MINTZ

Preparation for 2025 Fiscal Year-End SEC Filings and 2026 Annual Shareholder Meetings

Securities & Capital Markets Practice

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As issuers prepare for the upcoming annual reporting and proxy season, we share here highlights of significant actions from 2025 and regulatory considerations for the 2026 annual reporting season.

Although there were no significant changes to the SEC's disclosure rules in 2025, the past year marked a reset in federal regulatory priorities. Under the new administration, the SEC withdrew a significant number of proposed rules and signaled new areas of focus, including oversight of emerging financial technology and reworking of executive compensation rules. Across federal agencies, policy shifts and leadership changes have created operational uncertainty, particularly for life sciences companies monitoring direction at FDA, while parallel state activity, including California's mandatory climate disclosure program, advanced on a separate track. Executive actions affecting DEI, proxy advisor policies, and AI-related claims further shaped the compliance landscape throughout the year.

Looking to 2026, public companies should plan for continued policy volatility and uneven requirements across jurisdictions. We expect that divergence between state and federal requirements, fast-moving guidance on AI and data practices, and sector-specific oversight (including life sciences and fintech) will heighten disclosure, control, and governance risks. With the SEC's focus on principles-based disclosures, companies need to consider how these items have impacted or may impact business model, operations, and financial results in order to prepare appropriate disclosures that will help investors understand these impacts and make informed investment decisions.

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Updating Risk Factors and MD&A in 2026

As in past years, updating risk factors and Management's Discussion and Analysis (MD&A) in the Annual Report on Form 10-K is a top priority for management to provide context to financial results and explain trends, uncertainties, and future outlook in a company-specific manner. As Mintz highlighted last year, companies should continue to consider how risks and trends related to cybersecurity, China-related operations and supply chains, FDA developments, inflation and macro-economic market conditions, and geopolitical developments, including continued conflicts around the world, have impacted and may continue to impact your business. In addition, other areas of focus continue to evolve. This past year many companies have experienced impacts from macroeconomic trends such as tariffs and artificial intelligence (AI) proliferation, and disclosures should address how such policies and trends affected cash flow, supply chains, and pricing.

Artificial Intelligence (AI)

Most large public companies now list AI as a material risk, reflecting how widely the technology is being used. Common risks include cybersecurity, as AI can create new vulnerabilities and give attackers better tools; reputational risks from service outages or the mishandling of private data; and regulatory risks from the use of AI. Companies may also be subject to competitive risks for failure to use AI effectively. At the same time, companies should avoid making unproven claims about AI and machine learning technology. Boards and management must verify that all claims about the company's AI capabilities and benefits are accurate and supported by facts.

Tariffs

The Trump administration's tariff and other trade policies have impacted many businesses. These policies have also shifted and changed quickly, creating unpredictability in some businesses. Companies need to fully disclose the impact these policies have had on their business and how the company has responded to the policies through changes in their markets, supply chains, or otherwise, as well as the impact the current policies and potential changes are expected to have on their business.

ESG / DEI Matters

While the SEC's and many investors' priorities are changing, others remain focused on environmental, social, and governance (ESG) and diversity, equity, and inclusion (DEI) matters. Companies will need to navigate investor expectations and government input as they refine their policies in these areas and disclose the changes and the impact they may have on their business.

SEC Expectations and Rulemaking Outlook for 2026

SEC Rulemaking in 2026

The coming year is poised to be a transitional rulemaking year at the SEC marked by a focus on new, more principles-based, materiality-centered proposals aimed at simplifying disclosure and facilitating capital formation. The SEC's Spring 2025 Regulatory Agenda signaled a shift under current SEC leadership, with many legacy proposals withdrawn and a new set of pre-rule and proposed-stage items slated for action in 2026. Taken together, the proposed items aim to simplify offering mechanics, reduce duplicative or immaterial disclosure detail, and ease capital markets entry for smaller and newly public issuers.

Multiple items are planned for proposal or re-proposal in 2026, including rationalization of disclosure practices; shelf registration modernization; updates to the exempt offering framework; enhancement of emerging growth company accommodations and filer status simplification; Rule 144 modernization; and crypto-related framework items (including market structure elements designed to clarify the treatment of crypto assets within existing securities law constructs).

Executive Compensation Disclosure

Public remarks and SEC activity suggest that the SEC will begin rulemaking to modernize executive compensation disclosure in Regulation S-K Item 402, with a principles-based tilt: streamlining immaterial narrative, clarifying the link between intended pay and realized outcomes, and scaling requirements for smaller and newly public issuers. In June 2025,

the SEC convened a roundtable to evaluate the effectiveness of current executive compensation disclosure requirements. Opening remarks by Chairman Paul Atkins and Commissioners Peirce, Crenshaw, and Uyeda set the stage for a critical examination of the existing regime, with Chairman Atkins describing the current landscape as a "Frankenstein patchwork" of rules that has become increasingly complex and costly. Commissioner Peirce highlighted that this complexity not only burdens companies financially but may also unintentionally distort compensation practices, such as discouraging legitimate safety arrangements for executives to avoid triggering perquisite disclosures. Following the roundtable, the SEC's Spring 2025 Regulatory Agenda signaled that the SEC is moving from the evaluation phase to active rulemaking, listing April 2026 as the target date for publishing new proposals. Any proposal in 2026 would position final rules for late 2026 or 2027, with effective dates likely extending into the 2027 proxy cycle.

Impact of Government Shutdown

While the longest government shutdown in US history is over, its lingering effects continue even as core functions have largely been maintained. The SEC reported that during the shutdown, issuers filed over 900 registration statements with the SEC. Despite this massive backlog, the SEC is still generally adhering to its typical timing of 27 to 30 days for initial reviews. However, to the extent companies and practitioners are seeking nuanced or informal guidance, these requests will likely be delayed. Companies should also consider to what extent the prolonged closure or limited operations of other government agencies has affected or may affect their business or results of operations.

Quarterly Reporting

In September 2025, President Trump reiterated his position that US reporting companies should only have to report earnings every six months instead of on a quarterly basis. These statements are consistent with the SEC's request in 2018 for public comment on ways the SEC might "enhance, or at a minimum maintain, the investor protection attributes of periodic disclosures while reducing the administrative and other burdens on reporting companies associated with quarterly reporting." Shifting US public companies from quarterly to semiannual earnings reporting could reduce several well-recognized costs and distortions. Fewer reporting cycles would likely ease the compliance burden on issuers, particularly smaller companies, for whom the preparation, review, and filing of Form 10-Q reports is resource-intensive. Management teams might also gain more time and flexibility to focus on long-term strategy, capital allocation, and operational improvements rather than continually preparing for the next earnings release. Many proponents argue that less frequent reporting could help curb the short-termism sometimes fueled by quarterly earnings pressures and the market's fixation on meeting or beating estimates.

However, moving to twice-yearly reporting also presents meaningful risks. Quarterly filings serve as a key transparency mechanism for investors by providing timely insight into financial performance, liquidity, risks, and business trends; reducing that cadence could widen information gaps, increase uncertainty, and potentially heighten volatility around the fewer, more consequential release dates. Moreover, in fast-moving industries or during periods of economic instability, semiannual reporting could delay the public's ability to detect emerging issues, such as deteriorating financial conditions, compliance problems, or material risks, which could undermine market integrity and investor protection. From a securities liability perspective, quarterly reports are also a regular opportunity to disclose new risks and developments. Without regular quarterly reporting, companies may have to consider one-off or off-cycle disclosures to ensure that developments and new risks are appropriately disclosed in a timely manner to avoid the potential liability of retaining material (or potentially material) information from the market and to open trading windows.

We expect that a shift away from quarterly reporting could only be implemented gradually as it would require SEC rulemaking, which is typically a multi-month or even multi-year process.

AI Policy

In 2025, the SEC also recalibrated its regulatory approach to artificial intelligence, signaling a shift away from prescriptive rulemaking in favor of existing principles. This pivot was formalized in June 2025 when the Commission withdrew 14 outstanding proposals from the prior administration, including the rule regarding "Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers," which targeted algorithmic conflicts of interest. In subsequent remarks delivered in December 2025, Chairman Atkins emphasized his position that current materiality standards are sufficient to address risks associated with emerging technologies, cautioning against the adoption of specific disclosure mandates for each new technological development. Issuers are advised that while the immediate prospect of federal operational mandates has receded, the accuracy of AI-related disclosures remains a priority for the SEC.

Digital Asset Regulation

Throughout 2025, the SEC has signaled its interest in clarifying the regulatory framework for digital assets and promoting blockchain innovation in US financial markets.

US public companies are increasingly adopting digital asset treasury (DAT) strategies, raising significant capital through equity and debt instruments to accumulate Bitcoin, Ethereum, Solana, and other tokens as reserve assets. This shift in corporate treasury management has been accelerated by recent regulatory clarity, the growth of institutional-grade crypto infrastructure, and macroeconomic concerns such as rising sovereign debt. Institutional investors, facing compliance and operational barriers to holding digital assets directly, are turning to DAT equities for indirect exposure, further fueling expansion. Some estimate that more than 200 public companies have adopted DAT strategies. These companies are deploying sophisticated capital-markets tools, yield-enhancing trading strategies, and robust governance structures to manage risk, custody, valuation, and disclosure obligations. Boards are adding digital-asset expertise and implementing detailed investment policies, while federal regulators, including the SEC and CFTC, pursue initiatives to modernize digital-asset rules and improve market supervision. In parallel, Nasdaq and NYSE continue evolving their oversight of these companies and strategies; addressing issues such as liquidity, volatility, stockholder consent, and fair-value reporting specific to DAT-heavy issuers. Much of this oversight remains informal and is conducted pursuant to public policy mandates. With heightened scrutiny of corporate disclosures and a rapidly developing policy landscape, DAT companies face increasing operational and compliance demands even as they expand their role in the digital-asset ecosystem, and should be particularly mindful of the continuing need for Nasdaq and NYSE guidance.

The SEC's interest in this area also extends to the application of blockchain technology to traditional financial assets. In December 2025, the SEC Investor Advisory Committee convened a panel discussion that covered the tokenization of equities, a process involving the development of digital tokens that represent ownership of an underlying asset. The session examined how these technologies could modernize market structure, specifically exploring how tokenization might enhance the efficiency and transparency of how public equities are issued, traded, and settled within the existing regulatory framework.

SEC Retracts from Rule 14a-8 Adjudication

In November 2025, the SEC's Division of Corporation Finance issued the "Statement Regarding the Division of Corporation Finance's Role in the Exchange Act Rule 14a-8 Process for the Current Proxy Season" outlining the role that the SEC intends to play in the Rule 14a-8 process for the 2025 – 2026 proxy season. Citing resource constraints following the recent government shutdown and a concurrent surge in transactional filings, the Division of Corporation Finance stated it will no longer provide substantive views on the vast majority of no-action requests. Instead, for most bases of exclusion, the SEC will treat the mandatory 80-day pre-filing notice as purely informational and will not respond substantively to submissions regarding companies' intent to exclude shareholder proposals other than no-action requests related to Rule 14a-8(i)(1), which permits the exclusion of proposals that are improper under state law. For all other exclusion grounds, if a company wishes to receive a response from the Division of Corporation Finance, it must include an unqualified representation as part of its notification. The representation must assert that the company has a reasonable legal basis to exclude the proposal based on Rule 14a-8, prior published guidance, or judicial decisions. In response, the Division of Corporation Finance will send a letter stating it does not object to the exclusion. This response relies solely on the company's representation, and the Division of Corporation Finance will not verify if the representation is adequate. Further, the Division of Corporation Finance will not express an opinion on the specific reasons used to justify the exclusion.

The shift places additional burdens on issuers and their counsel when making exclusion decisions. While the SEC's no objection letters may offer procedural closure, they provide no substantive legal comfort. Consequently, we advise corporate boards that excluding proposals may now carry a heightened risk of private litigation, as shareholder proponents may be emboldened to challenge exclusions in court absent a substantive SEC vetting. In this new environment, we recommend ensuring that internal documentation is as robust as possible.

Proxy Advisory Updates

Increased Scrutiny

The proxy advisory industry was subject to increased scrutiny in 2025 that is poised to continue into 2026. Following the release of a draft executive order earlier in the year, in December 2025, President Trump signed an executive order directing the SEC to review its rules and regulations relating to proxy advisors, especially to the extent that they implicate DEI and ESG policies. The executive order also instructs the SEC to consider revising rules and regulations relating to shareholder proposals, enforce the anti-fraud provisions of the securities laws with respect to material misstatements or omissions contained in proxy advisors' proxy voting recommendations, and assess whether to require proxy advisors to register as registered investment advisors. The stated purpose of the executive order is to "increase oversight of and take action to restore public confidence in the proxy advisor industry" given the significant role that Institutional Shareholder Services (ISS) and Glass Lewis play in the policies and priorities of US public companies through the shareholder voting process. The executive order asks the SEC to consider requiring proxy advisors to provide increased transparency on their recommendations, methodology, and conflicts of interest.

Earlier in 2025, Texas Senate Bill 2337 targeted proxy advice by requiring proxy advisory firms to disclose when their recommendations are driven by ESG or DEI factors rather than solely by shareholder financial interest. The statute also mandates that proxy advisors provide a specific economic analysis when recommending a vote against management, which would significantly increase compliance costs. The law went into effect on September 1, 2025, but on August 29, 2025, the US District Court for the Western District of Texas granted a preliminary injunction in favor of ISS and Glass Lewis, blocking enforcement of the law pending a trial scheduled for February 2026.

Policy Updates for 2026

Both ISS and Glass Lewis have released their 2026 benchmark policy updates, which reflect a shift toward more nuanced, case-by-case evaluations in response to the evolving regulatory and political climate. ISS's 2026 updates, effective for meetings on or after February 1, 2026, introduce significant changes to its executive compensation and environmental / social (E&S) frameworks. Most notably, ISS is moving away from broad presumptions of support for certain E&S proposals, such as those related to diversity and climate change, in favor of a case-by-case approach that accounts for shifting investor sentiment and regulatory changes. On compensation, ISS is extending its quantitative pay-for-performance analysis to cover a five-year period (up from three) to better align with long-term value creation, and will now view time-based equity awards with extended vesting periods more positively. Additionally, ISS has harmonized its policy on unequal voting rights to consider them problematic regardless of whether the superior rights are attached to common or preferred stock.

Glass Lewis's 2026 guidelines, effective January 1, 2026, feature a major overhaul of its pay-for-performance methodology, replacing its traditional letter-grade system with a more granular scorecard approach. In the governance arena, Glass Lewis has introduced new guardrails against board actions that limit shareholder rights, specifically targeting mandatory arbitration provisions and amendments that restrict the filing of derivative lawsuits. Regarding shareholder proposals, Glass Lewis updated its policy to acknowledge the SEC's reduced role in the exclusion process; while it affirms the fundamental right of shareholders to submit proposals, it has signaled it may revise its approach further during the season if the regulatory landscape continues to shift.

Employment Matters: Diversity-Related Developments

The change in administration at the federal level has caused a significant shift in how public companies talk about, plan for, and address legal risks associated with diversity. While the disclosure rules remained the same in 2025 for public company human capital disclosures (aside from the successful legal attack on the Nasdaq diversity disclosures), the focus of the current administration on eradicating diversity from the American workplace has caused many public companies to modify how they disclose and talk about diversity-related risks and how those risks are incorporated into company missions and goals. Many companies have removed references to diversity in their public filings and websites, while reporting on the human capital risks the paradigmatic shift has posed. Those risks have predominantly come from two opposing forces: the risk of failing to properly plan for and address diversity corporate missions mandate (if any) and the risk posed by engaging in diversity-related programming that could attract regulatory attention, which creates legal risk. Further, many companies have struggled with how to account for and report on executive compensation given the movement away from metrics that reflect diversity goals. And some companies are choosing to make disclosures about reputational and other risks posed by the two opposing and contradictory DEI-related risks, causing a new focus on internal and external DEI diplomacy and the

change in labels that stakeholders such as investors and customers are demanding. For additional discussion on these risks, listen to our podcast **Mintz On Air: Practical Policies:** *DEI Developments: The Proxy Problem*.

Climate Disclosure Update

At the federal level, the SEC's mandatory climate disclosure rules remain effectively dormant. Under the Biden administration, the SEC voluntarily stayed the mandatory climate disclosure rule while the legal challenge to the rule was pending in the consolidated Eighth Circuit litigation (*Iowa v. SEC*). Following the change in administration, the SEC determined that it would no longer defend the rule in court. While the Eighth Circuit has taken exception to this decision by the SEC — ordering that the SEC either defend the mandatory climate disclosure rule or engage in a new notice-and-comment rulemaking process — the Eighth Circuit has now placed the legal challenge in abeyance until the SEC decides how it will proceed, effectively leaving the SEC mandatory climate disclosure rules in limbo.

With the federal rules stalled, the regulatory focus has shifted to California, where the implementation of S.B. 219 (which amended S.B. 253 and S.B. 261) is proceeding, albeit with certain significant legal hurdles. Notably, on September 24, 2025, the California Air Resources Board (CARB), the state regulator responsible for implementing California's new mandatory climate disclosure regulations, released a preliminary list identifying approximately 4,100 companies that it considers subject to the state's rigorous reporting mandates based upon broad "doing business" definitions and revenue thresholds of $500 million (for climate-related risk reporting) or $1 billion (for greenhouse gas emissions reporting).

While there have been a number of legal challenges filed against California's mandatory climate disclosure regulations, to date these efforts have been uniformly unsuccessful in invalidating California's regulations. Significantly, in the case filed by the Chamber of Commerce, the US District Court for the Central District of California has rejected each legal argument advanced in opposition to California's climate disclosure regulations. This decision is now on appeal to the Ninth Circuit, with oral argument scheduled for January 9, 2026. However, the Ninth Circuit issued a decision on November 18, 2025 that paused the implementation of the climate-related risk reporting aspect of these regulations (S.B. 261) until after the Ninth Circuit has an opportunity to rule on the merits of the underlying appeal. (As the compliance deadline for this disclosure requirement was January 1, 2026, this ruling effectively maintains the status quo for the moment. The proposed compliance deadline for the disclosure of greenhouse gas emission data is August 10, 2026, and so has less immediate impact on the affected companies. Numerous commentators have suggested that the Ninth Circuit intends to issue a decision on the merits concerning the legality of the California climate disclosure regulations before the looming compliance deadline in August 2026.)

Although the immediate compliance deadline has now been stayed mere weeks before implementation, it is still advisable for companies meeting the substantial revenue thresholds to prepare materials in response to these regulatory requirements. It is altogether possible that CARB may mandate compliance with the climate-related risk reporting requirement immediately following a favorable opinion by the Ninth Circuit, and the greenhouse gas emissions reporting requirement remains fully enforceable. As such, companies should proceed with data collection and analysis to enable regulatory compliance with California's climate disclosure regulations, even if the regulatory filings themselves are not yet due to the government. For more information, please see our Mintz Insights Center Viewpoint, California Identifies 4,100+ Companies Subject to Mandatory Climate Disclosures, and follow our insights for updates as the litigation progresses.

FDA Regulatory Developments

Public companies that either develop medical or consumer products that may be regulated by the US Food and Drug Administration (FDA) or do business directly with FDA-regulated entities must also consider whether any recent legal or regulatory developments in those spaces may prompt the need for new or updated disclosures in their Forms 10-K. Although in some cases non-regulated entities may need to disclose how they have positioned their products to avoid falling under the scope of FDA's oversight authorities, we will focus in this section on recent developments that affect directly regulated activities.

In order to facilitate the year-end SEC disclosure review process, it's important to ensure that legal, regulatory, and compliance teams within the public company are effectively tracking FDA and other federal or state agency actions that may affect the company's business. This past year, the Trump administration, with Robert F. Kennedy, Jr. as Secretary of the Department of Health and Human Services (HHS), has injected significant uncertainty into both the routine operations of FDA and its funding as the administration implements Kennedy's priorities and seeks to shrink the size of federal agencies. In particular, the disruptions and uncertainties relating to FDA stem from substantial reductions in staff since

January 20, 2025; dismissal or retirement of many experienced leaders at the agency, exacerbated by an inability to hire necessary expertise; shifting (and sometimes inconsistent) evidentiary standards for cutting-edge therapeutics like gene and cell therapies; and a decision to eschew traditional advisory committees in favor of cherry-picked "expert panels."

Additionally, throughout every year there can be a variety of legislative or administrative actions arising from FDA's authorities that could have the potential to be (or very clearly will be) material to a company's broader operations. Many of the initiatives highlighted in last year's memo continue to be priorities for the agency, while examples of key developments from 2025 include the following:

- Judicial review and vacatur of FDA's final rule that would have phased out enforcement discretion for laboratory developed tests (LDTs). This decision was followed in September 2025 by FDA's formal withdrawal of the amended regulation after the administration opted not to appeal the District Court's ruling. As we discussed in a blog post, the court's analysis could have broader implications for other areas that FDA regulates today or may want to regulate in the future, such as generative AI–enabled medical device software. Notably, although clinical laboratories are no longer required to implement a multi-year phase-in of oversight systems to meet FDA's medical device regulatory requirements, there continue to be risk areas for laboratories that stem from FDA's existing powers, such as the use of unauthorized specimen collection devices or kits to obtain patient samples for analysis with an LDT.
- Unprecedented, and now routine, nearly contemporaneous issuance and publication of complete response letters (CRLs) for unapproved drug and biological products. CRLs articulate the agency's reasons for declining to approve a marketing application, which can stem from clinical or statistical deficiencies, data quality concerns, or manufacturing issues. Previously, redacted CRLs were only made available as part of FDA review packages that are posted after a product is cleared for marketing. The move to proactively publish a CRL immediately after its issuance has created complex new challenges for public companies that must ensure investor communications do not omit material information. Real-time availability of the CRL may make it easier for an investor to demonstrate that a company made misleading representations about a drug candidate's approvability prospects or its compliance with manufacturing requirements, among other things, rendering it all the more critical for public companies to be disciplined in their disclosures and to consult broadly with internal subject matter experts when developing external messages about their FDA interactions.
- Finalization of the revised nutrient content claim "healthy" for use in food labeling, sweeping HHS / FDA announcements about removing certain food dyes from foods available to American consumers, and the launch of a consultation process to ultimately define "ultra-processed foods" (UPFs) for purposes of federal policymaking. The administration has also indicated that it is developing a proposed rule to reform the current "generally recognized as safe" (GRAS) process for new food ingredients, even as members of Congress are also introducing and considering legislative proposals aimed at modernizing the GRAS system. The high degree of regulatory activity with respect to human foods, beverages, and dietary supplements calls for significant engagement by manufacturers and distributors of these categories of consumer products. Separately, states are beginning to take their own actions to define and restrict UPFs in certain state-run programs, such as universal school meals.
- Several new FDA pilot programs for developers and manufacturers of certain classes of therapeutic products, including drugs, biologics, and cell and gene therapy products. Examples include the Commissioner's National Priority Voucher (CNPV) — granted to companies that are "aligned with critical US national health priorities" — and the FDA Pre-Check program for domestic manufacturing facilities to incentivize onshoring and reduce the nation's reliance on foreign facilities. Additionally, agency leaders have announced multiple pathways intended to advance rare disease drug development, such as the Rare Disease Evidence Principles (RDEP) and a still-nascent "plausible mechanism pathway." FDA has also emphasized the need to reduce reliance on animal testing in drug development and is encouraging industry to innovate and validate new approach methods, or NAMs, to answer preclinical safety questions. While it remains to be seen whether such new programs and pathways will lead to more efficient reviews and approval decisions for therapeutic products, if FDA can deliver on its promises, the expedited pathways are certain to become highly coveted methods to increase company and product value.
- Public repudiation of certain long-standing prescription drug advertising regulations and a wave (likely to be the first of many) of warning letters and other violation notices to drug companies, telehealth platforms, and other entities engaged in advertising such products. HHS / FDA are reportedly developing rules to tighten requirements for risk information to be presented in prescription drug broadcast advertisements. A rebalancing of rules that drug and biologic stakeholders have worked under for nearly 30 years again calls for direct engagement and participation in the rulemaking process to mitigate the potential for adverse business effects.

- Acceleration in the agency's use of artificial intelligence (AI) for administrative tasks (see here and here). FDA also plans to develop and deploy AI tools within the agency to support scientific review, post-market surveillance, and enforcement (one example here). Further, FDA continues to deliberate and hold expert discussions about the regulatory approach to medical devices that incorporate generative AI functions, including mental health chatbots.

In summary, FDA's calendar year 2025 was a busy and important one. With the Trump administration's focus on wholesale reforms to significant parts of the agency's operations and overall mission, next year's developments may be even more impactful to companies' bottom lines. One positive recent event to note is Congress's passage on November 12 (in conjunction with the short-term continued resolution to re-open the federal government) of FDA's fiscal 2026 appropriations bill, which funds the agency through September 20, 2026. The bill did not contain extensive cuts to FDA's appropriated budget and generally coincides with last year's funding allocation.

Notable Decisions in Securities and Corporate Governance Litigation

Litigation impacting corporate governance and disclosure issues had a much lower profile in 2025 than other issues grabbing the headlines and dominating boardroom discussions, such as tariffs and the rapid emergence of AI. This past year also stood out in that one of the most notable changes to corporate law was not established by a landmark court decision, but rather by the legislative process when the State of Delaware enacted Senate Bill 21, which provides numerous reforms to the Delaware General Corporation Law — most notably to controlling stockholder transactions. An appeal challenging S.B. 21 was recently heard by the Delaware Supreme Court, but not yet decided as of the date of this publication. Nevertheless, there were several notable decisions in 2025 impacting corporate governance and disclosure issues that we now highlight below.

Delaware removes a potential barrier to corporate departures

In an attempt to stop Delaware corporations from re-incorporating in other jurisdictions, stockholders have attempted to bring breach of fiduciary duty claims against directors who vote in favor of such a re-incorporation. A critical and open question with respect to these suits was what standard of review governs a director's decision to vote to re-incorporate the company in another jurisdiction.

The Delaware Supreme Court addressed this issue in *Maffei v. Palkon*, No. 125, 2024 (Del. Feb. 4, 2025). In *Maffei*, the plaintiff stockholders argued that re-incorporation would provide non-ratable benefits to the director defendants in the form of reduced potential liability. According to the plaintiffs' argument, this creates the type of self-interest and so any vote in favor of re-incorporation by the directors should be assessed against the exacting entire fairness standard. In rejecting the plaintiffs' argument, the court first articulated what a non-ratable benefit to a director consists of: "a personal financial benefit of material importance, in the context of the director's economic circumstances, as to have made it improbable that the director could perform her fiduciary duties without being influenced by her overriding personal interest." The court then held that protection from future, hypothetical liability was too attenuated to create a non-ratable benefit, and that "[g]iven the absence of any allegations that the Conversion decisions were made to avoid any existing or threatened litigation or that they were made in contemplation of any particular transaction, we hold that Plaintiffs have failed to adequately allege facts showing Defendants' receipt of a material non-ratable benefit." This conclusion led the court to hold that the business judgment rule should apply to the decision to re-incorporate in this specific case.

What can constitute a credible basis for wrongdoing for a books and records demand?

Section 220 of the Delaware General Corporation Law allows stockholders to seek certain books and records from a company if the stockholder can articulate a "proper purpose" for the request. One of the most frequently invoked "proper purposes" is that the stockholder is investigating potential mismanagement, waste, or wrongdoing. In order to invoke this proper purpose, however, a stockholder must present some evidence allowing an inference that a "credible basis" exists to support the alleged mismanagement, waste, or wrongdoing.

In *Roberta Ann K.W. Wong Leung Revocable Trust U/A Dated 3/9/2018 v. Amazon.com, Inc.*, No. 487, 2024 (Del. July 28, 2025), the Delaware Supreme Court reversed the decision made by the Chancery Court that the plaintiff had not satisfied this "credible basis" standard. A primary focus of the decision was how much a stockholder could rely on other complaints or regulatory proceedings against the company to satisfy the credible basis standard. In addressing this issue, the court held that "where a stockholder presents evidence of ongoing investigations and lawsuits, and those investigations and lawsuits have advanced beyond untested allegations, then the evidence can be sufficient to meet the credible basis

standard." The court then examined the various actions that had been filed against Amazon that the plaintiff relied upon and determined that those actions satisfied the credible basis standard because some had survived a motion to dismiss, another had resulted in a consent decree, and another resulted in a large fine. The court did note that each of those actions — in isolation — may not have been enough, but collectively they helped the plaintiff clear the credible basis bar.

When does personal misconduct in the workplace rise to the level of a breach of duty?

In the Chancery Court's notable decision in *In re McDonald's Corp. Stockholder Derivative Litigation*, C.A. No. 2021-0324-JTL (Del. Ch. Jan. 6, 2023), the Chancery Court allowed — for the first time — *Caremark* claims to proceed against an officer of a company. The claims in the *McDonald's* case were brought against the Chief People Officer and were premised — in part — on his own alleged sexual harassment of employees. But in *Brola v. Lundgren*, C.A. No. 2024-1108-LWW (Del. Ch. Dec. 1, 2025), the Chancery Court held that a director's "abhorrent" sexual harassment of two employees was "interpersonal, not a matter of corporate internal affairs," and dismissed the breach of fiduciary duty claims brought against that director at the pleading stage.

The analysis in the *Brola* decision helps clarify when improper personal conduct in the workplace can rise to the level of being a potential breach of fiduciary duty. In *Brola*, the court explained that the *McDonald's* decision involved a "senior officer charged with maintaining a safe and respectful workplace at the enterprise level," and that he allegedly failed to "oversee that function and [ ] engag[ed] in acts that subverted it." Accordingly, "[h]is personal misdeeds were framed by the corruption of the corporate mission he was entrusted to lead." In the *Brola* case, by contrast, the court found that the defendant "is not alleged to have abused the specific delegated authority of his corporate office." Rather, his conduct arose from his "general authority as a supervisor." The court's decision also rested on the fact that workplace misconduct is governed by state and federal employment law, which provide the more appropriate mechanism for pursuing individuals who engage in prohibited conduct.

If a statement is misleading to the FDA, is it therefore misleading to investors?

In *Sneed et al. v. Talphera, Inc. et al.*, No. 24-3560 (9th Cir. Aug. 20, 2025), the US Court of Appeals for the Ninth Circuit examined whether a promotional slogan that the FDA deemed to be "false and misleading" constituted the type of false statement that could be relied on by an investor for a federal securities law claim.

In *Sneed*, the plaintiff argued that the defendant's slogan, "Tongue and Done," misled investors into believing that the defendant's drug was easier to administer than it actually was, thereby creating a false impression about the overall market size for the drug. The company ceased using the marketing slogan when it received a warning letter from the FDA that the company "made 'false and misleading claims' for purposes of the FDCA by not providing a balanced description of the 'risks and benefits' of the drug."

In rejecting the plaintiff's argument that the "Tongue and Done" slogan was misleading for purposes of the federal securities laws, the court first explained that "[t]o decide whether a misstatement or omission can mislead, we need to look at 'the context surrounding the statement,'" and that "[a] reasonable investor cares about a statement's 'surrounding text, including hedges, disclaimers, and apparently conflicting information.'" The court then noted that "a reasonable investor would not blindly accept a marketing slogan by itself when she has access to other contextual information" and that the company provided "copious clarifying information next to the 'Tongue and Done' slogan."

In rejecting the contention that the FDA's letter finding that the marketing slogan was "false and misleading," the court noted that "[t]he FDCA imposes different legal requirements and targets a different audience. FDA warning letters are not dispositive or even necessarily probative for falsity claims under the Exchange Act." The court then went on to conclude that "[t]his case provides an example of how FDA regulations may require the disclosure of information to medical personnel that a reasonable investor would not need."

The narrowing window for Section 11 liability based on direct listings with both registered and unregistered shares

Since the US Supreme Court's decision in *Slack Technologies, LLC v. Pirani*, 598 U.S. 759 (2023), lower courts have had to address the pleading standard a plaintiff must meet in order to sufficiently allege that their "purchased shares [are] traceable to the allegedly defective registration statement" in order to sufficiently allege a claim under Section 11 of the Securities Act. The ability to make such an allegation becomes very difficult when both registered and unregistered shares

are part of the same direct listing. Since *Slack*, plaintiffs have generally faced strong headwinds trying to properly allege a Section 11 claim in this context. But the law is still developing and there have been some District Court decisions that have imposed a relatively low pleading bar, but the two Circuit Courts of Appeals to consider this issue (the First Circuit and the Ninth Circuit) have imposed a more restrictive standard.

One of the more recent District Courts to examine this issue did so in *Cupat v. Palantir Technologies, Inc.*, C.A. No. 22-cv-02384 (D. Colo.), which dismissed the plaintiff's Section 11 claims at the pleading stage. There the court held, among other things:

- A plaintiff must do something more than generally allege that it purchased registered shares;
- The plaintiff's attempts to allege that it was plausible that it purchased registered shares based on statistical analyses and probabilities (based on the number of shares it purchased compared to the number of registered and unregistered shares part of the listing) was not sufficient;
- The plaintiff was not entitled to limited discovery to prove it purchased registered shares; and
- Any unregistered shares the plaintiff purchased could not be deemed to be registered shares on an "integrated offering theory."

The court did recognize how its decision (along with other similar decisions) creates a "loophole" for issuers to avoid potential Section 11 liability by including both registered and unregistered shares in the same listing. The court surmised that "[p]erhaps there are judicial solutions to this loophole… But more likely, this is an issue best resolved through statutory or regulatory changes."

Filer Status and 2026 Periodic Report Filing Deadlines

Filer Status

A public company with a December 31 year end determines whether it is a "large accelerated filer," "accelerated filer," or "non-accelerated filer" for 2026 based on its public float as of June 30, 2025 (i.e., the last day of its most recently completed second fiscal quarter).

Based on the public float calculation, a company can initially qualify as a:

- ***Large Accelerated Filer*** — a public float of $700 million or more and is not a smaller reporting company (SRC) under the SRC revenue test referenced below[1];
- ***Accelerated Filer*** — a public float of $75 million or more, but less than $700 million, and is not an SRC under the SRC revenue test referenced below[2]; or
- ***Non-Accelerated Filer*** — a public float of less than $75 million, qualifies as an SRC under the SRC revenue test referenced below, or does not otherwise meet the requirements of a large accelerated filer or an accelerated filer.

Once a company has made its initial determination of its filer status, it will remain that category of issuer until at a future determination date (i.e., a subsequent June 30) it meets the thresholds set forth in the following table:

[1] *The company must also be subject to the SEC reporting requirements for a period of at least 12 calendar months and have filed at least one annual report.*
[2] *The company must also be subject to the SEC reporting requirements for a period of at least 12 calendar months and have filed at least one annual report.*

Initial Filer Status	Subsequent Public Float	Resulting Filer Status[1]
Large Accelerated Filer	$560 million or more	Large Accelerated Filer
	Less than $560 million, but $60 million or more	Accelerated Filer
	Less than $60 million	Non-Accelerated Filer
Accelerated Filer	$700 million or more	Large Accelerated Filer
	Less than $700 million, but $60 million or more	Accelerated Filer
	Less than $60 million	Non-Accelerated Filer
Non-Accelerated Filer	$700 million or more	Large Accelerated Filer
	Less than $700 million, but $75 million or more	Accelerated Filer
	Less than $75 million	Non-Accelerated Filer

[1] *In addition, an SRC under the revenue test referenced below qualifies as a non-accelerated filer even if it otherwise would be a large accelerated filer or an accelerated filer.*

In August 2025, the SEC issued new guidance that provides that an SRC under the revenue test that no longer qualifies as an SRC under the revenue test as of June 30 would be a non-accelerated filer for all filings due in the following year. As a result, a December 31 year-end company that had qualified as an SRC under the revenue test until its June 30, 2025 SRC determination will remain a non-accelerated filer for all filings due in 2026.

Smaller Reporting Company (SRC) Status

In addition to the categories of filers set forth above, a December 31 year-end company can also initially qualify as an SRC if at June 30 it has:

- a public float of less than $250 million; or
- annual revenues of less than $100 million for its most recently completed fiscal year for which audited financial statements are available, and either (a) no public float or (b) a public float of less than $700 million.

Once a company determines that it does not qualify as an SRC, it will remain unqualified under the public float test under the first bullet above until it determines that it has a public float of less than $200 million, and it will remain unqualified under the revenue test under the second bullet above until it determines that it meets the public float and annual revenue requirements set forth in the following table:

Prior Annual Revenues	Prior Public Float	
	None or less than $700 million	$700 million or more
Less than $100 million	Neither threshold exceeded	Public float — Less than $560 million; and Revenues — Less than $100 million

Prior Annual Revenues	Prior Public Float	
	None or less than $700 million	**$700 million or more**
$100 million or more	Public float — None or less than $700 million; and Revenues — Less than $80 million	Public float — Less than $560 million; and Revenues — Less than $80 million

A company that is an SRC is exempt from the requirement to provide an auditor attestation of internal control over financial reporting (ICFR) under Sarbanes-Oxley Act Section 404(b) and may take advantage of certain less stringent, scaled disclosure requirements if it chooses to do so. A company that qualifies as an SRC as of June 30, 2025 must indicate this status no later than in the filing of its Quarterly Report on Form 10-Q for the first quarter ended March 31, 2026, but the company may choose to indicate it is an SRC in earlier filings.

Additionally, as a result of the SRC transition guidance issued by the SEC in August 2025, a December 31 year-end company that had qualified as an SRC under the revenue test until its June 30, 2025 SRC determination would be ineligible to use the scaled disclosures for SRC companies beginning with its Quarterly Report on Form 10-Q for the first quarter ended March 31, 2026. Such a company may use the scaled SRC disclosures in its Annual Report on Form 10-K for the year ended December 31, 2025 (including the exemption from providing an auditor attestation of ICFR) and its 2026 proxy statement.

2026 Filing Deadlines

Based on the company's filer status, 2026 periodic filings for December 31 year-end companies are due:

	Annual Report on Form 10-K	**Quarterly Reports on Form 10-Q**
Large Accelerated Filer	Monday, March 2, 2026[(1)] (60 days after year end)	First Quarter — Monday, May 11, 2026[(1)] Second Quarter — Monday, August 10, 2026[(1)] Third Quarter — Monday, November 9, 2026 (40 days after quarter end)
Accelerated Filer	Monday, March 16, 2026 (75 days after year end)	First Quarter — Monday, May 11, 2026[(1)] Second Quarter — Monday, August 10, 2026[(1)] Third Quarter — Monday, November 9, 2026 (40 days after quarter end)
Non-Accelerated Filer	Tuesday, March 31, 2026 (90 days after year end)	First Quarter — Friday, May 15, 2026 Second Quarter — Friday, August 14, 2026 Third Quarter — Monday, November 16, 2026[(1)] (45 days after quarter end)

(1) *If the filing deadline would otherwise fall on a Saturday, Sunday, or federal holiday, the filing is due on the first business day following such deadline.*

The filing deadlines in the table above do not affect the proxy statement filing deadline of Thursday, April 30, 2026 (120 days after year end) for companies that choose to incorporate by reference the disclosure required by Part III of Form 10-K from their definitive proxy statement.

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Contributors

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Please contact the Mintz attorney who is responsible for your corporate and securities law matters if you have any questions regarding this information. We look forward to working with you on this year's annual reporting process.

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