



Fenwick Securities Law Update

– September 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
- The updated SEC fee schedule
- Other matters of interest, including a new SEC resource on capital markets activity

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

- **Trade Issues and Tariffs:** Sweeping "reciprocal" tariffs went into effect that will see importers paying tariffs of 10–50% in the coming months. Tariffs on specific products are also being discussed by the Trump administration. The U.S. has reached deals or tentative deals with a number of major trading partners, but no agreements have been struck with India and Brazil at this time. Trade negotiations are underway with China and Brazil. On August 29, 2025, the U.S. Court of Appeals for the Federal Circuit largely upheld a May ruling of the U.S. Court of International Trade that the president's imposition of tariffs exceeded his authority. The administration has appealed the decision to the U.S. Supreme Court.
- **Foreign Currency Exchange Risk:** As of August 31, 2025, the U.S. dollar index was down ~10% this year. Please see the discussion of foreign currency exchange risk in our [July 7 update](#).

Rules and Regulations

- **Securities and Exchange Commission Filing Fees:** [The SEC announced](#) that effective October 1, 2025, the fees that public companies and other issuers pay to register their securities with the Commission will decrease, as will fees for filings for the repurchase of securities under § 13(e) of the Securities Exchange Act of 1934, and proxy solicitations and specified tender offers under § 14(g) of the Securities Exchange Act of 1934.
- **Proposed Nasdaq Rule Regarding Listing Standards for Small IPOs and IPOs of Companies Operating in China:** On September 3, 2025, Nasdaq [proposed new initial and continued listing standards](#), with enhanced requirements for minimum company public float and capital raised during initial public offerings, alongside stricter suspension and delisting procedures for companies failing to meet Nasdaq's continued listings standards.

The revised standards include (i) a \$15 million minimum market value of public float (up from \$5 million), applicable to new listings on Nasdaq under the net income standard; (ii) an accelerated process for suspending and delisting companies with a listings deficiency that also have a market value of listed securities below \$5 million; and (iii) a \$25 million minimum public offering proceeds requirement for new listings of companies principally operating in China.

Other SEC Developments and Announcements

- **SEC's New Statistics and Data Visualization Page:** The Securities and Exchange Commission launched a [new statistics and data visualization page](#) that includes statistics and interactive graphics on key elements of the capital markets. The broad topics covered are capital formation, market participants, market activity, and investors.
- **Statement Regarding Liquid Staking Activities:** The SEC's Division of Corporation Finance (Corp Fin) released a statement clarifying that certain "liquid staking" activities [do not constitute securities offerings](#) under federal securities laws. This statement follows up on Corp Fin's statement in May that addressed protocol staking models (self/solo, self-custodial with third-party assistance, and custodial) and reached a similar conclusion regarding the inapplicability of the federal securities laws.

Other Matters of Interest

- **The California Air Resources Board (CARB) Holds Second Workshop on California Climate Disclosure Laws:** On August 21, 2025, [CARB held its second virtual workshop](#) to "support the development of California's Corporate Greenhouse Gas Reporting Program" reflected in the Climate Corporate Data Accountability Act (SB 253) and the Climate-Related Financial Risk Act (SB 261), each bill as amended by state Senate Bill 219. While the workshop did provide more clarity on certain topics, a number of basic questions remain, including who exactly will be in scope of California's new climate disclosure regulations. Following the workshop, [CARB posted draft guidance](#) on September 2, 2025, to assist potentially in-scope companies with SB 261 compliance. The guidance largely reiterates the information covered in the [slides reviewed during the workshop](#).
- **Federal District Court Rejects Motion for Preliminary Injunction Against California's Climate Disclosure Laws:** The U.S. District Court for the Central District of California issued an [order denying plaintiffs' motion for preliminary injunction](#) to enjoin California's climate disclosure laws. The motion is part of a larger lawsuit filed by the U.S. Chamber of Commerce, the California Chamber of Commerce, American Farm Bureau Federation, Los Angeles County Business Federation, Central Valley Business Federation, and Western Growers Association in January 2024 challenging the constitutionality of the laws. On August 20, 2025, plaintiffs in the case filed a notice of appeal to the U.S. Court of Appeals for the Ninth Circuit from this order as well as a motion for injunction pending appeal. Defendants filed their opposition to plaintiffs' motion on August 29, 2025. The hearing on the motion will be held September 8, 2025. The Court of Appeals for the Ninth Circuit has set a briefing schedule, under which the case will be fully briefed by November 6, 2025.
- **Judge Blocks Texas ESG Investment Disclosure Law:** On August 28, 2025, U.S. District Judge Alan Albright of the Western District of Texas granted an injunction temporarily blocking Texas' SB 2337, which would require proxy advisors, like Institutional Shareholder Services and Glass Lewis, to make certain disclosures



to shareholders of Texas-based publicly traded companies when their voting recommendations take into consideration non-financial factors (such as ESG, sustainability or DEI). The law was set to go into effect on September 1, 2025. In granting the injunction, the court sided with plaintiffs finding that SB 2337 wrongly compels speech by forcing advisory firms to issue disclosures “they don’t think are accurate.” The judge indicated that a written order would be issued in the next 30 days. A trial has been set for February 2, 2026.

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.