Proceed with Caution

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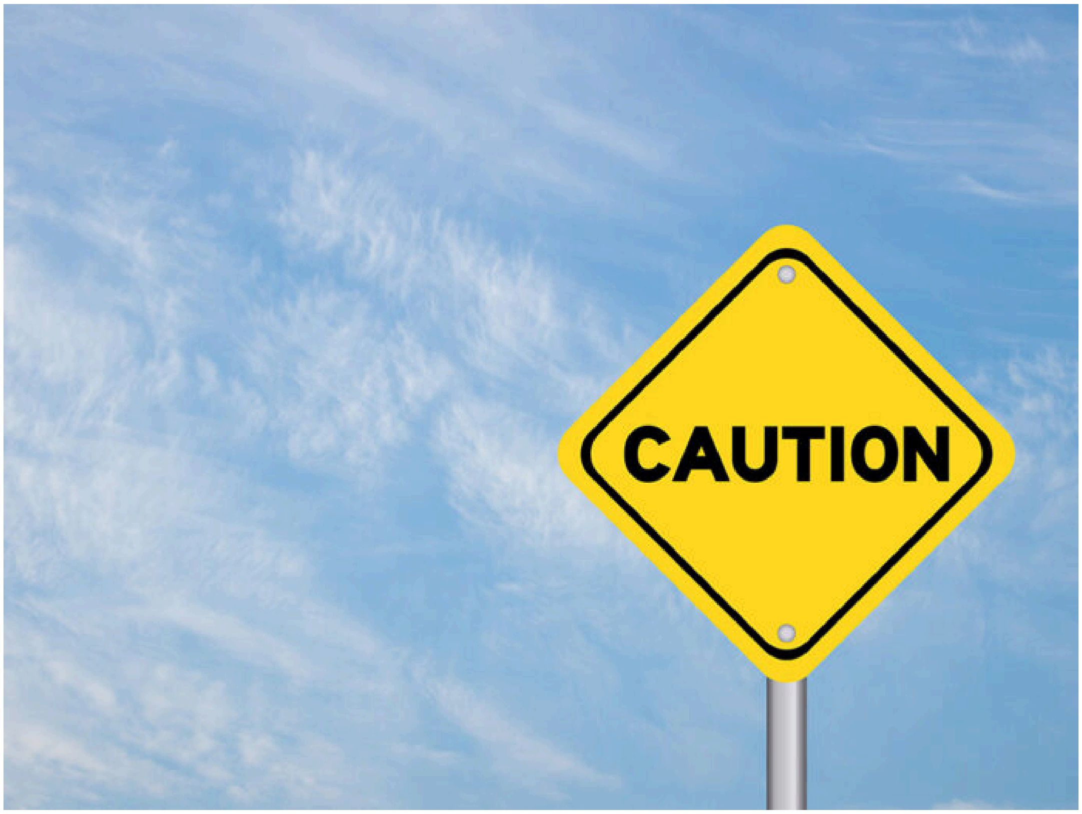

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Directors have broad latitude in how they manage the corporation, and it is often said that they can consider both the short-term as well as the long-term interests of the business and (within limits) its various constituencies. That balance between the long and short term may become subject to some tension in 2026. The last few years have seen dramatic changes in corporate governance, highlighted by the Delaware legislature's overruling of judicial decisions before the state's Supreme Court could weigh in. This turbulence has been accompanied by the reincorporation out of Delaware by some high-profile companies, such as Tesla, SpaceX and TripAdvisor, to jurisdictions they view as more friendly to the interests of controlling shareholders. Given recent events, it appears 2026 will continue this trend toward change, and not only in Delaware.

On December 11, 2025, President Donald Trump issued an executive order that picked up on themes the SEC had raised earlier in the year and foreshadowed even more significant changes ahead. These initiatives include steps to rein in what the administration sees as the excessive influence of proxy advisors like ISS and Glass Lewis, particularly regarding their positions on climate change and environmental concerns, as well as what the administration deems an over-emphasis on DEI. According to the executive order, "These proxy advisors regularly use their substantial power to advance and prioritize radical politically motivated agendas — like 'diversity, equity and inclusion' and 'environmental, social and governance' — even though investor returns should be the only priority." Proxy advisors have played a central role in shaping shareholder voting, especially for institutional investors who may not have the resources to analyze every proposal in detail. Their recommendations consequently carry outsized weight on matters ranging from board structure and majority voting by shareholders to executive compensation, social issues and environmental policies. The administration's scrutiny of these firms' practices will likely change how they interact with companies to provide guidance to shareholders, particularly in areas that have become flashpoints for cultural and political debate.

Even before this executive order, the SEC's rulemaking agenda previewed other changes. The SEC has said that it plans to reduce compliance costs for public companies by "rationaliz[ing] disclosure practices to facilitate material disclosure by companies and shareholders' access to that information." Among the items listed for "rationalization" is the existing detailed proxy statement reporting of executive compensation, including the "pay ratio" disclosures that require companies to compare CEO compensation to that of a median employee. Such disclosures were originally intended, at least in part, to promote transparency and shine a light on what was considered excessive executive compensation, but critics argue they add to regulatory burdens without meaningfully informing investors.

Another potentially significant shift on the table is the move from quarterly to semiannual financial reporting, which would align the U.S. approach to that in the European Union, United Kingdom and Australia. While proponents say this would ease administrative burdens and foster a longer-term perspective, many investors and analysts contend that quarterly reporting is vital for maintaining transparency and supporting more accurate forecasts. Abandoning quarterly reports would change a reporting system that has existed for more than 50 years and would, among other things, require changes in how companies manage stock-trading windows for their executives — periods when insiders are permitted to buy or sell shares, often tied to the release of quarterly results.

The SEC also plans to "modernize" its approach to shareholder proposals. President Trump's executive order aligns with a recent speech by SEC chairman Paul Atkins that casts doubt on how much the SEC will continue to facilitate shareholders' ability to make proposals for action at shareholder meetings. Shareholders have long been able to include proposals in the company's proxy statement that ask the board to take or consider some action that the shareholders themselves do not have the authority to enact. These nonbinding proposals have been an effective way for shareholders to express their views and influence corporate policy on issues ranging from governance reforms to sustainability and social responsibility. The SEC's move signals a major shift in shareholder rights, potentially limiting the ability of investors to voice collective concerns or recommendations without mounting a full campaign for binding action.

The ramifications of these expected changes are broad, and boards will need to consider whether and how to respond if these or other rules, or SEC staff guidance, change significantly. The board's perspective cannot be only for the moment but also should take into account the long-term interests and needs of the corporation and its constituencies. Moreover, as shifting political winds continue to drive regulatory policy, future administrations may seek to reverse such changes, creating additional risk and uncertainty for early adopters. The temptation to take advantage of today's more accommodating regulatory environment could expose companies to unintended consequences, including litigation, investor backlash and reputational harm.

As the regulatory pendulum swings, it can be tempting to swing with it. Boards should nonetheless continue to look to the long-term interests of the corporation and consider whether taking advantage of these changes is in the corporation's best interest, regardless of whether it may now be permitted. Trust, transparency and commitment to long-term value are the foundations of sound governance and remain so, even as the politics of the day create distractions and whipsaw the regulatory environment.