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Securities & Corporate Governance

Q1 2026 Quarterly Newsletter

Taft's Securities & Corporate Governance Quarterly Newsletter is designed to update public and private company clients on recent developments in federal securities laws and corporate governance matters. For further information, please contact any member of the firm's Public Company & Securities practice group or any of the contributors to this newsletter.

This edition of the quarterly newsletter addresses the following topics:

- Securities and Exchange Commission (SEC) Releases Statement on Reforming Regulation S-K Disclosure Requirements
- Is the Reincorporation of Public Companies Away From Delaware (DEXIT) *a Thing*?
- Financial Industry Regulatory Authority, Inc. (FINRA) Board of Governors Approves Three Rule Proposals to Strengthen Investor Protections and Modernize Information Delivery Requirements
- U.S. House of Representatives Passes Bill to Expand Definition of "Accredited Investor"
- U.S. Supreme Court to Determine Whether SEC May Seek Equitable Disgorgement Without Investor Pecuniary Harm
- Nasdaq Stock Market LLC (Nasdaq) and NYSE American LLC (NYSE American) to Tighten Initial Listing Standards

SEC Releases Statement on Reforming Regulation S-K Disclosure Requirements

On Jan. 13, 2026, the SEC released a statement noting its intent to reform Regulation S-K under the Securities Act of 1933, as amended (Securities Act). In particular, the SEC seeks to streamline the disclosure requirements of Regulation S-K to elicit the disclosure of material information while avoiding compelling an avalanche of immaterial information that would neither protect investors nor facilitate capital formation.

The SEC's Division of Corporation Finance began a comprehensive review of Regulation S-K last May, when the SEC solicited public comments and held a roundtable on whether the executive compensation disclosure framework in Item 402 of Regulation S-K could be improved. For more information about the roundtable discussion, and certain executive compensation disclosure requirements that have been scrutinized, see our legal update available here. The Staff is currently evaluating comment letters that followed the roundtable discussion and preparing recommendations for revisions to Item 402, but the Staff and SEC intend to revise other requirements of Regulation S-K as well.

Members of the public are encouraged to submit comments on how the SEC can amend the disclosure requirements of Regulation S-K on the SEC's website by no later than April 13, 2026.

Is DEXIT *a Thing*?

The trilogy of Delaware court decisions involving Elon Musk's 2018 Tesla pay package, as well as other recent Delaware court decisions, has led more public companies than ever to consider reincorporating from Delaware to states like Florida, Indiana, Nevada, and Texas, where the duties of directors are more clearly defined by statute and the prospect of personal liability for directors is more remote. According to proxy advisor Glass Lewis, more public companies reincorporated out of Delaware in 2025 than in prior years. At the same time, the fear of a "DEXIT" appears to be overblown.

More public companies are incorporated in Delaware than any other state — and by a large margin. More than 50% of U.S. public companies are Delaware corporations, including more than two-thirds of Fortune 500 companies. Delaware's specialized business courts and well-developed body of corporate law have given it the well-deserved reputation as the default state in which to incorporate. At the same time, as Tesla and other companies have learned, much of Delaware's corporate law is based on the decisions of courts acting in equity — often determining whether a particular action is "fair." That subjective determination can lead individual judges to find fault with board decisions despite the board's best efforts to comply with the law. In the Tesla case, the Delaware Supreme Court ultimately reinstated Musk's pay package, and while the court only awarded the plaintiff $1 in damages, the court still awarded an estimated $55 million in attorneys' fees to the plaintiff's counsel.

Other states like Florida, Indiana, Nevada, and Texas have corporate laws where the duties of directors are expressly written into the statute, courts have less discretion to overturn board decisions, and personal liability for individual directors requires some level of reckless or intentional wrongdoing on their part. They also have lower franchise taxes and, in some cases, have been aggressively marketing themselves as an alternative to Delaware.

As for DEXIT, in the Glass Lewis analysis, only 29 public companies formally proposed reincorporation to their shareholders (and only 18 such companies proposed reincorporation from Delaware), with all but two of the proposals being approved by shareholders. That's less than 1% of all U.S. public companies that proposed reincorporation, and an even smaller amount that proposed reincorporation from Delaware. While DEXIT may be overblown, a robust discussion of the pros and cons of reincorporating to another state is a healthy one for all public companies to consider. Corporate laws often differ in very material ways, and two different companies may legitimately reach two very different conclusions on which state of incorporation is best for them.

FINRA Board of Governors Approves Three Rule Proposals to Strengthen Investor Protections and Modernize Information Delivery Requirements

At its final meeting of 2025, the FINRA Board of Governors approved three rule proposals to advance FINRA's objective of modernizing its regulatory framework while strengthening investor protections. A summary of the three approved rule proposals is as follows:

- Electronic Delivery as Default: This approved proposal would permit FINRA member firms to use electronic delivery as the default method of providing information to customers. According to FINRA Board Chair, Scott Curtis, such proposal aligns FINRA rules "with how many investors prefer to receive information in the digital age." Customers would maintain their ability to choose paper delivery instead of electronic delivery of such information. FINRA plans to file proposed rule changes consistent with this proposal with the SEC.
- Customer Protection from Financial Exploitation: This approved proposal would extend the maximum temporary hold period on transactions where FINRA member firms suspect financial exploitation of senior or other vulnerable adults from 55 to 145 business days. The proposal would also establish a new temporary delay of up to five business days on transactions where there is a reasonable belief of fraud

against a customer of any age. In its Regulatory Notice about such proposal, FINRA noted that the proposal is necessary because of the surge in fraud and financial exploitation in recent years, driven in part by technological advances. FINRA has requested comment on the approved rule proposal.

- Collective Trust Fund Flexibility: This approved proposal would provide more flexibility for collective trust funds (or collective investment trusts)[1] to access initial public offerings under FINRA's new issue rules. The proposal would treat collective trust funds, which are generally used as investment options in qualified retirement plans, comparably to other types of pooled investment vehicles, which may help make collective trust funds a more competitive option for qualified retirement plans. FINRA plans to file this rule proposal with the SEC.

U.S. House of Representatives Passes Bill to Expand Definition of "Accredited Investor"

On Dec. 11, 2025, the U.S. House of Representatives, by a vote margin of 302 to 123, passed the Incentivizing New Ventures and Economic Strength Through Capital Formation (INVEST) Act. Among other things, the INVEST Act would modernize the definition of "accredited investor" in Rule 501(a) of Regulation D under the Securities Act of 1933, as amended, so that factors such as education, professional credentials, and experience – not just wealth – would determine whether an individual can invest in private securities offerings. The INVEST Act incorporates the concepts originally introduced in the Fair Investment Opportunities for Professional Experts Act, passed by the U.S. House of Representatives on June 23, 2025, and the Equal Opportunity for All Investors Act, passed by the U.S. House of Representatives on July 21, 2025.

As Taft previously described here, the Fair Investment Opportunities for Professional Experts Act (now Section 201 of the INVEST Act) would require an amendment to the definition of "accredited investor" to include individuals with certain licenses or, as determined by the SEC and Financial Industry Regulatory Authority, Inc., qualifying education or job experience.

As Taft previously described here, the Equal Opportunity for All Investors Act (now Section 203 of the INVEST Act) would require an amendment to the definition of "accredited investor" to include any natural person who is certified through a to-be-established SEC examination process. The examination process, which, pursuant to the INVEST Act, must be established by the SEC within one year following the enactment of the INVEST Act, and which may be a test, certification, or examination program, must (i) be designed with an appropriate difficulty level such that an individual with financial sophistication would be unlikely to fail, (ii) include methods to determine competency and knowledge in certain areas such as the disclosure requirements of different securities, and (iii) be administered by a registered national securities association and offered free of charge to the public.

These new categories of "accredited investor" introduced in the INVEST Act would enable individual investors to qualify as "accredited" beyond the current wealth and income thresholds (generally, $200,000 of annual income for individuals or $300,000 of joint annual income with a spouse or spousal equivalent, or a net worth in excess of $1,000,000)[2]. The bill also provides for these wealth and income thresholds, which have not been adjusted since the 1980's, to be adjusted for inflation every five years.

The INVEST Act has not yet been approved by the U.S. Senate or signed into law.

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[1]Collective trust funds (or collective investment trusts) are pooled investment vehicles that combine the money of multiple investors into a single portfolio with a specific investment strategy.

[2]A natural person can also qualify as an accredited investor if he or she (i) is a director, executive officer or general partner of the issuer, or a director, executive officer or general partner of a general partner of that issuer, (ii) holds in good standing a Series 7, 65 or 82 license, or (iii) is a "knowledgeable employee" of the issuer, as defined in Rule 3c-5(a)(4) under the Investment Company Act of 1940, as amended.

U.S. Supreme Court to Determine Whether SEC May Seek Equitable Disgorgement Without Investor Pecuniary Harm

On Jan. 9, 2026, the U.S. Supreme Court granted certiorari in *Ongkaruck Sripetch v. U.S. Securities and Exchange Commission*. The Supreme Court will decide whether, to obtain a remedy of disgorgement, the Securities and Exchange Commission (SEC) must demonstrate that investors have suffered actual pecuniary harm.

Section 21(d)(5) of the Securities Exchange Act of 1934, as amended (Exchange Act), provides that, in any action involving possible violations of securities laws, the SEC may seek, and any federal court may grant, equitable relief that may be appropriate or necessary for the benefit of investors. Federal courts have previously grappled with the question of whether disgorgement (essentially, the return of any unjust enrichment by the wrongdoer) constitutes equitable relief. In its 2020 opinion in *Liu v. SEC*, the Supreme Court held that a disgorgement award is permissible equitable relief only if (i) it does not exceed the wrongdoer's ill-gotten gains and (ii) the disgorged funds are disbursed to the victims.

Complicating matters, shortly following the *Liu v. SEC* decision, Exchange Act Section 21(d) was amended to include new subsection (d)(7), which allows the SEC to seek disgorgement in any action involving possible violations of securities laws. The federal courts of appeal are split over their interpretation of Section 21(d)(7), with the Second Circuit ruling that, following *Liu v. SEC*, disgorgement is inequitable absent a finding of investor pecuniary harm. By contrast, the Ninth Circuit has held that, for disgorgement relief, "the claimant need not show any loss whatsoever, let alone a pecuniary loss." While the Ninth Circuit agrees that there being a victim is a prerequisite for any disgorgement award following *Liu v. SEC*, it disagrees with the notion that "victim" must be so narrowly defined as to require pecuniary harm. The Supreme Court's decision should resolve this split. Taft will provide a further update once the Supreme Court has reached its decision.

Nasdaq and NYSE American to Tighten Initial Listing Standards

Each of Nasdaq and NYSE American has recently proposed, and Nasdaq has implemented, changes to its initial listing standards to heighten the financial and other standards required for initial listing, signaling a broader push to strengthen market quality and investor protections.

Effective January 2026, Nasdaq raised the minimum required market value of unrestricted publicly held shares (MVUPHS)[3] under its income standard for companies conducting initial public offerings and certain other underwritten offerings. The new required MVUPHS is $15 million for listings on the Nasdaq Global and Nasdaq Capital Markets, up from $8 million and $5 million, respectively. In addition, Nasdaq amended its "low price requirement" to allow Nasdaq to immediately suspend trading and issue a delisting determination without providing any cure period, which was provided under the prior version of the rule, if a company's security has a closing bid price of $0.10 or less for 10 consecutive trading days.

Nasdaq has also proposed stricter listing requirements for companies headquartered, incorporated, or principally administered in China, including Hong Kong and Macau, which would, among other things, require that, in the case of an initial public offering, any such company must offer a minimum amount of securities that would result in gross proceeds to the company of at least $25 million. These amendments are not yet effective.

Meanwhile, NYSE American has proposed amendments to align more closely with Nasdaq's framework, departing from its previously more flexible approach. These amendments include requiring $15-$20 million in unrestricted publicly held shares, imposing a $4 minimum share price for new listings, and mandating that companies meet price and market capitalization thresholds over a sustained 90-day period.

Legal disclaimer: This newsletter is intended to provide general information and should not be used or taken as legal advice. Readers should not act upon this information before seeking advice from counsel.

[3]Unrestricted publicly held shares are shares that are not held by an officer, director or 10% shareholder of the company and which are not subject to resale restrictions (Nasdaq Rule 5005(a)(46)).

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