SQUIRE PATTON BOGGS

Corporate Insights

US Securities and Exchange Commission (SEC) Update

September 2025

The SEC under the Trump administration is rapidly advancing and/or considering meaningful policy changes, and has begun considering a variety of new and updated rules covering a diverse group of topics, including mandatory stockholder arbitration in charter documents, standing stockholder voting instructions, proxy adviser rules, quarterly reporting and changes to executive compensation disclosure rules, each as discussed below.

Mandatory Stockholder Arbitration in Charter Documents

At an open meeting held on September 17, 2025, the commissioners addressed the SEC's decades-old policy stance, whereby the SEC would refuse to accelerate the effectiveness of an issuer's registration statement if its charter documents require the arbitration of investor claims arising under the federal securities laws. Under Commissioner Atkins' leadership, the SEC voted (in a 3- 1 vote along partisan lines) to abandon its historical policy and adopted a new policy statement, which provides that the presence of mandatory arbitration provisions in charter documents would not affect registration statement acceleration decisions (other than whether such provisions were sufficiently disclosed). Commissioner Atkins specifically stated that such mandatory arbitration provisions in corporate charters are "not inconsistent with federal securities laws."

Proponents of mandatory arbitration provisions have long held that such governance structures discourage frivolous and costly class action claims in that investors must individually pursue (and fund) securities laws grievances in a private forum without a jury. It remains to be seen whether public issuers will widely begin to amend their charter documents to take advantage of the SEC's policy shift. Institutional investors and proxy advisors may refuse to support management proposals for charter amendment to effectuate mandatory arbitration, and there may be state corporate law barriers as well. Recent changes to Delaware law essentially prohibit Delaware incorporated companies from using mandatory arbitration as Delaware now requires that stockholders have access to at least one court in the State of Delaware for federal securities laws claims, among others. Commissioner Atkins noted that other states may take other positions and, notably, the state laws of Texas or Nevada (two popular states for "Dexit" re-incorporators) do not address, and would likely not prohibit mandatory arbitration charter and bylaw provisions. Nevertheless, the SEC's policy reversal opens the door for a new defensive measure against class action litigation that we expect to be of interest to many public companies.

Stockholders' Standing Voting Instructions

On September 15, 2025, the SEC issued a no action letter to Exxon Mobil Corporation (Exxon) regarding its proposed "Retail Voting Program." With the Retail Voting Program, Exxon proposes to solicit its retail shareholder base and request that they empower Exxon with standing voting instructions to vote their shares on an ongoing basis at future Exxon annual or special shareholders' meetings in accordance with the Exxon board's recommendations in the proxy statement. Exxon contemplates that its Retail Voting Program would include a mechanism for a participating shareholder to override their instructions for an upcoming meeting and would have an annual reminder process conducted during the proxy off-season (i.e., not in connection with the annual meeting) that would give shareholders the opportunity to revise voting instructions or revoke the authorization altogether.

In granting no-action relief for the Retail Voting Program, the SEC agreed that it would not seek enforcement action against Exxon under SEC proxy rules that separately prohibit a proxy from conferring authority to vote at (i) more than one meeting (other than adjournments) or (ii) an annual meeting other than an annual meeting for which a proxy statement is sent. In its correspondence with the SEC, Exxon asserted that the standing voting authorizations contemplated by the Retail Voting Program are allowed under the state corporate laws of New Jersey and Delaware.

Proxy Advisor Rules

On July 1, 2025, the DC US Court of Appeals (the "DC Court") ruled in favor of Institutional Shareholder Services (ISS), a leading proxy advisory firm, in it its legal challenge to the SEC's definition of "solicit/solicitation" under Section 14(a) of the Securities Exchange Act of 1934, as amended. In 2020, the SEC adopted rules defining "solicit" and "solicitation" to include the provision of client-requested proxy voting advice (ISS's core business), which generally would have required ISS and other proxy advisory firms to file their voting recommendations with the SEC as proxy solicitations. In its recent decision in favor of ISS, the DC Court found that "the ordinary meaning of 'solicit' does not include entities that provide proxy voting recommendations requested by others, even if those recommendations influence the requestors' eventual votes." Accordingly, proxy-voting advice rendered by a third-party for a fee falls outside of the definition of "solicit/solicitation."

The DC Court's decision is a blow to public companies and other observers, as well as advisors who have become increasingly concerned with the influence and methodology of proxy advisors in making proxy voting recommendations.

Quarterly Earnings Reports

President Trump made recent social media statements that he favors eliminating quarterly reporting of earnings and encouraging quick regulatory action to implement the change (a change considered by the SEC during the first Trump administration). The statements appear driven at reducing regulatory burdens on issuers, but it should be noted that institutional investors (many of which are themselves public companies) generally oppose the idea of receiving information about their investments with less frequency. The US capital markets have historically been attractive for issuers and investors alike, with much of that appeal being built on a foundation of high-quality, routine financial reporting. As such, this remains a dynamic topic that will likely draw worldwide attention as it continues to evolve.

Executive Compensation

The SEC held a highly attended public roundtable this summer regarding potential executive compensation disclosure reforms. At the roundtable, SEC commissioners made evident that they are in favor of simplifying the SEC's rules regarding executive compensation (SEC Chair Paul Atkins described the current regime as a "Frankenstein patchwork of rules"). While we have yet to see any specific rulemaking or reforms in this area, we fully expect changes before long.

Spring 2025 Regulatory Flexibility Agenda

On September 4, 2025, the SEC released its Spring 2025 Reg Flex Agenda. While not a binding commitment, the SEC's Reg Flex Agenda provides insight into the types of rulemaking the SEC is considering and likely to pursue in the coming years. The Spring 2025 Reg Flex Agenda appears to be among the most issuer friendly agendas in recent years, which SEC Chair Paul Atkins emphasized in his public statements: "This regulatory agenda reflects that it is a new day at the Securities and Exchange Commission. The items on the agenda represent the commission's renewed focus on supporting innovation, capital formation, market efficiency and investor protection." The agenda includes proposed rules such as "Rationalization of Disclosure Practices" (which many anticipate will begin addressing executive compensation disclosures as highlighted during the summer roundtable), as well as "Shareholder Proposal Modernization" (focused on modernizing the requirements of Exchange Act Rule 14a-8 to reduce compliance burdens for registrants) and "Shelf Registration Modernization" (focused on modernizing the shelf registration process to reduce compliance burdens and facilitate capital formation).

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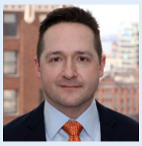

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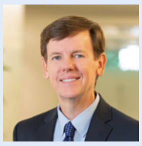

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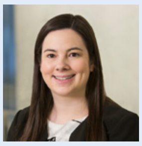

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