January 30, 2026

Thoughts for Boards:
Key Issues for 2026

In a year of significant regulatory, geopolitical, technological and macroeconomic turbulence, boards have had to manage through an environment of uncertainty. Unpredictability caused by frequent policy shifts and evolving expectations and demands from governmental and market actors added complexity to the array of demands that a modern public company board must address. Yet there were also more opportunities for proactive and well-advised companies to utilize new technologies, take a fresh look at their corporate governance practices and strengthen relationships with stakeholders in ways that helped boards not only navigate, but also take advantage of a rapidly shifting environment for public companies.

Set forth below are some of the most important trends and developments that shaped the landscape in three key areas for boards, along with some considerations for boards to bear in mind as they address these developments.

Government and Regulatory

- **A New Administration and SEC**. Through a series of policy directives in 2025, the U.S. Securities and Exchange Commission (SEC) eased formal reporting burdens on public companies and signaled increased reticence to dictate companies' interactions with their shareholders. In March, the SEC voted to end its defense of Biden-era climate rules requiring the disclosure of climate-related risks and greenhouse gas emissions. In September, SEC Chairman Paul Atkins announced, in response to a social media post by President Donald Trump, that the SEC would propose a rule change that, if approved, would permit companies to opt into reporting on a semi-annual basis rather than quarterly. As we discussed, a move to semi-annual reporting could meaningfully reduce the time and efforts spent on earnings calls and reduce the market's orientation towards short-termism, but would be a significant change in the cadence of engagement with and disclosures to investors. That same month, the SEC greenlit Exxon Mobil Corporation's auto-voting program for retail shareholders, which, once implemented, would allow Exxon's non-institutional investors to opt in to have their ballots automatically cast as recommended by the board. In November, in a dramatic reconsideration of its role in the shareholder proposal process, the SEC Division of Corporation Finance announced that for the 2025-2026 proxy season, it would not respond to no-action requests for companies' reliance on virtually all bases for exclusion of shareholder proposals under Rule 14a-8, effectively leaving it to companies to decide whether to omit these proposals. And finally, in January 2026, the SEC issued updated guidance, providing that the SEC will now object to a voluntary submission of a notice of exempt solicitation filed by a person that does not beneficially own over $5 million of the company's shares. The staff noted that such voluntary submissions appear to be primarily a means for smaller shareholders to generate publicity.

  The SEC's new policy directives signal a desire to afford companies more latitude in deciding how and when to communicate with their shareholders, and companies are

accordingly considering whether to recalibrate their engagement efforts in a more permissive regulatory environment. Boards considering making changes to their shareholder engagement practices should work closely with legal counsel and other advisors in order to assess the legal and practical implications of potential changes.

- **Pushback on DEI and ESG**. The Trump Administration has continued to criticize both governmental and private sector policies that promote diversity, equity and inclusion (DEI) and environmental, social and governance (ESG) initiatives. In his first few days as president, President Trump issued three executive orders terminating DEI policies and programs in the federal government, banning gender identity policies and requiring the heads of federal agencies to take action to encourage the private sector to end DEI policies and programs, respectively.

  Last year, the SEC followed suit, issuing two sets of guidance relating to ESG. The first, Staff Legal Bulletin 14M, reversed prior guidance regarding Rule 14a-8 shareholder proposals and made it easier for companies to exclude certain types of social policy-related proposals from its proxy materials. The second was an updated Compliance and Disclosure Interpretation, which clarified that passive investors could lose their eligibility to file on Schedule 13G if they exert pressure on a company to implement specific measures or policy changes, including as it relates to ESG.

  Despite the Administration's criticism of DEI and ESG initiatives, many large shareholders remain interested in monitoring companies' policies in these areas, even if they are no longer publicizing their interest. Accordingly, it is essential for companies and boards to consider how to balance regulatory compliance with stakeholder interests and expectations. Boards must work with management to set a "tone at the top" that facilitates the company's ability to navigate DEI- and ESG-related issues.

- **Government as Shareholder**. In various instances during 2025, the Trump Administration has taken ownership stakes in public companies it deems to be integral to national security. Many of these investments—such as the government's $8.9 billion investment in Intel and other investments in Lithium Americas, MP Materials, ReElement Technologies, Trilogy Metals and Vulcan Elements—primarily provide the U.S. government with economic rights, rather than governance rights or other direct means to influence a company's decision-making. However, in certain instances—such as the U.S. government's "golden share" in U.S. Steel (which gives the government veto rights over a range of corporate decisions) or its agreement with Nvidia and AMD (which gives the U.S. government a portion of revenues from chip sales to China in exchange for export licenses to China for chips that were previously subject to restrictions)—the government has had more direct involvement in corporate decision-making or the strategic trajectory of businesses.

  In an environment in which a wide range of industries, such as steel, minerals, nuclear energy and semiconductors, among others, could be considered integral to national security, an increasing number of companies may potentially be spotlighted for a potential governmental investment. Boards must be vigilant as to how an investment by the U.S. government—or even the potential for an investment by the U.S. government—might impact a company's shareholders and other stakeholders.

Technology

- **AI, AI, AI**. Artificial intelligence (AI) was top of mind for boards, management, shareholders and the public throughout 2025. News cycles were dominated by large and high-profile AI transactions, from "acquihires" (transactions in which larger AI companies sought to expand their talent pool by acquiring smaller startups) to multi-billion dollar financings (such as OpenAI's $40 billion investment round led by SoftBank) to strategic partnerships for computing power (such as OpenAI's partnerships with Broadcom, NVIDIA and AMD). Companies in a wide range of industries are increasingly expected to incorporate AI in their product offerings and day-to-day business operations.

  Boards should also be thoughtful about integrating AI expertise into the boardroom, to ensure effective oversight of AI-related risks and opportunities. Boards will be expected to familiarize themselves with the competitive landscape and understand how AI factors into a company's business model and strategy. Directors with meaningful AI experience and backgrounds will continue to be in high demand.

- **Crypto**. We previously discussed the importance of monitoring developments in the rapidly evolving crypto ecosystem. This is even more true in the new year. Between a decidedly friendlier regulatory environment (as we have written about here, here and here), emerging legislative clarity for stablecoins and cryptoasset market structure, and the proliferation of companies pursuing cryptoasset treasury strategies, companies across a range of sectors are considering if (and how) to incorporate crypto into their products, services and treasuries. For example, a recent report from PayPal and the National Cryptocurrency Association suggests that 39% of U.S. merchants already accept some form of crypto as payment at checkout, with 84% expecting crypto to become a common form of tender within five years. As another salient example, efforts to tokenize assets (such as securities and real estate) have moved from theory to early practice. Boards considering engagement with crypoassets either as a balance sheet asset or as financial infrastructure must cultivate a clear understanding of the strategic rationale, associated risks, and emergent legal requirements.

Corporate Governance

- **Engaging with Shareholders**. While robust shareholder engagement remains a top priority for companies, the manner in which a company identifies shareholders, approaches outreach, and engages with them continues to evolve:

  - **SEC Guidance on 13D / 13G Filers**. As mentioned above, recent SEC guidance clarified that investors seeking to exert pressure on a company to implement specific measures may lose their "passive investor" status and be disqualified from filing a short-form Schedule 13G. As a result, some shareholders have become more cautious about initiating conversations, especially on sensitive topics like director elections, executive compensation, and ESG issues. This dynamic has put the onus on boards to be proactive about continued engagement opportunities, asking for meetings with investors, setting agenda topics and asking targeted questions to solicit investor perspectives.

- **"Big Three" Shift Approach to Stewardship**. Last year, the "Big Three" asset managers—BlackRock, Vanguard and State Street—signaled that they are shifting their approach to stewardship. In particular, each of these institutions split its proxy voting team into two separate groups, each with their own voting decision-makers, voting policies and perspectives, to meet the growing demand for a more nuanced approach to voting and to reflect clients' differing—and often opposing—stewardship philosophies. It is now more important than ever for boards to find one-on-one opportunities with their key investors to better understand how they hold and vote their shares.

- **More Engaged Retail**. The growing engagement of retail investors, fueled in large part by technology and social media, is changing the way companies engage with their retail base. While some companies seek to increase retail voting on the view that such investors are generally inclined to support boards and management teams, we also have seen retail investors undertake activist tactics at companies in the form of organized social media campaigns, and in some cases their efforts have turned public companies into "meme stocks." Boards at companies with a significant retail shareholder base should continue to stay apprised of these developments and consult with legal counsel about whether it might be appropriate to modify or implement new methods of engagement.

- **The Role of Proxy Advisors**. Proxy advisory firms, like ISS and Glass Lewis, have been under considerable legislative and regulatory pressure. Most recently, President Trump issued an Executive Order aimed at "increas[ing] oversight of and tak[ing] action to restore public confidence in the proxy advisor industry, including by promoting accountability, transparency, and competition." Among other things, the Executive Order mandates that the SEC Chairman (i) review all rules relating to proxy advisors and consider revising or rescinding them, especially to the extent that they implicate DEI and ESG policies, (ii) consider revising or rescinding all rules relating to shareholder proposals, including Exchange Act Rule 14a-8, that are inconsistent with the purpose of the Executive Order, and (iii) analyze whether a proxy advisor serves as a vehicle for investment advisers to act as a "group" for purposes of the Exchange Act. The Executive Order also mandates that the FTC Chairman investigate whether proxy advisors engage in unfair methods of competition or unfair or deceptive practices that harm U.S. consumers, and that the Secretary of Labor revise regulations regarding the fiduciary status of individuals who manage or, like proxy advisors, advise those who manage shares held by plans covered under the Employee Retirement Income Security Act of 1974 (ERISA) and strengthen the fiduciary standards for ERISA plans.

  The growing scrutiny of ISS and Glass Lewis will increase pressure on investors to undertake their own voting analyses and not rely primarily on the recommendations of proxy advisors. For example, JPMorgan Chase's asset-management unit is cutting ties with ISS and Glass Lewis entirely and will now use an internal artificial-intelligence powered platform called Proxy IQ to assist on U.S. company votes. For companies, voting outcomes may become even less predictable if the influence of ISS and Glass Lewis subsides, although it may increase opportunities to solicit in support of company initiatives.

- **Continuing Dominance of Delaware**. Historically, Delaware has been the gold standard for incorporation for most public companies, due to its well-established corporate law and highly specialized judiciary, which have created a stable and predictable legal environment. More recently, however, two states—Texas and Nevada—have implemented changes seeking to attract incorporations. In late 2024, Texas launched its own business court, modeled after the Delaware Chancery Court, and last year, Texas made significant business-friendly updates to its state corporate law, including to codify the business judgment rule and to allow companies to set higher ownership thresholds for shareholder proposals submitted under Rule 14a-8. Similarly, Nevada updated its state corporate laws to make business-friendly changes and limit the reliance on Delaware case law in interpreting Nevada law. Several high-profile reincorporations to these states, including Tesla's reincorporation in Texas and TripAdvisor's and Dropbox's reincorporations in Nevada, have captured the attention of the corporate community.

  However, for the vast majority of existing public companies, Delaware will likely remain "home" for the foreseeable future for several important reasons. First, reincorporation requires shareholder approval, and many investors still prefer Delaware due to the predictability and strong shareholder protections. Second, reincorporation is associated with high transaction costs and litigation risk, especially for early movers. Finally, Delaware has responded to the challenges by Texas and Nevada by instituting reforms of its own, most notably through SB 21, a meaningful set of amendments to the Delaware General Corporation Law that, among other things, expanded the safe harbor protections for directors, officers and controlling shareholders for conflicted and controlling shareholder transactions and limited the scope of permissible Section 220 "books and records" demands. Boards should continue to stay abreast of these updates and the potential impact on governance rules and norms.

* * * * *

In an era of uncertainty and unpredictability, boards focused on long-term value creation must continue to reevaluate what is working for their companies and not assume that what once worked will continue to work, and vice versa. As the rules, demands and expectations that companies face continue to shift rapidly, it is more important than ever that boards remain informed, working with legal counsel and other advisors. Boards that stay on top of these developments will be best positioned to take advantage of the opportunities, and effectively prepare for the challenges, that arise.

Martin Lipton
Steven A. Rosenblum
Karessa L. Cain
Elina Tetelbaum
Loren Braswell
Alexander H. Sugerman