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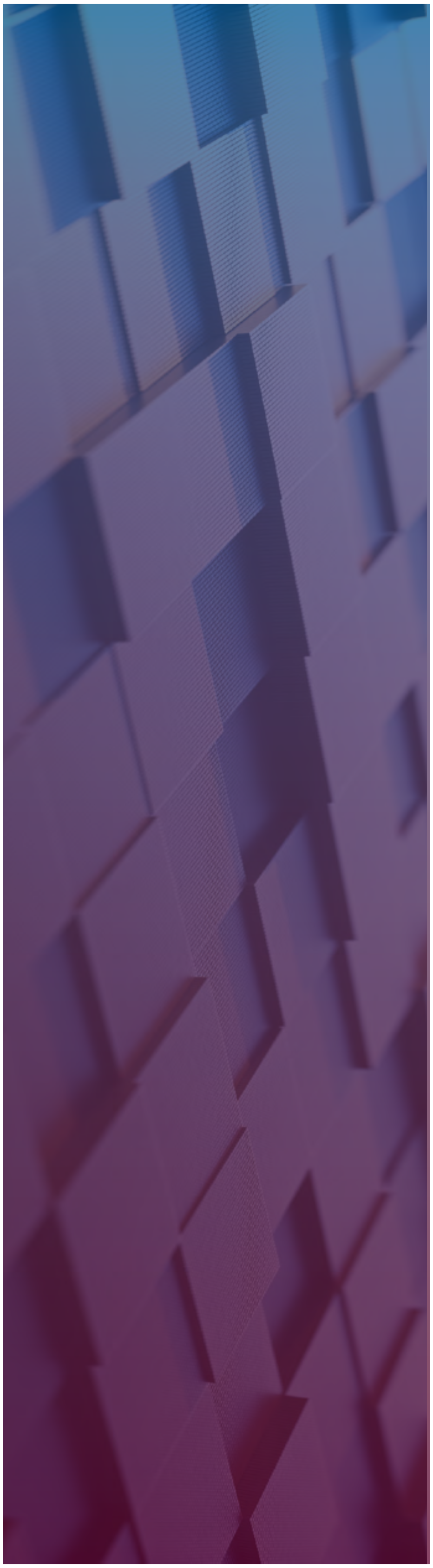
# Capital Markets

## 2025 Year in Review and Looking Ahead



Dear Clients and Friends,

As we wrap up 2025 and look ahead to 2026, we wanted to start by saying we are deeply grateful to each and every one of you. Your confidence in our counsel drives our commitment to excellence. We do not take that trust lightly. What follows is a recap of some of the most important issues and topics in the capital markets in 2025, from the administration turnover at the SEC, to the rise of Texas stock exchanges, and a mix of everything else. We hope you enjoy this annual update and we look forward to working alongside you in the year ahead.

Our capital markets team is a diverse group with a particular focus on the retail and consumer products, energy (including upstream, midstream, and downstream oil and gas; power; renewables; and utilities), financial services, and real estate industries. In 2025, our team of nearly 150 lawyers handled more than 330 equity and debt capital markets transactions aggregating over $190 billion. Our capital markets lawyers are routinely recognized for their exceptional service and grounded guidance in a number of publications including *Chambers USA*, *Legal 500*, *Super Lawyers*, and others.

As we reflect on the past year, one theme stands out: resilience paired with innovation. Our clients navigated a new administration, shifting regulatory frameworks, evolving market dynamics, and rapidly changing credit and valuation conditions—while continuing to build, create, distribute, finance, and operate assets and businesses that fill store shelves and online marketplaces, power communities, and shape skylines. Our newsletter, the 2025 *Capital Markets Year in Review and Looking Ahead*, captures the transactions, regulatory developments, trends, capital structures, and innovations that defined the market and the strategies that helped clients move from uncertainty to execution.

Whether structuring first-of-their-kind transactions, guiding compliance in a rapidly changing legal, regulatory, and disclosure environment, or optimizing capital solutions and access to capital markets, our focus is clear: providing practical, responsive, and relentless support aligned with your objectives, while putting a premium on execution and client expectations.

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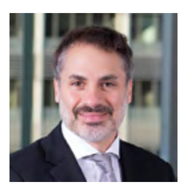
Philip Haines

Peter O'Brien



Robert Smith

## Editor-in-Chief

Scott H. Kimpel

# A Busy Year for the SEC

*By Scott H. Kimpel*

The 2024 Presidential election heralded a changing of the guard at the Securities and Exchange Commission (SEC) in 2025. SEC Chairman Paul Atkins took office in April 2025 and has initiated a range of reforms to the SEC's rulemaking agenda and enforcement objectives, as well as continuing a redesign of the agency's organizational structure. In many key ways, Chairman Atkins has departed from the approach of his predecessor, Gary Gensler.

## Downsizing the Agency

By some estimates, nearly 20 percent of the SEC's workforce left the agency during 2025 through a mixture of buyouts and attrition. Hiring freezes and reductions in the use of contract labor for IT and other back-office functions are likely to reduce headcount further in the coming years. The SEC has also pursued a series of initiatives to redesign its organizational structure and streamline layers of management, particularly in the ten regional offices outside Washington, DC. A small regional office in Salt Lake City closed entirely in late 2024, and rumors about further office closures continue to persist. While filling a less prominent role than at other agencies, in 2025 representatives from the Department of Government Efficiency (DOGE), spent time at the SEC and proposed a series of cost-cutting measures. Going forward, fewer SEC staffers will have a greater share of work to complete as Chairman Atkins advances his priorities.

## Rulemaking

Chairman Atkins has published an ambitious rulemaking agenda for the next several years. Nearly all the rule-writing projects initiated under Chair Gensler have been cancelled or withdrawn. In their place, Atkins is focused on a series of measures involving updates to the process for conducting public offerings, making it simpler to raise capital privately, reforming public company disclosure and reporting standards with a view towards reducing the costs and burdens of being publicly traded, reimagining the SEC's approach to the regulation of digital assets, and revisiting the SEC's market structure rules.

In a series of speeches and statements, Atkins has made clear that he hopes to reignite the IPO market and increase the total number of public companies. He has stated that his guiding principles will be rooting disclosure requirements in the concept of financial maturity and scaling disclosure requirements with a company's size and maturity. Atkins has also cited the objective of "future proofing" any regulatory action to ensure future regulatory clarity and guard against repeal by a future chairman. To that end, Atkins frequently speaks of ensuring the SEC rulebook is "fit for purpose." To encourage faster resolution of shareholder claims, the SEC in September 2025 issued a policy statement supporting the use of mandatory shareholder arbitration of securities claims. Finding a path to repeal the SEC's controversial climate reporting rules also seems to be a priority for Atkins.

## Enforcement

Chairman Atkins's selection of Judge Margaret Ryan from the US Court of Appeals for the Armed Forces to lead the SEC's Division of Enforcement also suggested a shift in tone for the agency. Statements by various senior SEC officials suggest less of an institutional willingness to pursue novel or wide-ranging legal theories against parties accused of violating the federal securities laws. Instead, the SEC's focus on enforcement cases has generally shifted back to areas such as offering and investment frauds, insider trading, market manipulation, and other violations of the federal securities laws where there is clear harm to investors. Conversely, the agency seems less interested in bringing cases that only allege technical violations of the law, particularly when there is minimal evidence of investor harm. Under Chairman Atkins, the SEC also announced modest reforms to the Wells process to give potential defendants an enhanced opportunity to present exculpatory information as well as returning to the previous agency practice of considering settlement offers and requests for disqualification waivers simultaneously.

## Digital Assets

An area where the shift in enforcement priorities has been most acute involves the agency's approach to cryptocurrency and digital assets. President Trump campaigned heavily on the promise that he would reform the federal government's restrictive view of the crypto sector, and has issued a series of orders and advanced other initiatives in furtherance of that goal. Shortly after the change in presidential administrations, the SEC began dismissing numerous enforcement cases it had initiated targeting crypto companies. Many of these cases accused crypto exchanges of failing to register with the SEC as a securities exchange or broker-dealer. Likewise, several prominent crypto companies defending SEC enforcement investigations that had not yet been formally charged saw their investigations concluded without further action. Further, the SEC withdrew a series of guidance documents that adversely impacted the industry. The SEC also formed a Crypto Task Force with a broad agenda focused on rulemaking and other projects to provide both clarity and flexibility in the regulation of digital assets. We expect the SEC to be busy in 2026 advancing crypto-related rules and interpretive guidance.

## Shareholder Proposals

SEC Rule 14a-8, which permits certain qualifying shareholders to include a shareholder resolution in a public company's proxy statement, has become a subject of debate and controversy in recent years. Supporters view the rule as a simple, efficient way to influence corporate policy, and critics see the rule as distracting to management and increasingly embroiling companies in political and social controversies. Over several recent presidential administrations, the Rule 14a-8 pendulum has swung back and forth from pro-shareholder to pro-management, depending on who has held office. Chairman Atkins seems focused on reforming the process more fundamentally.

On February 12, 2025, under Acting Chairman Uyeda the SEC staff released Staff Legal Bulletin No. 14M (SLB 14M), which addresses various aspects of the Rule 14a-8 proposal process. SLB 14M rescinds prior staff guidance and gives public companies more flexibility to exclude certain shareholder proposals, particularly those related to environmental and social issues. In sum, SLB 14M reasserts a more company-friendly approach and eliminates guidance that, in practice, led to an increase in shareholder proposals and fewer requests for no-action relief.

In November 2025, the SEC staff released a statement indicating a shift in the staff's handling of shareholder proposal no-action requests. Historically, companies have generally sought the staff's concurrence that it would not recommend enforcement action if a company excludes a particular shareholder proposal from its proxy statement under one of the enumerated grounds in Rule 14a-8. Under the new policy, the staff will not provide no-action relief except under narrow circumstances, and instead only requires a company seeking to exclude a proposal to notify it of its intent. This practice more closely aligns with the minimum requirements of Rule 14a-8. We expect future SEC rulemaking on the shareholder proposal process to follow in 2026, with the process likely to look much different in the years to come.

## Conclusion

The impact of the government shutdown in the fall of 2025 slowed but did not derail several key priorities for Chairman Atkins. As we head into 2026, we expect the SEC to take major steps advancing a regulatory regime for crypto and digital assets. We also anticipate an active year for SEC rulemaking and a continued emphasis on making the public company model more attractive. ■

# Y'all Street: Texas's New Era in Capital Markets

*By Joanna Enns and Fatima Anjum*

Texas is rapidly transforming the landscape of US capital markets. In 2025, the launch and expansion of three major exchanges—the Texas Stock Exchange (TXSE), NYSE Texas, and Nasdaq Texas—signaled a new chapter for issuers, investors, and the state's growing corporate ecosystem. These exchanges are not only a response to, but also a catalyst for, Texas's surge in business relocations, financial innovation, and infrastructure investment.

## Texas Stock Exchange (TXSE): A New National Venue

On June 5, 2024, the TXSE announced plans to launch a new stock exchange in Texas with headquarters in Dallas. On January 1, 2025, the TXSE announced that it had submitted its Form 1 application to the Securities and Exchange Commission (SEC) to register as a national securities exchange. The submission was published in April 2025. The TXSE's application and proposed listing standards aim to provide an alternative to existing national exchanges, with a focus on Texas-based businesses the state's business-friendly environment. TXSE's standards incorporate familiar financial and governance requirements, but also introduce features such as a mandatory pre-application review and higher quantitative thresholds than base tiers of other national US exchanges, targeting mid-to-large-cap issuers and more mature companies as well as a focus on ETFs. For a more detailed comparative review of the proposed listing standards, please see our article here.

On September 30, 2025, the SEC approved the TXSE, the first fully integrated national securities exchange to receive SEC approval since 2006. Trading and company listings are set to launch in 2026 from the exchange's Dallas headquarters. TXSE aims to reduce the burdens of going and staying public. Companies already listed on the NYSE or Nasdaq will have the ability to add TXSE as a secondary exchange if they satisfy the relevant listing standards. TXSE's investors include a number of prominent investment banks and other leading financial instruments, and it has raised over $250 million in capital.

## NYSE Texas: Dual Listings and a New Corporate Hub

In March 2025, NYSE launched NYSE Texas by relocating and reincorporating NYSE Chicago to Dallas. As the first securities exchange incorporated in Texas, NYSE Texas has quickly become a major venue for dual listings, reaching 100 such listings by December 2025. Among its early milestones, 49 founding member companies celebrated secondary listings at the August launch event. NYSE Texas offers companies enhanced liquidity, geographic reach, and regulatory flexibility, all from a Texas base. Notably, Nasdaq-listed companies are able to dual list on NYSE Texas with limited additional regulatory requirements, making it an attractive option for issuers seeking broader market access and visibility.

## Nasdaq Texas: Entering in Style from the Permian Basin

In March 2025, Nasdaq announced the opening of a new regional headquarters in Dallas. On November 12, 2025, at the Permian Basin BBQ Cook-Off in Midland, Texas, Nasdaq revealed plans for Nasdaq Texas--a dual listing venue expected to go live in 2026, pending regulatory approval. This move further cements Texas's role as the nation's newest capital markets center. The announcement was marked by ringing the Market Closing Bell from the Permian Basin, highlighting Nasdaq's ongoing commitment to Texas's innovation and economic growth. Nasdaq Texas will enable eligible companies to dual list and trade while benefiting from Nasdaq's technology, infrastructure, and regulatory standards. The launch builds on Nasdaq's strong presence in Texas, where it partners with over 800 clients and lists more than 200 companies with a combined market capitalization exceeding $2 trillion.

## A Surge in Corporate Headquarters and Financial Services

The rise of these new exchanges is both an indicator and a driver of Texas's booming business environment. From 2015 to 2024, 314 companies relocated their corporate headquarters to Texas. Dallas, Austin, and Houston are now among the top five fastest-growing cities for headquarters, with Dallas alone welcoming 100 new headquarters, Austin home to 81, and Houston with 31. Several prominent public companies also reincorporated from Delaware to Texas, seeking the state's favorable legal and regulatory climate. The financial services sector is also booming. The Dallas metro area now ranks second to New York City for finance-related employment. Investment banking and securities employment in Texas has jumped 111 percent over the past 20 years, with 27 percent growth since the pandemic.

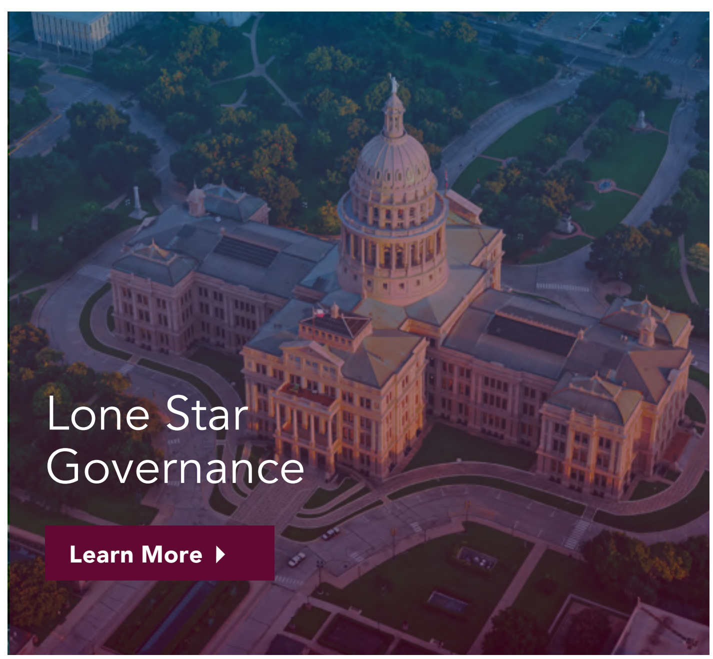
## Texas Power Play: AI, Data Centers, and Energy Growth

The momentum in Texas's capital markets is closely tied to explosive growth in technology and infrastructure. The AI industry's Stargate Project is expanding in West Texas, with a second phase bringing the 875-acre site to eight buildings, 1.2 gigawatts of power, and about 4 million square feet. Backed by prominent investors and technology companies, Stargate plans to invest $500 billion in AI infrastructure, drawn by Texas's abundant energy supply.

As of March 2025, Texas has surpassed Northern Virginia as the nation's top data center market with 1,191 megawatts under construction. The Austin-San Antonio market has more than doubled in size since 2020. As AI and data center projects proliferate, new natural gas-fired power plants are being planned to support them. Fermi—which recently went public—is an example of this, with a business model based on building a massive data center powered by a natural gas plant, and eventually, three small modular nuclear reactors. This development in turn is spurring upstream drilling, new pipelines, and expanded processing capacity across Texas's energy sector.

## Looking Ahead

The arrival of TXSE, NYSE Texas, and Nasdaq Texas is more than just a milestone for Texas; it is a signal of the state's emergence as a national leader in capital markets, corporate growth, and financial innovation. The influx of corporate headquarters, the rise of data and AI infrastructure, and the expansion of financial services all flow from—and reinforce—this transformation. Companies considering their listing options or expansion into Texas should closely monitor these developments and the evolving legal landscape.



# Beneficial Ownership Reporting Developments

*By Eric Markus*

In 2025, there were several developments related to Section 16 of the Securities and Exchange Act of 1934 (the Exchange Act) that public companies and other capital market participants should consider.

## Section 16 Expanded to Apply to Certain Insiders of Foreign Private Issuers

All issuers with a class of equity security trading on the New York Stock Exchange or the Nasdaq Stock Market are required to be registered under Section 12(b) of the Exchange Act. Issuers that are not required to register under Section 12(b) but meet certain valuation and number of record holder standards are required to be registered under Section 12(g). Most issuers that have a class of security registered under Section 12(b) or Section 12(g) are subject to substantial reporting obligations under Section 13. In addition, the directors and executive officers, and the beneficial owners of more than 10 percent of outstanding voting equity securities, of such companies are required to file periodic reports regarding their status and their security transactions under Section 16(a) (Insiders); these Insiders are also required to disgorge any profits they receive from buying and selling securities within a six-month time window under Section 16(b).

Recognizing that many issuers that are registered under Section 12(b) or 12(g) may be formed in other countries and may already be subject to regulation under those countries' laws, and not wanting to discourage those companies from offering their securities in the United States, the Securities and Exchange Commission (Commission) has long subjected any foreign issuer that meets various requirements—a "foreign private issuer" (FPI)[1]—to less burdensome issuer reporting requirements using the Commission's exemptive authority. Since at least 1991, the Commission has exempted Insiders of FPIs from Section 16(a) and 16(b) entirely.

The US House and Senate recently passed the National Defense Authorization Act of 2026 (NDAA). The NDAA is an over-3,000-page bill focused primarily on aspects military and national defense spending and policies for the coming year. However, on page 2,659 of the NDAA and comprising only a few pages is a set of provisions called the Holding Foreign Insiders Accountable Act, which strips the directors and executive officers of FPIs (collectively,

1 A "foreign private issuer" is any issuer that is organized under the law of a jurisdiction outside the United States (other than a foreign government) except for an issuer that meets both of the following two criteria: (1) more than 50 percent of the issuer's voting securities are directly or indirectly held of record by residents of the United States; and (2) one or more of the following conditions is true: (i) the majority of the executive officers or directors are United States citizens or residents; (ii) more than 50 percent of the assets of the issuer are located in the United States; or (iii) the business of the issuer is administered principally in the United States. Foreign private issuer status is determined by the issuer once per year on the last business day of its most recently completed second fiscal quarter.

Foreign Insiders) of their Section 16(a) exemption. The repeal of the Section 16(a) exemption does *not* apply to holders of greater than 10 percent of the issuer's shares. Moreover, though the statute is not entirely clear on this point, the extension of Section 16 to Foreign Insiders does not appear to extend to subject such insiders to the disgorgement requirements of Section 16(b).

On December 18, 2025, President Trump signed the NDAA 2026 into law.

The Section 16 requirements newly imposed on Foreign Insiders take effect on March 18, 2026. Prior to that date, FPIs will need to identify which officers will be deemed "executive officers" for purposes of Section 16. While the obligation to file Section 16 reports technically belongs to the relevant Insider, FPIs should consider whether they will—as many US public company issuers currently do—obtain EDGAR ID's for and undertake to prepare and file Forms 3/4/5 for their respective directors and executive officers.

## Heightened Section 16 Risks for Investors Acting in Parallel

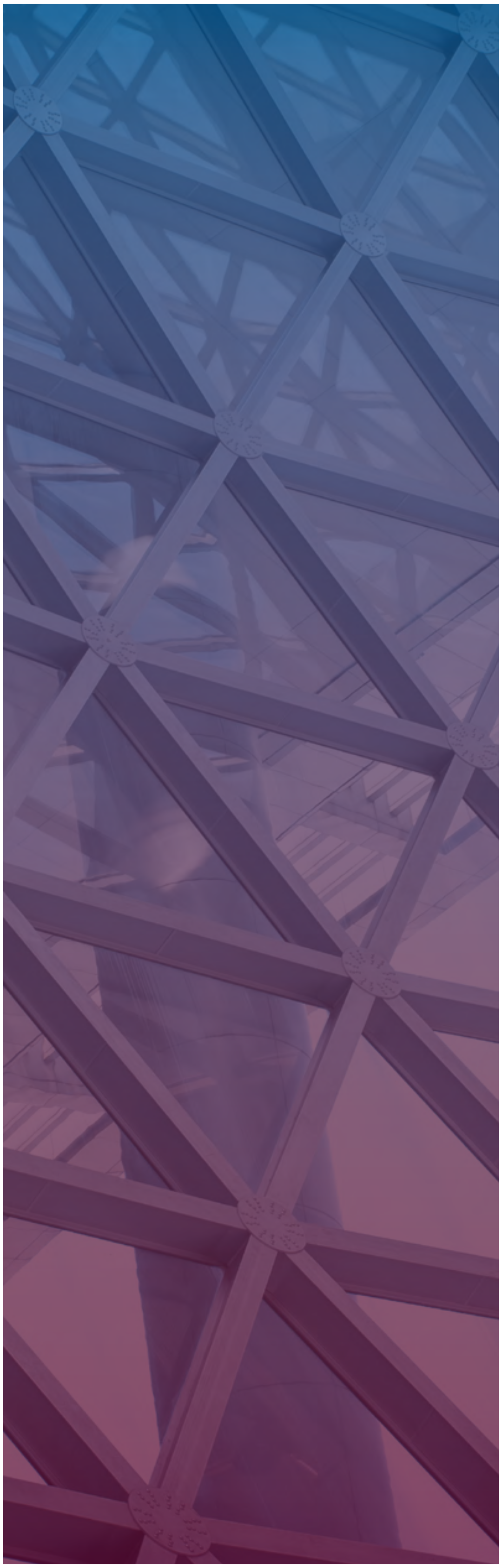
In September 2025, a judge in the US District Court for the Southern District of New York rendered a decision concerning parallel actions of investors in *Augenbaum v. Anson Investments Master Fund LP*[2] which has caused concern among certain public company investors. The case concerns a series of investments made by multiple investment funds in Genius Brands International, Inc., a Delaware company. Genius Brands was in financial distress and had engaged an investment bank—Special Equities Group (SEG)—to help it restructure and raise cash. In August 2019, Genius Brands and SEG started planning to raise funds for a private investment in public equity transaction (PIPE). At some point, Anson Investments Master Fund LP signed on as lead investor and Anson retained counsel.

There were a number of contacts between Anson (or its counsel) and other investors as well as parallel actions including: (1) shortly after Anson signed a term sheet as lead investor, it directed its counsel to send the deal documents to another investment fund's general counsel; (2) Anson asked Genius' investment banker to discuss a particular issue around redemption with two other investment funds; (3) sometime later, Anson inquired into whether the funding requirements had been met and, if they had not, recommended that SEG contact yet another fund; (4) the PIPE deal finally closed on March 11, 2020, which included fourteen separate funds (comprising eight distinct investment firms); and (5) after the March 11 PIPE, Genius Brands completed six more stock offerings involving a number of different subsets of the original 14 investors. On July 8, 2020, Genius Brands filed a prospectus with the SEC to register the resale of the shares from the March 11 PIPE (the later transactions all were registered upon issuance). The selling shareholders included all but one of the original purchasers in the March transaction. Promptly following the registration statement being declared effective by the SEC, many of the defendants proceeded to dispose of the newly registered shares.

At issue in *Augenbaum* is whether the various defendants, each of which participated in at least one of the transactions described above, plausibly constituted a Section 16(b) "group." If there was no group among any of the defendants, then no defendant would have had Section 16(a) reporting obligations or Section 16(b) disgorgement obligations because none of the defendants was known to have beneficially owned more than 10 percent of the relevant class. If, however, two or more of the otherwise unaffiliated defendants constituted a group and that group collectively owned more than 10 percent of the relevant class of shares, then each member of that group would be subject to reporting and disgorgement obligations.

On dueling cross-motions for summary judgment, the district court concluded that there were disputes as to material facts and that, therefore, the question of the existence of a group was not capable of summary disposition (in either party's favor). This issue would need a jury to determine whether (and when) such a group existed.

2 *Augenbaum v. Anson Investments Master Fund LP*, 22-cv-249 (AS), slip op. (SDNY Sept. 30, 2025) (*Augenbaum*).



*Augenbaum* thus highlights the "group" risks that can arise when overlapping sets of investors invest in multiple transactions over a period of months. When there are multiple transactions over a several month period, it increases the likelihood of finding that benign, ordinary course communications and instances of parallel actions are sufficient evidence of a potential group that resolution on a motion for summary judgment becomes very difficult.

## Section 16 Blocker Receives Strong Endorsement

In September 2025, a second case regarding Section 16 was handed down by a different judge in the US District Court for the Southern District of New York. The case—*20230930-DK-Butterfly-1, Inc. (f/k/a Bed Bath & Beyond Inc.) v. HBC Investments LLC*[3]—addresses the effectiveness and application of beneficial ownership blockers in a complicated set of transactions.

In *Butterfly*, the issue was a complex set of transactions between Bed, Bath & Beyond, Inc. (BBBY) and a defendant investment fund C (Fund) over a period of a few months in an effort by BBBY to raise cash and stave off bankruptcy. On February 7, 2023, BBBY and the defendants entered into a financing arrangement that provided BBBY with around $225 million at the close of the deal; BBBY could raise up to $800 million more over the following months. The financing consisted of the defendants acquiring three related securities: (1) Series A Convertible Preferred Stock (BBBY Convertible Preferred), (2) Warrants exercisable for BBBY common stock (BBBY Common Warrants) and (c) Warrants exercisable for Series A Convertible Preferred Stock (BBBY Preferred Warrants and, together with BBBY Convertible Preferred and the BBBY Common Warrants, the Derivative Securities).

According to the court: "The Derivative Securities issued to Defendants gave them the right to buy heavily discounted, tradable BBBY common stock that they could sell to public investors at market price for a profit. In the first two weeks after the Financing Arrangement was executed, Defendants sold… shares into the public market, nearly doubling the number of publicly traded BBBY shares. Within several months, the number of outstanding shares had expanded from 45 million prior to the transactions] to 782 million. In the same time period, the value of BBBY common stock plummeted. By March 20, 2023, less than two months after the Financing Agreement was reached, BBBY and the Defendants agreed to terminate the financing. A month later, BBBY filed a Chapter 11 bankruptcy petition, and the business was liquidated."

Exercise and conversion limits—commonly referred to as "blockers"—were included in the BBBY Common Warrants and the BBBY Convertible Preferred Stock, respectively. The blockers barred the holders of the Derivative Securities from exercising the BBBY Common Warrants for, or converting the BBBY Convertible Preferred Stock into, BBBY common stock to the extent that such exercise and/or conversion would result in the Fund "beneficially owning" more than 9.99 percent of the BBBY common stock outstanding.

3 *20230930-DK-Butterfly-1, Inc. (f/k/a Bed Bath & Beyond Inc.) v. HBC Investments LLC*, 24-cv-03370 (MKV), slip op. (SDNY Sept. 30, 20205) (*Butterfly*).

The plaintiff did not contest the general validity of blocker provisions. Indeed, it cited positively to *Levy v. Southbrook Int'l Invs., Ltd.*, 263 F.3d 10 (2d Cir. 2001), the seminal blocker case, in support of the proposition that a "binding" blocker can be respected as a "means of avoiding Section 13 and Section 16 obligations. Plaintiff asserted that, under the court's decision in *Levy*, the blockers in the Fund's agreements were defective—a "sham" or "illusory"—in at least two different ways: first, that there were serious drafting flaws; second, that the defendants did not adhere to the terms of those agreements.

Insofar as the alleged drafting flaws were concerned, the judge noted approvingly that the terms of the blockers in the Fund's instruments included blockers specifying (among other things) that, in the event shares were issued to an investor which made the investor an owner of more than 9.99 percent outstanding common stock, those shares issued in excess would be deemed "null and void and treated "as if never made." The judge also found that the fact that the BBBY Common Warrant was in a contract (the warrant) rather than the corporate charter did not make the blocker easily waivable or illusory; to the contrary, the blocker at issue in the *Levy* case was likewise entirely contractual. And the court found that the blocker was not illusory merely because BBBY had no independent ability to assess the Fund's compliance with the blocker terms.

Next came the question of whether the blockers were adhered to by the Fund. It appears that Plaintiff was claiming that shares that were sold by the defendants to third parties remained beneficially owned for a period due to the time it took for the sale transactions to settle. In 2023, when the transactions at issue occurred, share settlement was on a "T+2" basis – meaning that if the trade occurred on a Monday, plaintiff argued that the title to the shares did not actually transfer until Wednesday. The judge disagreed: "[O]nce Defendants sold BBBY common stock to a third-party buyer, that buyer became the owner of the shares, and Defendants were restrained in their actions regardless of the physical location of the shares and Defendants were required to deliver the shares to the buyer… Accordingly, Defendants could not instead decide to vote the shares already sold or dispose of them differently by selling them for a second time to another buyer. In sum, those shares already sold should not be counted toward Defendants' beneficial ownership."

# The Evolving Landscape of Sustainability Disclosure

*By Hannah Flint, Rachel Saltzman, and Chloe Dupre*

The sustainability reporting landscape in 2025 continued to evolve, with companies navigating several new standards and regulatory requirements. While the current administration has reversed much of the federal focus on environmental, social, and governance (ESG) disclosures, state and international developments continue to drive significant changes. This article recaps this year's major ESG disclosure developments and highlights emerging trends to watch in the year ahead.

## SEC's Pullback on Climate Disclosure Rules

Federal ESG reporting in the US is indefinitely on hold. The US Securities and Exchange Commission's (SEC) 2024 climate disclosure rules, which would have required most public companies to report climate-related risks and greenhouse gas (GHG) emissions in registration statements and annual reports, immediately faced litigation in the United States Court of Appeals for the Eighth Circuit and have been under a voluntary stay since April 2024. In February 2025, Acting Chair Mark Uyeda questioned the Commission's authority and the necessity of the rules, and on March 27, 2025, the SEC voted to withdraw its defense. After intervention by 18 states and Washington, DC, the Eighth Circuit held the case in abeyance in April 2025 and requested a status report; in July, the SEC stated it did not intend to review or defend the rules. As of September 2025, the Eighth Circuit ordered the litigation again held in abeyance until such time as the SEC reconsiders or renews its defense of the Rules. In its order, the Eighth Circuit emphasized that the SEC has the "responsibility to determine whether its Final Rules will be rescinded, repealed, modified, or defended in litigation." Therefore, unless or until the SEC reconsiders or resumes defending the Rules, which seems unlikely at this time, the litigation will remain paused. Now, with no federal mandates taking effect in the near future, state-level regulations are now poised to shape the future of corporate sustainability disclosures in the US.

## Stop-and-Go Progress at the State Level

Meanwhile, California has moved forward with implementation of its two landmark climate disclosure laws, Senate Bill 253 (SB 253), requiring disclosure of greenhouse gas emission data, and Senate Bill 261 (SB 261), requiring disclosure of climate-related financial risks. Both SB 253 and SB 261 apply to entities "doing business in California" with revenue exceeding specified thresholds ($1 billion for SB 253 and $500 million for SB 261).

Although the California Air Resources Board (CARB), which is the state agency responsible for administering these laws, has issued several rounds of guidance over the course of 2025, the implementation timeline is still uncertain.

On November 18, the United States Court of Appeals for the Ninth Circuit enjoined implementation of SB 261 pending appellate review of the district court's denial of a preliminary injunction in pending litigation challenging the constitutionality of both SB 261 and SB 253. CARB accordingly issued an enforcement advisory on December 1 confirming that it will not enforce SB 261's January 1, 2026 reporting deadline while the injunction is in place. Also on November 18, CARB announced in a public workshop that SB 253 reporting on Scope 1 and 2 emissions will be due on August 10, 2026. The Ninth Circuit will hear oral arguments on January 9 and will be considering whether implementation of both SB 261 and SB 253 should be delayed while the district court litigation proceeds.

Several other states, including Colorado, Illinois, New York, and New Jersey, have introduced similar legislation. The future of climate reporting in these states may depend in part on how California's laws fare in the ongoing litigation.

In addition, state attorneys general are increasingly scrutinizing the credibility of corporate sustainability claims. By invoking consumer protection and unfair practices laws, they are challenging companies that set and publicize ambitious environmental goals but lack clear plans or progress toward achieving them. This trend reflects a broader move by regulators to hold companies accountable for the accuracy and transparency of their ESG disclosures.

## Updates on ESG Regulations in the EU

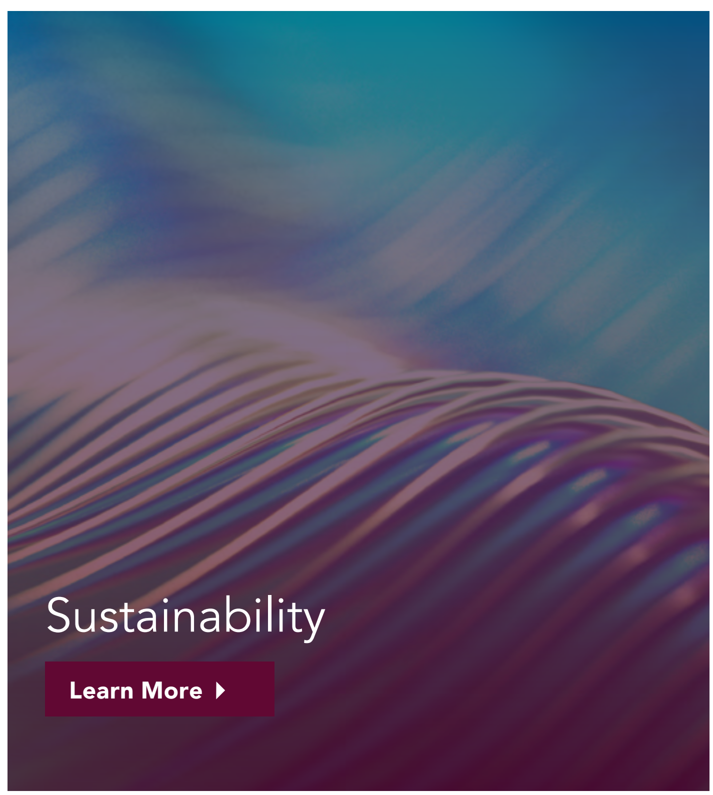
The Corporate Sustainability Reporting Directive (CSRD) and the Corporate Sustainability Due Diligence Directive (CSDDD) are two cornerstone EU initiatives that significantly expand companies' obligations to measure, report, and manage sustainability-related risks. The CSRD requires in-scope companies to produce certain sustainability disclosures, while the CSDDD obligates certain large companies to identify and address human-rights and environmental impacts throughout their operations and value chains.

In February 2025, the European Commission published an "Omnibus" simplification package proposing substantive changes to the CSRD and the CSDDD, including measures to ease reporting burdens, postpone application timelines for many companies, and reduce the extraterritorial impact of the regulations by increasing the threshold for non-EU companies to be subject to reporting requirements. By April, co-legislators had adopted a "Stop-the-Clock" Directive, delaying CSRD reporting deadlines for second- and third-wave companies by two years and postponing the first phase of the CSDDD by one year.

After months of uncertainty, on November 13, 2025, the European Parliament adopted its negotiating position on the CSRD and CSDDD Omnibus simplification. Formal "Trilogue" negotiations between Parliament, Council, and the Commission began on November 18, 2025. According to official releases from the European Parliament and the Council of the European Union published on December 9, Parliament, Council, and the Commission have reached a "provisional" political agreement on the Omnibus simplification package, though at the time this article went to press the final text has not yet been published. This agreement appears to expand certain exemptions to the rules for both EU and non-EU companies.

## What to Expect Moving Forward

We expect regulatory uncertainty to continue for the foreseeable future: federal rules remain stalled, state requirements continue to evolve, and international timelines are shifting. Disclosure of sustainability data continues to remain relevant for many companies regardless of regulatory timing, driven by investor expectations, customer demands, and operational considerations, among other things. Companies should continue to monitor reporting requirements closely and develop a disclosure strategy in light of both regulatory requirements and broader litigation risk management needs. ■



# Euro Bond Market: 2025 in Review and 2026 Outlook

*By Jane Hopwood and Alex Abramenko*

In a relative down year for the US dollar, the headline story in the international bond market is US companies crossing the Atlantic for euro bond issuances at a historic volume. These euro offerings by US companies come with significant logistical and regulatory considerations for issuers compared to US dollar offerings. Over the past year, the European market has also widened its lead in the international green and sustainability bonds market. This article reviews the key developments of 2025, examines operational differences between US dollar and euro offerings, surveys sustainability trends, and provides practical guidance for US companies considering euro bond issuances in 2026.

## Historic Volume in the Euro Bond Market

2025 marked a record-setting year for the euro bond market, driven in large part by US companies. US non-financial firms have already sold over €50 billion in euro bonds—commonly known as "reverse Yankees"—in roughly the first three quarters of 2025, setting a pace that would challenge the previous calendar year record of just shy of €60 billion in 2017. If US financial firms are included, the 2025 figure rises to over €80 billion.

What is driving this surge? The primary factor seems to be the relative weakness of the US dollar in 2025 as compared to the euro. When the euro grows strong against the US dollar, US issuers are able to take advantage of desirable currency swap rates, effectively reducing borrowing costs in Europe.

On the flip side, European investors appear to remain confident in the long-term strength of the US market. Of course, US companies being incentivized to go to market in Europe is only half of the equation—this year's historic volume is also a product of a desire by European investors to invest in US companies. The strong demand for US corporate issuances in Europe suggests European investors are keen to diversify their investment portfolios with increased US exposure. The long-term confidence in the US market is also reflected by increasingly long debt maturities in reverse Yankees, up to 20 years in some cases, whereas such issuances previously topped out at 5- to 12-year maturities.

In addition to this year's particular circumstances, there are pervasive benefits for US companies conducting occasional euro offerings. For one thing, coupon rates in Europe do not track the US rates exactly, so US issuers are able to sell debt at lower rates in Europe at certain times. Additionally, it is generally seen as beneficial to diversify a company's investor base and to increase its flexibility to smooth out its redemption portfolio by accessing the euro market. Irrespective of fluctuations in currency rates, the last decade has seen a consistent US company presence in the euro bond market.

Most financial analysts expect the US Dollar's relative weakness to persist into 2026, likely supporting continued high euro bond issuance. However, there is broad market consensus that the US dollar will rebound eventually, which could shift volume later in the year.

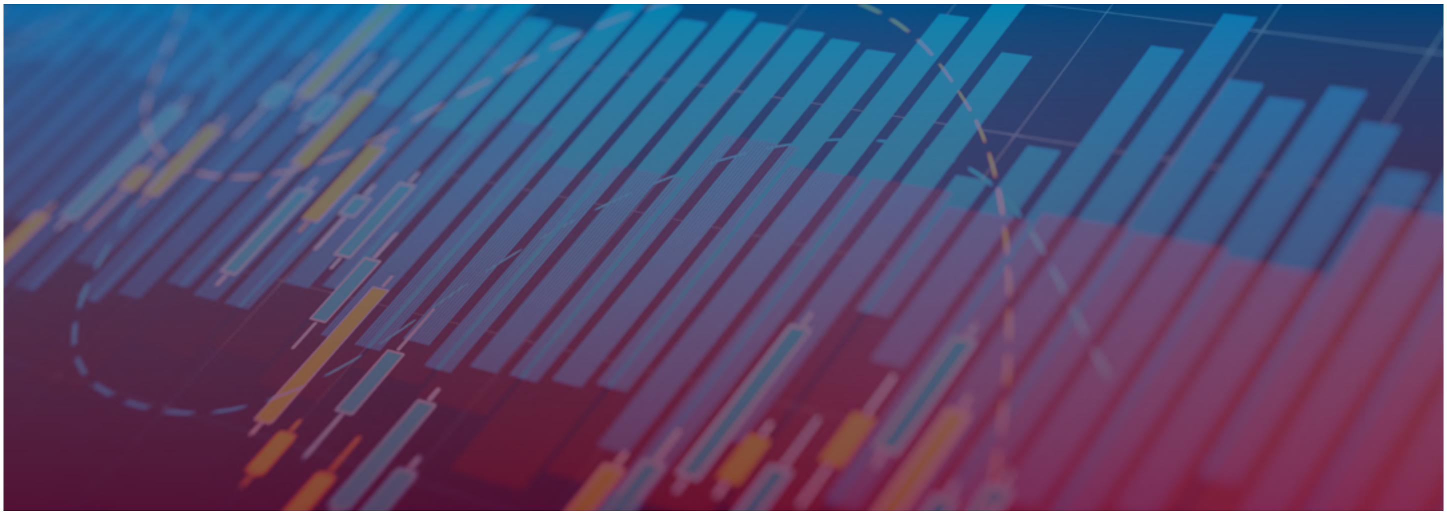
## Mechanical and Regulatory Differences Between US Dollar and Euro Bond Offerings

Key operational and regulatory differences exist between US dollar and euro debt issuances. US companies that go to market in Europe, particularly if they do not do so regularly, should carefully evaluate and tailor their offerings to the idiosyncrasies of the euro landscape.

Perhaps the biggest logistical difference in a euro offering is that Europe uses a common depositary system. In a euro deal, the notes and the funds are initially deposited with a bank serving as the common depositary and the common depositary distributes the notes to the underwriters and the funds to the issuer once it receives the green light from the underwriters. The notes are then registered in the name of the nominee of the common depositary, such as Clearstream or Euroclear. The noteholders ultimately hold their interests in the notes through the nominee, through which the distribution of the notes is cleared. This system significantly impacts the legal documentation required between the issuer, banks, trustee and common depositary as compared to the documentation for a US deal.

Other mechanical differences include:

- **Closing timelines:** US bond offerings typically settle on a T+2 or more basis, whereas euro offerings generally operate on T+3 or more.
- **Interest payment frequency:** Typically semiannually in the US and annually in Europe.
- **Denominations:** Notes are typically sold in minimum denominations of $2,000 and in integral multiples of $1,000 in excess thereof in the US and in minimum denominations of €100,000 and integral multiples of €1,000 in excess thereof in Europe.
- **Stock exchange listing:** Euro bonds are always listed on a stock exchange such as the NYSE, while US dollar bonds are mostly unlisted.
- **Maximum amount of note:** A single US dollar note cannot exceed $500 million, whereas there is no such limit in Europe.
- **Currency determination agent:** If there is any currency conversion contemplated, a currency determination agent is typically required in a euro offering.



## Sustainability and ESG Market Trends

Europe continues to lead the market in green, social, sustainability, and sustainability-linked bonds (GSSS bonds). The first three buckets—green, social and sustainability bonds—are those in which the debt offering raises funds that are used for projects with a positive environmental, social, and governance (ESG) impact. The last bucket—sustainability-linked bonds—are those in which the financial terms of the bonds are linked to some sort of measurable ESG targets. Green, social, and sustainability bonds are far more popular than sustainability-linked bonds, as directly tying the borrowing rate to an ESG goal has become quite rare.

Euro GSSS bond issuances already far outpaced US dollar issuances over the past five years and in 2025 the trend became even stronger as US dollar GSSS bond issuances declined sharply. The euro GSSS bond market was fairly similar in 2025 as compared to 2024, although a decline in corporate issuances was balanced out by an increase in supranational and sovereign issuances.

Perhaps the biggest development in the euro GSSS bond market in 2025 was the implementation of the EU Green Bond Standard. Going into effect in December 2024, the EU Green Bond Standard is a voluntary legislative standard that aims to set the "gold standard" for green, social, and sustainability bonds. It sets stringent requirements for what constitutes a "green" project and how proceeds of a bond offering are to be allocated to the related project. Issuers do not have to comply with the EU Green Bond Standard, but if they do, the bonds receive the "EuGB" label, which builds investor confidence.

## Key Considerations for Issuers Intending to Access the Euro Market in 2026

US companies evaluating euro bond issuances in 2026 should assess their preparedness to access the euro markets, including:

- Engaging a currency determination agent and negotiating relevant agreements.
- Identifying the entity that will act as common depositary.
- Plan for differences in settlement timelines, documentation and time differences.
- Analyzing exchange listing requirements.
- Coordinating with legal, treasury, and other advisors to tailor structures and documentation for the Euro market, and prepare for differences in closing logistics.

## Conclusion

As 2026 advances, US companies should remain attentive to market conditions, regulatory changes, and investor expectations. With strategic preparation, issuers can leverage the Euro bond market's opportunities to diversify funding, access new investors, and align with sustainability trends. ■

# Executive Compensation Disclosure: 2026 Hot Topics and Looking Forward to 2027

*By Scott McKinney*

Executive compensation is one of the most scrutinized aspects of public company disclosure. The US Securities and Exchange Commission (SEC) compensation disclosure requirements are complex, proxy advisors continue to adjust policies, stakeholders are not always on the same page on best practices, and criticism of executive compensation is a perennial hot topic in the press. Companies can best navigate this maze by not only complying with disclosure requirements but by effectively communicating a company's compensation approach that aligns with a company's long-term success. This article discusses compensation disclosure hot topics for the 2026 proxy season and potential disclosure reforms, possibly for the 2027 proxy season.

## 2026 Proxy Season Hot Topics

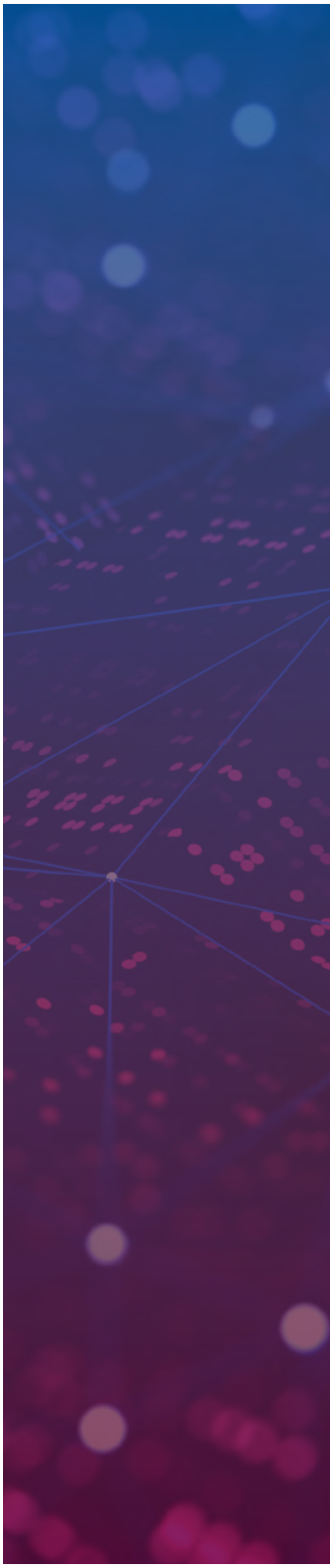
There are no new compensation disclosure requirements for the 2026 proxy season. However, there are updates to proxy advisor policies to consider. There are also certain compensation disclosure topics that could use extra attention for the 2026 proxy season.

### ISS Policy Updates on Executive Compensation

In November 2025, Institutional Shareholder Services Inc. (ISS) announced final updates to its 2026 benchmark proxy voting policies (2026 ISS Policies), which apply to shareholder meetings held on or after February 1, 2026, and impact certain compensation matters. The pay and performance alignment will now be measured over a five-year period (rather than a three-year period). Also, ISS will analyze the multiple of a CEO's pay relative to a peer group median over both one and three years (rather than just the most recent fiscal year). In addition, the 2026 ISS Policies allow for greater flexibility in assessing the proportion of time-based to performance-based equity compensation when time-based awards include extended vesting and/or retention requirements. The 2026 ISS Policies also expand the existing policy that addresses high, or problematic non-employee director pay practices, allowing for adverse recommendations in the first year of occurrence if considered highly problematic, or when a pattern emerges across non-consecutive years.

### Option Grant Practices Disclosure

Item 402(x), first effective for the 2025 proxy year for calendar year companies, requires narrative disclosure of a company's policies and practices on the timing of awards of options, stock appreciation



rights, and/or similar option-like instruments in relation to the disclosure of material nonpublic information (MNPI) by the company. Companies must discuss: (i) how the company decides when to grant awards; (ii) whether and how MNPI is considered in granting awards; (iii) whether the company has timed the release of MNPI for the purpose off effecting the value of awards.

Companies must also disclose in a table any such awards granted during the last completed fiscal year to a named executive officer in the period beginning four business days before and ending one business day after the (i) filing of a periodic report on Form 10-Q or 10-K or (ii) filing or furnishing of a current report on Form 8-K that discloses MNPI.

If a company hasn't done so yet, it should consider whether to adopt or revise a written equity grant policy on the timing of awards in relation to the disclosure of MNPI by the company. While companies are unlikely to find the narrative disclosure problematic, they may want to avoid being in the position of needing to make the tabular disclosure.

## Insider Trading Policy Disclosure

Under Item 408(b), first effective for the 2025 proxy year for calendar year companies, a company must disclose whether it has adopted insider trading policies governing transactions in the company's securities by directors, officers, and employees, or the company itself, that are reasonably designed to promote compliance with insider trading laws, and any listing standards applicable to the company. If the company has adopted insider trading policies, the company must file such policies as an exhibit.

Consider whether any updates are needed to a company's insider trading policy, such as to address a prohibition on shadow trading. Shadow trading is a novel theory of insider trading where an individual uses MNPI about one company to trade in the securities of a different, economically linked company, such as a competitor or business partner. The US government successfully argued that shadow trading is insider trading in *SEC v. Panuwat*, which is currently on appeal before the Ninth Circuit. It is uncertain whether the current SEC will pursue shadow trading claims, although it seems unlikely.

## Clawback Policies

In October 2024, ISS updated their equity compensation policy FAQs to define what it means for a clawback policy to be "robust." ISS now defines a "robust" clawback policy as one that goes beyond the minimum Dodd-Frank requirements and explicitly covers all time-vesting equity awards, not just performance-based awards. The implication is that companies with only a mandatory Dodd-Frank-compliant policy may face negative ISS recommendations on say-on-pay votes, potentially impacting shareholder support and proxy advisor voting outcomes. Companies may consider revising their policies to include discretionary clawbacks for time-based awards to avoid this negative assessment, if consistent with a company's compensation philosophy.

## Executive Perquisites

FW Cook's 2025 executive perquisites report reveals a rise in the prevalence and value of security services and personal use of corporate aircraft for CEOs at S&P 100 companies between 2021 and 2024 amid an era of heightened security concerns. The SEC considers personal security services and personal use of corporate aircraft to be perquisites. Undisclosed perquisites are historically an SEC enforcement priority. Consider whether additional controls and procedures are needed regarding, for example, personal use of corporate aircraft. Consider whether any updates are needed to the company's use of corporate aircraft policy and adopt such a policy if the company has not yet done so.

## Non-GAAP Financial Measures Used in Executive Compensation

One of the Council of Institutional Investors' three advocacy priorities for 2025 is to recommend that the SEC require that the CD&A include an explanation of why non-GAAP measures are better for determining executive pay than GAAP and provide a quantitative reconciliation of these two sets of numbers. ISS also seeks transparency in the use of non-GAAP financial measures in compensation.

## Executive Compensation Disclosure Reform: Looking Forward to the 2027 Proxy Season

On September 4, 2025, the SEC released its latest Reg Flex agenda, which sets forth the short- and long-term regulatory actions that the SEC plans to take. One of the agenda items listed is "Rationalization of Disclosure Practices." We believe this effort will include, among other things, changes to executive compensation disclosure requirements. However, SEC Commissioner Hester Peirce recently indicated that revised executive compensation disclosure rules are unlikely for the 2026 proxy season, suggesting companies should stick to current requirements for now.

In June 2025, the SEC hosted a roundtable to discuss whether executive compensation disclosure rules produce information material to investors and, if not, how they should be amended. Chairman Atkins noted in his remarks that one might describe the SEC's current compensation disclosure requirements as a "Frankenstein patchwork of rules." He suggested that the compensation disclosure rules have become unwieldy, are not cost-effective and result in disclosure that a reasonable investor struggles to understand.

Chairman Atkins and certain roundtable panelists wondered if there was a way to better align compensation disclosure with how compensation decisions are actually made by a company. Panelists inquired whether compensation disclosure should reflect information reviewed by boards and committees in making compensation decisions. Regarding perquisites, there was support among panelists for a more facts and circumstances determination regarding whether an item provided by the company to an executive is a perquisite, and modification or elimination of the SEC guidance on items that are presumptively perquisites. Other compensation areas panelists were interested in reforming include pay-for-performance, CEO pay ratio, and the Dodd-Frank clawback rules.

Chairman Atkins has indicated in recent speeches that in addition to refocusing disclosure on materiality, he is interested in better scaling disclosure with a company's size and maturity.

Although timing of executive compensation disclosure reform remains uncertain, momentum suggests disclosure reforms will emerge in 2026, possibly for the 2027 proxy season. ■

# Collared Forwards: The New Shiny Thing for ATMs?

*By Joseph Buonanno, Steven Friend, and Brendan Harney*

In 2024, a movie theater company added a novel structure to its at-the-market (ATM) stock sales program, a "collared forward". A collared forward is an additional option for forward sales under an ATM and allows the issuer to include a "cap price" and "floor price" based on the prices at which the forward purchaser establishes its initial hedge position with respect to the collared forward transaction following the initial trade date.

In August 2025, another issuer, this time a large domestic power utility, also included flexibility in its new ATM program for sales pursuant to a collared forward. Now becoming a trend, two additional domestic utility issuers added the collared forward option to their new ATM programs, each in October 2025.

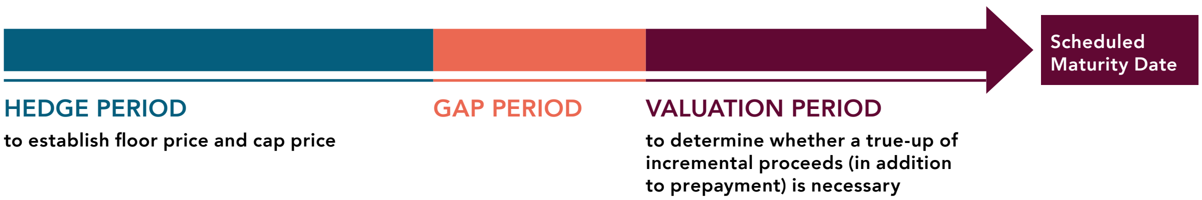
Traditionally, the forward sales of stock under a utility ATM have been made pursuant to an initially priced forward transaction. The price per share under an initially priced forward is initially based upon either a fixed price or the volume weighted average price (VWAP) per share at which (borrowed) shares are sold by the relevant forward seller.

Under a collared forward, the collared forward purchaser will similarly borrow and sell shares into the market. But such sales during the initial hedging period will be used instead to set a floor price and a cap price of the collared forward transaction. This floor price and cap price are determined upon completion of the initial hedging period for the collared forward by using the weighted average prices at which the collared forward seller has sold the hedging shares during the initial hedging period.

On a minimum maturity date for the collared forward, the issuer delivers the shares to the forward purchaser in exchange for a floor price per share or some percentage of that floor price. This is known as the prepayment (a feature not part of an initially priced forward), which feature was included in the first two collared forward transactions but not in the two most recent transactions.

Unlike for an initially priced forward, the share sale price under the collared forward is based on the VWAPs of the issuer's common stock during a subsequent valuation period that runs from the end of a gap period following the initial hedging period to the maturity date of the collared forward (subject to certain anti-dilution and other adjustments similar to those under an initially priced forward, including adjustments related to certain dividends on common stock and in the case of certain customary disruption and extraordinary events). At the termination date of the collared forward, the forward purchaser, depending on any applicable prepayment percentage and the stock performance during the valuation period, may be required to pay a true up amount of incremental proceeds to the issuer (which true up amount is subject to the cap previously established).

In an initially priced forward, the company may elect physical or (subject to unwind) cash or net share settlement. For the collared forward, the issuer will issue or pledge to the collared forward purchaser, on the prepayment date, a number of shares equal to the aggregate number of shares underlying any applicable collared forward transaction, or if that number of shares is not available to be borrowed from stock lenders at the beginning of the initial hedge period, the issuer will lend those shares to the collared forward purchaser at such time, if applicable. At maturity of the collared forward transaction (assuming that shares previously were pledged or loaned and were not issued outright on any applicable prepayment date), the issuer's obligation (if any) to deliver shares of common stock to the collared forward purchaser will typically be set off against the collared forward purchaser's obligation to return pledged or loaned shares to the issuer. However, subject to certain conditions, the issuer has the right at maturity to elect to receive the true up of incremental proceeds in the form of common stock instead of cash.




One benefit of the collared forward is the ability of the issuer to sell a fixed number of shares at a specified floor price. We understand that another advantage of the collared forward may be that downward pressure on the issuer's share price is more limited *vis-à-vis* a traditional forward sale, given that only a portion of the number of shares underlying the collared forward may need to be placed in the market at the outset (on a net basis) by the agent in order to establish the agent's initial hedge position.[4]

The below chart describes certain high-level differences between regular and collared forwards:

| | Regular | Collared |
|---|---|---|
| **Settlement Date** | Company may elect multiple dates (in part or whole) up to maturity | Dealer elects in whole on or after specified date up to maturity |
| **Settlement Method** | Company may elect physical or (subject to unwind) cash or net share | Physical, but company may elect (subject to unwind) final true-up in shares after prepayment |
| **Prepayment (if applicable)** | None | Percentage of the floor price vs. pledge or delivery of all shares |
| **Settlement Price** | Function of initial forward price adjusted daily by Overnight Bank Funding Rate minus spread | VWAP during a "Settlement Averaging Period" (subject to cap and floor) minus any applicable prepayment amount |
| **Adjustment Events** | Increased cost of stock borrow and certain extraordinary dividends | Tender offers and certain mergers and disruption events |
| **Termination Events** | Physical settlement upon acceleration events | Cash settlement upon dividends differing from expected dividends and certain regular acceleration events |

4 We understand that "net basis" is meant to take into account sales of the full number of shares underlying the forward *minus* purchases of shares effected by the agent pursuant to its dynamic hedging practices. See the October 9, 2003 no action letter to Goldman, Sachs & Co. In the corresponding October 6, 2003 letter to the Securities and Exchange Commission (SEC) staff, counsel sought interpretative advice regarding the sale of equity securities by Goldman, Sachs & Co. in connection with Goldman's entry into a derivative contract with an issuer.

One question posed to the SEC staff was if the maximum number of shares deliverable pursuant to the contract are registered under Section 5 of the Securities Act of 1933, as amended (1933 Act), and prospectuses are delivered in connection with the sale of the maximum number of shares, would (i) further sales of shares by Goldman in connection with Goldman's hedging activities that are settled with unrestricted shares acquired otherwise than from the issuer require registration of additional shares and (ii) delivery of shares (issued pursuant to the contract with the issuer or pledged or loaned by the issuer in connection with the contract) during the term of, or at the maturity of, a contract, up to the maximum number of shares, to close out open borrowings of stock created in the course of such hedging activities require registration of additional shares under the 1933 Act. In the no-action letter, the SEC staff permitted such sales to occur without further registration.

## Certain Other Considerations

In each of the new collared forward transactions to date, the transaction included a "clear market" provision whereby there were significant restrictions on the issuer's ability to sell common stock during both the initial hedging period and the valuation period (and, if applicable, certain unwind period(s)). Issuers considering the collared forward structure should review these "clear market" restrictions, which are significantly more onerous than other, more familiar, sales methods under an ATM.

Further, in the first two collared forward transactions, the master confirmation with the agent's affiliate was governed by English law. However, in more recent collared forward transactions, the master confirmation with the agent's affiliate was governed by New York law. We expect that future iterations of the product undertaken by US issuers will be governed by New York law.

Finally, while the first two collared forward transactions were limited to one specific agent and its affiliate, the two most recent collared forward transactions allowed other agents to participate in the product. This allows greater flexibility for issuers but does require enhanced negotiation of the collared forward documents with multiple agents. Issuers that desire to allow multiple agents participation in the collared forward option should allot enough time to allow for negotiations with multiple agents before finalizing the transaction documents. ■

# Real Estate Capital Markets: Year in Review and 2026 Outlook

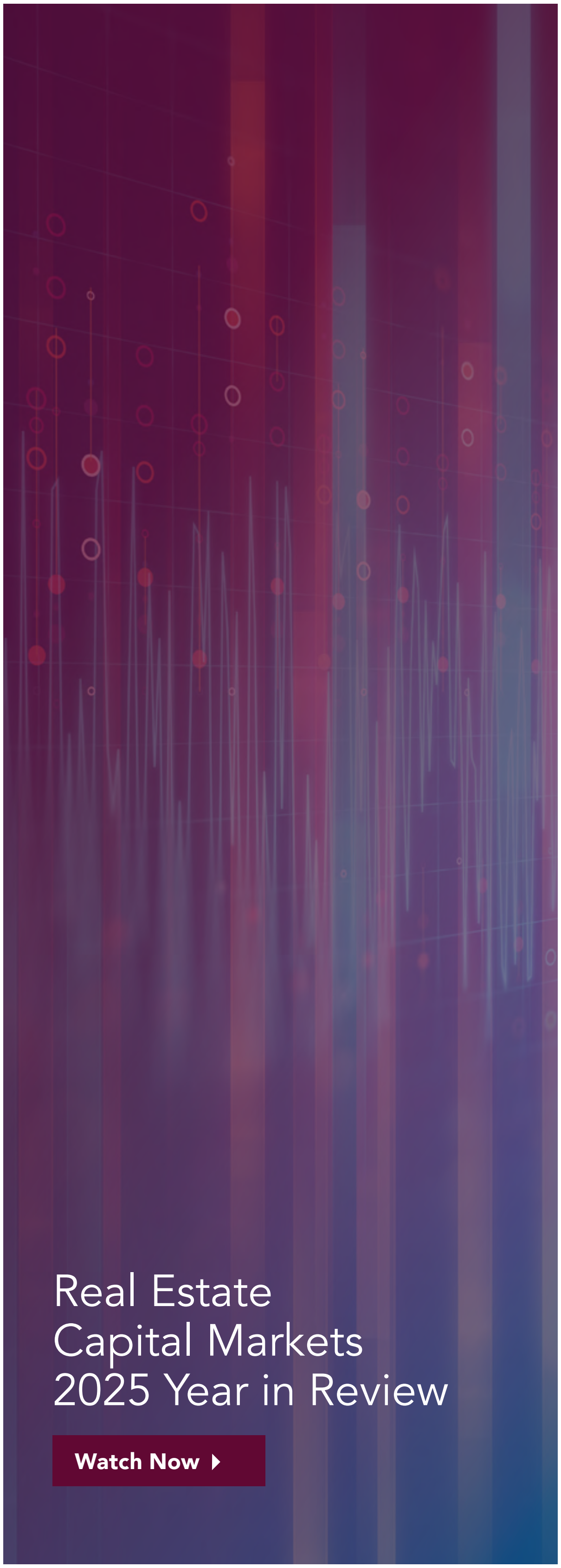
*By Kate Saltz and Tianlu Zhang*

Real estate investment trusts (REITs) continued to show signs of recovery in 2025. Investors in real estate were cautiously optimistic as interest rates declined and macroeconomic volatility slowed down, leading to a positive shift in the overall market sentiment.

The real estate sector maintained its rebound from prior interest-rate hikes, while investors began to see greater clarity in the emerging post-COVID office and retail environments. Nonetheless, interest rates remained relatively high, further complicated by uncertainties surrounding changing US trade and economic policies and their potential impact to the US economy, as well as geopolitical tensions worldwide. Commercial real estate and housing markets were lukewarm, recording below-expectation growths in most markets, primarily due to strained affordability as prices and mortgage rates remained high. The office market recorded increased leasing activities in most markets, as more people returned to working in-person, but continued to face challenges due to evolving workplace preferences, such as hybrid work. In the third quarter of 2025, office transaction volume in the debt and equity markets improved 27 percent compared to 2024. Demand for new construction remained high across sectors, as the US continued to face a significant housing shortage, which was further accentuated by increasing demand for data centers attributable to the AI boom. However, construction and delivery of new properties were hindered by factors such as rising costs of building materials, labor shortages and changing zoning regulations. While the limited supply of new construction helped preserve and support the value of existing properties, it may also impede the long-anticipated recovery of the real estate market.

Against this backdrop, REITs delivered stable overall performance in 2025. Most publicly traded REITs yielded marginally improved financial returns compared to 2024. Many REITs, especially equity REITs, announced dividend increases in 2025, reflecting a strong financial performance and positive outlook for the future. Mortgage REITs also benefitted from tightening credit spreads despite volatility earlier in the year, which boosted the value of their loan portfolios. Despite the foregoing, the REIT sector still underperformed as compared to the broader market and most REIT common stocks were trading noticeably below their book values, continuing the same trends over the past few years.

Although many were trading below book value, significant amounts of equity and debt were raised by REITs in 2025, reflecting the resilience and robustness of the real estate capital markets. Equity issuances were primarily driven by secondary common stock issuances, as REIT IPOs remained muted. Most REITs relied on "at-the-market" (ATM) offering programs to issue common equity. An ATM program is an offering method used by publicly




traded companies to sell shares into the existing market at the prevailing market price continuously over the course of several years. Despite the constant pressure on stock price, a handful of REITs (primarily larger equity REITs) also successfully completed follow-on public offerings of common stock. Nonetheless, ATM programs remained the preferred capital-raising vehicle for middle-market REITs, given their flexibility and low cost. Preferred stock offerings remained at a stable level, as they are less susceptible to market fluctuations and do not have the same dilutive effect, while providing investors with predictable dividend streams and appreciation potentials. Debt capital markets also remained active through 2025 with substantial deal volume, especially mid-term notes with five-to-ten-year tenure, both among large and middle-market REITs. Additionally, we noted several issuances of convertible or exchangeable notes, indicating a certain degree of confidence held by investors in the long-term potential of the underlying common stock. Total deal volumes were up from 2024, which was still marginally below the pre-pandemic level but significantly improved from 2022.

The market has been anticipating a full-scale REIT rebound for some time, but persisting challenges and uncertainties might complicate the prospect. Looking ahead, and taking current conditions into account, we anticipate that real estate capital markets will maintain a moderate upward trajectory in 2026. The Federal Reserve is expected to continue easing interest rates over the coming quarters, though uncertainty remains regarding the ultimate level at which those rates will settle. Overall, despite lingering questions about monetary policy, the broader indicators point toward steady, gradual improvement in the real estate capital markets in the year ahead.

We do expect that REITs will have increased need for capital overall, as we have seen more REITs pursuing strategic acquisitions or other endeavors in 2024 and 2025, reviving some projects put on hold due to the pandemic. Gradual improvement in the office sector, which has been driven by rising occupancy due to projected office job growth, stabilizing leasing activity, and renewed tenant commitments, is beginning to translate into healthier fundamentals and creating a foundation for modest but sustained office growth. Current housing economics, marked by elevated home prices, tight supply, and still-high borrowing costs, continue to favor renting, which we believe will continue to support strong demand and stable performance in the multifamily sector. As a result, we expect to see stronger transaction volumes, improved liquidity, and more investor activity, especially in certain sectors such as residential and data centers.

# 2025 Texas Legislature Passes Corporate Governance Legislation

*By Daryl Robertson*

The Texas Legislature passed a number of bills in 2025 that relate to the governance of Texas public companies and amend the Texas Business Organizations Code (TBOC). Most of these new laws are intended to attract more companies to move to and be formed in Texas, thereby enhancing the growth of business in Texas. The overall theme of the new laws is to impose new limitations on the rights of shareholders in favor of Texas corporations and their management or control parties.

## Restricting Shareholder Proposals (SB 1057)

Senate Bill 1057 only applies to a publicly traded Texas corporation that (1) opts into the provision by amending its governing documents and (2) either has its principal office in Texas or is listed for trading on a stock exchange that has its principal office in Texas and approved by the Texas Securities Commissioner. The new provisions prohibit any shareholder from submitting a proposal for consideration at a meeting of shareholders unless the shareholder (or group of shareholders) (1) owns at least the lesser of 3 percent or $1 million of market value of the corporation's voting shares, (2) has owned those shares for at least six months prior to and through the shareholders meeting, and (3) solicits holders of at least 67 percent of the voting shares to vote on the proposal. Director nominations and ancillary procedural resolutions are not covered by this restriction.

## Corporate Governance (SB 29)

Perhaps the most aggressive and controversial bill that related to corporate governance was Senate Bill 29, which has garnered some nationwide publicity and notoriety. The more substantive provisions in this bill relating to corporations are summarized below:

- Authorizes Texas entity governing documents to contain provisions that waive rights to a jury trial or that choose an exclusive court forum and venue, in either case for internal entity claims.
- Codifies the corporate business judgment rule as follows: (1) in taking or declining to take any action on any matters of the corporation's business, a director or officer is presumed to act in good faith, on an informed basis, in furtherance of the interest of the corporation, and in obedience to the law and its governing documents; (2) this new provision only applies to a publicly traded Texas corporation or one

that affirmatively elects to be governed by these provisions in its governing documents; (3) neither such corporation nor any shareholder has a cause of action against a director or officer unless the claimant rebuts one of the presumptions and proves a breach of duty that involved fraud, intentional misconduct, an *ultra vires* act, or knowing violation of law; and (4) a claimant must plead with particularity the fraud, intentional misconduct, *ultra vires* act, or knowing violation of law.

- No cause of action against any officer or director is permitted for authorizing or performing a related party contract or transaction unless the cause of action is permitted by the foregoing business judgment rule provisions.
- Authorizes the governing documents of a publicly traded Texas corporation to establish an ownership threshold for shareholder derivative actions, with the threshold not to exceed 3 percent of the outstanding shares of the company.
- Shareholder records inspection rights no longer apply to emails, text messages and social media accounts and are severely limited for a publicly traded company if the requesting shareholder has any pending litigation or derivative proceeding with the company.
- Authorizes a novel procedure for advance court determination of independent and disinterested status of directors in the context of shareholder derivative actions or conflict of interest transactions.
- Eliminates awards of attorney fees to a plaintiff for a settlement in a derivative proceeding based only on amending disclosures to shareholders.

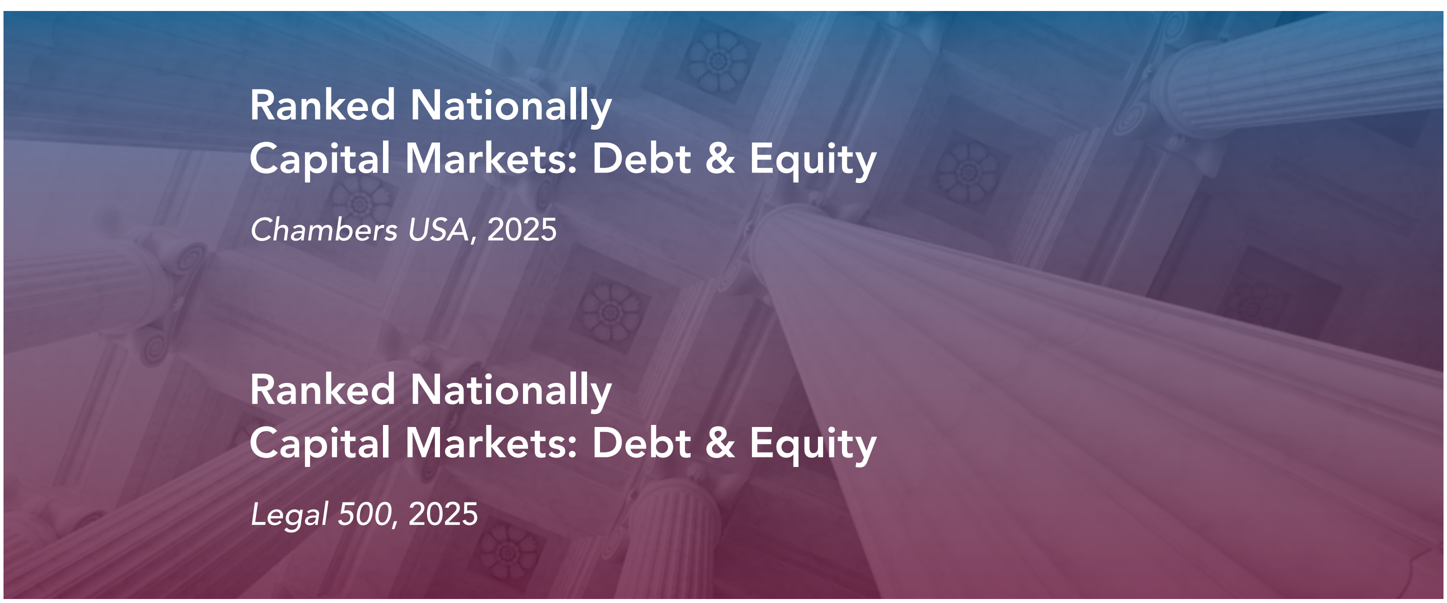
## Regulation of Proxy Advisors (SB 2337)

Senate Bill 2337 purports to regulate professional proxy advisors to public company shareholders. The new provisions assert that proxy advisory services should be provided in the best financial interest of shareholders. A proxy advisor must make specific disclosures to the recipient of its services and the affected publicly traded company and on the advisor's website if its proxy advisory service is not made solely in the financial interest of shareholders. Diversity, equity, and inclusion (DEI); environmental, social, and governance (ESG); and similar non-financial considerations are deemed not to be solely in the financial interest of shareholders. Disclosures are also required if the advisor makes differing recommendations to different clients on the same shareholder proposal. A violation is deemed a deceptive trade practice and can subject the advisor to a declaratory judgment or injunctive relief in an action brought by any affected party (including a publicly traded company that is the subject of a proxy advisory service and its equity holders), and the Texas Attorney General can intervene in any suit. Both Institutional Shareholder Services (ISS) and Glass Lewis filed suits in federal district court in Austin against the Texas Attorney General seeking declarations that SB 2337 is unconstitutional. In late August 2025, the federal district court issued a preliminary injunction enjoining the Attorney General's enforcement of SB 2337 against ISS or Glass Lewis; however, other affected parties may still bring claims under the law.

## Other TBOC Corporate Amendments (SB 2411)

Senate Bill 2411 was prepared by the State Bar Business Law Section's TBOC Committee and was the result of careful consideration, drafting, and discussions by committee members during several dozen meetings since the fall of 2023. This bill made an array of amendments to the TBOC covering various topics, many of which were derived from recent changes in the Model Business Corporation Act and Delaware entity statutes. Some of the more substantive amendments relating to corporations are summarized below.

- Authorizing notice of an action by less than unanimous written consent of shareholders to the nonconsenting holders through a publicly available electronic resource,
- Extending the authority for provisions in the certificate of formation exculpating directors from monetary liability for breaches of duty of due care to apply to officers,
- Specifying that a properly adopted plan of conversion may authorize additional entity action to be taken by the converted entity without further approvals being required,
- Specifying that Texas corporations can retroactively ratify a transaction that was ineffective because of a failure to file with the Secretary of State a filing instrument that was required to complete the effectiveness of the transaction,
- Simplifying the information required for a certificate of validation and limiting the circumstances under which a certificate of validation must be filed under the ratification provisions for corporations,
- Authorizing the board of directors of a Texas for-profit corporation, without shareholder approval, to effect certain limited amendments to the corporation's certificate of formation, subject to specified conditions,
- Authorizing the board of directors to approve a plan, agreement, instrument or other document in substantially final form and subsequently to ratify, with retroactive effect, the final form of such document  efore the effectiveness of the filing of such document, or a certificate referencing it, with the Texas Secretary of State, and
- Recognizing that shareholders in a Texas corporation that is party to a merger or interest exchange can appoint a representative to represent them in enforcing the plan of merger or exchange.



# Achieving Community Bank Capital Needs

*By Beth Whitaker and Nate B. Jones*

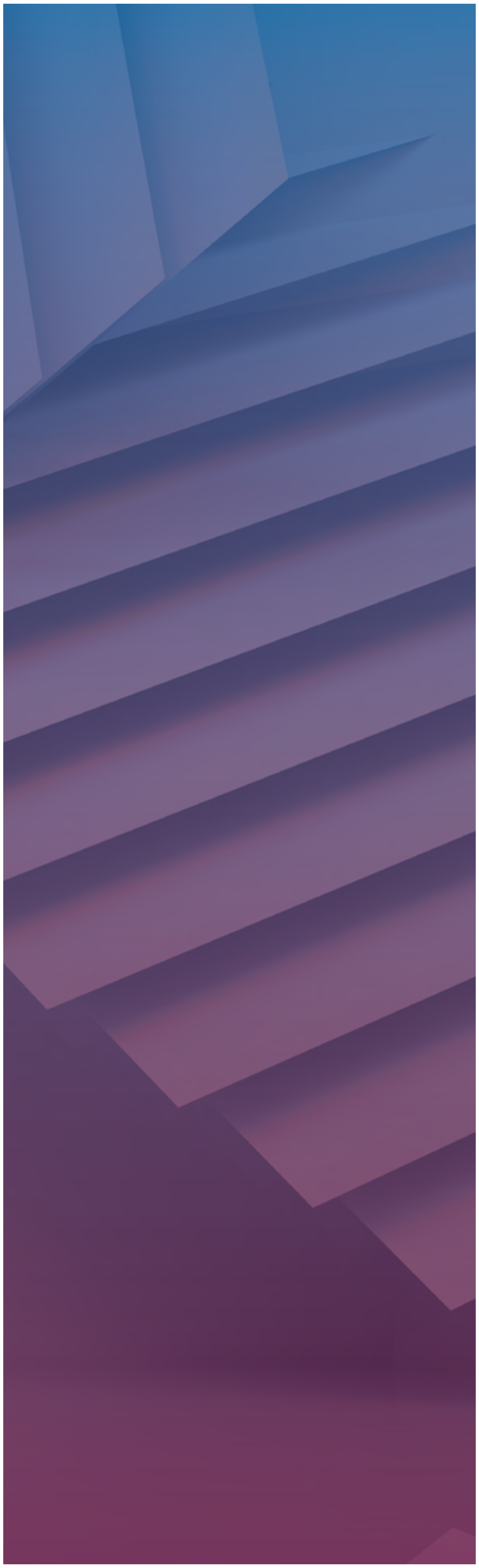
As 2025 concludes and we look ahead to 2026, the outlook for community bank capital markets activity once again looks promising. Community banks have struggled to find an attractive avenue to raise capital since the Federal Reserve Board started raising interest rates in March 2022. The historically low, COVID-induced interest rates for subordinated debt and preferred equity instruments disappeared. Then, in March 2023, the high-profile failures of two prominent banks resulted in dramatic declines in community bank valuations and extreme volatility for community bank common stock. Bankers were forced to measure the impact of common stock offerings on returns on equity and the increased dilution of ownership to their existing shareholders against the elevated interest rates on debt and preferred equity. All capital seemed to come at a high cost.

However, market interest rates are beginning to abate, yields on debt and debt-like securities are beginning to decline from recent post-COVID highs, risk premiums are narrowing, and returns on book value (without deducting for AOCI) have started to turn a corner. In 2025, we saw the return of community bank IPOs (six in 2025) after minimal activity since 2019. Late in 2025, we have also seen a resurgence in the community bank subordinated debt market due, in part, to (1) the continued lowering of interest rates, and (2) the desire to refinance outstanding debt instruments that are migrating from fixed to floating rates.

Thus, community banks in need of capital are presently evaluating the merits of numerous capital alternatives. Community banks continue to seek to issue shares of common stock, shares of preferred stock, senior notes, and subordinated notes. The attraction of one alternative over another may depend on any number of facts and circumstances, including the size of the bank, the desired capital treatment, the shareholder base, access to public markets, and others. Below we set forth a number of capital markets structures and alternatives that we commonly assist with our community bank clients.

## Private Placement Under Rule 506

The US Securities and Exchange Commission (SEC) has adopted rules under Section 4(a)(2) of the Securities Act of 1933, as amended (the Securities Act) to provide issuers with non-exclusive safe



harbors for non-public offerings, including the SEC's Regulation D. The two most commonly used exemptions under Regulation D are Rule 506(b) and Rule 506(c). Under both, the SEC allows issuers to offer and sell an unlimited amount of securities to an unlimited number of "accredited investors" (as defined in SEC Rule 501(a)). The distinction is that:

- Under Rule 506(b), issuers may also offer and sell securities to not more than 35 non-accredited investors that satisfy certain sophistication requirements if certain conditions are satisfied (including the presence of a pre-existing relationship between the issuer and the prospective investors and no use of general solicitation by the issuer); and
- Under Rule 506(c), issuers may use general solicitation to source accredited investors, but issuers must take "reasonable steps" to verify investors' status as "accredited investors." Historically, this has required considerable diligence by the issuer to inquire and evaluate the *bona fides* of the investors participating in the offering.

The principal drawback to Rule 506(b) is that, in the presence of non-accredited investors, issuers are required to provide a lengthy and comprehensive disclosure document (often called a "private placement memorandum" or an "offering circular") providing detailed information regarding the issuer and the securities being offered in order to provide all material information necessary to enable a reasonable person to make an informed investment decision.

The "middle ground" that many community banks have adopted for their capital raise transactions under Regulation D is to conduct a private placement offering of securities in reliance on SEC Rule 506(b) *but* the offering and sale of securities is to "accredited investors" *only*. In the absence of non-accredited investors, issuers can significantly simplify their disclosure obligations to investors and, furthermore, can rely on investors self-certifying their status as "accredited investors."

## Private Placement Under Rule 147 (Intrastate Offering)

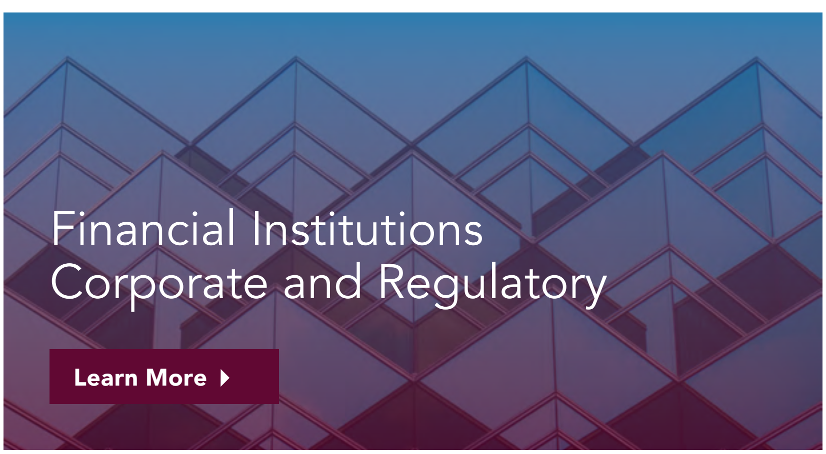
Section 3(a)(11) of the Securities Act also provides an exemption from registration for any security that is a part of an issue offered and sold only to persons resident within a single state, where the issuer is incorporated in and doing business within that state. In particular, SEC Rule 147 requires that offers and sales of securities can only be made to in-state residents or persons who the issuer reasonably believes are in-state residents and issuers must obtain a written representation from each purchaser providing the residency of that purchaser.

An important limitation of SEC Rule 147 is that, during the period in which securities are being offered and sold by an issuer, and for a period of six months after the last sale by the issuer of the securities, all resales by any person may be made only to residents of the state in which the offering was made. Issuers must disclose these limitations on resale to each offeree or purchaser of securities that are offered and sold in reliance upon the exemption available under Rule 147. The SEC's adoption of Rule 147A has provided some additional flexibility for companies to be organized outside the offering state so long as their principal place of business is in-state.

## Private Placements to Employees via Compensatory Benefit Plans Under Rule 701

Another common offering exemption used by privately held community banks is found in SEC Rule 701, which provides an exemption from registration for securities issued by private companies pursuant to a written compensatory employee plan or written contract. This covers all employee benefit plans, including any purchase, savings, option, bonus, stock appreciation, profit sharing, thrift, inventive, pension or similar plan. The primary purpose of Rule 701 is to facilitate the use of securities as compensation and for benefit purposes by private companies. Issuers may not rely on SEC Rule 701 for the primary purpose of raising capital, though additional capital is an ancillary byproduct of a Rule 701 offering.

For many of our community bank clients, the most common transaction structure relying on SEC Rule 701 is the formation of an employee stock ownership plan (ESOP) or an employee stock purchase plan (ESPP). Under an ESOP, employees may have the ability to elect to use a portion of their ESOP contributions to buy shares of their employer's common stock. Under an ESPP, eligible employees may be able to elect during certain enrollment periods to designate a portion of their compensation to purchase shares of their employer's common stock—often for a discounted price. Both ESOPs and ESPPs are attractive tools that community banks could use for employee recruitment and retention.




Further, Rule 701 expressly provides that an offering relying on that exemption will not be integrated with any other offerings. Thus, issuers may commence a Rule 701 offering while also simultaneously offering securities to other investors in reliance upon a different securities exemption without any integration issues.

## Rights Offering to Existing Shareholders

A rights offering is a proposed issuance of common stock to existing shareholders to purchase their pro rata portion of shares being offered. For example, if a shareholder owns 1 percent of the current outstanding shares of the company and the company is issuing 100 shares in the offering, then the shareholder would have the right to purchase one share in the offering. To the extent certain shareholders do not purchase their pro rata portion of the shares being offered, then those shareholders who fully exercise their rights may subscribe to purchase the leftover shares—also known as an over-allotment option. Therefore, rights offerings are non-dilutive to existing shareholders (as compared to an offering to new investors) to the extent that they are willing and able to purchase their pro rata portion of the offering. However, shareholders who do not participate would be diluted.

A rights offering may also be structured to allow for a limited number of new investors after the subscriptions of existing shareholders have been satisfied. To the extent there are shares leftover after the company's existing shareholders have exercised their rights and over-allotments, companies may elect to offer the remaining shares to select investors. With this structure, there would be incremental dilution to existing shareholders and fiduciary duties should be evaluated and addressed.

One challenge with rights offerings is finding an applicable exemption from registration at the federal level. Community banks must carefully analyze their shareholder base before exploring a rights offering.

## Other Capital Markets Transactions

Community banks also seek to return value to their shareholders in other ways. Community banks are often approached by minority shareholders seeking liquidity and look for ways to relieve the administrative burden of having numerous, smaller shareholders. We frequently assist our community bank clients in transactions whereby the bank is the purchaser of its own securities (rather than offering and selling its securities to investors).These transactions often take the form of (i) "case by case" repurchases by the issuers for shareholders who request liquidity; (ii) an annual or as-needed tender offer to shareholders; (iii) a continuous stock repurchase program; (iv) a reverse stock split; or (v) if permitted by applicable law, a cash-out merger transaction.

Due to the heavily regulated nature of the banking industry, community banks in particular must be mindful of the following when considering any program where the company will repurchase common stock from its shareholders:

### Federal Reserve Approval

When deciding to repurchase equity securities, a bank holding company must either provide a notice of repurchase to the Board of Governors of the Federal Reserve System (the Federal Reserve) or qualify for an exception from the notice requirements. Furthermore, regardless of whether an exception is available, bank holding companies must "consult" with the Federal Reserve under SR 09-4 prior to any material repurchases of common stock. The approval by the Federal Reserve may also be required if the bank holding company has a no debt commitment and will incur debt to finance the repurchase.

### Change in Control Considerations

Careful attention must be given to analyze the existing shareholder list in connection with any stock repurchase to confirm whether any change in control issues will be created for any shareholder as a result of the stock repurchase. While the change in control filing obligation is technically the shareholder's responsibility, it is prudent for community banks to conduct this analysis and understand if the stock repurchase will create any change in control filings.

### Funding/Bank Regulatory Approval

Community banks should consider how they will fund the stock repurchase (e.g., bank stock loan, excess cash at the Company, dividend from the bank, etc.). If the stock repurchase will be funded through a dividend from a wholly owned banking subsidiary, consideration should be given as to whether any prior bank regulatory approval will be required for the dividend.

### Information Requirements

It is important that any shareholder engaging in a repurchase transaction be provided with all material information about the issuer that the shareholder may deem relevant in making an investment decision. Regardless, issuers should not engage in stock repurchases while they are in possession of any material, nonpublic information.

### Regulation M

In connection with a repurchase of securities, SEC Regulation M generally provides that an issuer and its affiliates cannot contemporaneously sell the same class and type of securities. Thus, whenever an issuer decides to conduct a capital raise transaction, it must be mindful to suspend all repurchases during the period in which the offering is being conducted.

## Capital Markets Alternatives for Public Companies

While some of the private placement exemptions discussed above (like SEC Rule 701) are unavailable to public companies, many of our public company bank holding company clients use Regulation D when conducting a private placement and the public capital markets offer alternatives that are not available to private companies.

For example, we often assist our public bank holding company clients (as well as underwriters) in capital raises structured as PIPE transactions—or private investment in public equity—whereby a public company will issue securities in a private placement in reliance upon Regulation D to accredited investors and in reliance upon Rule 144A to qualified institutional buyers (or QIBs). Following closing of the private placement, the public company would then work to register identical securities via a registration statement for exchange with the investors who purchased the securities in the private placement. As a result of the exchange, which typically takes two to four months following the closing of the private placement, the investors are left holding public securities that are freely tradeable in the marketplace.

Additional examples of public company capital markets transactions include shelf registration statements, dividend reinvestment programs, shareholder direct stock purchase programs, employee stock purchase programs, and secondary offerings. Each of these require registering the securities with the SEC for public offering and sale. ■

# US Oil and Gas Capital Markets: 2025 Reflections and 2026 Outlook

*By Michael O'Leary, Jordan Hirsch, and Philip Haines*

The oil and gas sector has historically required significant new capital investments on a recurring basis to bolster ongoing and new capital-intensive projects. Compounding this need are investor expectations in the oil and gas sector that many energy companies consistently deliver returns to investors in the form of periodic dividends/distributions, which further reduces ongoing cash flow availability to such companies.

At the beginning of this decade, the traditional US oil and gas industry experienced an extremely difficult funding backdrop on various fronts, triggered by investor reluctance to invest in the fossil fuel industry and intrusive environmental, social, and governance (ESG) scrutiny, leading to a precipitous decline in capital markets activity, a reduction in private equity investment and a retreat by many traditional lenders from the fossil fuel sector, in addition to the brief, but acute, commodity demand nose dive due to COVID-19, resulting in an intense slowdown in US energy project development and the imposition of a requirement that energy companies live within their operating cash flow rather than continuing to seek capital investments. However, beginning in 2023 and continuing through 2025, the liquidity crisis that impaired many US oil and gas companies at the start of the decade started to subside, and we started to see renewed interest in financing traditional oil and gas exploration and development and midstream development projects. This renewed interest was driven by a number of factors, including (i) the resurgence of M&A activity, with a focus on all-stock deals due to cash preservation strategies, (ii) re-engaged institutional investors, (iii) the return of upstream and midstream-focused private equity funds (which had all but disappeared in the ESG era) and (iv) the rapid growth of private credit funds, which have quadrupled over the last decade in the wake of traditional banks pulling back from riskier borrowers. During this calmer period, many public US oil and gas companies have remained conservative and cautious, focusing primarily on cash preservation, the reduction of debt-to-equity ratios and prioritizing investor returns through buybacks and dividends rather than growth intensive long-term capital projects.

At the same time, while capital expenditure budgets across the traditional US oil and gas industry have increased modestly in 2025 compared to the doldrums earlier in the decade, growth development in certain portions and regions of the US oil and gas sector has been supercharged by the joint tailwinds of a more permissive regulatory environment and the anticipated increase in natural gas demand in order to fuel the burgeoning data center industry and to provide supply for export as liquified natural gas (LNG) from several newly approved LNG projects along the Gulf Coast. In particular, the robust interest in rapidly developing data centers that became more pronounced in 2025 and the power needed to sustain them has significant implications across the entire energy ecosystem, including the corresponding need by those impacted energy companies for additional capital to fund their large-scale capital projects in 2026 and beyond. For example, in order to meet the anticipated increase in power demand, upstream companies are increasing drilling plans and budgets scouring for additional natural gas; midstream companies are racing to develop new pipeline capacity sufficient to deliver additional volumes of natural gas to processing facilities and natural gas fired power plants; and downstream companies are ramping up spending in order to build-out and complete natural gas processing plants in areas where increased power demand is expected. The data center developers are in a race to get their projects in operation; and natural gas can be supplied in the near term without delaying the underlying project, which is leading to substantial increases in demand for natural gas development and production.

During 2025, we saw increased optionality for US oil and gas companies to access the capital markets. While equity offerings (including IPOs) by US energy companies continued to remain subdued, 2025 has seen more investor demand for the issuance of traditional equity capital by US energy companies. Both investment grade and non-investment grade debt continued to remain available for US energy companies, particularly when the use of proceeds were specifically directed at refinancing maturing debt or synergistic acquisitions. The high-yield market welcomed a return from a number of institutional investors willing to accept additional risk in search of higher yields.

Furthermore, during 2025, many US energy companies have increasingly sought to utilize (and saw corresponding increase in investor demand for) hybrid capital products in order to fund their growth projects or reduce their debt leverage. We saw a number of transactions involving preferred equity investments or hybrid bonds, which enable companies to maintain functional control of their operations while avoiding excessively levered balance sheets.

Looking forward to 2026, we expect the increased desire to sustain US energy independence and expand LNG export growth, as well as a more relaxed energy regulatory environment and the increasing need for natural gas to fuel the booming data center industry will incentivize US energy companies to continue increasing capital expenditures and approving bigger projects. We expect US energy companies will continue to seek to strategically utilize a combination of debt or hybrid capital products to provide additional capital support for their operations and expansion projects and strategically seek equity investments to fund capital needs where the dilution to existing equity investors can be minimized. We also expect investor appetite to continue to rebound from the recent lows at the beginning of the decade. If the Federal Reserve cuts interest rates further in 2026, investors will likely look to achieve additional yield via debt or hybrid securities issued by oil and gas companies. Given these tailwinds, as well as a large amount of debt maturities that are expected to come due in the US oil and gas sector in the next few years, we anticipate a busy year in 2026.

HUNTON