Fenwick Securities Law Update

– July 7, 2025 –

Welcome to the latest edition of Fenwick's Securities Law Update. This issue contains updates and important reminders on:

- Risk factor and Management's Discussion and Analysis considerations for upcoming Form 10-Q filings
- An SEC staff statement on crypto asset exchange-traded products
- SEC discussion with the Nasdaq and New York Stock Exchange to ease public company regulations
- State law developments in Texas and California

Important Reminders

- Risk Factor and MD&A Considerations for Upcoming Form 10-Q
  - **Trade Issues and Tariffs:** U.S. and Chinese officials announced in May that they had reached a temporary deal that would bring U.S. tariffs on Chinese goods to 30%, with an August deadline to reach a more permanent agreement. In late June, the U.S. and China reported reaching an understanding regarding a future trade agreement. In early July, the administration indicated that tariffs would be imposed on U.S. trading partners that have not reached a deal with the U.S. by July 9. The potential impacts of increased tariffs and trade uncertainty are discussed in our April and June Securities Law Updates.
  - **U.S. Budget and Tax Policy:** In May, the U.S. House of Representatives approved a budget and tax bill largely aligned with the goals of the Trump administration. On July 1, the Senate passed and sent back to the House a revised version of the bill. On July 3, the House approved the bill, and it was enacted on July 4.
  - **Foreign Currency Exchange Risk:** As of June 30, the U.S. dollar index was down ~10.8% this year. In light of this significant decrease, companies should review their disclosures about foreign currency exchange risk. For example, some companies include a statement that a hypothetical 10% increase or decrease in the relative value of the U.S. dollar to other currencies would not have a material effect on their operating results. With the value of the U.S. dollar decreasing by 10%, companies should evaluate the continued accuracy of this statement.

Rules and Regulations

- **SEC Withdraws Proposed Amendments to Rule 14a-8:** The SEC withdrew previously proposed amendments to Rule 14a-8. The amendments, proposed in 2022, would have made it more difficult for companies to exclude shareholder proposals on the grounds of substantial implementation, duplication, and resubmission.

Other SEC Developments and Announcements

- **SEC Roundtable on Executive Compensation Disclosure Requirements:** The SEC hosted a roundtable regarding executive compensation disclosure in late June. In their remarks at the roundtable, the Republican-appointed commissioners, now representing a majority of the commission, referred to a disclosure regime that has led to significantly more compensation-related disclosures being included in proxy statements and other securities filings. They question the materiality to investors of some of the information now being provided and note the cost of providing it. Commissioners placed particular focus on the pay ratio disclosure and pay-versus-performance disclosures, as well as on claw-back rules and perquisite disclosures. It is worth noting that some of these more controversial disclosures are, in some form or another, mandated by the Sarbanes-Oxley Act of 2002, so the commission does not have complete discretion to eliminate these requirements.

- **SEC Open Meeting:** The SEC announced the next Small Business Capital Formation Meeting will take place at its headquarters on July 22, 2025. The meeting will cover matters relating to rules and regulations affecting small and emerging businesses and their investors under federal securities laws. The specific agenda for the meeting will be forthcoming.

- **SEC Division of Corporation Finance Issues Statement on Crypto Asset Exchange-Traded Products:** On July 1, the SEC's Division of Corporation Finance (Corp Fin) issued a statement regarding Crypto Asset Exchange-Traded Products (crypto asset ETPs). Crypto asset ETPs are investment products that are listed and traded on national securities exchanges and are typically structured as trusts that hold assets which consist of spot crypto assets or derivative instruments that reference crypto assets. These trusts are issuers of securities who must register their offerings and classes of securities under the Securities Act of 1933 and the Securities Exchange Act of 1934, respectively. In the statement, Corp Fin provides its views on the application of certain disclosure requirements for offerings and registrations by crypto asset ETPs. These views include guidance, reminders and numerous observations of typical filings pertaining to the (i) cover page, (ii) prospectus summary, (iii) risk factors, (iv) description of the business, (v) description of securities, (vi) plan of distribution, (vii) directors, officers and significant employees, (viii) financial statements, and (ix) filing fee tables.

- **SEC in Discussion with Exchanges to Ease Public Company Regulations:** The SEC is reportedly in discussions with Nasdaq and NYSE about ways to ease the burden of becoming—and remaining—a public company. Some of the topics reportedly being considered include:

  - Making it more difficult for activist investors with minimal stock holdings to launch proxy contests and submit repetitive proxy proposals

  - Less onerous disclosure requirements in preliminary proxy filings

  - Reducing fees associated with initial and continued listings

- Making it easier for companies that went public through deals with Special Purpose Acquisition Companies to raise capital

- Making it easier to raise capital by selling additional shares through follow-on offerings

State Law Developments

- **Texas Developments:** SB 2337, signed into law on June 20, 2025, requires proxy advisors to provide detailed disclosures when providing voting recommendations concerning any public company that is incorporated in Texas; has its principal place of business in Texas; or has sought, but not yet received, shareholder approval to reorganize in Texas that are based, in whole or in part, on nonfinancial factors—including environmental, social or governance (ESG) principles or diversity, equity and inclusion (DEI) considerations—or when they diverge from management's recommendation or provide conflicting advice across clients. Any violation of SB 2337 will be deemed to constitute a deceptive trade practice under Texas law and will be actionable by the company that is the subject of the recommendation, any of its shareholders, advisory clients and the Texas Attorney General's office.

- **California Climate Disclosure Law Developments:** On May 29, 2025, the California Air Resources Board (CARB) held a virtual workshop to "support the development of California's Corporate Greenhouse Gas Reporting Program" reflected in the Climate Corporate Data Accountability Act (SB 253) and the Climate-Related Financial Risk Act (SB 261)—each bill as amended by Senate Bill 219. More than 3,000 people from five continents attended the workshop. California state Senators Scott Wiener and Henry Stern, the sponsors of the legislation, began the webinar by confirming that, despite speculation in the media, the reporting requirements under SB 253 and SB 261 will not be delayed. Despite multiple inquiries, CARB would not provide details on exactly when the first emission reports will be due in 2026 under SB 253. The first reports under SB 261 will be due on or before January 1, 2026. Notwithstanding the looming deadlines, CARB revealed that implementing regulations for SB 253 will not be ready by July 1, 2025 (the deadline imposed by SB 219). Instead, proposed regulations for SB 253 will be released sometime before the end of the year and will then be subject to comment, making it unlikely that we will have final regulations for SB 253 until sometime (probably late) in 2026. CARB noted during the session that it expects to hold additional workshops in the coming months and will continue to solicit public feedback. However, given the time and effort required to publish greenhouse gas emissions and climate-related risk reports, companies that believe they may be in scope of these regulations are encouraged to start preparing now for these disclosures, despite the many unresolved questions.

Other Matters of Interest

- **Court Ruling Invalidating SEC's 2020 Rules Regarding Activities of Proxy Advisory Firms:** On July 1, the U.S. Court of Appeals for the District of Columbia Circuit upheld a 2024 Circuit Court decision that invalidated SEC rules issued in 2020 regulating the activities of proxy advisory firms (most notably Institutional Shareholder Services Inc. and Glass, Lewis & Co.). The 2020 regulations noted that providing proxy voting advice was a "solicitation" under the Securities Exchange Act of 1934, with corresponding implications. The circuit court held that proxy voting advice is not a solicitation but simply a recommendation. It stated that the "SEC's effort to expand 'solicitation' to include such advice cannot be reconciled with the statutory text and its adoption of that definition in the 2020 Rule was contrary to law."

Notable Resources

This update was created by Fenwick's corporate governance and capital markets practices.

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As a leading technology and life sciences law firm, Fenwick advises companies on the full suite of corporate governance matters. We partner with our clients to anticipate and navigate issues arising in an evolving corporate governance landscape, including SEC reporting and governance requirements of relevant securities exchanges, board and committee structure, corporate purpose and sustainability, shareholder engagement, and executive compensation.