

Confronting a Changing and Uncertain Corporate Governance Environment in 2026

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In 2026, public companies are facing a rapidly shifting economic, regulatory, geopolitical, and technological landscape. While these changes create meaningful opportunities, they also introduce new and often interrelated risks that must be incorporated into existing governance, risk management, and disclosure processes. Against this backdrop, boards of directors are increasingly expected to exercise more proactive, informed, and agile oversight. Oversight by active, engaged directors is critical to help companies navigate this changing environment, ensuring that their governance models, risk management frameworks, and strategic planning processes are well-positioned to support long-term value creation, growth, and resilience.

Set forth below are significant corporate governance trends and developments that we expect to impact board oversight and actions throughout 2026.

I. Focus on Macroeconomic Conditions

Geopolitical tensions and conflicts, shifting trade policies, evolving sanctions regimes, and supply chain constraints continue to add complexity and risk for companies. These developments are becoming structural features of the operating environment, rather than discrete or episodic issues. Boards must now integrate these factors into recurring strategic and risk discussions, rather than addressing them only as specific situations arise.

Boards should therefore review how these factors are included in companies' enterprise risk management frameworks. Management teams should also give periodic updates on developments and risks with respect to these factors, rather than limiting updates to ad hoc crisis briefings. In addition, boards should consider how these factors impact companies' liquidity planning, funding strategy, and capital allocation decisions.

By embedding a focus on macroeconomic conditions into their regular oversight responsibilities, including through strategy sessions, risk reviews, and committee work, boards can better ensure that companies remain resilient, compliant, and prepared to pivot as conditions evolve.

II. Recalibration of Stakeholder Engagement

Companies' engagement with stakeholders is changing in response to regulatory developments, political scrutiny, and changes in how voting decisions are made. Boards should understand how these changes may affect investor relationships, proxy season dynamics, and the channels through which stakeholders seek to influence corporate governance.

Increasing Passivity of Investor Engagement. In 2025, the U.S. Securities and Exchange Commission (SEC) updated its beneficial ownership reporting requirements to emphasize passivity of institutional investors. Previously, SEC guidance indicated that engagement with management on executive compensation, environmental, social, or other public interest issues, or corporate governance topics unrelated to a change of control typically would not, in itself, prevent a stockholder from qualifying as a passive investor. The new guidance, however, broadened the actions that would constitute an attempt to influence control, and, consequently, cause a stockholder to be deemed an “active,” rather than “passive,” investor. Notably, the new guidance states that recommendations to “change...executive compensation practices or undertake specific actions on a social, environmental, or practical policy” coupled with explicitly or implicitly conditioning support of one or more of the company’s director nominees may constitute an attempt to influence control.

This new guidance generally has made investors more cautious with management engagement. As a result, many engagement meetings are shorter and more scripted, with fewer forward-looking or thematic discussions, and feedback often is confined to direct responses to company-prepared questions.

Stockholder engagement strategies under these new parameters are continuing to develop, but companies should review their approaches to stockholder outreach to ensure they continue to receive timely and valuable feedback. In particular, boards should consider whether:

- Management and the board should more actively set the timing, structure, and substance of engagements.
- Additional venues for engagement outside of typical proxy season touchpoints would be useful.
- The board receives regular and adequate information on investor engagements, including areas of concern and emerging expectations.

Investors may increasingly look to boards and management teams to structure engagement opportunities and provide visibility into companies’ approaches to key topics.

Narrowing of Eligible Stockholder Proxy Proposals. Historically, stockholders could make their views on governance matters known to management, the board, and other stockholders through a variety of mechanisms, including by submitting a proposal to the company for inclusion in the company’s annual proxy statement. Although the proposal may not pass, the fact that the proposal would appear in the proxy statement and be subject to a stockholder vote may impact the company’s activities. For example, in advance of the vote, the company may settle with the stockholder proponent by making responsive changes on terms mutually acceptable to the stockholder proponent and the company. However, long-standing SEC rules limit the subjects of stockholder proposals that companies are required to include in their proxy statements. The SEC’s interpretations related to these eligibility rules heavily impact a stockholder’s ability to access a company’s proxy statement and thereby force a stockholder vote on a proposal.

In 2025, the SEC issued guidance narrowing the stockholder proposals that companies are required to include in their proxy statements. In November 2025, the SEC announced that, due to “current resource and timing considerations,” it would not give companies substantive responses to Rule 14a-8 no-action requests to exclude stockholder proposals for the 2026 proxy season, with a limited exception for no-action requests based on certain state law issues. As a result, public companies face a heightened risk of litigation from proponents if the determination is made to exclude the proposal from the proxy statement, which, to date, has been limited.

Companies seeking to exclude stockholder proposals during the 2026 proxy season should follow Rule 14a-8's procedures and bring proposed exclusions to their boards for deliberation regarding the company's decision, and also consider engaging and negotiating with the stockholder proponent.

Greater Scrutiny of Proxy Advisors and Changing Voting Models. In December 2025, the White House issued an executive order aimed at reducing the influence of proxy advisors, asserting that the policies of these firms, particularly those related to environmental, social, and governance (ESG) and diversity, equity, and inclusion (DEI) matters, advance nonfinancial goals that conflict with investor fiduciary duties. The executive order directs the SEC, Federal Trade Commission, and Department of Labor to review the rules governing the proxy advisory industry.

At the same time, voting programs for retail investors have been shifting, which may reduce reliance on proxy advisory firms. For example, in September 2025, the SEC granted ExxonMobil's no-action request to establish a new retail stockholder voting program that allows stockholders to authorize standing voting instructions that require ExxonMobil to vote their shares based on the recommendation of the company's board at each meeting of stockholders. Additionally, over the last several years, large asset managers have continued to roll out or expand "pass-through voting" and "voting choice" programs, allowing underlying investors greater input into how their indirectly held shares are voted.

These programs may decrease the predictability of voting outcomes for companies and increase the importance of stockholder engagement and communication. Boards and management may also need to devote more attention and resources to understanding investor preferences and explaining the company's position on key matters. Boards should stay apprised of investor engagement plans and feedback.

III. Artificial Intelligence

Artificial intelligence (AI) is rapidly developing and becoming embedded in many aspects of companies' operations. At the same time, regulation, as well as best practices for oversight and risk identification and management in connection with AI, are still evolving. As AI becomes increasingly important in companies' businesses, as well as those of their third-party vendors, it is essential that boards have the expertise and structures needed to oversee the risks and opportunities associated with AI.

Boards should consider whether they have the skillset to effectively oversee AI, including the ability to guide and challenge management on these matters. This may mean requiring regular education for directors on AI fundamentals, current and proposed regulatory frameworks, and emerging best practices, or recruiting directors with specific AI experience. Companies should also consider updating their director and officer questionnaires to collect information regarding AI expertise of board members.

Additionally, stakeholders increasingly expect companies to adopt formal AI governance frameworks as AI becomes more prevalent. The number of S&P 500 companies disclosing that a board committee has AI oversight responsibilities more than tripled in 2025. Audit committees are the primary choice; however, technology committees, nominating and governance committees, and others also are designated to oversee AI. The prevalence of technology committees has also grown in recent years as companies seek structures better suited to ongoing oversight of AI and cybersecurity generally. As AI implementation and use will differ across companies,

appropriate governance structures will likewise differ. Boards and management should thoughtfully approach board and management-level governance structures that best support the company's AI activities. Boards should also consider the type and scope of information delivered by management on AI, including whether it effectively supports the board's oversight role.

Boards also should consider how AI tools might be used to enhance their own oversight function. AI capabilities can be used by boards to provide analyses, summaries, and comparisons that can contribute to deeper discussions, more insightful questions, and better decision-making. The use of AI can also help overcome the information gap between directors and management. However, appropriate parameters should be put around the use of AI in the boardroom. Confidentiality and data security matters should be carefully considered, as well as potential biases and errors found in AI-generated materials. As in other areas of companies, AI can be a powerful tool in the boardroom, but ultimately, it cannot replace the board's oversight role or the need for informed, independent judgment.

IV. Finding New Paths for Sustainability

The corporate sustainability landscape has evolved significantly since the beginning of 2025 due to ongoing regulatory divergence at the federal and state levels, increasing public and political scrutiny, and general uncertainty. In 2026, the ESG landscape remains highly politicized and is experiencing significant regulatory fragmentation. Many companies have responded by revisiting their ESG programs and modifying their public-facing communications with respect to ESG topics. This includes shifting toward the term "sustainability" and away from the term "ESG" due to its politicized connotations. At the same time, stakeholders continue to focus on certain ESG issues that may affect long-term value. Boards should recognize that many of these substantive issues remain important, even as terminology and political dynamics shift.

DEI practices and disclosures have also been under increasing scrutiny. As noted above, in early 2025, the White House issued executive orders targeting DEI programs and policies. While these executive orders were aimed at the federal government and government contractors, they have influenced broader public debate and contributed to recalibration of DEI approaches across companies.

Effective February 25, 2025, ISS indefinitely halted consideration of a board's gender diversity and racial/ethnic diversity when making voting recommendations with respect to the election of directors at U.S. companies. In March 2025, Glass Lewis modified its approach to board diversity so that it flags all director election proposals at U.S. public companies in which its recommendation is based, in part, on considerations of gender or underrepresented community diversity.

In response to the changing environment, many companies have reduced DEI-related disclosures in public-facing documents, including proxy statements. Companies have also expanded their definitions of diversity to encompass varied skills, experiences, and backgrounds in addition to gender and racial/ethnic characteristics.

Finally, the prevalence of greenwashing litigation has continued to increase in the United States, with heightened scrutiny directed at sustainability representations, particularly in marketing and labeling.

Given the new risk dynamics at play in these areas, boards should take an active role in overseeing sustainability

programs and disclosures. In particular, boards and management should:

- Seek to tailor sustainability programs to the company's business model and operations, prioritizing issues that are most material to long-term value and risk
- Integrate key sustainability risks into the company's enterprise risk management framework
- Coordinate disclosures to mitigate misalignment risks; and
- Engage with stockholders on sustainability, particularly when making changes to sustainability programs, goals, or disclosures.

V. Revisiting Board Refreshment and Succession Planning

Board refreshment and succession planning are critical to ensure that board composition remains aligned with a company's evolving strategy, current and emerging needs, risk profile, and stakeholder expectations. Over the last few years, additional emphasis has been placed on companies' explanations regarding what skills and experiences each director brings to the board and how the board ensures it has the right mix of skills and perspectives.

The SEC's universal proxy rules further heightened scrutiny of individual directors. In universal proxy contests, activist investors can more easily target specific directors and tend to target directors whose profile may be perceived as misaligned with the company. In this environment, it is important for boards to have robust processes for evaluating directors' continued service.

While most boards conduct some type of annual evaluation process, those processes may not be as rigorous or actionable as they could be. To enhance their effectiveness, boards should consider:

- Incorporating individual director evaluations, in addition to board- and committee-level assessments, to provide more specific feedback on performance and engagement.
- Engaging a third-party facilitator periodically to conduct evaluations. The use of a third-party facilitator can help to promote candid feedback and assist with difficult conversations about board composition and function.

These steps may help drive meaningful improvements in board effectiveness.

Investors are also increasingly expecting disclosures that demonstrate boards are considering succession planning in a structured way, including board leadership, director, and management succession planning. Thoughtful succession planning supports continuity, reduces the risk of disruption, and can enhance confidence in long-term strategy.

Final Thoughts

As boards confront this evolving governance environment, the common thread across these developments is the need for deliberate, forward-looking, and well-documented oversight. In 2026, directors should periodically reassess board and committee structures, risk management frameworks, disclosure controls, engagement strategies, and succession planning processes to ensure they remain fit for purpose in light of changing regulatory expectations, stakeholder dynamics, and technological advances such as AI. Thoughtful calibration of these elements, tailored to the company's industry, strategy, risk profile, and investor base, can help boards mitigate

legal, regulatory, and reputational risks and better position the company to capitalize on emerging opportunities. By approaching these issues in an integrated manner, including engaging proactively with management, advisors, and key stakeholders, boards can strengthen their governance foundations and support companies' long-term value creation, resilience, and credibility in a period of continued uncertainty.

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