle that applied to previous periods (*i.e.*, retrospective changes) are not considered accounting errors.

- Out-of-period adjustments are also not in this category.
- Correcting errors in the application of GAAP, IFRS or other mathematical errors are considered accounting errors.

Box 2: Do any of those error corrections involve restatements that require a company to determine whether it must recover incentive-based compensation under the company's clawback policy?

- As noted above, companies should also refer to C&DIs 104.20-104.25 if they are contemplating whether marking the annual report's restatement checkboxes is necessary.

Clawbacks Beyond the Dodd-Frank Requirements – Considering Whether to Amend or Supplement the Clawback Policy

Compensation committees (or boards of directors, if applicable) should consider at least annually whether to update the clawback policy in response to (i) company-specific, market and/or industry trends; (ii) proxy advisory firm guidance; (iii) other clawback rules; and (iv) other factors that arise in the coming years as law and norms regarding the Dodd-Frank clawback rules take shape. Such trends have not materially changed since 2024. For a detailed summary of these trends, refer to our [Form 20-F for Fiscal Year 2024 publication](#).³⁷

Consider Recent Developments in US Sanctions

The SEC has continued its historical practice of issuing comment letters to public companies seeking more detail about disclosures related to dealings in countries that are the subject of U.S. sanctions enforced by the U.S. Treasury Department's Office of Foreign Assets Control (OFAC), which administers and enforces most economic and trade sanctions on behalf of the U.S. government.

OFAC currently administers and enforces comprehensive sanctions with respect to Cuba, Iran, North Korea and certain regions of Ukraine (Crimea, the so-called Donetsk People's Republic and the so-called Luhansk People's Republic), as well as against specific individuals and entities, including certain governments (such as the government of Venezuela). In July 2025, the U.S. government lifted long-standing country sanctions imposed on Syria; however, targeted sanctions on certain individuals and entities there remain in place. Targeted sanctions are also in place against those carrying out certain activities (*e.g.*, terrorism, transnational organized crime, narcotics trafficking, corruption

³⁶See the SEC's [Compliance and Disclosure Interpretations: Update](#) (April 11, 2025).

³⁷See our January 16, 2025, guide "[Form 20-F for Fiscal Year 2024: What Foreign Private Issuers Should Keep in Mind](#)," pp. 16-17.

and activities that violate human rights). In addition, OFAC maintains sanctions that target categories of activity in certain jurisdictions (*e.g.*, new investment in Russia), and types of dealings with specified targets (*e.g.*, sectoral sanctions with respect to Russia or transactions involving publicly traded securities of certain Chinese military companies).

In response to the Russian invasion of Ukraine in February 2022, the U.S. government has imposed significant sanctions against Russia, including prohibitions on trade in certain goods and services between the United States and Russia; prohibition of new investment in Russia by U.S. persons; asset-blocking sanctions on a number of Russian individuals and entities, including many Russian financial institutions; restrictions on transactions involving Russia's Central Bank, National Wealth Fund and Ministry of Finance; and restrictions on dealing in Russian sovereign debt and debt or equity of certain Russian companies.

Companies should ensure that they have robust policies, procedures and systems to ensure compliance with U.S. sanctions law. If a company is lawfully conducting business in sanctioned countries or territories or with persons covered by existing sanctions, the company must consider whether disclosure of such activities (and the attendant risks) is mandated or appropriate. For example, pursuant to Section 13(r) of the Exchange Act, certain transactions or dealings with individuals or entities sanctioned under sanctions authorities with respect to Iran, terrorism or weapons of mass destruction are required to be reported in an issuer's Form 20-F. A company should also consider whether it is appropriate to disclose (i) sanctions compliance-related risks more generally, even if the company does not specifically conduct business in sanctioned countries or territories or with persons targeted by existing sanctions, or (ii) risks that imposition of additional sanctions could impact the company's business in the future, in light of current geopolitical trends.

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