



Fenwick Securities Law Update

– November 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
- SEC relief for automatically effective registration statements during the government shutdown
- The future of shareholder precatory proposals
- The Texas Stock Exchange receiving SEC approval to operate as a national securities exchange
- Other matters of interest including enhancements to Glass Lewis business model, ISS request for comments on voting policy, California climate disclosure laws, ExxonMobil retail voting program, and scrutiny of ESG-influenced investing by ERISA plans

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

- **United States Federal Government Shutdown:** The [U.S. federal government shutdown](#) that began October 1, 2025, has continued without resolution as of the end of October. Companies whose operating results or financial condition are materially affected by the ability to interact with federal government agencies should consider appropriate disclosures if the shutdown remains in place at the time of their next periodic report. Companies that expect to provide the investment community with information about the effects of the shutdown should consider the desirability or necessity of filing an Item 7.01 Form 8-K to disclose any material information that is so disseminated, and companies might otherwise consider the desirability of filing an Item 8.01 Form 8-K to voluntarily report material effects of the shutdown on their operations or financial condition.
- **Trade Issues and Tariffs:** On October 30, 2025, President Donald Trump announced that the United States and China had reached an agreement on certain trade matters that would lower U.S. tariffs on Chinese goods and prompt China to relax restrictions on export of certain processed rare-earth materials. Also, in late October the United States and South Korea announced a trade deal that would reduce reciprocal tariffs that the two countries had imposed upon each other. In October the president announced the United States’ intent to raise tariffs on Canadian exports by an additional 10%. Trade issues and tariffs can have a direct impact on a company based on its industry and the extent of its international operations and supply chain. They may indirectly affect other companies through the downstream impacts of upstream tariffs and trade tensions’ economic impacts, such as inflation, increasing uncertainty and volatility (which can reduce underlying customer demand), or the unavailability of certain components. While reviewing their Form 10-Qs, companies should consider how trade tensions and tariffs may impact any components from, or their



business with, these countries, as well as secondary domestic and international effects. Companies should also consider whether to update any of their supply chain disclosures to reflect new risks, such as increasing prices, reduced availability, new disruptions, the risk of holding excess inventory, or any other developments.

- **Interest Rates:** The Federal Reserve cut the federal funds rate by a quarter percentage point for the second month in succession on October 29, 2025. Federal Reserve Chair Jerome Powell cast doubt on expectations for a future reduction at the Federal Reserve's next meeting in December 2025.
- **Foreign Currency Exchange Risk:** As of October 31, 2025, the U.S. dollar index was down ~8% this year. The decline in the index has slowed, and recently slightly reversed, since the steep decline in the spring of 2025. Learn more about [foreign currency exchange risk](#).

Rules and Regulations

- On October 9, 2025, the Securities and Exchange Commission announced that, during the government shutdown, it [would not recommend enforcement action](#) against companies that have a registration statement under the Securities Act of 1933 go effective automatically after the statutory 20-day waiting period while omitting the information allowed to be omitted by Rule 430A. The omitted information, essentially pricing information for the offering, should be supplied in a final prospectus filed with the SEC.

Other SEC Developments and Announcements

- **Future of Precatory Shareholder Proposals May Be In Doubt:** In a [keynote address](#) at the John L. Weinberg Center for Corporate Governance's 25th Anniversary Gala, SEC Chair Paul Atkins [questioned whether precatory stockholder proposals are a proper subject](#) under Delaware law, as required by Rule 14a-8(i)(1), which permits a company to exclude such a proposal "[i]f the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization." He also noted that he has "high confidence" that the SEC staff would honor an argument to this effect (accompanied by a Delaware legal opinion) made under Rule 14a-8(i)(1), and pointed out that the SEC has the right to certify questions of law to the Delaware Supreme Court, which could allow for quick resolution if any shareholder proponent took an opposing argument. This position could have a substantial impact on the next proxy season, given that currently almost all shareholder proposals are presented as nonbinding.
- **SEC Approves Texas Stock Exchange:** On September 30, 2025, the SEC approved the Texas Stock Exchange's (TXSE) Form 1 registration to operate as a national securities exchange. The TXSE will be organized as a single-tier exchange featuring comparatively less-stringent listing requirements, designed to primarily attract mid- and large-cap issuers. In granting approval, the SEC observed that numerous aspects of TXSE's listing framework, including its listing standards and governance guidelines, are substantively similar to those of The New York Stock Exchange and Nasdaq. TXSE may commence operations upon satisfying certain operational conditions and approvals. It is expected to announce a launch schedule later, with plans to commence trading as early as 2026.

Other Matters of Interest

- **Glass Lewis Announces Substantial Business Model Enhancements:** On October 15, 2025, Glass Lewis announced that it will be making substantial enhancements to its business model over the next two years. The enhancements will help all Glass Lewis clients move beyond standard policies and guide them in

creating their own voting frameworks and move away from singularly focused research and vote recommendations based on the Glass Lewis house policy and shift to providing multiple perspectives reflecting the varied viewpoints of its clients.

- **ISS Requests Comments on Voting Policy Revisions:** On October 30, 2025, ISS announced the commencement of a comment period running through November 11, 2025, on proposed changes to its benchmark voting policies. Comments are being sought on 19 proposed policy changes, including those relating to:
 - Capital structures – unequal voting rights
 - Non-employee director (NED) compensation practices – problematic high NED pay
 - Executive compensation – company responsiveness
 - Executive compensation – long-term alignment in pay-for-performance evaluation
 - Executive compensation – time-based equity awards with long-term horizons
 - Executive compensation – enhancements to equity plan scorecard
 - U.S. Environmental and Social – related (E&S) shareholder proposals
 - Global – shareholder proposals

ISS stated that any changes to its voting policies will be announced in late November 2025 and will be generally applicable to shareholder meetings held on or after February 1, 2026.

- **California Climate Disclosure Law Developments:** On October 10, 2025, the California Air Resources Board (CARB) [issued a draft reporting template](#) for those companies that will be required to report Scope 1 and Scope 2 greenhouse gas emissions in 2026 under SB 253. CARB requested public feedback on the template through October 27, 2025. CARB also posted a notice on its website stating that initial rulemaking, that was expected to be released in mid-October 2025, will now be delayed until the first quarter of 2026. The notice does not indicate any changes to the compliance deadlines for SB 253 and/or SB 261, meaning that companies required to report under SB 261 will be expected to submit their reports by January 1, 2026, and those that are covered by SB 253 will be expected to report Scopes 1 and 2 emissions in 2026 (by a date still to be determined). CARB had previously proposed a June 30, 2026, deadline for reporting under SB 253, but given the delay in rulemaking, many expect this deadline will be pushed back. In addition to ongoing litigation from the California Chamber of Commerce challenging the California reporting laws, ExxonMobil has filed a lawsuit [arguing that the laws violate the First Amendment](#) (similar to the Chamber of Commerce lawsuit) and the National Securities Market Improvement Act.
- **Update on ExxonMobil Retail Voting Program:** The City of Hollywood Police Officers' Retirement System has filed a proposed class action in U.S. district court on behalf of ExxonMobil shareholders against the company and its board of directors, alleging that they are breaching their fiduciary duties in connection with the company's adoption of its "retail voting program." The lawsuit seeks an injunction to prevent ExxonMobil from implementing the program, which the plaintiffs allege infringes on shareholders' voting rights and is designed to stifle shareholder dissent and entrench management.



- **Texas Court Imposes Heightened Scrutiny Over ESG-Influenced Investing by ERISA Plans:** In January 2025, the Northern District of Texas ruled in *Spence v. Am. Airlines, Inc.* that American Airlines and its Employee Benefits Committee (EBC) breached their ERISA duty of loyalty (but not their duty of prudence) by allowing corporate interests and BlackRock's (the plan's investment manager and one of the company's largest shareholders and a significant lender) non-pecuniary ESG agenda to influence management of plan assets, rather than acting solely in participants' best financial interests. The court found a significant failure to separate corporate and fiduciary roles, resulting in conflicts of interest and a lack of meaningful oversight of BlackRock's ESG-driven proxy voting. On September 30, 2025, the court issued its final, remedial judgment, imposing an array of burdensome equitable remedies on the 401(k) plan fiduciaries; the plan's corporate sponsor; and their respective officers, employees, and agents, aimed at stewardship practices, fiduciary independence, and transparency (while denying monetary damages), including:
 - Prohibition on proxy voting motivated by nonpecuniary goals
 - New independent EBC members
 - Annual participant disclosures and certifications
 - Public disclosure of memberships in climate coalitions or initiatives
 - Structural conflict management related to asset managers

Corporations, especially those that sponsor ERISA plans, should expect increased pressure to document the financial basis for ESG-related positions, tighten the separation between corporate ESG objectives and plan decision-making, reassess relationships with asset managers and proxy advisors, and enhance board-level oversight. The court's remedial framework also foreshadows disclosure and governance practices that may become de facto expectations even outside this case.

- **ISS Announces Window for Submission of Peer Group Changes:** On November 3, 2025, ISS announced that for companies with annual meetings between February 1, 2026, and September 15, 2026, its peer group review and submission window will open at 9:00 a.m. ET on November 10, 2025, and will close at 8:00 p.m. ET on November 21, 2025. Submissions should reflect peer companies used (or to be used) by the submitting company for pay-setting for the fiscal year ending prior to the company's next upcoming annual meeting (for 2026 annual meetings, peers used for the 2025 fiscal year). In announcing the window, ISS noted that companies that have not changed their previous peers, or companies that do not wish to provide this information are under no obligation to participate and, in those cases, the proxy-disclosed peers from the company's last proxy statement will automatically be factored into ISS' peer group construction process.

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.