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Securities Regulation & Corporate Governance Update

February 11, 2026

Observations and Considerations on 2025 Form 10-Ks

An annual update of observations on new developments and highlights of considerations for calendar-year filers preparing their Annual Reports on Form 10-K for 2025.

Each year we offer our observations on new developments and highlight select considerations for calendar-year filers as they prepare their Annual Reports on Form 10-K. As we have worked with clients and reviewed filings by others, these are the developments that have been more top-of-mind and evolving. This alert touches upon recent trends, guidance and priorities of the U.S. Securities and Exchange Commission (the SEC or Commission), emerging trends among reporting companies, recent comment letters issued by the staff of the SEC's Division of Corporation Finance (the Staff), and developments in the securities litigation and SEC enforcement landscape.

Since being appointed to chair the Commission, Chairman Paul Atkins has emphasized continuity in core disclosure frameworks while prioritizing modernization and materiality-driven reporting. Although the Commission has not yet proposed new disclosure rulemaking that would impact most public company issuers, it has actively pursued policy shifts through guidance, both formal (*e.g.*, compliance and disclosure interpretations) and informal (*e.g.*, speeches). Other changes in leadership at the SEC, including the appointment of longtime Gibson Dunn partner James J. Moloney as Director of the Division of Corporation Finance, are expected to help accelerate Chairman Atkins's disclosure rationalization initiatives. While regulatory changes have been foreshadowed and shifts in review focus and enforcement priorities are expected, companies should be mindful to maintain compliance with existing rules and respond to any changes only after they are formally implemented.

An index of the topics described in this alert is provided below.

I. Disclosure Trends and Considerations for the 2025 Form 10-K

A. Risk Factors

Appropriately Characterize Risk Factors to Mitigate Risk

Recent securities litigation has highlighted the importance of properly characterizing the purpose of risk factor disclosures and clearly communicating the limitations of those disclosures to investors. Securities lawsuits increasingly include claims that risk factors are misleading when they describe potential risks as hypothetical when such risks have already materialized. Last year, the Supreme Court's decision to dismiss the appeal in *Facebook Inc. v. Amalgamated Bank* left unanswered how securities fraud claims challenging risk factor disclosures should be analyzed, and, as a result, companies face even greater uncertainty in drafting risk factors.

To address this risk, we recommend companies update the introductory paragraph to the Risk Factors section to clarify that the risk factor disclosures reflect management's beliefs and opinions about potential future risks and do not contain factual assertions about past events. As Gibson Dunn partner Michael Kahn explained to Bloomberg Law, "[r]isk factor disclosures fundamentally are an expression of a company's opinions and beliefs about what poses a risk to their business," and treating them as such "has sound basis in law and common sense and would help companies."[1] Framing risk factors as opinion statements aligns with the Supreme Court's decision in *Omnicare Inc. v. Laborers District Council Construction Industry Pension Fund* and reinforces that Item 105 of Regulation S-K calls for judgment-based, forward-looking disclosure.

The following is an example of language that could be included in the introductory paragraph of the Risk Factors section:

> These disclosures reflect the Company's beliefs and opinions as to factors that could materially and adversely affect the Company and its securities in the future. References to past events are provided by way of example only and are not intended to be a complete listing or a representation as to whether or not such factors have occurred in the past or their likelihood of occurring in the future.

Including such clarification communicates that Item 105 disclosures are inherently speculative and exclusively forward-looking. We encourage companies preparing their 2025 Form 10-Ks to incorporate similar language to strengthen their litigation protection while maintaining clarity.

Trends and Emerging Risks

Companies should review and update their risk factor disclosures to address material risks that have emerged or materially evolved during 2025. Material risks that have already materialized should be described accordingly, and risk factors that have become stale or are no longer material should be removed. Companies should also review any illustrative examples included in their risk factors to determine whether those examples remain current or should be refreshed. In addition, as risk factor disclosures are updated, companies should consider whether updates in other sections of the Form 10-K, such as in the Business section, Management's Discussion and Analysis (MD&A), or Financial Statements, warrant corresponding or conforming updates.

Some of the themes and emerging risks we have observed this year include the following:

- **Generative Artificial Intelligence:** Discussion of artificial intelligence (AI), including generative AI, within risk factors has expanded significantly. Companies are increasingly addressing how AI may affect risks related to cybersecurity, human capital, government regulation, competition, intellectual property, and business reputation. For example, many companies are discussing (i) risks related to attracting and retaining personnel with AI expertise, (ii) how the use of AI, particularly by bad actors, may exacerbate cybersecurity risks, and (iii) risks related to the internal adoption and use of AI technologies as well as the deployment of AI-related products. Please see Section I.D.

"Generative Artificial Intelligence" below for more information regarding AI-related disclosures.

- **ESG:** In response to increased scrutiny of, and heightened litigation over, environmental, social, and governance (ESG) and diversity, equity, and inclusion (DEI) initiatives, many companies have scaled back ESG- and DEI-related disclosure, including in the Risk Factors section. For example, some companies have opted to remove ESG-related risk factors entirely, while others have opted to replace ESG and DEI with less contentious terms, such as "corporate responsibility," "sustainability," or "inclusion." In addition, many companies have added to their risk factor disclosures risks related to evolving and increasingly conflicting stakeholder expectations and regulations relating to ESG initiatives. We encourage you to refer to our client alert titled "Five Years of Evolving Form 10-K Human Capital Disclosures" for more information regarding S&P 100 companies' human capital disclosures. Please also see Section I.F. "Human Capital" and Section I.H. "Climate Change and ESG" below for more information regarding ESG- and DEI-related disclosures.

- **U.S. Tariffs and Trade Policy**: In connection with evolving changes in domestic and foreign trade policies, including U.S.-imposed tariffs and corresponding retaliatory actions by other countries, many companies have expanded their discussion of risks related to tariffs and other trade policies, including the potential effects that such policies may have on supply chains, costs, price fluctuations, and market demand. Please see Section I.B. "Tariffs and Export Controls" below for more information regarding disclosures related to tariffs and international trade policies.

- **Export Controls:** Although less generally applicable, companies in certain industries have increasingly addressed risks related to U.S. export controls and related measures. For example, companies have addressed the potential effect of U.S. export controls on semiconductors, data flows, and AI technologies, as well as Chinese export controls on rare earth metals, on their business and operations. Please see Section I.B. "Tariffs and Export Controls" below for more information regarding disclosures related to tariffs and international trade policies.

- **U.S. Government Regulatory and Policy Changes**: Many companies updated their risk factors to address risks related to the change in the U.S. presidential administration, including changes in the leadership of various federal regulatory agencies and changes in federal government policy, that have led to, in some cases, legal challenges as well as uncertainty around the funding, functioning, and policy priorities of federal regulatory agencies and the status of current and future regulations. Please see Section I.C. "Federal Policy and Regulatory Activity" below for more information regarding these types of disclosures.

- **Human Capital:** Many companies have updated their risk factors to account for evolving risks related to their human capital. For example, some companies have addressed how evolving U.S. immigration policies and enforcement may disrupt workforce availability and increase related costs. In addition, a number of companies have updated risk factors related to work-from-home employees, such as potentially increased cybersecurity risks associated with work-from-home arrangements, as company policies regarding remote work continue to evolve. Please see Section I.F. "Human Capital" below for more information regarding human capital resource disclosures.

B. Tariffs and Export Controls

As tariffs, export controls, and other federal government and regulatory agency activities continue to evolve, companies should continue to ensure that their disclosures adequately address the implications and impacts to their business. During 2025, risks and operational challenges associated with these topics have shifted from hypothetical to reality, and upcoming filings should reflect this.

Tariff and Trade Policy Environment

Throughout 2025, companies have expanded on their disclosures related to tariffs and other trade policies as their impacts began to be felt. With respect to risk factors, companies have progressed from listing tariffs among general macroeconomic headwinds to providing more detailed descriptions of the specific impacts caused by tariff policies and related uncertainties, such as supply chain disruptions, increased costs, price fluctuations, and shifts in market demand. Going forward, companies should ensure that these disclosures remain consistent with ongoing trade policy implementation and changes and current with respect to specific company impacts. For example, any references to specific tariffs or potential retaliatory actions should be updated as needed quarter over quarter to keep the disclosure accurate, especially in light of the dynamic and rapidly developing changes in U.S. and foreign trade policies. Even for companies that include references to specific developments, due to the amount of activity in this area, they should also consider using evergreen language that can provide coverage as the scope of developments expands.

Beyond risk factors, companies should review tariff-related disclosures in their MD&A and Business sections to add quantifiable details where applicable and possible. In MD&A, when material, companies have quantified the effects of certain tariffs, including more robust examples and discussions of mitigation strategies. In the Business section, which calendar-year filers have not updated since before "Liberation Day" on April 2, 2025, non-calendar-year filers have increasingly added references to tariffs and other trade policy developments, specifically addressing their effects on the company's products, manufacturing systems, and supply chain. The depth of these tariff-related disclosures will depend on each company's specific industry and the extent to which tariff policies affect the company's business.

For example, in their Q3 2025 Form 10-Qs, many companies within the biotechnology industry discussed the September 25, 2025 announcement of potential 100% U.S. tariffs on imported branded or patented pharmaceuticals without U.S.-based manufacturing plants and how such tariffs may affect their business, as discussed in our blog post. Companies that identify tariffs or trade policies likely to have a direct impact on their business should, to the extent material, address those matters in the Risk Factors, MD&A, Forward-looking Statement disclaimers, and other relevant sections, as applicable.

Export Controls

Although less broadly applicable than tariff policies, companies affected by export controls and related measures should ensure that their disclosures continue to evolve to appropriately address not only government policies that limit international sales but also, when material, the quantifiable impacts of such restrictions. During 2025, many companies, specifically technology companies, have addressed the effect that export controls on semiconductors, data flows, and artificial intelligence technologies have on their business.

The effects of these policies are increasingly reflected in MD&A, especially in discussions related to international sales and in the identification of new costs tied to compliance and relocation efforts. To the extent material, disclosure about how export controls may affect the company's operations should be provided in the Risk Factors, Business section, and Financial Statements, as applicable.

C. Federal Policy and Regulatory Activity

The longest federal government shutdown in U.S. history concluded on November 12, 2025, but it remains clear that risks stemming from the fluidity of the federal government's budgetary and regulatory agenda will persist. Even though the most recent shutdown threat was largely averted, these risks continue to warrant careful consideration by companies, especially those in highly regulated industries, such as the pharmaceutical industry, or those with significant government contracting exposure, such as defense and aerospace.

Since the start of the new presidential administration, companies have drafted new risk factor language to address heightened risks arising from shifting administrative enforcement priorities, such as the shift away from ESG policies and initiatives, the increased use of executive orders as a policy tool, and the potential effects of changing federal budget priorities on government contracts. While fewer disclosures regarding these trends have been included in MD&A (apart from those specifically tied to the previous government shutdown), companies should assess whether any quantifiable effects—particularly those involving government contracts—can be meaningfully measured and disclosed.

D. Generative Artificial Intelligence

AI, including generative AI, continues to be an increasingly relevant topic for public companies, all of which should continue to assess whether they have adequate AI-related disclosures, specifically considering the ways in which the company's strategy, productivity, market competition and demand for the company's products, investments, and the company's reputation, as well as legal and regulatory risks, could be affected by AI. To the extent material, how the company uses AI and the risks related to its use—by the company or its competitors—should be provided in the Description of Business section, Risk Factors, and MD&A, as applicable.

Discussion of risks associated with AI in periodic reports has increased, with AI-related risks being addressed in the substantial majority of all Forms 10-K filed by large companies during 2025. Companies typically discussed AI within the context of the following risk factors:

- **Cybersecurity:** AI-related cybersecurity risks, especially risks arising from the use of AI by bad actors to commit cyberattacks, such as by creating sophisticated new attack methods, impersonating authorized individuals, or otherwise exploiting weaknesses in security systems, have become a common topic discussed by companies. Many companies have also noted that the use or misuse of AI by employees, contractors, or third-party vendors may increase cybersecurity risks.

- **Human Capital:** Some companies that rely on AI as part of their business have included disclosure regarding risks related to attracting and retaining competent personnel with relevant AI experience. Additionally, some companies have addressed how AI offerings and the internal adoption of AI may disrupt or modify workforce needs.

- **Regulatory:** With AI becoming increasingly incorporated into businesses and operations, many companies have begun to discuss risks related to new and developing AI-related government regulations, such as the EU AI Act.

- **Competition:** Many companies have begun addressing AI in competition-related risk factors, noting that competitors may incorporate AI faster or more successfully into their products, services, or operations.

- **Execution:** Risks related to the launching of new AI tools or offerings, such as the introduction of new vulnerabilities, bugs, or defects, or the risk of customers not accepting AI products, are also often discussed. Many companies also address how investments in new technologies, such as generative AI, may not be recoverable or achieve the company's intended benefits.

- **Intellectual Property:** Companies are increasingly discussing AI in connection with IP risks. In particular, many companies discuss risks related to the uncertainty around evolving AI IP laws and the increased risk of IP infringement due to the use of AI tools or AI training models.

- **Reputation:** Many companies address how public perceptions regarding their use of AI may negatively affect their reputation or brand image.

Moreover, in lieu of (or in addition to) referencing AI in multiple different risk factors, many large companies have begun to include a standalone "AI risk factor" that consolidates the most relevant AI-related risks in one place.[2]

When making AI-related disclosures, companies should be careful of overly broad or otherwise imprecise language that could be interpreted as "AI Washing."[3] As noted in a prior Division of Corporation Finance announcement, the Staff will consider how companies describe AI-related opportunities and risks, including, to the extent material, whether the company: (1) clearly defines what it means by "AI" and how the technology could improve the company's results of operations, financial condition, and future prospects; (2) provides tailored, rather than boilerplate, disclosure about material risks related to AI; (3) focuses on the company's current or proposed use of AI; and (4) has a reasonable basis for its claims when discussing AI prospects.[4]

Similar to last year, SEC comment letters continue to seek additional context for AI-related disclosures, frequently asking companies to explain the basis of AI-related performance claims and to provide specific descriptions of any AI technology being used by the company, such as the development, implementation, and source of the technology, and risks related to such use.[5]

E. Insider Trading State of Play

As we previously reported, pursuant to Item 408(b) of Regulation S-K, calendar year companies were required to file their insider trading policies as exhibits to their annual reports on Form 10-K and comply with the related disclosure requirements in their proxy statements for the first time during the 2024-2025 annual reporting season.[6] We recently published a survey of the insider trading policy disclosures from the S&P 100, available in our client alert titled "Survey of S&P 100

Insider Trading Policies in Year One of the SEC's Insider Trading Exhibit Requirement." We encourage you to refer to that alert for more information about trends regarding the S&P 100 companies' insider trading policies. Relevant to the Form 10-K filing requirement is our finding that 90% of companies surveyed filed only one insider trading policy and no other related policies or documents, even when the policy referenced other ancillary materials (*e.g.*, FAQs, handbooks).

F. Human Capital

Human capital resource disclosures by public companies have continued to be a focus since the SEC adopted new rules in 2020, not only for companies making the disclosures but also for employees, investors, and other stakeholders reading them. As we have done for the past several years, we recently published a survey of the human capital resource disclosures on Form 10-K from the S&P 100, available in our client alert titled "Five Years of Evolving Form 10-K Human Capital Disclosures,"[7] which also provides practical considerations for companies as we head into 2026. Key findings of that survey are summarized below.

- **Length of disclosure.** 85% percent of companies surveyed decreased the length of their disclosures and the remaining 15% increased the length of their disclosures. In most cases, the decreases in length were driven at least partially by companies scaling back diversity-related disclosures. In some cases, diversity-related discussions were deleted in their entirety. Of the 85 companies that decreased the length of their disclosures, 49 decreased the length of disclosures in both 2024 and 2025, 30 increased the length of disclosures in 2024 followed by a decrease in 2025, and the remaining six had no change in the length of disclosures in 2024 followed by a decrease in 2025.
- **Number of topics covered.** 72% of companies surveyed decreased the number of topics covered, 11% increased the number of topics covered, and the remaining 17% covered the same number of topics. Year over year, 36 companies decreased the number of topics covered in both 2024 and 2025, 29 companies covered the same number of topics in 2024 compared to the prior year but decreased the number of topics covered in 2025, seven companies increased the number of topics covered in 2024 followed by a decrease in 2025, 11 companies made no change to the number of topics covered in both 2024 and 2025, and nine companies made no change to the number of topics covered in 2024 followed by an increase in 2025.
- **Breadth of topics covered.** Across all companies, the prevalence of three topics increased, 19 topics decreased, and six topics remained the same.
    - The most significant year-over-year decreases related to diversity disclosures, continuing a trend from 2024, with decreases in every diversity-related category as well as in pay equity and quantitative pay gap disclosures. Other significant decreases related to disclosures addressing community investment (26% to 17%), governance and organizational practices (51% to 45%), and flexible work arrangements (37% to 32%).
    - The year-over-year increases in frequency involved minor increases in unionized employee relations (39% to 40%), employee mental health (52% to 54%), and monitoring culture (68% to 70%) disclosures.
- **Most common topics covered.** This year, the most commonly discussed topics remained consistent with the previous three years, with the top five most frequently discussed topics being talent development, talent attraction and retention, employee

compensation and benefits, diversity and inclusion, and monitoring culture. The topics least discussed this most recent year, however, changed slightly from those of the previous year as quantitative pay gap and diversity in promotion disclosures were tied as the fifth least frequently covered topics (joining physical security, diversity targets or goals, quantitative new hire diversity, and supplier diversity), replacing full-time and part-time employee split.

- **Industry trends.** Disclosure trends in the technology, finance, and pharmaceutical industries shifted slightly from previous years, with some industries responding differently to the changing DEI landscape than the S&P 100 as a whole, as further discussed below.

G. Cybersecurity

On July 26, 2023, the SEC adopted a final rule requiring public companies to provide current disclosure of material cybersecurity incidents and annual disclosure regarding cybersecurity risk management, strategy, and governance. The rule first applied to annual reports on Form 10-K for fiscal years ending on or after December 15, 2023, and companies provided the required disclosures for the first time in 2024. As companies prepare their second year of disclosures for 2025, we suggest reviewing our alerts titled "Cybersecurity Disclosure Overview: A Survey of Form 10-K Cybersecurity Disclosures by the S&P 100 Companies," which analyzes disclosures made by 97 S&P 100 companies in response to Item 106 requirements as of November 30, 2024.

While certain disclosure trends have emerged under Item 106, there remains significant variation among companies' cybersecurity disclosures, reflecting the reality that effective cybersecurity programs must be tailored to each company's specific circumstances, including its size and operational complexity, the nature and scope of its activities, industry, regulatory environment, data sensitivity, and risk profile. Companies must strike a careful balance in their disclosures, providing sufficient, decision-useful information for investors, while taking care not to reveal sensitive information that could be exploited by threat actors. For example, when describing cybersecurity processes, management roles, or board oversight, companies should discuss these matters at the policy or governance level rather than detailing specific controls or response mechanisms that could expose vulnerabilities.[8]

SEC comment letters regarding Item 1C disclosures tended to fall into one of the following categories: (i) requests for additional information on the relevant cybersecurity expertise of individuals responsible for a company's cybersecurity program; (ii) requests that the company provide Item 1C cybersecurity disclosure where it was omitted from the Form 10-K; and (iii) requests for additional detail regarding the processes the company uses to oversee and identify cybersecurity threats.[9]

H. Climate Change and ESG

The SEC's climate disclosure rules[10] will not apply to the next Form 10-K, as they remain stayed and subject to ongoing litigation.[11] Even so, as has always been the case, public companies should consider whether, given their particular circumstances, existing SEC rules require disclosure on environmental or sustainability-related matters.[12] For example:

- Companies who have faced, or expect to face, material environmental or social risks or impacts should address them in relevant sections of the Form 10-K. In the Risk Factors, for example, companies may foresee operational disruptions or reputational harm. The Business section may need to flag material climate-related laws or regulations or strategic changes. In MD&A, disclosure might focus on material costs invested in climate-related technologies or incurred to repair severe weather damage.
- Companies should also revisit past disclosures on these topics and make relevant updates or removals. The company's risk profile may have changed since the disclosure was introduced due to resilience investments, changes in the location of operations, or shifts in government funding or subsidies. The U.S. regulatory environment on climate-related matters has changed course from the prior presidential administration, and historical risks or expectations may need to be updated to account for such directional shifts.

Companies should also review their ESG-related statements and expectations outside of SEC filings, including in voluntary sustainability reports, third-party questionnaires or new mandatory sustainability reporting requirements. These matters should be consistent with material information being provided in the Form 10-K.

Finally, consider working with outside counsel to confirm that ESG-related claims and terms are accurate and properly qualified to avoid greenwashing litigation risks.

II. SEC Comment Letter Trends[13]

In 2025, comment letters from the Staff continued to focus on addressing disclosures in MD&A and the use of non-GAAP measures, followed by segment reporting, revenue recognition, and goodwill and intangible assets. Over the next year, we expect the Staff to focus on disclosures related to segment reporting following the adoption of Accounting Standards Update (ASU) 2023-07 and risks related to the current macroeconomic environment and AI.

A. Management's Discussion and Analysis

Many of the comment letters addressing MD&A continued to focus on results of operations, with the Staff often requesting that companies explain related disclosures with more specificity. The Staff has continued to focus on the requirement that companies discuss material period-to-period changes in qualitative *and* quantitative terms as prescribed by Item 303(b) of Regulation S-K. For example, the Staff has continued to comment on disclosures about factors contributing to period-on-period changes in financial line items, such as revenue, gross margin, cost of sales, expenses, and operating cash flows, to request that companies provide both more quantitative detail regarding the extent to which each factor contributed to the overall change in the line item, as well as qualitative discussion of the underlying factors attributable to such contributing factors.[14] The Staff often requests that companies refrain from using terms such as "primarily," "mostly," or "mainly" in lieu of providing more specific quantitative disclosure.[15] The Staff has also continued to request that companies disclose known trends and uncertainties affecting their results of operations.

The Staff has also continued to emphasize the importance of clearly contextualizing key performance indicators (KPIs) to ensure they are not misleading.[16] For example, the Staff has requested that companies provide additional disclosures regarding how KPIs are defined and calculated, why they are useful to investors, and how they are used by management.[17] The Staff has also often asked companies to quantify and provide additional disclosure regarding significant components of financial condition and results of operations that have affected segment results.

Two other key areas of MD&A that the Staff has continued to focus on are (i) critical accounting estimates and (ii) liquidity and capital resources. The Staff frequently noted that companies' disclosures regarding critical accounting estimates were too general and requested that companies provide a more robust analysis, including both qualitative and quantitative information necessary to understand the estimation uncertainty and its impact on the financial statements, consistent with the requirement now set forth in Item 303(b)(3).[18] The Staff often indicated that these disclosures should supplement, not duplicate, the disclosures in footnotes to financial statements.[19] The Staff frequently requested enhanced disclosures regarding goodwill and other intangible assets, including seeking clearer discussions of impairment methodologies and assumptions and identification of any reporting units at risk.[20]

B. Non-GAAP Financial Measures

The Staff continues to express concerns regarding the improper use of non-GAAP measures in filings, with recent comments focusing on whether companies are excluding costs that appear to be normal, recurring operating expenses, such as product development costs, letter-of-credit fees, or other routinely incurred expenses.[21] In addition, the Staff has reiterated that non-GAAP presentations must not give undue prominence to non-GAAP measures and has emphasized the need to quantify the contribution of each material factor affecting changes in non-GAAP metrics such as Adjusted EBITDA.[22]

C. Segment Reporting

The Staff has continued to comment on a number of segment reporting disclosures with recent comments emphasizing the need for more decision-useful analysis of segment results. In particular, the Staff has asked companies to quantify the impact of each material factor driving changes in segment revenue and operating profit, including the effects of price, volume, and product mix, and to explain why segment performance differs where segments have varying profitability profiles.[23] The Staff has also reminded registrants that MD&A must discuss consolidated results, with segment information provided as necessary to explain material trends.[24]

III. Securities Litigation

Companies should be aware of two decisions from the federal courts of appeal—*Sodha v. Golubowski* from the Ninth Circuit and *In re WalMart Inc. Securities Litigation* from the Third Circuit. In *Sodha*, the Ninth Circuit held that Sections 11 and 12 of the Securities Act may require a company to disclose intra-quarter or interim financial results in its offering materials if necessary to prevent other disclosures in the offering materials from being misleading. In *Walmart*, the Third Circuit confirmed that Section 10(b) and Rule 10b-5 do not require a company to describe all items or events in equal detail in their SEC filings, holding that the fact that one item is described in more detail than another does not make the less detailed description fraudulent. These decisions are discussed in further detail below.

Sodha

On August 29, 2025, the Ninth Circuit issued its decision in *Sodha*, holding that a company may violate the securities laws if it discloses historical financial results in its offering materials while omitting current, intra-period financial results that "differ[] in a material way" from the historical results.[25] The district court had found that disclosure of intra-quarter, interim results was only necessary when the interim results reflected an "extreme departure" from historical results.[26] The Ninth Circuit, however, held that the test was not whether interim results were an "extreme departure," but rather whether the interim results were "material" in light of the total mix of information presented in the offering materials.[27] If so, said the court, then a company must disclose the interim results.

The court also held that a company must disclose interim financial results under Item 303 of Regulation S-K if the interim results constitute a known "trend" likely to have a material impact on the company's revenues or financial condition.[28] The court emphasized that what constitutes a "trend" is a "fact-specific inquiry" that depends on the nature, not the duration, of the observed pattern.[29] In doing so, the court rejected the bright-line rule adopted by some courts that a "trend" has to be a pattern longer than two months.[30] The court reasoned there may be certain "short patterns"—such as the fallout from crises like the COVID pandemic or the 2008 financial crisis—that have persistent effects that are recognizable after less than two months.[31] In these cases, the "trends" would have to be disclosed under Item 303.[32]

On February 5, 2026, the defendant company in *Sodha* filed a petition for writ of certiorari, asking the United States Supreme Court to review the Ninth Circuit's decision.

WalMart

On the same day the Ninth Circuit issued its decision in *Golubowski*, the Third Circuit decided *WalMart*, holding that a company does not commit securities fraud under Section 10(b) and Rule 10b-5 merely because certain items in its SEC filings are described in more detail than other items.[33] The plaintiffs argued that Walmart misled investors when describing certain investigations to which the company was subjected because it provided "detailed" descriptions of some investigations while providing less detail about the investigation that allegedly was the most "threatening."[34] The Third Circuit rejected this argument, explaining that the fact that "a company describes one item in more detail than another does not make the less detailed description fraudulent" because "[t]he securities laws do not require disclosure of all material facts in equal detail."[35] This made sense, said the court, because companies do not always have the same level of information about all the events included in their disclosures, "and neither the law nor the market encourages companies to disclose down to the lowest common denominator."[36]

IV. SEC Enforcement

The recent transition in SEC leadership ushered in a "return to basics" enforcement regime for the Division of Enforcement. Chairman Atkins has emphasized going after bread-and-butter securities law violations involving industry participants who "lie, cheat, and steal."[37] He has also emphasized the importance of fairness and transparency in the investigation process and discouraged the Staff from pursuing creative legal theories that penalize respondents for honest mistakes. Accordingly, companies should expect a more predictable enforcement regime that aggressively pursues enforcement against financially material misstatements and omissions that were intended to mislead investors and less attention on novel securities law theories or good-faith mistakes that are diligently remediated.

Several themes have emerged as to the types of disclosures the SEC's enforcement regime may focus on in 2026.

A. Emerging Technologies (AI)

Building on a theme from the last administration, the Commission continues to prioritize enforcement action against "AI washing" in which companies overpromise on the capabilities and implementation of AI technology. In February, the SEC created a new "Cyber & Emerging Technologies Unit" to combat cyber-related misconduct and protect retail investors from misconduct in emerging technologies, such as AI and machine learning.[38] The actions from the Atkins-led SEC have thus far focused on companies that lie about the technology being used. In April, for example, the SEC filed an action against a former CEO of a mobile shopping app for lying to investors about the use of AI technology to process transactions when, in reality, transactions were processed manually.[39]

B. Financial Reporting

SEC enforcement will always prioritize financial reporting. While the SEC has slowed enforcement related to accounting, reporting, and disclosure against public companies, now is not a time for complacency. This administration is expected to focus its enforcement resources on traditional fraud cases, such as fabricated revenue numbers and audit reports. Companies that have experienced fewer enforcement inquiries this year would be well served to focus on evaluating and strengthening internal controls and rooting out potential accounting fraud. The SEC will continue to be interested in restatements and potential misconduct by bad actors and may return to a more aggressive posture in a market downturn or future administration.

C. Insider Trading

In March, the SEC's acting enforcement director emphasized that insider trading would continue to be an enforcement priority. To align with Chairman Atkins's "back to basics" approach to enforcement, the SEC will likely back away from novel "shadow trading" theories and focus on more traditional insider trading involving material nonpublic information (MNPI) from the company whose shares are being traded. For example, earlier this year the SEC announced settled charges against a former vice president of a pharmaceuticals company for insider trading in advance of the company's announcement of negative news from the FDA.[40] In another example, the SEC filed charges alleging an insider trading scheme involving corporate insiders disclosing MNPI to outsiders who traded profitably on the information in advance of corporate announcements.

D. Foreign Issuers

On September 5, 2025, the SEC formed a Cross-Border Task Force to investigate potential securities law violations related to "foreign-based companies."[41] Foreign issuers should expect increased scrutiny and enforcement in traditional areas within the SEC's expertise, including the use of the SEC's most advanced analytical tools to identify potential concerns. In addition, the SEC announced that the task force will focus special attention on the following areas: market manipulation, gatekeepers (*e.g.*, auditors and underwriters), and jurisdictions, such as China, that may pose “unique investor risks” due to government control and other factors.

V. Other Reminders and Considerations

Set forth below is a discussion of a few other recent rule changes, as well as reminders and considerations to keep in mind as companies prepare their annual reports on Form 10-K.

A. Tax Footnote Disclosures

While the drafting of notes to the financial statements usually falls outside of the purview of corporate and securities lawyers, practitioners in this space should be aware that ASU 2023-09 (amending Accounting Standards Codification (ASC) Topic 740) expanded and enhanced income tax footnote disclosures, including adding more robust effective tax rate reconciliation requirements (*e.g.*, units of measure, disaggregated components). These amendments are effective for years beginning after December 15, 2024.

B. Avoiding Common XBRL Errors in Form 10-K Filings

The Staff continues to emphasize the importance of accuracy in XBRL tagging, particularly in annual reports on Form 10-K. In 2025, after conducting an assessment of fiscal year 2024 filings, the Division of Economic and Risk Analysis issued a reminder that filers continue to make basic mistakes when tagging public-float data on the Form 10-K cover page. The Staff observed some filers committed scaling errors in certain filings along with inconsistencies in the date information between the HTML filing and the tagged data.[42] For example, one filer reported a public float of $78 million in its HTML filing but reported a public float of $78 in its XBRL data.[43] Another filer reported a public float of $800 million in its HTML filing but $8 billion in its XBRL data. This is not a new phenomenon—similar errors were first observed in 2019 and continue to occur.[44] Errors of this type can cause EDGAR validation warnings and require amended filings.[45]

Companies should carefully review common tagging pitfalls identified by the SEC and outside observers, including incorrect tag selection, sign conventions, scaling, and date-context mismatches.[46][47] Before submitting a Form 10-K, filers should either refer to the Staff’s EDGAR XBRL Guide or validate their XBRL using the EDGAR Renderer/Previewer, which displays how an Inline XBRL filing will appear on the SEC’s website and shows the same warning and error messages EDGAR generates when a filing is submitted. The SEC provides both the validation system and the Renderer/Previewer as open-source tools.

Companies should incorporate XBRL validation into their pre-filing process and coordinate with their financial printers or vendors to ensure tags align with the published U.S. GAAP taxonomy. Routine use of the SEC’s validation tools and prompt correction of any warnings or errors will help prevent filing delays and ensure the accuracy of public-data submissions.

C. ASC 280 and Non-GAAP Measures

Recent changes to ASC 280 (ASU 2023-07) clarify that, if the chief operating decision maker (CODM) uses more than one measure of segment profitability, a company may include these additional measures in the financial statement footnotes. Initially, there were questions about how these new provisions interact with the SEC’s non-GAAP rules, but in August 2024, the Staff confirmed that, because these additional measures are neither required nor expressly permitted by GAAP, they are considered non-GAAP measures under Regulation S-K Item 10(e)(5). The Staff also confirmed that it is acceptable for companies to include such non-GAAP measures in the financial statement notes or elsewhere (such as MD&A) as long as all required non-GAAP disclosures—like reconciliations to the most comparable GAAP measure—are also presented.

D. Clawback Policies and Checkboxes

In April 2025, the Commission published six new C&DIs relating to the Form 10-K restatement and clawback analysis check boxes and the related disclosures under Item 402(w) of Regulation S-K available here. A summary of the new C&DIs is available here.

E. SRC Filer Status Guidance

In August 2025, the Commission issued a new C&DI (available here) for determining filer status for smaller reporting companies (SRCs) that lose their eligibility as smaller reporting companies under the SRC revenue test in paragraph (2) or (3)(iii)(B) of the "smaller reporting company" definition in Exchange Act Rule 12b-2 and must transition to being accelerated filers. The key point is that, while a company that no longer qualifies as an SRC may no longer take advantage of the SRC scaled disclosure requirements starting with its first Form 10-Q of the fiscal year, a non-accelerated filer will have a one-year transition period before becoming an accelerated or a large accelerated filer.

F. SEC's Flex Agenda

In September 2025, the Commission issued the Spring 2025 Unified Agenda of Regulatory and Deregulatory Actions (the Agenda). The Agenda outlines the Commission's rulemaking priorities under the leadership of Chairman Atkins. A summary of the key aspects of the Agenda that potentially impact public companies is available here.

Over the coming year, the Commission is expected to advance several rule proposals—anticipated in April 2026—aimed at supporting capital formation, simplifying disclosure practices, and reducing compliance costs. These initiatives could include introducing voluntary semi-annual reporting, right-sizing the disclosure requirements in Regulation S-K, updating the exempt offering pathways to streamline businesses' access to the market, modernizing shelf registration to ease compliance burdens and improve access to capital, and enhancing accommodations for emerging growth companies while simplifying and recalibrating filer-status categorizations for reporting companies. As discussed in Chairman Atkins' recent speech, the Commission plans to pursue a broader rationalization of disclosure practices, focusing on refining disclosure requirements and clarifying what constitutes "material" information. Collectively, these efforts aim to facilitate more meaningful disclosure by companies and improve shareholders' access to material information.

[1] Kahn, Michael, *Treat Risk Disclosures as Opinions to Clean Up Fraud Challenges*, Bloomberg Law (May 6, 2025).

[2] *See* "2025 Risk Factor Hop Topics: AI, Tariffs, Administration Change" (September 10, 2025), *available at* https://www.thecorporatecounsel.net/blog/2025/09/2025-risk-factor-hot-topics-ai-tariffs-administration-change.html.

[3] *See* "Chair Gary Gensler on AI Washing" (March 18, 2024), *available at* https://www.sec.gov/newsroom/speeches-statements/sec-chair-gary-gensler-ai-washing.

[4] *See* "The State of Disclosure Review" (June 24, 2024), *available at* https://www.sec.gov/newsroom/whats-new/gerding-state-disclosure-review-062424.

[5] Phunware, Inc. (link); FirstVitals, Inc. (link); Jefferson Capital, Inc. (link); Masterworks Vault 2, LLC (link).

[6] See Items 408(b) and 601(b)(19) of Regulation S-K, adopted by the SEC in connection with the Rule 10b5-1 amendments in December 2022. For fiscal years beginning on or after April 1, 2023, domestic public companies are required to disclose whether they have adopted insider trading policies and procedures governing the purchase, sale, and/or other dispositions of their securities by their directors, officers and employees, or the companies themselves, and if so, to file those policies and procedures as an exhibit to their annual reports on Form 10-K. If a company has not adopted such policies and procedures, it is required to explain why it has not done so. Disclosure about the adoption (or not) of policies or procedures must appear in a company's proxy statement (and must also be included in, or incorporated by reference to, Part III of a company's Form 10-K). Similar disclosure and exhibit filing requirements apply to foreign private issuers (FPIs) in respect of their annual report on Form 20-F, although Item 16J of Form 20-F does not specifically reference trading by the "registrant itself." None of the filers covered by this client alert were FPIs.

[7] Data provided is as of November 14, 2025 and is based on the companies currently included within the S&P 100, so some statistics are slightly different than they were in the prior surveys. The categorization data necessarily involves subjective assessment and should be considered approximate.

[8] Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure, Release No. 33-11216 (July 26, 2023) at 60-63.

[9] First Merchant Corporation (link); Equifax, Inc. (link); New Peoples Bankshares, Inc. (link).

[10] For a further discussion of the climate reporting requirements, please see our prior client alert "SEC Adopts Sweeping New Climate Disclosure Requirements for Public Companies," Gibson Dunn (Mar. 2024), *available at* https://www.gibsondunn.com/sec-adopts-sweeping-new-climate-disclosure-requirements-for-public-companies/.

[11] For a discussion of the most recent developments in the litigation, please see our prior client alert "ESG: Risk, Litigation and Reporting Update," Gibson Dunn (Aug. 2025), *available at* https://www.gibsondunn.com/gibson-dunn-esg-monthly-update-august-2025/.

[12] Prior to adopting the climate disclosure rules, the SEC issued guidance in 2010 explaining how current SEC reporting requirements could already require discussion of climate-related matters. See "Commission Guidance Regarding Disclosure Related to Climate Change" (Feb. 8, 2010), *available at* https://www.sec.gov/files/rules/interp/2010/33-9106.pdf.

[13] For additional discussion of comment letter trends, see "SEC Reporting Update – Highlights

of trends in 2025 SEC staff comment letters" (September 11, 2025), *available at* https://www.ey.com/content/dam/ey-unified-site/ey-com/en-us/technical/accountinglink/documents/ey-secru28204-251us-09-11-2025.pdf.

[14] Adtalem Global Education, Inc. (link); Energy Fuels, Inc. (link); Kyndryl Holdings, Inc. (link); Commvault Systems, Inc. (link); Ross Stores, Inc. (link); Ralph Lauren Corporation (link); REV Group, Inc. (link); Apogee Enterprises, Inc. (link).

[15] MeridianLink, Inc. (link); Rumble Inc. (link).

[16] *Id*. at 8.

[17] Kyndryl Holdings, Inc. (link).

[18] Azitra, Inc.(link); Cipher Mining Inc. (link); Babcock & Wilcox Enterprises, Inc.(link); Zynex, Inc. (link).

[19] Babcock & Wilcox Enterprises, Inc. (link); Cipher Mining Inc. (link); Azitra, Inc. (link).

[20] iRobot Corporation (link).

[21] *See* note 24; Babcock & Wilcox Enterprises, Inc. (link); Ralph Lauren Corporation (link); REV Group, Inc. (link); Comtech Telecommunications Corp. (link); Hillenbrand, Inc. (link).

[22] Ralph Lauren Corporation (link); City Office REIT, Inc. (link); UFP Industries, Inc. (link); Aviat Networks, Inc. (link); Matthew International Corp (link); Apogee Enterprises, Inc. (link).

[23] *See* note 24; Texas Instruments Inc. (link); Amphenol Corporation (link); Ralph Lauren Corporation (link); G-III Apparel Group, Ltd. (link).

[24] Babcock & Wilcox Enterprises, Inc. (link); TTM Technologies, Inc. (link); G-III Apparel Group, Ltd. (link).

[25] 154 F.4th 1019, 1033-35 (9th Cir. 2025).

[26] Id. at 1033, 1036.

[27] Id. at 1036-37.

[28] Id. at 1037-38.

[29] Id. at 1038.

[30] Id.

[31] Id.

[32] Id. at 1038-39.

[33] 151 F.4th 103 (3d Cir. 2025).

[34] Id. at 119.

[35] Id.

[36] Id.

[37] SEC Speeches and Statements, “Testimony Before the United States House Appropriations Subcommittee of Financial Services and General Government” (May 20, 2025), *available at* https://www.sec.gov/newsroom/speeches-statements/atkins-testimony-fsgg-052025.

[38] SEC Press Release, “SEC Announces Cyber and Emerging Technologies Unit to Protect Retail Investors” (Feb. 20, 2025), *available at* https://www.sec.gov/newsroom/press-releases/2025-42.

[39] SEC Litigation Release, “SEC Charges Found and Former Ceo of Artificial Intelligence Startup with Misleading Investors” (April 11, 2025), *available at* https://www.sec.gov/enforcement-litigation/litigation-releases/lr-26282.

[40] SEC Litigation Release, SEC Charges Former Biopharmaceutical Company Vice President with Insider Trading (Mar. 7, 2025), *available a*t https://www.sec.gov/enforcement-litigation/litigation-releases/lr-26262.

[41] SEC Press Release, SEC Announces Formation of Cross-Border Task Force to Combat Fraud (Sept. 5, 2025), *available at* https://www.sec.gov/newsroom/press-releases/2025-113-sec-announces-formation-cross-border-task-force-combat-fraud.

[42] SEC Division of Economic and Risk Analysis, *Announcement — Public Float Tagging Errors*, U.S. Securities and Exchange Commission (July 21, 2025), https://www.sec.gov/newsroom/whats-new/2507-dqreminder-public-float-tagging-errors.

[43] *Id.*

[44] SEC Division of Economic and Risk Analysis, *Announcement — Scaling Errors in Public Float*, U.S. Securities and Exchange Commission (Nov. 20, 2019), https://www.sec.gov/newsroom/whats-new/osd-announcement-111919-data-quality-reminder.

[45] SEC Office of Structured Disclosure, *Staff Interpretations and FAQs Related to Interactive Data Disclosure* at A.3, U.S. Securities and Exchange Commission (June 16, 2025), https://www.sec.gov/data-research/structured-data/office-structured-disclosure-staff-observations-guidance-trends/staff-interpretations-faqs-related-interactive-data-disclosure.

[46] SEC Division of Economic and Risk Analysis, *supra* note 1.

[47] SEC Staff, *EDGAR XBRL Guide*, U.S. Securities and Exchange Commission (Nov. 2025), https://www.sec.gov/files/edgar/filer-information/specifications/xbrl-guide.pdf.

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