Cooley

2025 – 2026 SEC Annual Reporting Workshop: Masterclass in Proxy Reporting

Key takeaways

Recent and ongoing '34 Act reporting issues

- Filer status
  - Determining and understanding your filer status matters – it dictates filing dates for Forms 10-K and 10-Q, as well as eligibility for scaled disclosures, financial statement and attestation requirements, and may affect the phase-in compliance deadlines for new rules.
  - Important: Exchange Act Rules Compliance and Disclosure Interpretation (C&DI) 130.05 effectively gives companies transitioning out of smaller reporting company (SRC) status under the revenue test an extra year to comply with auditor attestation requirements and other accelerated filer rules.
  - Use our Filer Status Guide and Appendix A to determine your filer status and corresponding accommodations.
- Form 10-K
  - Changes and reminders: For most companies, there are no Securities and Exchange Commission (SEC) rule-driven changes compared to last year, but we recommend reviewing the risk factors and management's discussion and analysis (MD&A) for recent material trends, as well as checking iXBRL tags.
  - Directors and officers (D&O) Rule 10b5-1 plan disclosure: Remember quarterly disclosures for new or amended Rule 10b5-1 plans, as well as the two new C&DIs (120.32 and 120.33) that were made to better align with the 2022 amendments to Rule 10b5-1.
- D&O questionnaires are still important and an area for continuous improvement. Cooley clients can use our streamlined platform for the questionnaire process, Cooley D+O.
- Form 10-Q: Potential elimination in the wake of SEC Chair Paul Atkins' statements about the support and prioritization of a shift toward semiannual reporting for US-listed public companies.
- Executive compensation disclosure: Simplification is on Atkins' agenda.

Proxy statement refresher

- Your proxy statement must be filed with the SEC and delivered to shareholders in advance of your annual meeting (deadline depends on state law and delivery format).
- If the proxy statement is not filed within 120 days after the year end, the 10-K must be amended.

Your proxy statement – big picture trends and drivers

- Telling your "board composition" story: You can and should use your proxy statement to accurately show why your board is fit for purpose and functioning well – this can improve director support, avoid repetitive conversations and reduce risk.
- Director support increased in 2025, even though board and committee leaders still faced increased scrutiny.
- Director support at companies that had failed say-on-pay votes in the prior year was 4.9% lower than at companies with say-on-pay support levels above 70%.
- Other common issues impacting director elections:
    - Adverse governance provisions
    - Director independence
    - Board composition
    - Overboarding
    - Responsiveness
    - Board oversight of environmental and social (E&S) matters
- More boards assigned artificial intelligence oversight to committees in 2025, in addition to a significant reduction in sustainability disclosures.

Your proxy statement – technical changes and reminders

- For most companies, there are no SEC rule-driven changes compared to last year, but beware of common traps:
    - Proxy statement voting standards and advance notice deadlines.
    - iXBRL requirements: Clawback analysis, equity grant policies, pay versus performance and insider trading policies.
    - Disclosure of equity grant policies (Item 402(x)): No express time limit for the disclosure lookback, does not apply to restricted stock units or performance share units, and don't "oversell."

Shareholder proposals and engagement – key takeaways for 2026

- The SEC staff changed its Rule 14a-8 process – but it's not a "free pass."
- Expect sustained support for governance proposals and level or weakening support for E&S proposals – similar to 2025.
- Establish a regular engagement cadence with key investors and stay attentive to communications from potential shareholder proposal activists.
- Due to changes in SEC guidance, the onus is now more on companies to set up engagement meetings and establish the agenda for discussion.
- Begin outreach to key shareholders early, audit gaps in existing disclosures and craft fallback settlement frameworks now.

Tips for formatting and process automation

- Formatting tips:
    - Consider what you can remove as well as what you can add.

    - Consider a “what’s new” section if you’ve made significant substantive updates.
    - Be aware of how investors and other audiences review proxy statements.
    - Remember regulatory requirements.
- Process automation tips:
    - Use dynamic working timelines – include *everything.*
    - Track stewardship team conversations, policy changes and voting tendencies.
    - Continually improve D&O questionnaires.
    - Coordinate early with service providers and internal teams.
    - Post-mortem may be more important than ever this year.

For more information, please email Brianna Vega.