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Fenwick Securities Law Update

– February 27, 2026 –

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

- The SEC released a series of Compliance & Disclosure Interpretations (CDIs) updates.
- The New York legislature passed the Climate Corporate Data Accountability Act (CCDAA) and is now awaiting action by the governor.
- Beginning March 16, 2026, EDGAR generally will suspend filings rather than issue warnings for incorrect or incomplete structured filing fee-related information for all filers.
- Three companies have been sued over their decision to exclude a shareholder proposal from their 2026 proxy materials.
- SEC Chair Paul Atkins elaborated on his proposed SEC disclosure reforms.
- Vanguard released updated proxy voting guidelines amid organizational restructuring.
- The New York Stock Exchange (NYSE) released its annual compliance letter providing guidance on regulatory updates, compliance obligations and key reminders for listed companies.

2026 Reporting Season Considerations

- **2026 Reporting Season – Upcoming Disclosure Considerations for Your Form 10-K:** Please see our December 2025 Securities Law Update for a high-level overview of disclosure topics and other considerations for upcoming Forms 10-K.
- **Form 10-K – Trade and Tariffs:** On February 20, the U.S. Supreme Court struck down the sweeping tariffs that President Donald Trump imposed in a series of executive orders under the International Emergency Economic Powers Act (IEEPA). In response to this ruling, companies are filing lawsuits requesting refunds for the unlawful IEEPA tariffs already paid to the federal government.

  Beginning February 24, Trump will impose a new 10% global tariff for 150 days under different authority. Notably, this tariff will not apply to pharmaceuticals and pharmaceutical ingredients.

Companies should review their disclosures in the management's discussion and analysis, quantitative and qualitative disclosures about market risk, and risk factor sections of their Form 10-K and update these sections as necessary to reflect these developments.

- **Filing Fee Exhibit in Form S-8:** As a reminder, all filers are now required to submit filing fee data in inline XBRL format. Beginning March 16, 2026, EDGAR generally will suspend filings rather than issue warnings for incorrect or incomplete structured filing fee-related information.

  The SEC is now offering a fee exhibit preparation tool (FEPT) as an aid to help filers calculate, disclose, and construct structured filing fee-related information and produce a filing fee exhibit in a format acceptable for submission as an EDGAR attachment (i.e., EX-FILING FEES).

- **Delinquent § 16(a) Report in the Proxy Statement:** We expect that there will likely be more delinquent § 16(a) filings to report this year due to administrative issues related to the EDGAR Next transition. Companies should carefully review director and officer questionnaires this year for any delinquent filings. If there are delinquent filings, identify each § 16 insider who failed to file a timely report under the caption of "Delinquent Section 16(a) Reports" and disclose:
  - The number of late reports
  - The number of transactions that were reported late
  - Any known failure to file a required form

  If no disclosure is required, the caption should be excluded from the proxy statement.

- **Governance Disclosure in the Proxy Statement:** Due to recent political scrutiny of proxy advisory firms, institutional investors are shifting away from standardized benchmark voting recommendations and moving towards customized voting policies and decisions. This trend presents risks and opportunities for companies. Accordingly, it is important to clearly explain key governance practices and decisions in the proxy statement this year.

- **ESG / DEI Disclosure in the Proxy Statement:** While there is no one-size-fits-all approach, we have observed that many companies are cutting down their ESG and DEI disclosures, moving the disclosures to less prominent locations and changing their terminology, specifically around diversity. With respect to sustainability, companies are more directly tying their sustainability efforts to the business and value creation.

Rules and Regulations

- **The SEC has been releasing a series of Compliance & Disclosure Interpretations updates**. Notably, under the new CDI 133.02, the SEC staff will not object to a company conducting a broker search less than 20 business days before the record date assuming materials can be timely disseminated. Broadridge is currently recommending that companies allow **10–12 days for the broker search**.

  Here is a full summary of the recent CDI updates.

- **NYSE released its annual compliance letter providing guidance on regulatory updates, compliance obligations, and key reminders for listed companies.** Among other helpful compliance reminders, NYSE reminds listed companies to provide delegation to the exchange on EDGAR Next in advance of any Form 8-A filing. Delegation is necessary for NYSE to submit its certification on behalf of the company's EDGAR account.
- **The New York legislature recently passed the Climate Corporate Data Accountability Act (CCDAA), which requires companies exceeding $1 billion in revenue operating in New York to disclose their carbon emissions.** Under the CCDAA, Scope 1 and 2 emissions reporting would be required in 2027, followed by Scope 3 reporting in 2028. The CCDAA has been sent to the governor of New York and is awaiting her action**.**

  The CCDAA is expected to face legal challenges similar to those confronting California's climate disclosure rules and may ultimately be enjoined. Accordingly, companies operating in New York should monitor this space closely with counsel, but they may want to start preparing to comply with the CCDAA in 2027.

Other SEC Developments and Announcements

- **Beginning March 16, 2026, EDGAR generally will suspend filings rather than issue warnings for incorrect or incomplete structured filing fee-related information for all filers.** Please consult the following for guidance:
  - Filing Fee Disclosure and Payment Methods Modernization Release (33-10997 (Oct. 13, 2021))
  - EDGAR Filer Manual
  - EDGAR XBRL Guide
  - EDGAR Filing Fee Interface Courtesy Guide
  - How Do I Guide: Prepare an Inline XBRL Filing Fee Exhibit
  - SEC Modernizes Filing Fee Rules
- **On February 17, SEC Chair Paul Atkins elaborated on his proposed SEC disclosure reforms at the Texas A&M Corporate Law Symposium.** Atkins's vision for disclosure reform centers on achieving a "minimum effective dose of regulation" by rooting disclosure in financial materiality and scaling requirements to company size and maturity. He outlined the following types of reforms that he has instructed the SEC staff to explore:
  - **Executive Compensation (Item 402)**
    - **Executive Officers:** Atkins believes that the number of executives for whom compensation info is required should be reconsidered, and that the level of disclosure should be calibrated with its cost.
    - **Pay-versus-Performance (PvP):** Atkins agreed with commenters who said that the SEC should make PvP disclosure simpler to prepare and more straightforward to understand.
    - **Perks:** Atkins agreed with commenters who said the SEC should reconsider the treatment of executive security as a perk in light of how the world and security threats have evolved in the past two decades.

- **Regulation S-K**

  - **"Comply or Explain" Disclosure Requirements:** Atkins criticized "comply or explain" requirements (e.g., explaining why a company lacks a nominating committee or a policy for shareholder-recommended director candidates) because they operate as de facto mandates rather than disclosure provisions. Companies may feel compelled to adopt such policies to avoid appearing deficient, regardless of whether the policies suit their circumstances. Atkins stated that it is not the SEC's role to enforce "best practice" governance through "regulation by shaming."

  - **Related Party Transactions:** Atkins proposed reevaluating the definition of "immediate family members;" a term that encompasses not only spouses and children but also in-laws, regardless of the closeness or continuity of the relationship.

  - **Risk Factors:** Atkins noted that risk factors were originally anticipated to be a concise discussion of "what keeps management up at night" (perhaps two or three pages) but have instead become one of the longest sections of Form 10-K filings. He proposed two approaches to address the volume of risk factor disclosure:

    1. **Standardized Risk Factors Supplemented with Company-Specific Risks:** The SEC or companies could maintain a standardized set of broadly applicable generic risks (e.g., U.S. legislative developments, geopolitical issues, natural disasters) as "general terms and conditions" for any securities investment, published separately. Companies could incorporate these by reference and supplement them with company-specific material risks, resulting in a shorter, more targeted risk factors section.

    2. **New Safe Harbor for Publicized Events:** The SEC could adopt a new safe harbor providing that failure to disclose impacts from publicized events reasonably likely to affect most companies will not constitute material omissions under the anti-fraud rules. Such a safe harbor could incentivize companies to include fewer generic risk factors by shielding them from liability for events related to those generic risks.

- **On February 11, SEC Division of Enforcement Director Margaret Ryan addressed the enforcement of non-fraud violations of the federal securities laws**, such as public company reporting requirements, books-and-records obligations, and internal accounting controls, in her prepared remarks at the Los Angeles County Bar Association. In her remarks, Ryan noted that the division's principal focus right now is protecting investors from fraud schemes perpetrated by bad actors. She indicated that where fraud is absent, failure to comply with public company reporting requirements, books-and-records obligations, and internal accounting controls should not necessarily result in an enforcement case. If such noncompliance poses risks to investors, presents a risk to the integrity of the market, or yields a benefit to the participant, she believes that the SEC should work with the company to find thoughtful resolutions "that recognize wrongdoing while rectifying the violation or charting a firmer path toward compliance."

- **On January 30, the SEC updated its operations plan and potential government shutdown guidance.** See the redline reflecting the recent updates, including two new questions and a revised question with new language about Rule 430A.

- **2026 Northwestern Securities Regulation Institute (SRI):** There was significant discussion at this year's SRI concerning the SEC's ambitious agenda to make being a public company more attractive, including:
    - Disclosure Reform**:** The SEC is soliciting public comments on potential amendments to Regulation SK with the goal of focusing requirements on material disclosures.
        - In remarks at SRI, SEC Commissioner Mark Uyeda outlined potential simplifications across several areas, including insider trading, related party transactions, cybersecurity, unregistered offerings, stock performance graphs, and mine safety. He also encouraged expanded use of scaled disclosure and broader eligibility for Form S3.
        - A proposal for semiannual reporting is also expected this spring. The new director of Corporation Finance (Corp Fin), Jim Moloney, noted that companies will still be able to voluntarily report quarterly financial results.
    - **SEC Guidance:** Corp Fin plans to continue updating CDIs and other guidance. Moloney welcomes suggestions for interpretive guidance, whether in the form of draft CDIs or otherwise.
    - **SEC Review:** The SEC continues to work through a significant filing backlog attributed to the government shutdown and staff reductions. Staff are reportedly about halfway through the backlog while receiving new filings daily.
        - Currently, it is taking 6+ weeks to receive SEC comments.
    - **Depoliticizing Annual Meetings:** For the current proxy season, Corp Fin will not respond to or express views on companies' intended reliance on any basis for exclusion of shareholder proposals under Rule 14a8 other than Rule 14a8(i)(1) (i.e., proposals not a proper subject for shareholder action under state law).
        - Director Moloney indicated that the staff will evaluate how this proxy season went and then determine whether to extend this approach next year.
        - Further changes to the shareholder proposal rules are expected this year.
    - **Securities Litigation Reform:** Atkins has advocated for reforms to reduce frivolous securities lawsuits. As part of this effort, the SEC announced that mandatory arbitration provisions will not affect effectiveness of registration statements. Since that announcement, only one company—Zion Oil—has adopted mandatory arbitration.

Other Matters of Interest

- **Three companies were sued over excluding a shareholder proposal from their 2026 proxy materials.** On February 17, two separate lawsuits were filed by shareholder proponents challenging company decisions to exclude shareholder proposals from their 2026 proxy materials based on the ordinary business exception. Shortly after, another lawsuit was filed challenging a company's decision to exclude a shareholder proposal on a procedural basis.

Each company went through the process to receive a Rule 14a-8(j) "no objections" letter from Corp Fin under the new SEC policy for non-review of proxy proposal. See the 14a-8(j) letters for AT&T, Axon Enterprise, and PepsiCo.

When the SEC announced a streamlined 14a-8 process for this proxy season, there was concern that omitting a proposal without substantive concurrence from the SEC staff could heighten the risk of litigation by proponents. In the absence of substantive SEC responses, more proponents may start turning to the court system to force companies to include their proposals.

To minimize this risk, companies should clearly explain their basis for excluding a shareholder proposal in their 14a-8(j) notice. Nevertheless, the procedural challenge highlights that the current litigation risk is not limited to substantive questions of excludability. Fenwick will continue to monitor developments in this area.

- **Vanguard released its updated proxy voting guidelines amid organizational restructuring.** In order to support greater focus, flexibility, and streamlined operations for investors, Vanguard recently established two wholly owned U.S. investment advisors, Vanguard Capital Management (VCM) and Vanguard Portfolio Management (VPM), each with its own investment management and investment stewardship teams. This restructuring caused concern about the potential divergence in stewardship implementation and voting practices between these new advisors. However, Proxy Analytics reports that there are no material differences between the published VCM and VPM policies, suggesting that voting records for these entities will remain closely aligned.

  The VCM and VPM policies include the following notable updates:

  - **Director Accountability:** Previously, Vanguard included a list of triggers that outlined when the fund would withhold a vote for a company's directors. Vanguard removed this list of triggers, including zombie directors (renominating directors who failed to receive majority support), actions that meaningfully limit shareholder rights, non-responsiveness, compensation-related concerns, oversight failures, and audit failures.
  - **Board Composition:** Similar to BlackRock, Vanguard deleted references to directors' "personal characteristics," including age, gender, and race or ethnicity, and replaced that framing with a broader emphasis on the skills, experiences, and perspectives that contribute to cognitive diversity and board effectiveness.
  - **Overboarding:** Vanguard changed its voting consequence from "will" to "may" for directors exceeding board limits.
  - **Environmental & Social Initiatives:** Vanguard maintained its operative criteria for environmental and social proposals, but it further refined the tone. For example, Vanguard cut down its explanatory language and added a financial qualifier to its materiality standard.
  - **Reincorporation:** The policies deleted examples of "potential benefits" of reincorporation and the explicit balancing test against shareholder rights.
  - **Exclusive Forum:** Vanguard removed the possibility of withholding support for governance committee members who adopt exclusive forum provisions without a compelling rationale.
  - **Virtual-Only Meetings:** Vanguard replaced its list of detailed procedural requirements with a general "rights-protection" framing.

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.