

GET READY FOR THE 2026 REPORTING SEASON

Dec 18, 2025

As companies prepare for the upcoming proxy and annual report season, the following lists some of the key items to consider:

Form 10-K Cover Page

- **Filer Status.** Calendar-year companies should have determined their filer status for 2026 as of June 30, 2025. See [Confirming SEC Filer Status for the Upcoming Year](#) (June 18, 2025).
- **Clawback CDIs.** Last year the SEC staff published [several interpretations](#) relating to clawbacks, focusing on checkboxes on 10-K/20-F cover pages and related recovery disclosures.

Risk Factors

Consider whether any material updates to risk factors are appropriate, such as:

- **Possible government shutdown.** In light of the potential expiration of the federal budget in January 2026, public companies should evaluate the factors discussed in our post concerning the recent government shutdown: [Key issues for public companies during continuing government shutdown](#) (Oct. 8, 2025).
- **Continuing tariff uncertainties.** Companies should give special attention to risk factors in light of the continuing global tariff regime. See [How Should Companies Update Risk Factors and MD&A During a Global Trade War?](#) (Apr. 8, 2025). In addition, companies should consider how to address uncertainties presented by the impending U.S. Supreme Court ruling on challenges to U.S. tariffs.
- **Artificial intelligence developments.** Companies should consider the effects of AI developments on their businesses, depending on the level of their investments in or dependence on AI. See [Should Your Company Consider Risks of an Artificial Intelligence Bubble?](#) (Oct. 20, 2025). In addition, as the SEC staff explained in June 2024, companies should [exercise care and temper descriptions of AI activities](#), and avoid "AI washing".

- **Other possible topics.**

- Continuing effect of international conflicts such as those in the Middle East and Ukraine and tensions between Taiwan and China.
- Supply chain and labor challenges, including the effect of immigration policies on hiring and retention.
- Continuing economic uncertainties related to macro-economic issues, such as trends in unemployment and inflation.
- Cybersecurity threats and vulnerabilities.
- Climate change and extreme weather events, including physical, financial and regulator risks, taking into account regulatory developments and legal challenges, as discussed in [ExxonMobil Takes Its Turn Challenging California Climate Disclosure Laws](#) (Nov. 6, 2025) and [Ninth Cir. Halts CA Climate-Related Financial Risk Law; Emissions Reporting Law Remains in Force](#) (Nov. 20, 2025).

Additional reminders for risk factors:

- Stay mindful of the "buried facts" doctrine, under which disclosure may be found to be false and misleading where its significance is obscured or buried. It can be helpful to list risks in general order of significance and filter out trivial or irrelevant information.
- As [previously discussed](#), presenting risks as "hypothetical" or speculative when, in fact, a material adverse event has actually occurred, such as a tariff impact, can be misleading.
- Include a summary ([concise, bulleted or numbered, and not more than two pages](#)) where the risk factors section exceeds 15 pages.
- Move risks that are not specific to the company to a "General Risk Factors" sub-section.

Companies should also review the substance and priority of factors included in their forward-looking statement disclaimers, with careful attention to tailoring the listed factors to the specific forward-looking statements in the filing.

MD&A

- **Eyes of management.** One of the key objectives of MD&A is to provide a narrative explanation of financial statements that enables investors to see the company through the eyes of management.
- **Known trends or uncertainties.** Item 303 directs companies to disclose in MD&A "any known trends or uncertainties that have had or that are reasonably likely to have a material favorable

or unfavorable impact” on financial performance, liquidity or capital resources. They are also required to provide “such further material information . . . as may be necessary to make the required statements, in the light of the circumstances under which they were made not misleading” pursuant to Rule 12b-20.

- **Tariffs.** Similar to [SEC staff guidance relating to Covid disclosures](#), companies should consider disclosing the impact of tariffs through the eyes of management, including, to the extent material:
 - The effects on operations, liquidity and capital resources.
 - Operational changes, such as changes to suppliers or manufacturing locations or substitutions of parts or raw materials.
 - Known trends, events or uncertainties that are reasonably likely to have a material impact on the company results of operations or financial position.
- **Non-GAAP financial measures.** Companies should pay attention to the staff’s most recent guidance on problematic non-GAAP practices in earnings releases and quarterly or annual reports. See [SEC staff flashes red and yellow traffic lights on common non-GAAP practices](#) (Dec. 16, 2022).

Selected 10-K/Proxy Checklist Items

- **Confirm data tagging.** Although not new, eligibility to use Forms S-3 and S-8 and Rule 144 depend on compliance with SEC electronic filing rules, including data tagging of certain disclosures as well as the cover page, financial statements, auditor information, notes and schedules. See [SEC filing reminder: Confirm data tagging in your 10-K](#) (Feb. 6, 2025).
- **Confidentiality practices.** Companies should review internal practices to protect confidential information, including earnings announcements and business developments, when communicating with vendors, such as SEC filing agents, financial printers, and IR and PR advisors. See [Proceed at Your Own Risk: Steps to Protect Confidential Information and Public Disclosures](#) (July 14, 2025).
- **Officer certification disclosure controls.** Companies should regularly evaluate their DCPs and consider potential enhancements. See [Is it time to take a fresh look at disclosure controls and procedures for CEO/CFO certifications?](#) (Sept. 5, 2023) and [Don’t forget accounting rules when accelerating vesting of stock-based awards](#) (Feb. 4, 2025) (coordination by HR, accounting and legal functions relating to equity compensation awards).
- **Selected disclosures**
 - [Diligence director independence determinations](#) (Jan. 20, 2022).

- [Review controls and procedures for perquisites](#) (Jan. 20, 2022).
- [Review reasonableness and support for claims, such as prospects or products](#) (Oct. 17, 2024).
- [Review legal proceeding disclosures, such as describing lawsuit as "without merit"](#) (Oct. 17, 2024).
- [Keep track of related party transactions to ensure proper disclosures](#) (Oct. 17, 2024).
- [SEC Doesn't Like Secret Hush Money Deals Either](#) (Jan. 13, 2025) (former CEO settled charges for not disclosing confidential settlements with his accusers).
- **SEC comments.** Reflect any responses given to SEC comments over the past year.
- **Electronic signatures.** Confirm that the company complies with the SEC's requirements when collecting electronic signatures for filings. See our [November 24, 2020 post](#) for a summary of required procedures.
- **Exhibits**
 - Update the [Description of Registered Securities](#) required by S-K Item 601(b)(4) for any changes, such as to the certificate of incorporation or bylaws, that affect last year's description.
 - Update [Insider trading policies & procedures](#) required by S-K Item 408(b)(2) for any changes.
 - Confirm hyperlinks to referenced documents in the exhibit index, and fix any broken links. See [SEC Reminder: Confirm Accurate Internal Links in EDGAR Filings](#) (updated 2024).
 - Address any pending expirations of confidential treatment for redacted exhibits.
 - Include (cross reference) any exhibits filed since the last 10-K, such as with 10-Qs or 8-Ks.
 - Double-check accountant consents to ensure they reflect an accurate list of the company's active registration statements, including S-3s and S-8s, as applicable.

Shareholder Engagement and Disclosure

- **Latest proxy advisor policies.** Depending on the composition of their largest institutional shareholders and the influence or discretion they afford to proxy advisors, companies should consider how to respond to updated proxy voting policies. See [Season's Greetings from ISS and Glass Lewis](#) (Dec. 11, 2025).

- **Deterrent effect of SEC guidance.** Traditional (non-activist) institutional investors may have shifted away from explicit calls for policy changes or specific actions in discussions with public companies to avoid being viewed as exerting pressure. Some may no longer communicate their voting plans or decline invitations to meet with management. Companies should evaluate their communication strategies and consider whether to improve or expand disclosures in their proxy statements or supplemental materials on key topics of investor interest. See [Shareholder engagement by investors may trigger requirement to convert from Schedule 13G to 13D](#) (Feb. 25, 2025).
- **Potential retail investor strategies.** Companies with significant numbers of retail holders may consider voting instruction programs as a way to promote voting by retail investors by reducing the time and inconvenience associated with traditional proxy voting. Before adopting programs, companies should consider various factors discussed in the alert. See [SEC staff authorizes use of standing voting instructions by retail shareholders as way to boost participation](#) (Sep. 30, 2025).
- **Options to address shareholder proposals.** The SEC no longer companies substantively responds to most 14a-8 no-action letter requests. While companies may request “no objection” letters, some may nonetheless decide to include such proposals based on investor relations and other strategic factors. See [SEC announces it will not review most 14a-8 shareholder proposal no-action letters for next proxy season](#) (Nov. 19, 2025).

Reminders for Annual Meeting SEC Filings

Companies should review their checklists for certain SEC action items:

- **Glossy Annual Report.** Electronically submit a copy of the glossy annual report by the later of the mailing of the annual report or the filing of proxy materials with the SEC.
- **Annual Meeting 8-K.**
 - Report the results of the shareholder vote on the election of directors and other proposals in Item 5.07 8-K.
 - If a say-on-frequency vote is held, either include the board’s frequency determination in light of such vote or file an amended 8-K within 150 days of the shareholder meeting date disclosing the determination.
- **Form S-8.** If shareholders approve an amended or new equity plan, the company should prepare and file a Form S-8 before making awards and distribute (either electronically or physically, as appropriate) the relevant prospectus or offering circular.

- **Section 16 Forms.**

- Form 3 for newly elected directors.
- Form 4 for director equity awards made at the annual meeting.

RELATED CAPABILITIES

- Securities & Corporate Governance

MEET THE TEAM



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