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“The Latest: Your Upcoming Proxy Disclosures”

Tuesday, January 20, 2026

Course Materials

<u>**“The Latest: Your Upcoming Proxy Disclosures”**</u>

Tuesday, January 20, 2026

2 to 3:30 p.m. Eastern [archive and transcript to follow]

Following up where our Fall conferences left off, this critical webcast will provide you with the latest guidance — including the latest SEC positions — on how to improve your executive & director pay disclosure to improve voting outcomes and protect your board, as well as how to handle the most difficult issues on oversight, engagement and disclosure of executive & director pay. Hear from these experts:

Joining us are:

- **Mark Borges,** Principal, Compensia and Editor, CompensationStandards.com
- **Alan Dye,** Partner, Hogan Lovells LLP, and Senior Editor, Section16.net
- **Dave Lynn,** Partner, Goodwin LLP, and Senior Editor, TheCorporateCounsel.net and CompensationStandards.com
- **Ron Mueller,** Partner, Gibson Dunn & Crutcher LLP

Among other topics, this program will cover:

1. Status of SEC Executive Compensation Disclosure Requirements
2. Other Possible Topics for SEC Review
3. Incentive Compensation — Disclosure Considerations for Tariff Challenges and Discretionary Adjustments
4. Executive Security and Other Key "Perks" Disclosures
5. Investor Perspectives: "Homogenization" and Performance Equity
6. Proxy Advisors — Impact of the Executive Order
7. Proxy Advisors — Voting Policy Updates for 2026
8. Proxy Advisors — Impact of Announced Move Towards “Customization” of Voting Policies

9. Proxy Advisors — Status of Legal Challenges in Texas and Florida
10. New Challenges with Shareholder Engagement
11. Clawback Policies — Lessons from 2025
12. Compensation-Related Shareholder Proposals in 2026
13. ESG and DEI Goals: Impact of Shifting and Conflicting Perspectives
14. Managing Stock Price Volatility When Granting Equity

<u>"The Latest: Your Upcoming Proxy Disclosures"</u>

Course Outline

1. Status of SEC Executive Compensation Disclosure Requirements

- In 2025, the SEC launched a retrospective review of its executive compensation disclosure requirements, beginning with a roundtable discussion in June with representatives from public companies and investors as well as other experts in the field

  - The retrospective review is focused on clarity, conciseness, and materiality in disclosures (particularly those required by Item 402 of Regulation S-K), plus investor protection, cost-effectiveness, and plain English

    - Key issues discussed at the roundtable include:

      - Complexity and length of current disclosures

      - Materiality of information for investors

      - Engagement between companies and investors driving disclosure trends

      - Dodd-Frank Act provisions: Say-on-Pay, pay-versus-performance, clawbacks

      - Executive security as a perquisite: SEC guidance and recent enforcement actions

- When the roundtable was announced, SEC Chairman Paul Atkins encouraged members of the public to provide views on the executive compensation disclosure requirements to inform its retrospective review

  - Corp Fin Staff has been digesting comment letters and roundtable feedback

  - A formal rule proposal is expected in the coming months, although the process was slowed by the government shutdown

2. Other Possible Topics for SEC Review

- A number of comment letters made suggestions for Rule 701 (registration exemption for certain offers and sales pursuant to compensatory benefit plans) and Form S-8 (short form registration statement for certain offers of securities pursuant to compensatory benefit plans), for example:

  - Harmonizing the scope of eligible persons under Rule 701 and Form S-8

  - Extending eligibility under Rule 701 and Form S-8 for consultants and advisors, specified post-termination grants to former employees, former employees of acquired entities and "platform workers"

  - Clarifying the ability to add multiple plans to a single Form S-8 and allocate securities among multiple incentive plans on a single Form S-8

  - Permitting use of a post-effective amendment to add shares on a Form S-8

  - Modifying Rule 701 disclosure requirements

  - Aligning the treatment of RSUs with the treatment of options so that the "date of sale" for RSUs is deemed to be the date of vesting or later settlement (and/or delaying required disclosures to new hires to be within 14 days following their hire)

  - Extending the Rule 701 exemption to reporting companies

  - Simplifying registration on Form S-8 for securities offered under 401(k) plans

- Davis Polk's comment letter also addressed:

  - Related person transaction reporting under Item 404 of Regulation S-K

- Current report disclosures under Item 5.02 of Form 8-K
- Exhibit filing requirements under Item 601 of Regulation S-K

3. Incentive Compensation — Disclosure Considerations for Tariff Challenges and Discretionary Adjustments

- A July 2025 Pay Governance memo [“Key Developments Facing Compensation Committees for the 2025-2026 Cycle”] describes common approaches to address the potential impact of tariffs in compensation programs, including:
  - “Planning for year-end adjustments to account for actual tariff impact
  - Incorporating a “best estimate” of tariff effects into goal-setting
  - Establishing wider performance ranges to accommodate uncertainty
  - Delaying goal-setting until more information becomes available
  - Maintaining a shadow schedule to monitor parallel performance metrics”
- Adjustments often attract criticism from investors and proxy advisors, even when they are used for tariff impacts, since investors generally expect companies to work through these types of operational issues
- Proxy statement disclosure in the Compensation Discussion & Analysis (Item 402(b) of Regulation S-K) should:
  - Clearly describe how tariff impacts were considered in setting goals, making adjustments, or exercising discretion
  - Disclose:
    - The rationale for any adjustments (*i.e.*, why the committee thinks they were appropriate, with a focus on long-term performance)

    - The process followed (including whether the committee used a scorecard or if any other parameters were set in advance regarding the use of discretion or adjustments)
    - The effect on payouts (including why the committee believes the adjustment and payouts were appropriately sized and whether adjustments went both upward and downward)
    - *See* the June 2025 Semler Brossy alert, [“Maintaining Motivation in 2025 Short-Term Incentive Programs”]

4. Executive Security and Other Key “Perks” Disclosures

- It’s common for high-profile public companies to engage and pay for personal security services for their CEOs and other senior executives
  - Some public companies also require their executives to use company aircraft for personal travel due to security concerns
  - In addition to their typically higher profile, public companies may also have heightened security concerns for their executives since they are often required by Regulation FD to disclose their executives’ involvement in certain public events
- Current SEC rules and guidance treat personal security arrangements as disclosable compensatory perquisites or other personal benefits (“perks”)
  - Perks are required to be included in the “All Other Compensation” column of the Summary Compensation Table for each named executive officer and identified by footnote unless the aggregate amount of such compensation is less than $10,000

- If any perk is valued at the greater of $25,000 or 10% of the NEO's total perks, its value must be disclosed in a footnote to the table
- *See* Item 402(c)(2)(ix) of Regulation S-K

- The requirement to disclose executive security spend in the Summary Compensation Table's calculation of "Total Compensation" has been a significant area of comment in letters submitted to the SEC on executive compensation disclosure requirements

- In addition to addressing security spend, the letters have also commented on the two-part perks test and the disclosure thresholds

  - The September-October issue of *The Corporate Executive* newsletter included a deep dive into the topics covered at the SEC's Executive Compensation Roundtable, as well as the many issues that commenters have been raising for the SEC's consideration in its retrospective review of executive compensation disclosure requirements:

    > Many comment letters ask the SEC to revisit the nuanced, two-part test since it is difficult to apply in practice. Cooley advocates for a "primary purpose" test — that is, whether the primary purpose of a benefit is to further a company's legitimate business objectives, not whether it is necessary for the executive's job.

  - The Society for Corporate Governance's comment letter also addresses this. Here's an excerpt:

    > As part of the Commission reconsideration of the definition of perquisites, the current interpretive standard should be revised in a manner to exclude arrangements provided primarily for legitimate business objectives. There should be a presumption, but not a requirement, that defers to the determination of a company's board of directors or

committee of independent directors. For example, rules or interpretive guidance could provide that an arrangement or item is not a perquisite if a company's board of directors or a committee of independent directors have approved or ratified the benefit as being primarily to fulfill a business purpose, or have approved or ratified a business purpose policy under which the benefit is provided. Any standard for determining whether an item or arrangement is a perquisite should be applied on a facts-and circumstances basis instead of per se determinations that items are perquisites.

- Commentators also advocate increasing the perquisite disclosure thresholds:
  - The National Association of Manufacturers and the NYSE Institute suggest that there be a $100,000 aggregated threshold for perquisite reporting, to be indexed to inflation going forward, while the Society for Corporate Governance offered a $50,000 threshold
  - The NYSE Institute and many other letters also cite the heightened threat environment and argue that amounts spent on executive security have become critical business expenses and should not be considered a reportable perquisite
  - Cooley and Baker McKenzie also argue that work locations have become decentralized, such that travel between an executive's approved work location and the company's headquarters should not be deemed a commute, and when a company covers the cost of an executive's travel between these locations, those amounts should not be considered perquisites

5. Investor Perspectives: “Homogenization” and Performance Equity

- The topic of “homogenization” came up repeatedly during the SEC’s roundtable on executive compensation disclosure requirements

  - Some panelists at the roundtable touched on a number of ways that executive compensation design has become a bit “wash, rinse, repeat”:

    - The use of modest base salaries, cash bonuses tied to financial metrics and the majority of compensation delivered in equity

    - The widespread use of performance share awards

    - The limited use of simple stock structures with long-term holding requirements

    - The move away from stock options

    - The widespread use of relative TSR as a performance metric

    - The use of formulaic plans instead of discretionary

    - Avoiding practices considered problematic or egregious by proxy advisors and investors

    - *See* the Harvard Law School Forum on Corporate Governance blog post by Diligent Market Intelligence titled “Are CEO Pay Plans Too Samey?”

  - Issuer participants stressed that having the flexibility to simplify equity programs would be welcome, but that a 180-degree change in the other direction, so that compensation committees do not feel that they have the option to use performance share units when appropriate, would also present challenges

6. Proxy Advisors — Impact of the Executive Order

- In mid-December, the White House finally issued an Executive Order that specifically targets the proxy advisory firms ISS and Glass Lewis. The Executive Order states:

> "Section 1. Purpose. Unbeknownst to many Americans, two foreign-owned proxy advisors, Institutional Shareholder Services Inc. and Glass, Lewis & Co., LLC, play a significant role in shaping the policies and priorities of America's largest companies through the shareholder voting process. These firms, which control more than 90 percent of the proxy advisor market, advise their clients about how to vote the enormous numbers of shares their clients hold and manage on behalf of millions of Americans in mutual funds and exchange traded funds. Their clients' holdings often constitute a significant ownership stake in the United States' largest publicly traded companies, and their clients often follow the proxy advisors' advice.
>
> As a result, these proxy advisors wield enormous influence over corporate governance matters, including shareholder proposals, board composition, and executive compensation, as well as capital markets and the value of Americans' investments more generally, including 401(k)s, IRAs, and other retirement investment vehicles. These proxy advisors regularly use their substantial power to advance and prioritize radical politically-motivated agendas — like 'diversity, equity, and inclusion' and 'environmental, social, and governance' — even though investor returns should be the only priority. For example, these proxy advisors have supported shareholder proposals requiring American companies to conduct racial equity audits and significantly reduce greenhouse gas emissions, and one continues to provide guidance based on the racial or ethnic diversity of corporate boards. Their practices also raise significant concerns about conflicts of interest and the quality of their recommendations, among other concerns. The United States must therefore increase oversight of and take action to

restore public confidence in the proxy advisor industry, including by promoting accountability, transparency, and competition."

- The Executive Order goes on to direct the Chairman of the SEC, the Chairman of the FTC and the Secretary of Labor to take a number of rulemaking and investigative actions. The Executive Order specifically directs the SEC Chairman to:

  - Consistent with the APA, “consider revising or rescinding those rules, regulations, guidance, bulletins, and memoranda that are inconsistent with the purpose of this order, especially to the extent that they implicate ‘diversity, equity, and inclusion’ and ‘environmental, social, and governance’ policies;”

  - Consistent with the APA, “consider revising or rescinding all rules, regulations, guidance, bulletins, and memoranda relating to shareholder proposals, including Rule 14a-8 (17 CFR 240.14a-8), that are inconsistent with the purpose of this order;”

  - Enforce the antifraud provisions of the federal securities laws with respect to material misstatements or omissions contained in proxy advisors’ proxy voting recommendations;

  - Assess whether to require proxy advisors whose activities fall within the scope of the Investment Advisers Act of 1940 to register as registered investment advisers;

  - Consider requiring proxy advisors to provide increased transparency on their recommendations, methodology, and conflicts of interest, “especially regarding ‘diversity, equity, and inclusion’ and ‘environmental, social, and governance’ factors;”

  - Analyze whether, and under what circumstances, a proxy advisor serves as a vehicle for investment advisers to coordinate and augment their voting decisions with respect to a company’s securities and, through such coordination and augmentation, form a group for purposes of sections 13(d)(3) and 13(g)(3) of the Securities Exchange Act of 1934; and

  - Direct the SEC staff to examine whether the practice of registered investment advisers engaging proxy advisors to advise on (and following the recommendations of such proxy advisors with respect to) non-pecuniary factors in investing, including, as appropriate, "diversity, equity, and inclusion" and "environmental, social, and governance" factors, is inconsistent with their fiduciary duties.

- The Executive Order directs the FTC Chairman to "review ongoing State antitrust investigations into proxy advisors and determine if there is a probable link between conduct underlying those investigations and violations of Federal antitrust law," as well as to "investigate whether proxy advisors engage in unfair methods of competition or unfair or deceptive acts or practices that harm United States consumers."

- The Executive Order also directs the Secretary of Labor to "take steps to revise all regulations and guidance regarding the fiduciary status of individuals who manage, or, like proxy advisors, advise those who manage, the rights appurtenant to shares held by plans covered under the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. 1001 et seq.), including proxy votes and corporate engagement, consistent with the policy of this order." Further, the Secretary of Labor is directed to "take all appropriate action to enhance transparency concerning the use of proxy advisors, particularly regarding 'diversity, equity, and inclusion' and 'environmental, social, and governance' investment practices."

7. Proxy Advisors — Voting Policy Updates for 2026

- ISS announced these compensation-related updates to its 2026 Benchmark Voting Policies (from the Executive Summary prepared by ISS):

  - "Long-Term Alignment in Pay-for-Performance Evaluation: Updates U.S. pay-for-performance quantitative screens to assess pay for performance alignment over a longer-term time horizon, considering a five-year period, above the current three years, while also maintaining an assessment of pay quantum over the short term.

- Time-Based Equity Awards with Long-Term Time Horizon: This policy update reflects the importance of longer-term time horizons for time-based equity awards and provides for a more flexible approach in evaluating the equity pay mix in pay-for-performance qualitative reviews.

- Company Responsiveness: Expands flexibility for companies to demonstrate responsiveness to low Say-on-Pay support, in light of recent SEC guidance on 13G vs. 13D filing status that may limit shareholder engagement.

- High Non-Employee Director Pay: Expands existing policy that addresses high NED 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.

- Enhancements to Equity Plan Scorecard: Adds a new scoring factor under the Plan Features pillar to assess whether plans that include non-employee directors disclose cash-denominated awards, and introduces a new negative overriding factor for equity plans found to be lacking sufficient positive features under the Plan Features pillar despite an overall passing score.

- Compensation Committee Responsiveness: Streamlines policy language by removing duplicated factors for evaluating responsiveness to shareholder input on executive pay. The section now cross-references the factors listed under the Board of Directors policy."

- Glass Lewis has updated its pay-for-performance model for the 2026 proxy season:

> "The "Pay for Performance" section of these guidelines has been updated to reflect enhancements and modifications to Glass Lewis's proprietary pay-for-performance model. Rather

than a single letter grade of "A" through "F", the model will use a scorecard-based approach, consisting of up to six tests. Each test will receive a rating, which will be aggregated on a weighted basis to determine an overall score ranging from 0 to 100. To better understand the model, please see the Pay-for-Performance Methodology Overview."

8. Proxy Advisors — Impact of Announced Move Towards "Customization" of Voting Policies

- In October, ISS & Glass Lewis both announced major changes to their business models — specifically that they are shifting away from a standardized "benchmark" voting recommendation approach and even more towards a research approach customized to the specific investor-client

- A November 2025 Compensia alert, "Have we reached the end of standardized proxy advisor voting recommendations? The looming ISS and Glass Lewis policy shifts" says:

  > "With proxy advisor benchmark policies becoming less influential, companies have greater flexibility to tailor incentive plan designs to meet their individual needs. However, this flexibility increases the importance of understanding and considering the specific priorities and policies of key investors when making and communicating design decisions."

- But with more customization comes more work for compensation committees. Compensia suggests that committees:

  – "Map your top investors' voting policies and identify where views diverge (*e.g.*, preferred metrics, performance periods, equity mix).

  – Pressure-test incentive design decisions against those investor perspectives before finalizing awards.

   - Engage early and often, before you file your 2026 proxy statement to understand how key shareholders' policies may be evolving.

   - Know which investors already follow in-house policies. Track how and when shareholders transition to new ISS and/or Glass Lewis frameworks.

   - Reassess vote forecasting tools. Move away from reliance on benchmark-based models toward more tailored approaches informed by shareholder engagement.

   - Refresh governance and compensation messaging. Ensure CD&A and proxy statement summaries clearly articulate the "why" behind key pay decisions and governance practices."

9. Proxy Advisors — Status of Legal Challenges in Texas and Florida

   - Proxy advisory firms Institutional Shareholder Services and Glass Lewis are being investigated by the FTC for potential violations of antitrust laws

   - The Florida Attorney General has filed a complaint against ISS and Glass Lewis — alleging violation of state consumer protection and antitrust laws

   - In June, Texas Governor Greg Abbott signed into law Senate Bill 2337, which imposes new regulations on proxy advisory firms such as ISS and Glass Lewis

      - Just before the September 1st effective date, a district court judge issued a preliminary injunction that temporarily blocks enforcement of the new requirements

10. New Challenges with Shareholder Engagement

   - After the SEC Staff's February Schedule 13G guidance (see Exchange Act Sections 13(d) and 13(g) and Regulation 13D-G Beneficial Ownership Reporting Compliance & Disclosure Interpretation

Questions 103.11 & 103.12), there was concern that companies that saw their say-on-pay approvals fall below the key 70% threshold for ISS and 80% threshold for Glass Lewis in 2025 (triggering the proxy advisor “responsiveness” policies) may — if institutional investors are reluctant to provide feedback — have a harder time making the disclosures proxy advisors expect to see

- ISS’s 2026 benchmark policy updates contemplate this addition to its policy on company responsiveness to low Say-on-Pay:

> “If the company discloses meaningful engagement efforts, but in addition states that it was unable to obtain specific feedback, ISS will assess company actions taken in response to the say-on-pay vote as well as the company’s explanation as to why such actions are beneficial for shareholders.”

  - This is a narrow change. The policy still expects companies to put in the same engagement efforts that they have in the past. If anything, this change may result in longer disclosures since presumably many companies will hear specific feedback from some investors, but not others, and, in the absence of extensive, consistent feedback, may need to provide a longer explanation of the “specific and meaningful actions taken” in response

11. Clawback Policies — Lessons from 2025

- Item 402(w)(1) of Regulation S-K requires reporting companies that prepared an accounting restatement during the last completed fiscal year that required recovery of erroneously awarded compensation pursuant to their Exchange Act Rule 10D-1 compensation recovery (“clawback”) policy to disclose certain prescribed information about the restatement and associated compensation clawback

- There haven’t been many proxy statement disclosures in 2025 in response to this item

- Many companies' recovery analyses resulted in determinations that no recovery was necessary
  - The initial Item 402(w)(2) disclosures made in 2024 (if there was any disclosure at all) simply stated that no recovery of erroneously awarded compensation was required
  - However, as the SEC Staff pointed out in a handful of comment letters, Item 402(w)(2) requires that this decision be accompanied by a brief explanation of why the recovery policy resulted in this conclusion
  - Since then, the disclosures have been much more thorough
- A few interesting tidbits from some of the disclosures (see Mark Borges's May 20, 2025 Proxy Disclosure Blog):
  - "Decision not to seek recovery: There have been three primary reasons cited for concluding that no recovery was necessary. The overwhelming reason given has been that the financial restatement did not affect any of the performance metrics included in the company's incentive-based compensation arrangements (24 responses). The second most common reason provided was that none of the covered executive officers received any incentive-based compensation after October 2, 2023 (six responses), while the third most common reason cited was that, under the plan or award design, the covered executive officers did not earn any incentive-based compensation (four responses).
  - Restatement resulted in more, not less, compensation: Three companies, Allegro Microsystems, Inc., Atlas Lithium Corporation, and Axon Enterprise, Inc. disclosed that their recovery analysis revealed that the covered executive officers were eligible for more, rather than less, performance-based compensation following the financial restatement. It's a bit unclear whether those additional amounts were paid to the covered executive officers.

- Recovery analysis of stock price or TSR metric: At least four companies that maintained incentive compensation arrangements involving either a stock price or TSR metric concluded that the award payouts would not have changed as a result of the financial restatement (see Cardinal Health, Inc. (disclosed outside valuation consultant), Gold Resource Corporation (no disclosure of outside consultant), Live Nation Entertainment, Inc. (disclosed outside valuation consultant), and Outfront Media, Inc. (no disclosure of outside consultant).

- Other clawback policies not triggered: Two companies went beyond the application of their Exchange Act Rule 10D-1 policy and indicated that their other compensation recovery policies were not implicated by the financial restatement (see Cardinal Health, Inc. (no indications of employee misconduct under discretionary policy) and Flux Power Holdings, Inc. (no recovery required under Section 304 of the Sarbanes-Oxley Act). It would not surprise me to see this become a typical part of the disclosure where a company has multiple clawback policies; less so, however, with respect to Section 304 of SOX.

- Many smaller reporting companies: It may just be coincidental, but one-third of the companies experiencing a financial statement and conducting a "no recovery" analysis were either smaller reporting companies, emerging growth companies, or both. This appears to be consistent with a 2022 analysis of the Center for Audit Quality which reported that over the preceding eight years, the number of financial restatements by small, NASDAQ-listed companies almost doubled."

12. Compensation-Related Shareholder Proposals in 2026

  - In November 2025, the Division of Corporation Finance issued a statement indicating that "the Division has determined to not respond to no-action requests for, and express no views on, companies' intended reliance on any basis for exclusion of shareholder proposals under Rule 14a-8, other than no-action requests to exclude a proposal under Rule 14a-8(i)(1)"

- According to Meridian's 2025 Corporate Governance & Incentive Design Survey: "In 2025, 14% of companies received at least one compensation-related shareholder proposal. Most compensation-related shareholder proposals continue to receive limited shareholder support."

13. ESG and DEI Goals: Impact of Shifting and Conflicting Perspectives

- In its 2025 policy survey, ISS asked respondents how it should assess the removal of E&S or DEI-related metrics from in-flight awards:

  – 73% of investors responded, "Continue with the current approach, whereby changes to in-flight awards are generally viewed negatively absent a compelling rationale"

  – 76% of non-investor respondents preferred "The removal of E&S or DEI metrics from in-flight awards generally should not in and of itself be considered problematic absent other concerns"

- The July 2025 Pay Governance memo "Key Developments Facing Compensation Committees for the 2025-2026 Cycle" says:

  > "Amid shifting political and regulatory pressures, many companies are re-evaluating their approach to and disclosure of ESG and DEI initiatives. While these goals were actively promoted under the previous administration, the current environment has prompted some organizations to soften publicly disclosed language, delay the rollout of new programs, or reframe existing initiatives under broader business strategy or talent objectives. In some cases, companies are maintaining core commitments but reducing prominence in disclosures, incentive plans, or charters to avoid drawing scrutiny. This repositioning reflects a careful effort to balance evolving external trends with internal priorities and long-term reputational considerations."

14. Managing Stock Price Volatility When Granting Equity

- Declining stock prices can cause "burn rate" issues and possibly necessitate seeking the authorization of additional equity plan shares more frequently

- A 2022 Semler Brossy blog offers six approaches to equity grant practices that can help manage "burn rates" — and preserve share authorizations — during volatile times:

  - "Adjusting the Grant Date Fair Value for purposes of determining award sizes by using an average value — such as an annual average stock price — to better reflect the likely prices once the market stabilizes. Note that if this calculation results in a larger number of shares than historical, there will be greater leverage if the market rebounds.

  - Replacing shares with cash awards below the top leadership team — *e.g.*, NEOs. Note that this may not be an option for struggling or cash-strapped firms.

  - Changing the mix of long-term incentive (LTI) vehicles from performance-based to time-based vehicles. Experience has shown that providing greater certainty of awards in volatile times makes executives more willing to accept fewer shares. There is an added benefit: fewer shares need to be reserved for time-based awards because there is no upside.

  - Reducing the eligibility for LTI awards to reflect share constraints while increasing the size of annual incentive opportunities.

  - For early-stage companies, characterizing awards as inducement awards which are not counted against share authorizations. However, these awards do need to be reported to the applicable stock exchange and in a press release. In addition, these awards would be reported as 'not approved by shareholders' in the Equity Compensation Plan Information Table.

  - Targeting awards to ensure that higher value-add positions and top performers receive larger awards, especially in tight labor markets."

- Based on a NASPP/Deloitte survey, respondents using a multi-day trailing average closing price to convert their target equity award values into a number of shares increased from 27% in 2019 to 42% in 2022. As this NASPP blog argues, there are a lot of good reasons to make this switch, but there are also some traps for the unwary:

  - Using averages also means that grant sizes are more predictable, making it easier to forecast share usage and less likely that the company will use its plan shares more quickly than anticipated

  - It does, however, complicate things a bit — what you communicate to your executives will match the target values you describe in your Compensation Discussion & Analysis (S-K Item 402(b)) section of your proxy statement (which will also explain the average price used for the conversion), but it will not match the company's accounting expense or the grant date fair value reported in the proxy statement tables for named executive officers

- If you change the method you use to convert target award values to a number of shares, explain the reason for the new conversion method in your Compensation Discussion & Analysis (Item S-K 402(b) of Regulation S-K)

- If the grant date fair values of awards presented in the Summary Compensation Table (Item 402(c) of Regulation S-K) do not match the target values reported in your Compensation Discussion & Analysis (Item S-K 402(b) of Regulation S-K) because of the conversion method used, explain the differences between the target value and the grant date fair value for accounting purposes reported in the Summary Compensation Table in a footnote to the table

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Compensia
THOUGHTFUL PAY

November 6, 2025

Thoughtful Pay Alert

Have we reached the end of standardized proxy advisor voting recommendations? The looming ISS and Glass Lewis policy shifts

Overview

In October, Institutional Shareholder Services, Inc. ("ISS") and Glass Lewis & Co., Inc. ("Glass Lewis") each announced major changes to their governance research models that mark a decisive shift away from standardized "benchmark" voting recommendations, towards a broad reorientation of the proxy advisor landscape centered on investor-specific customization - a change that is consistent with investors' diversifying views regarding compensation program design that have led to questioning legacy views regarding the effectiveness of performance-based equity in aligning pay with performance.

This reorientation will increase the need to consider individual investor viewpoints, not just proxy advisor benchmark policies, when making compensation decisions. In particular, Glass Lewis intends to discontinue benchmark policies entirely by 2027. Accordingly, companies will need to refine their engagement strategies to elicit decision-useful insights and prepare for the reduced predictability of voting decisions in future proxy seasons.

The end of standardized benchmark voting recommendations represents one of the most potentially disruptive shifts in proxy advisor influence over the past decade. While many companies may see and welcome the move as an opportunity for more investor-specific understanding, the resulting fragmentation of viewpoints and voting behavior will require more proactive, data-informed strategies.

What's Changing and Why?

ISS recently introduced "Gov360" and "Custom Lens," two new services that separate ISS's research and analytics from its vote recommendations. Custom Lens expands ISS's ability to deliver custom investor research, while Gov360 allows investors to access ISS's research reports without attendant voting recommendations. While ISS did not specify a launch date, its announcement suggests the services are available immediately.

ISS indicates these offerings were developed in response to the growing diversity in investors' stewardship philosophies, where a single benchmark policy no longer meets all needs. Gov360 and Custom Lens are intended to provide modular, customizable tools that align with each investor's priorities and those of their beneficiaries. The underlying goal is to help investors scale stewardship programs in an increasingly complex environment while maintaining alignment with their own strategic objectives.

Meanwhile, Glass Lewis announced that, beginning in 2027, it will to replace (and cease publishing) its benchmark market-wide proxy voting guidelines with a spectrum of "governance lens" research offerings designed to align with investors' diverse stewardship priorities. Glass Lewis has also set a goal of moving all clients to custom policies entirely by 2028.

Glass Lewis explains that this reorientation is intended to accommodate growing divergences in investor priorities, particularly on environmental and social issues, and the balance between fiduciary and values-driven considerations. The move also *likely* responds ongoing federal and state scrutiny regarding alleged proxy advisor bias, conflicts of interest, and the unpredictable and often unwarranted outcome resulting from the current "one-size-fits-all" voting frameworks on corporate governance outcomes.

This evolution parallels the rise of "investor choice" voting programs introduced by notable large institutional investors, including BlackRock, Vanguard, and State Street, which allow its clients to select among different policy options when voting their shares.

Together, these developments reflect a broader market trend toward greater investor autonomy and customization.

Implications and How to Prepare

Implication		What Compensation Committees Should Do
Increased Flexibility in Pay Design	With proxy advisor benchmark policies becoming less influential, companies have greater flexibility to tailor incentive plan designs to meet their individual needs. However, this flexibility increases the importance of understanding and considering the specific priorities and policies of key investors when making and communicating design decisions.	**Map your top investors' voting policies** and identify where views diverge (e.g., preferred metrics, performance periods, equity mix) **Pressure-test incentive design decisions** against those investor perspectives before finalizing awards

Compensia THOUGHTFUL PAY

Implication		What Compensation Committees Should Do
Shareholder Engagement Will Take on Greater Importance	With the decline of benchmark-aligned voting, companies will need to broaden and deepen engagement efforts. This may require more effort as stewardship teams become more fragmented; for example, BlackRock recently divided its stewardship functions into BlackRock Investment Stewardship and BlackRock Active Investment Stewardship - State Street and Vanguard have made similar changes.[1] This fragmentation means companies may need to engage multiple decision-makers within a single firm to fully understand their governance and compensation expectations.	Engage early and often, before you file your 2026 proxy statement to understand how key shareholders' policies may be evolving.
Voting Outcomes Will Become Less Predictable	As investors adopt customized policies, either through these new proxy advisor offerings or otherwise, companies should anticipate greater variability in voting behavior across their shareholder base, with fewer uniform voting waves driven by a single benchmark recommendation. This de-emphasis (or in the case of Glass Lewis, elimination) of benchmark recommendations will make investors' voting rationales and decisions less predictable.	Know which investors already follow in-house policies. Track how and when shareholders transition to new ISS and/or Glass Lewis frameworks. Reassess vote forecasting tools. Move away from reliance on benchmark-based models toward more tailored approaches informed by shareholder engagement.
Disclosure Will Grow in Strategic Importance	As voting policies fragment and outcomes become more opaque, high-quality, decision-useful disclosure will become a critical tool in effectively communicating with a diverse shareholder base.	Refresh governance and compensation messaging. Ensure CD&A and proxy statement summaries clearly articulate the "why" behind key pay decisions and governance practices.

[1] For more information regarding BlackRock Investment Stewardship and BlackRock Active Investment Stewardship, see here.

Need Assistance?

Compensia has extensive experience in helping companies establish executive compensation programs and practices and developing disclosure of such practices in their proxy materials taking into consideration SEC disclosure requirements, proxy advisor policies and investor expectations. If you would like assistance with or if you have any questions on the subjects addressed in this Thoughtful Disclosure Alert, please contact your regular Compensia team members or the authors of this Alert: Brigid Rosati, Hannah Orowitz and Mark Borges.

About Compensia

Compensia is the leading independent compensation advisor to technology and life sciences companies. For more than two decades, Compensation Committees and C-Suites have looked to us to develop customized solutions that balance the interests of a company, its shareholders and its executives.

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GIBSON DUNN

Securities Regulation & Corporate Governance Update

August 30, 2025

Texas Court Blocks Enforcement of New Texas Proxy Advisor Law Against ISS and Glass Lewis

In ISS' and Glass Lewis' challenges to a new Texas law that imposes disclosure obligations on proxy advisory firms related to certain advice to shareholders of Texas-based companies, a Texas federal court preliminarily enjoined enforcement of the law and set trial date for early February 2026.

On Friday, August 29, 2025, after a three-and-a-half-hour hearing, Judge Albright of the U.S. District Court for the Western District of Texas entered a preliminary injunction against Texas Senate Bill 2337 (SB 2337) in two lawsuits challenging the law, which will take effect on Monday, September 1, 2025—*Institutional Shareholder Services Inc. v. Paxton* and *Glass, Lewis & Co., LLC v. Paxton*. The Court's ruling blocks enforcement of SB 2337 by the Texas Attorney General against Institutional Shareholder Services Inc. (ISS) and Glass, Lewis & Co., LLC (Glass Lewis) while the cases proceed to discovery and trial, which the Court set for February 2, 2026. Of note, the order by Judge Albright does not enjoin the law with respect to other covered proxy advisors and enjoins actions by only the Attorney General.

SB 2337 will impose extensive public and directed disclosure obligations on proxy advisory firms when their recommendations or services are based on non-financial factors, which include environmental, social and governance (ESG) and diversity, equity and inclusion (DEI) considerations, diverge from company management's recommendations, or provide conflicting advice across clients. This law impacts proposals presented to shareholders of publicly traded Texas-based companies or those that have proposed to become Texas companies. A violation of the law constitutes a deceptive trade practice under the Deceptive Trade Practices Act and is actionable by the company, its shareholders, the firm's clients, and the Attorney General. For a discussion of SB 2337, please see Gibson Dunn's prior Guide and Webcast about the recent changes in Texas law.

The Parties and Their Positions

ISS and Glass Lewis asserted several claims, some overlapping, in their attempts to invalidate SB 2337 (ISS docket) (Glass Lewis docket). ISS and Glass Lewis both argued that SB 2337:

- Violates the First and Fourteenth Amendments of the U.S. Constitution through compelled speech, content-based regulation of speech and viewpoint discrimination by forcing proxy advisors to state that recommendations inconsistent with management or incorporating ESG/DEI are not in shareholders' financial interest[1];
- Is unconstitutionally vague, given the undefined and/or politically charged terms of, for example, "nonfinancial factors," "financial interest," "ESG," and "DEI"; and
- Violates the Dormant Commerce Clause by regulating speech of out-of-state advisors to out-of-state clients when the subject company is, or intends to become, Texas-based.

Additionally, both ISS and Glass Lewis argued that SB 2337 is preempted. ISS argued that it is expressly preempted by the Investment Advisers Act of 1940 and Glass Lewis argued that it is expressly preempted by the Employee Retirement Income Security Act of 1974.

Attorney General Ken Paxton moved to dismiss both complaints, arguing that:

- Plaintiffs lack standing because SB 2337 has not yet been enforced;
- Sovereign immunity bars the suits;
- Proxy advisor speech is commercial in nature and subject only to rational basis or intermediate scrutiny under *Zauderer* and *Central Hudson*;
- SB 2337 is not vague and simply requires factual, noncontroversial disclosures; and
- To the extent provisions were problematic, they could be severed while leaving the statute largely intact.

On August 25, 2025, the Texas Stock Exchange (TXSE) and the Texas Association of Business (TAB) jointly intervened as defendants in the cases, arguing that they have direct and protectable interests at stake given their representation of Texas companies, a private right of action under SB 2337, and that their interests diverge from those of the Attorney General who may not need to defend the law on the merits.

The Alliance for Corporate Excellence filed amicus briefs in each of the Glass Lewis and ISS cases, generally supporting SB 2337 and characterizing it as a transparency requirement rather than a speech restriction.

The Hearing

The Court began the August 29th injunction hearing by agreeing that the plaintiffs have standing to sue and admitted the intervenors without discussion. The Court then heard extensive argument on the First Amendment and vagueness claims:

- **First Amendment**. Plaintiffs emphasized that SB 2337 forces them to adopt a state-scripted message directly contradicting their professional judgment and that it singles out certain speech based on viewpoint and content for regulation. They likened this to a "scarlet letter" requirement compelling them to announce publicly and to clients that their advice "subordinates shareholder financial interests" whenever ESG/DEI is considered or they recommend against management. The Attorney General countered that these were mere "factual disclosures" akin to securities regulations. Judge Albright accepted the plaintiff's argument they provide recommendations specifically solicited by clients, rather than factual statements that must be accompanied by a disclosure.
- **Vagueness**. Plaintiffs highlighted that terms such as "solely in the financial interest," "non-financial interest," "ESG," and "DEI" lack settled definitions. Because violations could trigger penalties of up to $10,000 per report and reports are distributed to thousands of clients, the statute exposed firms to potentially huge liability on a regular basis. The Attorney General responded that these terms are widely used in the industry and reasonably clear. The Court was sympathetic to the plaintiffs, emphasizing that the statute does not seem to indicate what would constitute a violation with sufficient particularity. ISS and Glass Lewis also explained that, due to the vagueness of the statute, nearly every recommendation they issue with respect to a Texas-based company would trigger SB 2337, requiring website disclaimers, notices to issuers and the Attorney General, and forced labeling of customized client recommendations as "conflicts," undermining their credibility and client relationships.

After hearing arguments from both plaintiffs, the Attorney General attempted to present its arguments and was questioned extensively by the Court over the purpose of the statute, how the statute would function, and who it would protect. The intervenors were questioned, as well, after describing the statute in a way the court believed was inconsistent with its actual language.

The Outcome and Order

At the end of the hearing, the Court ruled that ISS and Glass Lewis had met the standard for the issuance of a Preliminary Injunction and enjoined the "Attorney General and his agents, employees, and all persons acting under his direction or control from taking any action to enforce SB 2337 against [ISS and Glass Lewis], including but not limited to intervention in any private right of action."

While the Court issued the preliminary injunction only with respect to ISS and Glass Lewis, it is persuasive, though non-binding authority for any other advisor or service provider seeking a similar injunction against the Attorney General.

What to Watch Next

Judge Albright likely will issue a written order memorializing the rulings at the hearing and setting forth his reasoning. The Attorney General has the option to appeal to the Fifth Circuit for an emergency stay of the injunctions. If the Attorney General were successful in lifting the injunction on appeal, ISS and Glass Lewis would face compliance obligations while litigation proceeded on the merits.

The trial on the merits, scheduled for February 2026, will directly impact rules governing proxy advisory services in the next full proxy season. If SB 2337 or a modified version is ultimately upheld, proxy advisors will have to include disclaimers on a significant number of recommendations, notify issuers and the Attorney General of differing advice, and provide written economic analyses—all of which could alter the timing, content, and consistency of recommendations institutional investors rely upon. Conversely, if the injunction is affirmed and the law is struck down at trial, proxy advisors will continue under the limited existing federal framework without the state-imposed disclosure obligations.

We will continue to monitor the situation for developments.

[1] Glass Lewis also argued that SB 2337 violates the First and Fourteenth Amendments by infringing on its freedom of association by penalizing it for associating with a group that evaluates company value based on nonfinancial factors.

The following Gibson Dunn lawyers prepared this update: David Woodcock, Hillary Holmes, Gregg Costa, Colin Davis, Ronald Mueller, Gerry Spedale, Jason Ferrari, and Hayden McGovern.

Gibson Dunn's lawyers are available to assist with any questions you may have regarding these developments. To learn more about these issues, please contact the Gibson Dunn lawyer with whom you usually work, or any of the following lawyers in the firm's Securities Regulation & Corporate Governance, Securities Enforcement, or Securities Litigation practice groups:

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