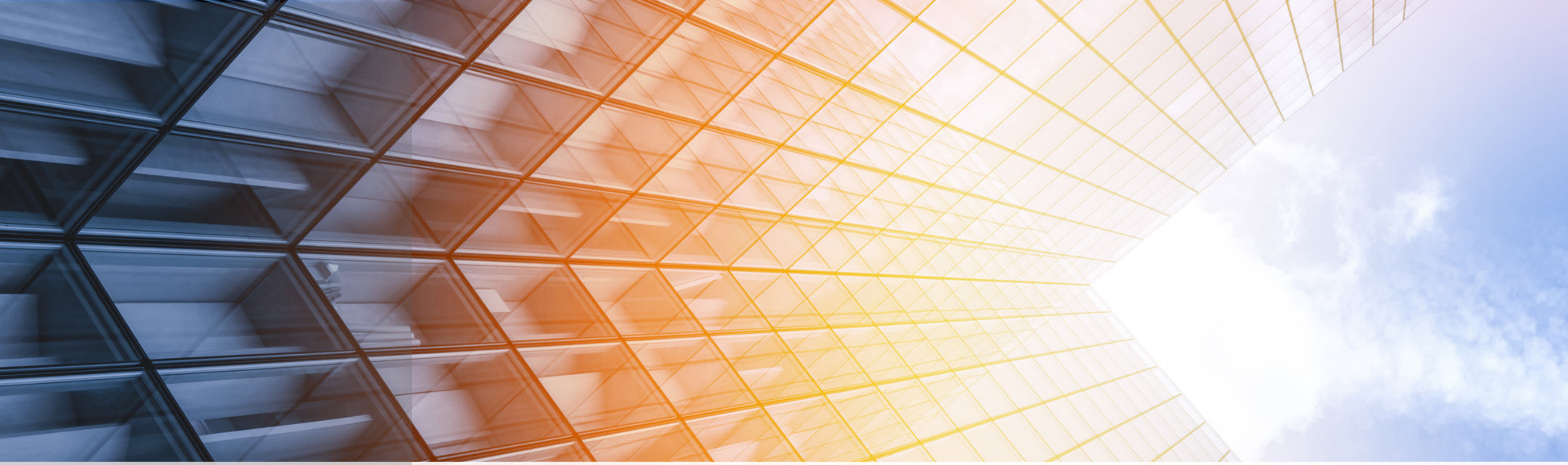

January 5, 2026

Services

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2026 SEC and Corporate Governance Update

The following summary is designed to help our clients and friends keep track of the most significant Securities and Exchange Commission ("SEC") developments and rule changes as they plan for their annual meetings, periodic reporting and corporate governance matters in the coming year.

SEC Pauses Substantive Review of Shareholder Proposal No-Action Letter Requests for the 2025-2026 Proxy Season

In November 2025, the SEC issued a statement that for the 2025-2026 proxy season, the SEC will not respond to no-action requests for, and express no views on, companies' intended reliance on any basis for exclusion of shareholder proposals under Rule 14a-8, other than no-action requests to exclude a proposal under Rule 14a-8(i)(1). While the SEC will not respond substantively to such requests, it will issue a response to companies who include "an unqualified representation that the company has a reasonable basis to exclude the proposal based on the provisions of Rule 14a-8, prior published guidance, and/or judicial decisions" as part of its notification pursuant to Rule 14a-8(j). In this instance, the SEC's response will note that, based solely on the company's or counsel's representation, the SEC will not object if the company omits the proposal from its proxy materials. This recent change to the shareholder proposal process follows the SEC's February 2025 issuance of Staff Legal Bulletin 14M that provided updated guidance on the exclusion of shareholder proposals under Rule 14a-8. Shareholder proposals remain a topic of focus for the SEC.

What companies should be doing now: Companies should continue to review submitted shareholder proposals for compliance with Rule 14a-8 in connection with existing SEC guidance. Companies intending to exclude a shareholder proposal must still comply with Rule 14a-8(j) and provide notice of the exclusion to the SEC and proponents no later than 80 days before filing its proxy statement. Finally, companies should decide whether they want to receive a response from the SEC noting that it has no objection to the exclusion of the shareholder proposal, but again, the SEC will not substantively comment on companies' arguments for exclusion at this time.

SEC Ends Defense of Climate Change Final Rules

In March 2024, the SEC adopted long-awaited rules that could impose significant climate change-related disclosure obligations on registrants. The final rules required companies to disclose financial statement metrics; provide data regarding material scope 1 and 2 emissions consisting of their own material greenhouse gas (GHG) emissions and how much energy they consume; disclose climate-related risks and the impacts of said risks, particularly those likely to have a material impact on the company's business or financial statements; disclose governance and oversight of climate-related risks;

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and disclose material climate-related targets and goals, progress toward meeting those targets and goals, and transition plans. As a welcome change from the originally proposed rules, the SEC removed disclosure requirements for scope 3 emissions but still required the disclosure of material scope 1 and scope 2 emissions. Additionally, the final rules exempted emerging growth companies, smaller reporting companies, and non-accelerated filers from the GHG emissions disclosure requirements.

The new rules were immediately challenged in court in multiple jurisdictions, with the litigation ultimately being consolidated in the United States Court of Appeals for the Eighth Circuit. In April 2024, the SEC issued a voluntary stay of the rules pending resolution of the litigation, and in March 2025, the SEC ended its defense of the rules.

What companies should be doing now: The SEC ending its defense of the rules means that the climate change rules will not go into effect, but climate change still should remain an important issue for companies in 2026. Investor pressure and certain state laws (e.g., California) will likely continue to drive companies to provide similar climate-related disclosure.

"EDGAR Next" Went Live in March 2025; Legacy EDGAR Platform Went Dark September 2025

In September 2024, the SEC adopted rule and form amendments regarding the EDGAR filing system commonly called "EDGAR Next." The final rules effectively ended shared EDGAR accounts and moved from a system of one login per company to one login per individual. Each filer must authorize at least two individuals as account administrators (one account administrator is allowed for individual or single-member company filers). The account administrators will generally manage the filer's account, with responsibilities such as: delegating authority, annually confirming on EDGAR that all individuals and entities reflected on the filer's dashboard are authorized to act on the filer's behalf, maintaining accurate and current corporate information on EDGAR and maintaining information relevant to access the filer's EDGAR account.

The EDGAR Next dashboard went live on March 24, 2025. After that date, any new filers were required to register on the new EDGAR Next platform. On September 12, 2025, the legacy EDGAR filing process ended and on September 15, 2025, compliance with EDGAR Next become mandatory. Filers that did not enroll on EDGAR Next by December 22, 2025 must submit a new Form ID to gain access to EDGAR.

What companies should be doing now: Companies should confirm that they are enrolled on the EDGAR Next platform. Additionally, if public companies handle Section 16 filings for their officers and directors, they should confirm that the officers and directors are properly enrolled, or file a new Form ID to enroll the officers and directors on the new platform. Companies should discuss and determine which administrators and/or third-party providers should be authorized for each individual filer. Companies should include relevant proxy statement disclosure in the event the EDGAR Next transition caused any untimely Section 16 filings. Additionally, EDGAR Next account administrators should remember to file their annual confirmation for each EDGAR Next filer once it becomes due in 2026

SEC Spring 2025 Regulatory Agenda

Below are a few relevant rule proposals currently included on the SEC's Spring 2025 regulatory agenda (the "Flex Agenda"). Note that SEC Chair Paul S. Atkins issued a brief statement regarding the Flex Agenda, stating that it "reflects a new day at the [SEC]."

Shareholder Proposal Modernization (April 2026). The SEC's Flex Agenda indicates that it is considering recommending that the SEC propose rule amendments that would modernize the requirements of Exchange Act Rule 14a-8 in order to "reduce compliance burdens for registrants and account for developments since the rule was last amended."

Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies (April 2026). The SEC's Flex Agenda indicates that it is considering recommending that the SEC propose rule amendments to expand accommodations that are available for emerging growth companies and "to rationalize filer statuses to simplify the categorization of registrants and reduce their compliance burdens."

Rule 144 Safe Harbor (April 2026). The SEC's Flex Agenda indicates that it is considering reproposing amendments to Rule 144, initially proposed in 2021, to increase the instances in which the Rule 144 safe harbor would be available.

Rationalization of Disclosure Practices (April 2026). The SEC's Flex Agenda indicates that it is considering recommending that the SEC propose rule amendments "to rationalize disclosure practices to facilitate material disclosure by companies and shareholders' access to that information." There is speculation that these rule amendments could be very broad in nature and address many aspects of the current disclosure landscape, including changes to executive compensation disclosure.

Renewed Interest — Semiannual Reporting

In 2018, the SEC issued a request for comment on quarterly earnings releases and reports, but the rulemaking process did not progress further. In 2025, the current presidential administration and SEC expressed renewed interest in transitioning to a semiannual reporting cycle. The quarterly reporting regime has been in place in the U.S. since the 1970s, so semiannual reporting would signal a dramatic shift in the reporting regime. However, semiannual reporting would bring the U.S. in line with many foreign jurisdictions, such as the United Kingdom, the European Union and Australia. Proponents of semiannual reporting tout reduced regulation and a longer-term focus, while opponents of semiannual reporting criticize decreased transparency, quality and availability of information.

Notable SEC Enforcement Actions

SEC Formation of Cross-Border Task Force to Combat Fraud. On September 5, 2025, the SEC announced the formation of a task force to strengthen and enhance the SEC's efforts to identify and combat cross-border fraud harming U.S. investors. This new task force will focus initially on investigating potential securities law violations related to foreign-based companies, including potential market manipulation, such as "pump-and-dump" and "ramp-and dump" schemes, with focused enforcement efforts on gatekeepers, such as auditors and underwriters. Finally, the task force will examine potential securities law violations related to companies from foreign jurisdictions where governmental control and other factors pose unique investor risks. 2025 marked a sharp decline in SEC enforcement actions and comment letters, but the formation of this task force is an indication of the SEC's current enforcement focus on traditional fraud.

Special Relationships that Bring Director Independence into Question. On September 30, 2024, the SEC announced settled charges against James R. Craigie, a former CEO, Chairman and board member of Church & Dwight Co., Inc. for violating proxy rules by standing for election as an independent director without informing the board of his close personal friendship with a Church & Dwight executive. Among other things, Craigie frequently vacationed with the executive and the executive's spouse, including six trips that spanned eight countries on five continents. Craigie paid more than $100,000 for them to join Craigie and his spouse on several of these international vacations. In addition to the Craigie case, there have been other cases over the years in which directors were alleged to have lacked independence because they belonged to the same country clubs, served on the same boards (including boards of charitable organizations) or generally ran in the same social circles. Although casual friendships are not problematic, companies should consider this enforcement action when determining director independence.

New "Shadow Trading" Theory. On April 4, 2024, in SEC v. Panuwat, a federal jury in the Northern District of California found a company employee liable for insider trading when the employee traded in the securities of a third party who was not the source or subject of the material non-public information. The defendant, Matthew Panuwat, was an employee at an oncology-focused biopharmaceutical company. Through the course of his employment, Panuwat learned that his employer expected to be acquired at a premium price. Panuwat purchased out-of-the-money call options in a company that was a peer to his employer, believing that the stock price in the peer company would rise on announcement of the acquisition of his employer. Panuwat obtained approximately $110,000 in profits from the trade. To prove that Panuwat breached a duty when he purchased the call options, the SEC focused on vague language in his employer's insider trading policy that prohibited trading in the securities of "another publicly traded company," when the employee had material non-public information. Companies should review their insider trading policies and other governance documents to ensure they are drafted in a clear and precise manner that does not create any unintended duties.

Risk Factor Updates to Consider in 2026

Risk factors should be reviewed and updated often to address the ever-changing risk environment. Some risk factor topics and trends to consider in 2026 are included below:

- **Geopolitical risks** – With the continued war in Ukraine, increasing tensions in South America and volatility in the Middle East, companies should consider risk factors concerning geopolitical risks and conflict around the world.
- **Trade restrictions** – With the dust beginning to settle on the 2025 trade restrictions, such as tariffs, consider specific business risks related to the restriction of international trade.
- **Cybersecurity risks** – With constantly evolving cybersecurity threats, cybersecurity risks should be reviewed to stay current in the cyber risk landscape.
- **Artificial intelligence risks** – With constant advancements in artificial intelligence technology, increased implementation into companies' businesses and continued changes in the regulatory environment, artificial intelligence risk factors should be considered and revised as new risks arise.
- **Climate risks** – With continued investor interest and certain state law focus on climate change and the proliferation of extreme weather events, this item should stay at the forefront of company risk factor considerations.

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Artificial Intelligence Disclosure and "AI Washing"

The advancements in generative artificial intelligence have continued to attract the attention of companies, legislators and regulators alike. Companies should avoid "AI Washing," which is the intentional overstating of a product or service's AI capabilities to make such product or service appear more innovative than it actually is, which "artificially" inflates sales or engagement. In April 2025, the SEC announced that it brought charges against a CEO/founder for making false and misleading statements to investors regarding the company's use of AI. Investors were led to believe that the company was utilizing AI to complete purchases made through its app without human involvement, when in reality it was relying on contract employees to manually input the purchases. Although the case above is a particularly egregious example, companies should be careful to avoid AI disclosures that are vague or aspirational and, instead, describe their AI usage and capabilities with accuracy and precision. Additionally, companies should continue to focus on AI-related risks in their periodic reports, including regulatory, operational, competitive, cybersecurity, ethical and third-party risks. Companies should assess the material impact of AI on the company's business outlook and performance and update their risk factors and other disclosures, if necessary. Outside of disclosures, companies should continue monitoring regulatory developments, evaluate their AI governance and oversight procedures, and look toward establishing broader company policies relating to the use of AI.

Additional Information

This legal update is merely a high-level summary of the developments discussed herein as of January 5, 2026, and does not purport to be a complete discussion of each of the noted rule changes. Complying with the SEC rules and regulations is a complex task within an ever-changing environment. If you have questions about the rules discussed above, please contact your Kutak Rock attorney or one of the authors listed on the left. For more information regarding our practices, please visit us at kutakrock.com.