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WHAT TO EXPECT IN 2026: ANTICIPATED CHANGES TO EXECUTIVE COMPENSATION DISCLOSURE AFTER THE SEC CHAIRMAN'S NYSE SPEECH

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For the first time in nearly two decades, the SEC is preparing to modernize Item 402 of Regulation S-K, the backbone of public-company executive compensation disclosure. Although the timing remains uncertain, we expect proposed reforms to emerge in 2026, setting the stage for the most significant shift in pay disclosure since 2006.

Recent public remarks—including Chairman Paul Atkins' December 2025 address at the New York Stock Exchange[1]—indicate a strong shift toward re-centering the SEC's executive compensation disclosure regime on financial materiality, scalable requirements for smaller and newly public issuers, and avoidance of what Chairman Atkins described as an "avalanche of trivial information."[2] These remarks reinforce that any modernization of Item 402 is likely to emphasize clarity, decision-useful disclosures, and proportional compliance burdens.

Messaging from the SEC over the past year similarly signals an intent to revise the disclosure rules to reduce unnecessary complexity and restore focus on information a reasonable investor would consider important. Anticipated changes are likely to focus on the Compensation Discussion and Analysis (CD&A), the Summary Compensation Table (SCT), and related tabular disclosures, while shifting toward a more principles-based regime that clearly links intended pay opportunities with realized executive outcomes.

1. Recentering on Materiality and Scaling Disclosure for Size and Maturity

SEC leadership has emphasized that materiality—not volume—should be the "north star" of the executive compensation disclosure regime.[3] The current system often results in lengthy, highly technical disclosures that impose disproportionate burdens on smaller issuers while providing limited incremental value to investors.

In practice, we expect reforms to:

- streamline or eliminate immaterial narrative disclosures;
- consolidate overlapping tables;
- expand the IPO onramp for emerging growth companies; and

IN THIS ISSUE:

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- reevaluate public-float thresholds that subject smaller issuers to large-issuer disclosure obligations.

Companies with modest public floats or early-stage reporting histories may benefit from scaled requirements that reduce friction during the transition to public-company reporting.

2. A More Principles-Based, Materiality-Driven CD&A

The CD&A was originally intended to explain how and why compensation decisions were made and how those decisions aligned with performance. Over time, successive layers of rulemaking and growing compliance demands have caused many CD&As to balloon into lengthy, formulaic disclosures, often driven more by the need to satisfy technical disclosure requirements than by the goal of providing investors with information useful in the decision-making process.

Against this backdrop, we expect the forthcoming revisions will likely recenter the CD&A on storytelling and strategy, one that highlights the compensation committee's objectives, its evaluation of performance, and how compensation outcomes supported corporate strategy and value creation. Rather than repeating tabular information, companies should prepare for heightened expectations around plain-English explanations of key decisions.

We expect forthcoming reforms to:

- encourage clearer articulation of compensation philosophy and performance evaluation;
- reduce duplicative narrative reflecting tabular information;
- shift focus toward the committee's objectives and strategic rationale; and
- emphasize plain-English explanation rather than formulaic detail.

Taken together, these developments suggest that the CD&A will evolve into a more streamlined, materially focused narrative.

3. Rethinking the Tables: Clarity Without Overload

A key question is whether the SCT will survive in its current form. Many expect that it will evolve into a "target versus realized pay" presentation, one that contrasts intended compensation opportunities with compensation actually earned, while others expect a hybrid model that places target opportunities and realized results side by side, effectively merging the SCT with elements of the Pay-Versus-Performance (PVP) disclosures. In either case, reform is expected to transform the tables into more

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decision-useful dashboards rather than static compliance exhibits, better aligning narrative and quantitative disclosures to show how pay intent translated into outcomes.

The SEC also appears to be focused on making executive pay disclosure more intuitive and comparable across issuers. This may include encouraging companies to provide a lifecycle view of compensation, showing how intended pay opportunities evolve from grant to vesting to realized value, and revisiting the equity award tables to capture that progression.

If implemented as anticipated, these revisions would mark a fundamental modernization of the executive compensation disclosure regime, shifting it from a compliance exercise to a communication tool intended to demonstrate pay-for-performance alignment in a way that is both accessible and analytically robust.

Potential revisions may include:

- combining target opportunities and realized outcomes into integrated presentations;
- reducing duplicative tables;
- encouraging lifecycle views of equity awards; and
- improving clarity around intended versus realized pay outcomes.

If implemented, these changes would modernize the executive compensation disclosure framework, transforming it from a compliance exercise into a communication tool that more clearly demonstrates pay-for-performance alignment.

4. Perquisites Remain a Flashpoint

Perquisite disclosure is expected to remain an area of SEC focus. Rather than adopting new quantitative thresholds, we expect that the Commission may issue clarifying guidance to better distinguish business versus personal benefits and to highlight the importance of contemporaneous board approval and well-documented oversight.

Companies should continue to:

- formalize internal approval processes;
- document business purposes for high-value or mixed-use arrangements;
- maintain clear and consistently applied classification standards; and
- coordinate early with disclosure counsel when preparing proxy materials.

5. The CEO Pay Ratio

Because the CEO pay-ratio rule is statutory, repeal is unlikely. However, the SEC may consider refinements that make the disclosure more meaningful to investors and less prone to the unintended effects highlighted in recent public remarks. For instance, some have argued that the mandated disclosures may unintentionally fuel benchmarking and "ratcheting," where companies adjust CEO pay upward to keep pace with peers regardless of performance, and may also shift attention toward comparisons that feel punitive or shaming rather than providing investors with insight into compensation philosophy or company-specific context.[4]

To address these concerns while maintaining statutory compliance, potential reforms may include:

- streamlining methodologies;
- expanding sampling flexibility;
- incorporating the ratio into revised compensation tables to reduce repetition; or
- presenting the ratio on a year-over-year basis to provide investors with trend information rather than a single data point.

6. What Boards and Counsel Should Do Now

Although any new SEC rulemaking will not affect 2026 proxy filings, boards and compensation committees can prepare now by:

- **Reassessing narrative clarity:** Ensure CD&A narrative explains *why* executives earned what they earned, how decisions aligned with strategy, and how the committee evaluated performance.

- **Strengthening perquisite governance:** Formalize approval processes for executive travel, security, and other mixed-use benefits, and document the business rationale contemporaneously. Tighten policies and maintain written logs defining boundaries between business and personal use (*e.g.*, aircraft, executive security, club memberships, etc.). Advance approvals and consistent disclosure demonstrate strong governance discipline, reducing the risk of SEC scrutiny and shareholder criticism.

- **Enhancing governance and disclosure coordination:** Ensure alignment among management, the compensation committee, finance, and disclosure counsel through structured internal review protocols. Establish a cross-functional "disclosure alignment" review before filing. This not only improves accuracy and coherence for the upcoming 2026 proxy season but also positions the company to meet the integrated, narrative-plus-data approach expected under upcoming SEC reforms.

The Bottom Line

The SEC's long-anticipated modernization of executive compensation disclosure is coming and is expected to reflect a broader desire to anchor disclosure in financial materiality, reduce information overload, and scale compliance for smaller and newly public companies. In the meantime, boards should focus on readiness, strengthening governance, ensuring well-documented decision-making, and maintaining clear alignment between pay and performance. Doing so will not only ease the transition to any new rules but also strengthen credibility under the current regime.

ENDNOTES:

[1]Paul S. Atkins, Chairman, U.S. Sec. & Exch. Comm'n, Remarks at the New York Stock Exchange, "Revitalizing America's Markets at 250" (Dec. 2, 2025) (https://www.sec.gov/newsroom/speeches-statements/atkins-120225-revitalizing-americas-markets-250).

[2]*Id.* (quoting *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 448-449, 96 S. Ct. 2126, 48 L. Ed. 2d 757, Fed. Sec. L. Rep. (CCH) P 95615 (1976)).

[3]*See* Atkins, supra note 1.

[4]Paul S. Atkins, Chairman, U.S. Sec. & Exch. Comm'n, Remarks at the New York Stock Exchange, "Revitalizing America's Markets at 250" (Dec. 2, 2025, *available at*: https://www.sec.gov/newsroom/speeches-statements/atkins-120225-revitalizing-americas-markets-250) (quoting Warren Buffett, *see* Berkshire Hathaway Inc. (Nov. 10, 2025 (https://www.berkshirehathaway.com/news/nov1025.pdf)).

BANK OF ENGLAND REVISES ITS PROPOSED REGIME FOR REGULATING "SYSTEMIC" STABLECOINS

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Executive Summary

- **What's new:** The Bank of England issued a consultation paper setting out in detail its latest proposals for regulating stablecoins which are deemed "systemic," including requirements for backing assets, capital and reserves, and redemption procedures for coinholders.

- **Why it matters:** The bank's proposals are more restrictive in a number of respects than the Financial Conduct Authority's proposed rules for non-systemic stablecoins. In considering whether to recommend to HM Treasury that a stablecoin be treated as systemic, the bank will look at a number of factors, including the volume of transactions using the stablecoin, the nature of transactions processed and its interconnectedness with other systemically important financial market infrastructure.

- **What to do next:** The industry will be monitoring the ongoing consultation on the bank's proposed regime and may want to submit comments on the

proposals before the consultation ends in February 2026.

The long-awaited Bank of England ("Bank") consultation paper on its proposed regulatory regime for sterling-denominated systemic stablecoins was published on November 10, 2025 ("Consultation Paper").[1] This follows its discussion paper of November 6, 2023,[2] as well as the UK Financial Conduct Authority's ("FCA") consultation paper (CP25/14) on stablecoin issuance and cryptoasset custody.[3]

The Consultation Paper outlines the Bank's current position across a number of key areas, including:

- The scope of "systemic stablecoins."
- The composition of "backing assets."
- Capital and reserve requirements.
- Holding limits.
- Redemption requirements.
- Safeguarding of backing assets.
- Remuneration of coinholders.

Whilst the Bank has shown some flexibility on its positions on a number of topics since 2023, its proposed regime remains, as expected, significantly more onerous than the FCA's proposals for non-systemic stablecoins.

What Is a Systemic Stablecoin?

As noted, the Bank's proposals (and therefore the scope of its regulation of stablecoins) only relate to sterling-denominated systemic stablecoins. In response to feedback, the Consultation Paper seeks to clarify and offer further guidance on what constitutes systemic importance.

HM Treasury is responsible for determining whether a payment system which uses stablecoins or service provider which issues stablecoins is systemic (whether in its own right or because it provides an essential service to a systemic payment system or service provider). HM Treasury will consider a number of factors, including the advice of the Bank regarding whether an entity should be recognized as systemic.

The Consultation Paper sets out a number of specific criteria and indicators which the Bank will look at when providing advice to HM Treasury as to whether a stablecoin should be considered systemic. Those include:

- The number and value of transactions presently processed or likely to be processed in the future, and the value of services that the service provider presently provides or is likely to provide in the future.
- The nature of the transactions processed or the nature of the services provided.
- Whether those transactions or equivalent could be processed elsewhere or whether the services or equivalent could be provided by others.
- The relationship with other systems and service providers (*i.e.*, its interconnectedness with other systemically important financial market infrastructures or institution specific exposures).
- Whether the system is used by the Bank in the course of its role as a monetary authority.

The Bank, however, declined to provide any quantitative thresholds, saying that such an approach could cause the Bank to recognize stablecoin issuers that it would not otherwise propose to HM Treasury as systemic.

The Consultation Paper also notes that the Bank is exploring stablecoin use in wholesale settlement through the Digital Securities Sandbox and, if that proves successful, it is expected that the Bank would recommend to HM Treasury that the issuer of a stablecoin used for settlement in core wholesale financial markets be recognized as systemic and therefore fall under the joint regulation of both the Bank and FCA.

Key Requirements

Backing Assets

In its 2023 consultation paper, the Bank proposed that backing assets could only be comprised of unremunerated

central bank deposits. This was at odds with both the proposed FCA regime for non-systemic stablecoins as well as the regulations in a number of other comparable jurisdictions. In response to feedback, the Bank has proposed that:

- At least 40% of the backing assets must comprise unremunerated central bank deposits (*i.e.*, held at the Bank itself).
- Up to 60% of the backing assets may be held in short-term sterling-denominated UK government debt securities.
- Temporary deviations from the 40:60 split are possible to meet large unanticipated redemption requests.
- Securities may be lent by issuers via repurchase agreements for liquidity purposes.
- Issuers will be able to transition to the 40:60 split over an appropriate time horizon, with it being expected that there will be an allowance for sterling-denominated UK government debt securities of up to 95% at the outset.

The Bank has clarified that its allowance of 40% central bank deposits aligns with its estimates of potential short-term redemption requests based on outflows which have occurred during stress events in the markets. In terms of what is meant by "short-term" sterling-denominated UK government debt, the Bank said that further guidance regarding the maximum maturity of eligible assets will follow. The move to allow backing assets to be held in short-term securities will be welcomed by the industry.

Capital and Reserve Requirements

The Bank intends to use existing international standards (*i.e.*, the Principles for Financial Market Infrastructures)[4] as the baseline for calculating capital requirements, with some modifications. In particular:

- Capital against general business risk should be sufficient to recover from the larger of: (i) the largest plausible loss event or (ii) current operating expenses for six months.
- Issuers must hold a reserve of liquid assets to mitigate the financial risk of backing assets and to manage an insolvency/wind-down. This includes both a financial risk reserve (*i.e.*, in respect of the risk of holding short-term UK government debt securities) and an insolvency/wind-down reserve (to cover the costs of an insolvency practitioner, continuation of critical services and the return of funds to coinholders).

This is a departure from the FCA's proposed regime in its consultation paper (CP25/14) for non-systemic stablecoins, which proposes the use of the K-SII factor to determine an issuer's variable capital requirement (which is broadly 2% of issued stablecoins). This may pose operational challenges for issuers transitioning into the systemic regime.

Holding Limits

The Bank remains concerned that a disorderly transition to widespread adoption of systemic stablecoins could negatively impact the provision of credit to the UK economy, resulting from diminished levels of UK bank deposits. Consequently, the Bank is proposing that issuers implement a per-coin holding limit of £20,000 for individuals and £10 million for businesses (subject to exceptions if a business requires larger balances in the ordinary course of its business).

The Bank's intention is that these limits will ultimately fall away once there is sufficient understanding and mitigation of the potential financial stability risks arising from the adoption of systemic stablecoins. Whilst these proposals seem onerous, the Bank has noted that it remains open to views on alternative tools to achieve its desired outcomes (which, per the Consultation Paper, includes not stifling innovation in payments and money).

In the meantime, however, the thresholds are not in line with proposals in other markets and may be seen as very conservative in terms of restricting the adoption and use of stablecoins. Questions will also remain about how such limits can be enforced given the possibility of secondary trading activity, as well as about the effectiveness of the limits given that individuals will potentially be able to

easily swap systemic stablecoins for non-systemic stablecoins (which have no holding limits).

Legal Claim and Redemption

The Bank's expectation is that coinholders have a robust legal claim for the value of their stablecoins on demand without undue constraint or cost. In order to achieve this, the Bank's proposals provide that:

- Redemption requests must be met by the end of the business day on which a valid request is made.
- Issuers should have processes in place to ensure that anti-money laundering and know-your-customer verification is completed so that it can meet this timeline, and issuers should set out in advance to coinholders the documentation to be submitted with or prior to a redemption request.
- Issuers remain responsible for meeting the redemption requirements and no use of intermediaries will discharge it of this obligation.
- Redemptions should, where possible, be free of charge, and where any fees do apply, they should be fair, transparent and proportionate to costs incurred.
- Systemic stablecoins should directly access payment systems to support frictionless redemptions and interoperability across different forms of money.

The Bank also proposed providing a backstop lending facility for eligible, solvent and viable systemic stablecoin issuers, which remains subject to further consideration.

Safeguarding of Backing Assets

The Bank's proposed safeguarding regime focuses on two key elements:

- **Segregation and statutory trust.** The Bank is proposing that safeguarded assets (*i.e.*, backing assets and reserves of liquid assets for financial risk and insolvency/wind-down costs) be held under a statutory trust for the benefit of coinholders. This will establish fiduciary duties on the issuer as trustee and, in the case of any non-central bank deposits, will require the appointment of a separate and qualified third-party custodian who is authorized and regulated in the UK.
- **Robust safeguarding rules.** These would cover a range of areas including segregation and reconciliation requirements (among other things), with the intended outcome of providing confidence that systemic stablecoin issuers maintain sufficient backing assets and reserves. Further consultation is expected in relation to the detailed design of the safeguarding regime.

Remuneration for Coinholders

Consistent with the Bank's position in 2023 and FCA proposals, the Consultation Paper maintains that systemic stablecoins should primarily be used for payments and not as a means of investment, and so issuers should not pay interest to coinholders. The Bank is, however, also considering whether providers may offer incentives such as points or rewards linked to transaction volume, as is the case in the existing payments market.

Location

The Bank is requiring any non-UK based sterling-denominated systemic stablecoin issuers to establish a subsidiary in the UK in order to carry out business and issuance activities in the UK and with UK-based consumers. This will, in its view, allow the Bank to mitigate risks to UK financial stability through direct regulation.

By contrast, in the case of any non-sterling denominated systemic stablecoins in the UK which are issued from non-UK entities, the Consultation Paper indicates that the Bank will, in the first instance, engage with the issuer's home authority. The Bank notes that it could consider deferring to the home authority's regulatory and supervisory framework provided (among other things) it delivers broadly similar outcomes to the Bank's regime and there are sufficient co-operation arrangements in place to rely on such home authority.

What's Next?

The Consultation Paper is only intended to "lay the

groundwork" for the Bank's next phase of work. The Bank intends to consult on and finalize its draft Codes of Practice during the course of next year. Responses to the Consultation Paper are due in by February 10, 2026, with a view to the Bank publishing its final rules instrument and supervisory approach in the second half of 2026. We will continue to monitor developments from the Bank and other market participants over the coming months.

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ENDNOTES:

[1] https://www.bankofengland.co.uk/paper/2025/cp/proposed-regulatory-regime-for-sterling-denominated-systemic-stablecoins.

[2] https://www.bankofengland.co.uk/paper/2023/dp/regulatory-regime-for-systemic-payment-systems-using-stablecoins-and-related-service-providers.

[3] https://www.fca.org.uk/publications/consultation-papers/cp25-14-stablecoin-issuance-cryptoasset-custody.

[4] https://www.skadden.com/-/media/files/publications/2025/11/bank-of-england-revises-its-proposed-regime-for-regulating-systemic-stablecoins/principles-for-financial-market-infrastructures.pdf.

TRUMP EO TARGETS GLASS LEWIS, ISS

On December 11, 2025, President Donald Trump signed an executive order that encourages what could be a substantially greater level of federal oversight of the proxy advisory industry, singling out advisors Institutional Shareholder Services Inc. and Glass, Lewis & Co., LLC.

In the executive order ("EO"),[1] which was posted on the White House website, the president directed the Securities and Exchange Commission and other agencies to review whether ISS and Glass Lewis, along with other proxy advisors, had violated any rules or antitrust laws "related to their treatment of environmental and social issues." The order also directs such agencies as the Federal Trade Commission and the U.S. Labor Department to consider taking steps such as writing new regulations affecting proxy advisors.

In the EO, the president claimed that "unbeknownst to many Americans, two foreign-owned proxy advisors [ISS and Glass Lewis] 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% 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." The EO further claimed that the proxy advisors "regularly use their substantial power to advance and prioritize radical politically-motivated agendas—like "diversity, equity, and inclusion" (DEI) and "environmental, social, and governance" (ESG)—even though investor returns should be the only priority."

The EO cited as examples the proxy advisors' past support of shareholder proposals that required companies to reduce greenhouse gas emissions or encourage greater racial diversity on corporate boards. "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 EO said.

SEC Actions

The EO charged SEC Chairman Paul Atkins with reviewing "all rules, regulations, guidance, bulletins, and memoranda relating to proxy advisors. Consistent with the Administrative Procedure Act (5 U.S.C.A. §§ 551 et seq.), [Atkins] shall 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."

The EO also charged Atkins with considering "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."

Further, Atkins shall, as per the EO:

(i) enforce federal securities laws' anti-fraud provisions with respect to any material misstatements or omissions found in proxy advisors' proxy voting recommendations;

(ii) assess whether to require proxy advisors whose activities fall within the scope of the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) to register as Registered Investment Advisers;

(iii) consider requiring proxy advisors to provide increased transparency on their recommendations, methodology, and any potential conflicts of interest, especially regarding DEI and ESG factors;

(iv) 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 (15 U.S.C. 78a et seq.); and

(v) direct 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, DEI and ESG factors, is inconsistent with their fiduciary duties.

FTC Actions

In a section of the EO titled "Unfair, Deceptive, or Anticompetitive Practices," Andrew Ferguson, Chairman of the Federal Trade Commission, in consultation with Attorney General Pam Bondi, were charged with reviewing "ongoing state antitrust investigations into proxy advisors and determin[ing] if there is a probable link between conduct underlying those investigations and violations of federal antitrust law."

Ferguson and Bondi were also asked to investigate whether any proxy advisors engage in unfair methods of competition "or unfair or deceptive acts or practices that harm United States consumers" via such actions as allegedly colluding to diminish the value of consumer investments (such as retirement accounts), failing to disclose conflicts of interest, providing misleading or inaccurate information, "undermining the ability of consumers to make informed choices," or "otherwise engaging in conduct that violates the antitrust laws as defined in 15 U.S.C. 12(a) or section 5 of the Federal Trade Commission Act (15 U.S.C. 45)."

DOL Actions

The EO further charged Secretary of Labor Lori Michelle Chavez-DeRemer 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."

As per the EO, the Department of Labor "shall consider whether these proposed revisions should include amendments to specify that any individual who has a relationship of trust and confidence with their client, including any proxy advisor, and who provides advice for a fee or other compensation, direct or indirect, with respect to the exercise of the rights appurtenant to shares held by ERISA plans, is an investment advice fiduciary under ERISA."

Chavez-DeRemer was also asked to "take all appropriate action to strengthen the fiduciary standards of pension and retirement plans covered under ERISA." Such actions would entail assessing whether proxy advisors are acting "solely in the financial interests of plan participants and the extent to which any of their practices undermine the pecuniary value of the assets of ERISA plans."

The EO noted that "nothing in this order shall be construed to impair or otherwise affect: the authority granted by law to an executive department or agency, or the head thereof; or the functions of the Director of the

Office of Management and Budget relating to budgetary, administrative, or legislative proposals."

The Trump EO came months after proxy advisors had won a victory in federal appeals court, when the court sided with ISS to affirm a lower court ruling that ISS does not "solicit" proxy votes—the action preserved a lower-court decision that had blocked proxy adviser regulations issued in 2020. Yet proxy advisors remain under pressure by some state Attorneys General, such as Florida AG James Uthmeier, who in November claimed proxy advisors had violated state consumer-protection and antitrust laws. Texas' AG has also launched an investigation into proxy advisers' activities.

ENDNOTES:

[1] https://www.whitehouse.gov/presidential-actions/2025/12/protecting-american-investors-from-foreign-owned-and-politically-motivated-proxy-advisors/.

NINTH CIRCUIT ENJOINS CALIFORNIA CORPORATE CLIMATE RISK DISCLOSURE LAW, BUT THE WAITING GAME CONTINUES

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- **What's new**: On November 18, 2025, the Ninth Circuit granted an injunction pending appeal staying the enforcement of a California law requiring certain companies to publish a climate risk report.
- **Why it matters**: The law, SB 261, would have otherwise required such reports to be publicly disclosed by January 1, 2026.
- **What to do next**: The Ninth Circuit did not stay a second California disclosure law, SB 253, that requires certain companies to disclose their Scope 1 and 2 greenhouse gas emissions by a yet-undetermined date in 2026. Since the Ninth Circuit declined to also stay SB 253, companies should continue to plan for compliance with that law.

On November 18, 2025, the U.S. Court of Appeals for the Ninth Circuit granted an injunction pending appeal, which stays enforcement of California Senate Bill 261[1] ("Greenhouse Gases: Climate-Related Financial Risk") ("SB 261"). The law requires certain companies to publicly publish a report identifying their financial risks associated with climate change and their efforts to mitigate such risks.[2]

The plaintiffs, including the U.S. Chamber of Commerce, California Chamber of Commerce, American Farm Bureau Federation and other business groups, sued the California Air Resources Board ("CARB") in January 2024.

The business groups challenged SB 261 as well as California Senate Bill 253 ("Climate Corporate Data Accountability Act"[3]) ("SB 253") on multiple grounds, including the First Amendment, federal preemption and extraterritoriality. Early in the case, the court dismissed the Supremacy Clause and extraterritoriality claims and deferred a motion for summary judgment on the First Amendment claim until after discovery.

Subsequently, the business groups sought a preliminary injunction to block enforcement of SB 253 and SB 261 on First Amendment grounds. On August 13, 2025, the U.S. District Court for the Central District of California denied a motion for an injunction pending resolution of the legal challenge to the laws.[4]

Next, the plaintiffs appealed to the Ninth Circuit and sought an injunction pending appeal. After that injunction was denied, the plaintiffs filed an Emergency Application

for Injunction Pending Appeal with the U.S. Supreme Court on November 14, 2025.

Before the Supreme Court ruled, the Ninth Circuit issued an injunction. No opinion was issued, and the court's two-sentence order stated that:

> The motion for injunction pending appeal (Dkt. No. 6) is **GRANTED IN PART** and **DENIED IN PART**. The motion is granted as to the enforcement of Senate Bill 261 and denied as to the enforcement of Senate Bill 253.

On the same day, the plaintiffs withdrew their application for an emergency stay from the Supreme Court.[5]

Scope of the Injunction

The plaintiffs requested an injunction against enforcing SB 253 or 261 "as to their members" or against "[p]laintiffs' members pending resolution of appeal." The injunction, as requested, would apply to members of any of the organizations that signed on as plaintiffs.

Nevertheless, the Ninth Circuit did not limit the injunction to enforcement against members of the plaintiff organizations. And given that the U.S. Chamber of Commerce alone has an estimated 300,000 members, it seems unlikely that the law will be enforced against any covered entity pending resolution of the plaintiffs' appeal.

SB 253—The Waiting Game Continues for Implementing Regulations

CARB still has not issued the regulations implementing SB 253, but it is expected to continue the rulemaking process. Those regulations are anticipated to provide clarity on important questions about the applicability of the law, including:

- What it means to be "doing business in California."
- How the revenue thresholds will be applied, particularly in the context of parent corporations that are not doing in business in California and have organization-wide revenues above the thresholds, but have subsidiaries that are doing business in California and have revenues below the statutory thresholds.

For now, companies should consider CARB's FAQ, which were updated on November 17, 2025.[6]

The lack of clarity on these fundamental questions has been a source of uncertainty for companies. Whether companies will be required to disclose their greenhouse gas emissions in 2026 will likely depend on the Ninth Circuit's ultimate resolution of the plaintiff's appeal.

The appeal is set for hearing in January 2026. Unless it is successful, it appears that SB 253 remains on track to require certain companies to disclose their greenhouse gas emissions sometime in 2026.

ENDNOTES:

[1] https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB261.

[2] *See* our October 28, 2024, client alert "State of Play: California Amends Climate Disclosure Rules" (*available at*: https://www.skadden.com/insights/publications/2024/10/state-of-play-california-amends-climate-disclosure-rules) and our September 26, 2023, client alert "California Poised To Adopt Sweeping Climate Disclosure Rules" (*available at*: https://www.skadden.com/insights/publications/2023/09/california-poised-to-adopt-sweeping-climate-disclosure-rules).

[3] https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB253.

[4] We discussed the denial of the injunction in our August 19, 2025, client alert "Injunction To Block California Environmental Disclosure Laws Denied" (*available at*: https://www.skadden.com/insights/publications/2025/08/injunction-to-block-california-environmental-disclosure-laws-denied).

[5] It appears the application was withdrawn in its entirety, notwithstanding that the Ninth Circuit did not enjoin enforcement of SB 253, and the emergency application applied to both laws.

[6] https://www.skadden.com/-/media/files/publications/2025/11/ninth-circuit-enjoins-california/faq.pdf.

A POLICYMAKER'S VIEW OF FINANCIAL STABILITY

By Lisa D. Cook

Lisa Cook is a member of the Board of Governors of the Federal Reserve. The following is edited from remarks she gave at Georgetown University's McDonough School of Business Psaros Center for Financial Markets and Policy, in Washington, D.C. on November 20, 2025.

Financial stability is a focal point of my attention at the Board of Governors, since I serve as chair of the Board's Committee on Financial Stability. Allow me to start by saying that the financial system remains resilient, supported by strong balance sheets among households and businesses and high capital levels across the banking system. Earlier [in November], the Fed issued the most recent version of our semiannual Financial Stability Report. That report affirmed the system is resilient, while also noting some of the same risks and vulnerabilities we have seen in recent reports.

My remarks will center on three areas of vulnerabilities: asset valuations; the structural shift in lending to private companies, away from traditional bank loans and toward private credit arrangements; and the growing role of hedge funds as investors in the U.S. Treasury market. Finally, I will turn to a longer-term issue—the potential for the use of generative artificial intelligence ("AI") in financial market trading that could both increase and decrease financial stability.

Let's begin by putting financial-system vulnerabilities into context. The Federal Reserve promotes financial stability in order to support the achievement of its dual mandate of promoting maximum employment and price stability. That is, achieving maximum employment and price stability depends on a stable financial system. We know from history, whether from the distant past—the Great Depression—or from the recent past—the Great Financial Crisis or the Great Recession—that financial crises typically lead to large job losses and high unemployment.[1] However, given the complexity of the financial system, it is sometimes hard to see the connection between the system and everyday life.

Living and teaching in Michigan during the Great Recession, I saw firsthand how the financial system's fragility contributed directly to job losses. One example is how the default of Lehman Brothers contributed, via a chain of events, to declines in employment in Michigan. Lehman's failure in September 2008 led a money market fund to "break the buck"—the fall in the value of its assets meant it could no longer redeem shares for the $1 that investors expected to receive—prompting a run on the funds. In turn, the funds pulled back from riskier assets, including asset-backed commercial paper. But the major auto finance companies depended on that commercial paper to finance loans to consumers; hence, they came under stress.[2] With less credit available, auto sales plummeted, and Michigan was hit very hard. Many people—including some of my family members, my students' and colleagues' family members, friends, and neighbors—lost their jobs and experienced significant hardship. The Michigan unemployment rate exceeded 14 percent in 2009, while the national unemployment rate peaked at 10 percent in 2009. Correspondingly, foreclosures more than tripled in Michigan between 2006 and 2010, and home values in Michigan sank 33 percent over the same period.

I tell this story, not because I fear we are on the brink of a financial crisis, but because I think it is worth emphasizing why resilience of the financial system matters for the real economy—a point I have made since writing my dissertation—and for everyday Americans' lives. A stable and resilient financial system supports employment and stable prices and ensures families and businesses can function effectively in the economy. That is why policymakers work diligently to understand the functioning of the financial system and is one reason we publish a financial stability report twice a year. And, of course, the story emphasizes the need to maintain resilience in the financial system.

Asset Valuations

With that background, allow me to turn to the financial system vulnerabilities I consider to be most salient currently, beginning with asset valuations. When we evaluate asset valuations, we do not look at the actual levels of asset prices. Rather, we look at their levels relative to fundamentals and whether their levels relative to fundamentals are high by historical standards.[3]

As noted in the Financial Stability Report, our assessment of asset valuations is that they are, on the whole, elevated relative to historical benchmarks in a number of markets, including equity markets, corporate bond markets, leveraged loan markets, and housing markets.

To be sure, this is not investment advice. Indeed, it is neither my role nor my desire to offer any comment on the merits of different asset valuations. Our role at the Fed is to simply observe that expected compensation for risk is low relative to history—and that might revert, stay low, or even go lower. And situations of elevated valuations are quite common. Asset valuations have been stretched many times since the 2009 trough.

I consider any potential financial system vulnerability through the lens of how it might constrain the Federal Reserve's ability to attain its dual-mandate goals of maximum employment and price stability. Currently, my impression is that there is an increased likelihood of outsized asset price declines. However, given the system's overall resilience, I do not see the kinds of weaknesses that played out so painfully in the Great Recession, and, thus, I do not see potential asset price declines as posing risks to the financial system.

Private Credit

Another potential vulnerability worth watching is the growth of private credit. Fed staff estimate that, over the past five years, private credit has roughly doubled. Whenever we observe such rapid growth in credit over such a short period of time, it draws our attention. I use the term private credit to describe loans to privately held businesses that originate from *nonbank* entities. *Privately held* businesses are companies without publicly traded stock that generally lack access to public capital markets for debt or equity finance. The growth in nonbank lending to privately held businesses has increased credit access. As a result, private businesses that have difficulty securing a loan from a bank can continue to grow their businesses with loans from private credit providers.

In one of its simplest forms, private credit involves a straightforward intermediation chain. Investors with very long investment horizons and no particular need for liquidity invest in a private credit vehicle, such as a private credit fund or business development company ("BDC"), which then extends loans to private businesses. Such investments are usually locked up or ineligible for redemption for five to seven years, or even longer. At its best, private credit vehicles conduct due diligence and monitor the loans on behalf of the investors. Private credit vehicles tend to have a strong incentive to monitor these loans and can flexibly respond to emerging distress. This careful monitoring is important, because private businesses are not subject to the same public scrutiny—auditing and disclosure standards—as their public counterparts. This model has the potential to enhance financial stability and expand economic growth, since it matches longer-maturity loans with longer-term funding and allows firms to get the financing they need on favorable terms. Default rates have also been low and returns high.

Nonetheless, we should expand the lens and inspect this funding vehicle more closely. We have also seen more complex intermediation chains involving more leveraged players, such as banks and insurance companies, emerge in recent years.[4] Some private firms may also have multiple sources of funding.

The increased complexity and the interconnections with leveraged financial entities create more channels through which unexpected losses in private credit could spread to the broader financial system. What do recent trends in the sector suggest about the potential for such losses and financial stability risks? I do not currently see the potential for private credit to contribute to an unexpected credit crunch in the same way that the asset-backed commercial paper market did in 2008.

However, it is well worth keeping a close eye on developments here. Default rates remain low, but they are a backward-looking measure and could also reflect increased usage of payment-in-kind arrangements, or PIKs; loan amendments; and distressed exchanges. Recent private business bankruptcies in the auto sector also revealed unexpected losses and exposure across a broad range of financial entities, including banks, hedge funds, and specialty finance companies.

Should we expect to see more? There are some reasons

to interpret the recent failures as outliers. I do not assess the current risks from private credit to be a threat to financial stability. The businesses that failed recently may have been more exposed to changes in trade and immigration policy, made more use of off-balance sheet financing, or been of poorer credit quality than other private businesses. Therefore, it is difficult to infer general lessons from these specific cases.

Yet, history teaches us a lesson here. The likelihood of observing additional cases like those recently in the news increases when size of exposure and level of complexity in these arrangements are not transparent, when a sector experiences periods of rapid growth, and when these arrangements have not been through a full credit cycle (boom and bust). Accordingly, I will continue to focus on ensuring that we understand developments in this sector and how these lending arrangements are evolving over time.

Hedge Fund Footprint in Treasury Markets

Another vulnerability I am following carefully is the footprint of hedge funds in the U.S. Treasury market. This footprint has grown substantially over the past few years and recently just exceeded its previous, pre-pandemic peak. My focus relates to the potential for transmitting stress to the U.S. Treasury market, which is critical to the functioning of our financial system. The U.S. Treasury market is the largest and most liquid financial market in the world. Treasury securities, by serving as a source of safe and liquid assets, enable the efficient and stable flow of capital across the global financial system. The Treasury market averages around $900 billion in transactions per day, with transactions on high-volume days around $1.5 trillion per day in recent years.[5] The smooth operation of U.S. Treasury markets is also critical for the transmission and implementation of monetary policy.

Hedge funds' holdings of Treasury cash securities—that is, Treasury bills, notes, and bonds—have increased from representing about 4.6 percent of total Treasury securities outstanding in the first quarter of 2021 to representing 10.3 percent in the first quarter of this year, just above its pre-pandemic peak of 9.4 percent.[6] This represents significant growth in the scale of liquidations that could result, if hedge funds were to sharply reduce their Treasury positions because of changing market conditions. We witnessed such an episode at the start of the pandemic during the "dash for cash" when sales of Treasuries by a broad range of market participants increased dramatically and all at once.[7]

The sensitivity of hedge fund Treasury positions to shifting market conditions depends on the Treasury trading strategies that hedge funds are pursuing. Staff analysis suggests that the vast majority of hedge fund Treasury positions involve relative value trading strategies, of which there are many types. These trades exploit relative price differences between related securities—pairs or combinations of Treasury cash securities, Treasury derivatives, or interest rate derivatives. To be sure, outside of episodes of stress, relative value trades substantially improve the efficiency and liquidity of Treasury securities and related markets. Yet, during episodes of stress, the unwinding of crowded positions in such trades could magnify instability in these markets.

Relative value trading strategies typically share key features that create potential Treasury market vulnerabilities.[8] For example, relative value trades are highly leveraged to amplify returns from small price differentials, with these trades generally funded with repo that is shorter term than the maturity of the trade, resulting in maturity mismatch. As a result, these strategies are exposed to significant funding risks that could arise from instability in repo markets. Relative value trades that involve derivative contracts—such as the cash-futures basis trade and the swap-spread trade—are further exposed to margin calls when additional liquidity is required to satisfy increased minimum margin requirements. Such adverse funding shocks can result from episodes of market volatility or from moves in relative prices that are disadvantageous to the trade. Sudden funding shocks can then prompt an unwinding of hedge fund positions, resulting in significant Treasury security sales and the potential for market liquidity strains. Increased volatility and losses due to changes in relative prices can also lead hedge funds to choose to exit trades for risk-management reasons, also resulting in large Treasury security sales.[9] All of these features of relative value strategies can make Treasury

market liquidity conditions—and, in the extreme, market functioning—more vulnerable to stress.

Note that it is not inevitable that episodes of market volatility will induce an unwinding of relative value trades and, indeed, instances of one of these trades unwinding are rare. As you know, the swap-spread trade—a relative value trade between Treasury securities and interest rate swaps—experienced an unwinding during April's heightened market volatility, because the relative prices of securities at the core of the trade moved in ways that became unfavorable to the trade. Nonetheless, other relative value trades remained fully intact. This was especially notable for the cash-futures basis trade, reflecting the fact that conditions in repo markets remained orderly throughout the episode.[10] Notwithstanding, the paucity of sizable relative value trade unwindings remains a potential impetus for market liquidity strains.

AI Use in Financial Services

The potential implications of rapid advancements in AI for financial stability constitute my final topic today. Just as the scientific revolutions in chemistry and biology brought both life-saving medicines and more potent weapons, the recent advancements in AI have prompted forecasts that run the gamut from utopia to doomsday. How do theory and limited evidence inform us thus far about the potential impact of AI on financial stability? To structure our thinking, I would like to briefly consider one aspect of this question: the use of AI in algorithmic trading in financial markets and the implications for financial stability.

Certainly, sophisticated computer-driven trading algorithms are not new. Traders have been using machine learning and other advanced statistical tools for decades. Trading in many important financial markets is now heavily reliant on algorithms.[11] But the adoption of generative AI in trading is different and brings new challenges. Unlike pre-programmed algorithms with limited flexibility, generative AI is able to quickly review large amounts of data and then autonomously deploy trading strategies that could be opaque to humans. Used without careful testing and human oversight, generative AI may create risks that are difficult to monitor or mitigate. The use of generative AI in trading may also improve on current algorithmic trading activity, especially if the less rigid models prove able to adjust in ways that stabilize rather than destabilize prices. There is early evidence for both.

Correlated Trading and Herding

Researchers are only starting to study whether the use of generative AI in trading leads to more or less correlated trading. Nonetheless, research so far offers some useful insights. Theory and empirical evidence show that independent but simultaneous actions by high-frequency trading ("HFT") algorithms in response to a common signal can indeed generate excess volatility and mispricing, thereby reducing market efficiency.[12] Not all algorithms are created equal. Studies have also shown instances when correlated trading by HFTs improved price discovery without increasing volatility.[13] Research also shows widespread use of popular arbitrage strategies helped eliminate mispricing across fragmented markets.[14] In other words, correlated trading by algorithms can, at times, also benefit market quality and efficiency.

A recent experimental study by Fed economists demonstrates that algorithmic strategies relying on generative AI may also be less prone to herding behavior—by which I mean ignoring private information and imitating others—than human traders. In this experiment, the AI agents were less influenced by the cognitive biases that sometimes drive human investment decisions.[15]

Collusion, Market Manipulation, and Concentration

Researchers have also pointed to the risk that generative AI could engage in collusion and market manipulation, rigging the system to favor those employing the technology. Recent theoretical studies find that some AI-driven trading algorithms can indeed learn to collude without explicit coordination or intent, potentially impairing competition and market efficiency.[16] However, others observe that the possibility of collusion rests on the assumption that all traders use very similar algorithms. They argue that algorithmic traders have strong incentives to differentiate their trading strategies, because noncollusion can be highly profitable when others collude.[17] Thus, according to these views, the likelihood of tacit algorithmic

collusion arising in real-world financial markets is very small.

Beyond collusion, there is also the troubling possibility that AI trading systems could learn to manipulate markets. A recent theoretical study shows that self-learning, profit-maximizing algorithms can unintentionally discover spoofing strategies—that is, placing large orders they never intend to execute just to create false impressions of market demand.[18] Potentially, some new AI systems could operate with greater opacity, execute more complex trades, and better hide manipulative intent than old-fashioned dishonest human traders. Additionally, there are growing concerns that results obtained from complex AI models may be difficult to explain or rationalize by human experts—the "black box" problem.[19] The inability to fully audit trades executed by algorithms makes surveillance by trading venues and regulators more challenging.

The good news here is that major electronic trading platforms are also rapidly adopting advanced machine learning techniques to detect market manipulation and collusive behavior.[20] Thanks to improving surveillance capabilities, AI technology could ultimately strengthen market integrity and enhance market liquidity. Trading venues are also taking steps to mitigate the risk stemming from the "black box" problem associated with AI-enabled trading algorithms. For example, the Chicago Mercantile Exchange ("CME") recently reminded its members that they must be able to fully explain and reproduce any decisions or actions taken by their algorithms on the CME market.[21] Such initiatives may limit the deployment of generative AI and other stochastic algorithms for direct trade execution on major trading venues.

Last but not least, the debate is also growing as to whether the adoption of generative AI in trading algorithms may increase concentration due to high investment barriers (as seen with one liquidity provider using 25,000 GPUs and building billion-dollar infrastructure) or decrease concentration by democratizing access to sophisticated capabilities previously limited to large institutions.[22]

Taken together, areas to watch carefully have emerged, as well as potential ways we will benefit from this new technology.

Conclusion

Back to my broader themes, the financial system remains resilient. Yet, vulnerabilities from elevated asset values, growth and complexity in private credit markets, and the potential for hedge fund activity to contribute to Treasury market dislocation warrant attention. These emerging vulnerabilities also occur against a backdrop of very significant technological change. These innovations may ultimately improve financial stability but also involve transitions and potential challenges that may require thoughtful and deliberate navigation. My focus going forward will be on working with my colleagues to navigate these opportunities and vulnerabilities to ensure the financial system remains strong and resilient.

ENDNOTES:

[1]Financial crises can also lead to deflation, which can have further feedback on the financial system due to deflation leading to increases in the real burden of debt that can, in turn, prompt business (and household) bankruptcies, reducing their spending and production. This reduced economic activity can then lead to layoffs and further declines in prices—that is, a deflationary spiral. This process occurred in the U.S. in the 1930s after the Great Depression and also occurred in Japan in the 1990s after their banking crisis. For summaries of these two episodes, *see* John C. Williams (2009), "The Risk of Deflation," FRBSF Economic Letter 2009-12 (San Francisco: Federal Reserve Bank of San Francisco, March; *available at:* https://www.frbsf.org/research-and-insights/publications/economic-letter/2009/03/risk-deflation/).

[2]*See* Ralf R. Meisenzahl (2017), "Auto Financing During and After the Great Recession," FEDS Notes (Washington: Board of Governors of the Federal Reserve System, June 22; *available at*: https://www.federalreserve.gov/econres/notes/feds-notes/auto-financing-during-and-after-the-great-recession-20170622.html).

[3]*See* Tobias Adrian, Daniel Covitz, and Nellie Liang (2015), "Financial Stability Monitoring," Annual Review of Financial Economics, vol. 7 (December), pp. 357-95.

[4]*See* Jose Berrospide, Fang Cai, Siddhartha Lewis-Hayre, and Filip Zikes (2025), "Bank Lending to Private Credit: Size, Characteristics, and Financial Stability Implications," FEDS Notes (Washington: Board of Governors of the Federal Reserve System, May 23; *available at*: https://www.federalreserve.gov/econres/notes/feds-notes/bank-lending-to-private-credit-size-characteristics-and-financial-stability-implications-20250523.html); and Syd-

ney Carlino, Nathan Foley-Fisher, Nathan Heinrich, and Stéphane Verani (2025), "Life Insurers' Role in the Intermediation Chain of Public and Private Credit to Risky Firms," FEDS Notes (Washington: Board of Governors of the Federal Reserve System, March 21; *available at*: https://www.federalreserve.gov/econres/notes/feds-notes/life-insurers-role-in-the-intermediation-chain-of-public-and-private-credit-to-risky-firms-20250321.html).

[5]Financial Industry Regulatory Authority (2025), "Treasury Daily Aggregate Statistics" (accessed November 17, 2025). https://www.finra.org/finra-data/browse-catalog/about-treasury/daily-data.

[6]Hedge funds' Treasury holdings data can be found on the Board's website: https://www.federalreserve.gov/releases/efa/efa-hedge-funds.htm. The market value of privately held Treasury debt can be found at https://www.dallasfed.org/research/econdata/govdebt.

[7]*See* Daniel Barth and R. Jay Kahn (2025), "Hedge Funds and the Treasury Cash-Futures Basis Trade," Journal of Monetary Economics, vol. 155 (October), 103823; Mathias S. Kruttli, Phillip J. Monin, Lubomir Petrasek, and Sumudu W. Watugala (2025), "LTCM Redux? Hedge Fund Treasury Trading, Funding Fragility, and Risk Constraints," Journal of Financial Economics, vol. 169 (July), 104017; and Andreas Schrimpf, Hyun Song Shin, and Vladyslav Sushko (2020), "Leverage and Margin Spirals in Fixed Income Markets during the Covid-19 Crisis," BIS Bulletin 2 (Basel, Switzerland: Bank for International Settlements, April).

[8]*See* Emil N. Siriwardane, Adi Sunderam, and Jonathan Wallen (2025), "Segmented Arbitrage," *The Journal of Finance*, vol. 80 (5), pp. 2543-90; and Jefferson Duarte, Francis A. Longstaff, and Fan Yu (2007), "Risk and Return in Fixed-Income Arbitrage: Nickels in Front of a Steamroller?" *The Review of Financial Studies*, vol. 20 (3), pp. 769-811. *See also* Ayelen Banegas and Phillip Monin (2023), "Hedge Fund Treasury Exposures, Repo, and Margining," FEDS Notes (Washington: Board of Governors of the Federal Reserve System, September 8; https://doi.org/10.17016/2380-7172.3377).

[9]*See* Kruttli, Monin, Petrasek, and Watugala, "LTCM Redux? Hedge Fund Treasury Trading, Funding Fragility, and Risk Constraints"(see note 7).

[10]*See* Roberto Perli (2025) "Recent Developments in Treasury Market Liquidity and Funding Conditions," remarks at the 8th Short-Term Funding Markets Conference, Washington, May 9.

[11]*See* Andrei A. Kirilenko and Andrew W. Lo (2013), "Moore's Law versus Murphy's Law: Algorithmic Trading and Its Discontents," *Journal of Economic Perspectives*, vol. 27 (2), pp. 51-72; and Maureen O'Hara (2015), "High Frequency Market Microstructure," *Journal of Financial Economics,* vol. 116 (2), pp. 257-70.

[12]*See* Robert A. Jarrow and Philip Protter (2012), "A Dysfunctional Role of High Frequency Trading in Electronic Markets," International Journal of Theoretical and Applied Finance, vol. 15 (3), 1250022.

[13]*See* Alain P. Chaboud, Benjamin Chiquoine, Erik Hjalmarsson, and Clara Vega (2014), "Rise of the Machines: Algorithmic Trading in the Foreign Exchange Market," *Journal of Finance*, vol. 69 (5), pp. 2045-84; and Evangelos Benos, James Brugler, Erik Hjalmarsson, and Filip Zikes (2017), "Interactions Among High-Frequency Traders," *Journal of Financial and Quantitative Analysis*, vol. 52 (4), pp. 1375-402.

[14]*See* Albert Menkveld and Bart Zhou Yueshen (2019), "The Flash Crash: A Cautionary Tale about Highly Fragmented Markets," *Management Science*, vol. 65 (10), pp. 4470-88; and Dobrislav Dobrev and Ernst Schaumburg (2016), High-Frequency Cross-Market Trading and Market Volatility," Federal Reserve Bank of New York, Liberty Street Economics (blog), February 17.

[15]*See* Anne Lundgaard Hansen and Seung Jung Lee (2025), "Financial Stability Implications of Generative AI: Taming the Animal Spirits," Finance and Economics Discussion Series 2025-090 (Washington: Board of Governors of the Federal Reserve System, September; https://doi.org/10.17016/FEDS.2025.090).

[16]*See* Álvaro Cartea, Patrick Chang, Mateusz Mroczka, and Roel Oomen (2022), "AI Liquidity Provision in OTC Markets," Quantitative Finance, vol. 22 (12), pp. 2171-204; and Winston Wei Dou, Italy Goldstein, and Yan Li (2025), "AI-Powered Trading, Algorithmic Collusion, and Price Efficiency," NBER Working Paper Series 34054 (Cambridge, Mass.: National Bureau of Economic Research, July).

[17]*See* Laura Veldkamp (2024), "Discussion of 'AI-Powered Trading, Algorithmic Collusion, and Price Efficiency,'" NBER Summer Institute 2024: Asset Pricing, Cambridge, Mass., July 11-12; https://www.nber.org/papers/w34054).

[18]*See* ?lvaro Cartea, Patrick Chang, and Gabriel Garc?a-Arenas (2025), "Spoofing and Manipulating Order Books with Learning Algorithms," *available at*: https://ssrn.com/abstract=4639959.

[19]*See* Alessio Azzuti, Wolf-Georg Ringe, and H. Siegfried Stiel (2022), "Machine Learning, Market Manipulation and Collusion on Capital Markets: Why the 'Black Box' Matters," *University of Pennsylvania Journal of International Law*, vol. 43 (1), pp. 79-135.

[20]*See* Pedro Gurrola-Perez and Kaitao Lin (2024), "An Analysis of Market Manipulation Definitions round the World," working paper (London: World Federation of Exchanges, June).

[21]*See* the CME Group's "Market Regulation Advisory Notice" at https://www.cmegroup.com/content/dam/cmegroup/notices/market-regulation/2024/07/CME-Group-RA

2403-5.pdf.

[22]*See* Anna Irrera and Justina Lee (2025), "Billionaire Trader Alex Gerko's XTX to Build €1 Billion Data Hub," Bloomberg, January 22.

SEC/SRO UPDATE: SEC EXTENDS SHORT SALE AND SECURITIES LENDING RULES' COMPLIANCE DEADLINES TO 2028; CFTC ANNOUNCES FIRST-EVER LISTED SPOT CRYPTO TRADING ON U.S. REGULATED EXCHANGES; SEC AGREES TO EASE RESEARCH ANALYST RESTRICTIONS ON MAJOR BANKS; SEC CHARGES CANADIAN CITIZEN WITH FRAUD SCHEMES TARGETING INVESTORS ON DISCORD

SEC Extends Short Sale, Securities Lending Rules' Compliance Deadlines to 2028

On December 3, 2025, the Securities and Exchange Commission issued an exemptive order that postponed the compliance deadline for Rule 13f-2 under the Securities Exchange Act of 1934 by two years. The new deadline for compliance is January 2, 2028.[1]

Compliance with Rule 13f-2, which was adopted in October 2023, had already been extended one year beyond the original deadline date of January 2, 2025. The SEC also extended the deadline for compliance with Rule 10c-1a, a related securities lending rule that it had adopted simultaneously with the short sale rule. The new compliance date for Rule 10c-1(a) is September 28, 2028.

Rule 13f-2 establishes a mandatory requirement for institutional investment managers which meet or exceed certain thresholds to report their short selling activity. Such activity would be listed in confidential reports filed with the SEC, which would then aggregate and publish the results. When Rule 13f-2 was adopted, it faced push-back about the operational burden and technical issues that will be needed for a firm to be in compliance.

Indeed, both Rule 13f-2 and Rule 10c-1a face legal challenges from industry groups which argue that the rules exceed the SEC's authority under the Exchange Act. In August 2025, when the Fifth Circuit rejected a broad challenge to the SEC's statutory authority, it remanded Rule 13f-2 and Rule 10c-1a, charging the SEC with reconsidering its economic analysis and to take into account the rules' economic impact.

As the Fifth Circuit remanded but did not vacate the rules, it was necessary for the SEC to extend the deadlines to give itself time to respond. While the SEC has not formally stated that it intends to amend or repeal the rules, SEC Chairman Paul Atkins has said the Commission will consider a broad range of options in responding to the court's remand.

In a statement, Commissioner Caroline Crenshaw questioned whether the SEC actually intends for the rules to go into effect. "It should not take two years to complete a narrow revision of the Rules' economic analyses consistent with the Court's request," she said.[2] "This could be done expeditiously and concisely. However, rather than following the Court's narrow directive, the Commission not so subtly signals that no one should even bother with implementation; the Rules will be changing."

"The right (and legal) thing to do would be to implement the Rules, which are already effective since the Fifth Circuit declined to vacate them," Crenshaw said. "If extra time is truly necessary to allow registrants more runway to prepare for the Rules in light of the Court's decision, this could be accomplished by a short compliance date extension. Any future modifications should be addressed separately, as required by statute, through notice-and-comment rulemaking. Under the guise of compliance date extensions, we are attempting to camouflage a new willingness to repeatedly bend the rules until they break—eroding the rule of law."

CFTC Announces First-Ever Listed Spot Crypto Trading on U.S. Regulated Exchanges

The Commodity Futures Trading Commission ("CFTC") announced on December 4, 2025, that spot trading in cryptocurrency products will be available on CFTC-regulated exchanges for the first time.[3]

The debut exchange will be Bitnomial Exchange, LLC ("Bitnomial"), a CFTC-regulated designated contract market ("DCM") that operates with an associated CFTC-registered derivatives clearing organization. In a statement, Acting CFTC Chairman Caroline Pham said that "recent events on offshore exchanges have shown us how essential it is for Americans to have more choice and access to safe, regulated U.S. markets. Now, for the first time ever, spot crypto can trade on CFTC-registered exchanges that have been the gold standard for nearly a hundred years, with the customer protections and market integrity that Americans deserve."

The CFTC has been undertaking what it terms a "Crypto Sprint" initiative, meant to implement recommendations from of the White House Digital Assets Report of earlier this year. In August, Acting Chairman Pham announced an initiative to facilitate trading of spot digital asset contracts on CFTC-registered DCMs. In the following month, the CFTC and SEC announced a coordinated effort to enable trading of certain spot digital asset products. The two agencies said they believed that current law does not prohibit a CFTC-registered DCM from listing and facilitating trading in certain spot digital asset products under Section 2(c)(2)(D) of the Commodity Exchange Act.[4]

In the joint statement, the SEC and CFTC said they would "promptly review filings and requests by DCMs, FBOTs, and NSEs seeking to facilitate trading of certain spot crypto asset products. As market participants prepare to submit any necessary registrations, proposals, or requests for appropriate relief to the SEC and/or CFTC, the Divisions stand ready to engage regarding any questions."

SEC Agrees to Ease Research Analyst Restrictions on Major Banks

On December 5, 2025, the SEC consented to modifications to the October 2003 and September 2004 final judgments against settling firms that are still covered by the Global Research Analyst Settlement, a global settlement of SEC and other enforcement actions against 12 investment banks and two individuals. The modifications are subject to court approval.[5]

The cases include *SEC v. Bear, Stearns & Co. Inc*., No. 03 Civ. 2937 (S.D.N.Y.); *SEC v. J.P. Morgan Securities Inc.,* No. 03 Civ. 2939 (S.D.N.Y.); *SEC v. Lehman Brothers, Inc.,* No. 03 Civ. 2940 (S.D.N.Y.); *SEC v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, No. 03 Civ. 2941 (S.D.N.Y.); *SEC v. U.S. Bancorp Piper Jaffray, Inc*., No. 03 Civ. 2942 (S.D.N.Y.); *SEC v. UBS Securities LLC, f/k/a UBS Warburg LLC,* No. 03 Civ. 2943 (S.D.N.Y.); *SEC v. Goldman, Sachs & Co.,* No. 03 Civ. 2944 (S.D.N.Y.); *SEC v. Citigroup Global Markets Inc., f/k/a Salomon Smith Barney Inc.*, No. 03 Civ. 2945 (S.D.N.Y.); *SEC v. Credit Suisse First Boston LLC, f/k/a Credit Suisse First Boston Corp.*, No. 03 Civ. 2946 (S.D.N.Y.); *SEC v. Morgan Stanley & Co. Incorporated*, No. 03 Civ. 2948 (S.D.N.Y.); *SEC v. Deutsche Bank Securities Inc.*, No. 04 Civ. 6909 (S.D.N.Y.); and *SEC v. Thomas Weisel Partners* LLC, No. 04 Civ. 6910 (S.D.N.Y.)

As per the SEC, "the final judgments contained an Addendum with undertakings that addressed potential conflicts of interest between equity research analysts and investment banking personnel. The Addendum also included a sunset provision for newly adopted rules that would supersede the undertakings, and stated that for terms that were not superseded, the SEC would agree to an amendment or modification, subject to court approval, unless the SEC believed the amendment or modification would not be in the public interest. The Addendum was modified by court order in March 2010 to remove or modify certain provisions."

The SEC noted that the revised Addendum also stated that the Commission would agree to further amendment

or modification of the undertakings, subject to court approval, unless the SEC believed the amendment or modification would not be in the public interest.

In 2015, FINRA adopted and implemented, and the SEC approved, Rule 2241 (Research Analysts and Research Reports), which addressed perceived conflicts of interest between research analysts and investment banking personnel within registered broker-dealers. The settling firms filed motions in June and December 2025 seeking to terminate the remaining undertakings in the Addendum, based in part on the adoption and implementation of FINRA Rule 2241. In its responses to the motions, the SEC said that "it acknowledges the sunset provision in Addendum A of the final judgments and the passage of FINRA Rule 2241," adding that it "believes modification of the Judgment is in the public interest," and that it consented to the requested modification of the final judgments.

SEC Charges Canadian Citizen With Fraud Schemes Targeting Investors on Discord

On December 10, 2025, the SEC charged Canadian citizen Nathan Gauvin and three entities under his control—Blackridge, LLC, Gray Digital Capital Management USA, LLC, and Gray Digital Technologies, LLC—with orchestrating two allegedly fraudulent securities offerings that raised more than $18 million from investors in the United States and abroad.[6]

As per the SEC, Gauvin allegedly misappropriated approximately $6.3 million of investor funds, and that he employed fabricated credentials, false performance metrics, and fictitious account statements to lure investors into his schemes.

The SEC's complaint,[7] filed in the U.S. District Court for the Eastern District of New York, charged that Gauvin had gained a following on the social media site Discord by falsely presenting himself as a successful investment professional who managed over a billion dollars in assets through Blackridge. In reality, Blackridge was a mere shell entity, the SEC claimed in a statement.

From September 2022 to November 2024, Gauvin and his entities allegedly raised approximately $18.1 million from investors, mostly through an unregistered offering of interests in the "Gray Fund," a purported diversified investment fund advised by Gray Digital and Gauvin. As per the complaint, "using this fictional backdrop, Gauvin launched Gray Digital and the Gray Fund in March 2022, claiming that he wanted to use his purported financial acumen to benefit retail investors by allowing them to invest in the Gray Fund—a diversified investment fund advised by Gray Digital and Gauvin that would purportedly hold and trade debt and equity securities, derivatives, and crypto assets."

The complaint alleges that Gauvin and Gray Digital falsely claimed that the Gray Fund had generated double-digit monthly returns and held over $78 million in assets. In fact, the fund actually had a monthly compounded return of approximately 1.4% and its assets were far lower than claimed, as per the SEC.

The complaint further alleges that Gauvin misappropriated investor funds to finance a what the SEC termed a "lavish lifestyle, including using hundreds of thousands of dollars for purchases of custom jewelry, luxury concierge services, real estate, and art."

In a second scheme which he rolled out in May 2024, Gauvin allegedly offered "seed stock" in Gray Digital Technologies at $30,000 per share, falsely claiming the company had a $60 million valuation and more than $12 million in annual revenue. The complaint alleges that Gray Digital, in truth, lacked operations, assets or revenue. According to the complaint, Gauvin raised at least $60,000 from two retail investors and then ceased communicating with them about this offering, "never provid[ing] them a promised NFT documenting their ownership interest."

"Gauvin exploited the trust of his online followers to perpetrate a brazen fraud," said Jaime Marinaro, Associate Director of the SEC's Fort Worth Regional Office. "Investors should always verify the credentials of anyone offering investment opportunities, especially when those opportunities are promoted through social media or online communities."

The SEC's complaint charges Gauvin and his three

entities with violating the antifraud provisions of the federal securities laws and Gauvin, Gray Digital, and Gray Digital Technologies with registration violations. The complaint seeks permanent injunctive relief, disgorgement of ill-gotten gains with prejudgment interest, civil penalties, and conduct-based injunctions against all defendants, along with a bar against Gauvin acting as an investment adviser. In a parallel action, the U.S. Attorney's Office for the Eastern District of New York announced criminal charges against Gauvin.

ENDNOTES:

[1] https://www.sec.gov/files/rules/exorders/2025/34-104303.pdf.

[2] https://www.sec.gov/newsroom/speeches-statements/crenshaw-statement-extension-compliance-dates-120325.

[3] https://www.cftc.gov/PressRoom/PressReleases/9145-25.

[4] https://www.cftc.gov/PressRoom/SpeechesTestimony/cftcsecjointcryptostatement090225.

[5] https://www.sec.gov/enforcement-litigation/litigation-releases/lr-26434.

[6] https://www.sec.gov/newsroom/press-releases/2025-141-sec-charges-canadian-citizen-fraud-schemes-targeted-retail-investors-discord.

[7] https://www.sec.gov/files/litigation/complaints/2025/comp-pr2025-141.pdf.

FROM THE EDITOR

The Year That Paid Off (For Investors, At Least)

Looking back, 2025 had all the makings of a volatile year for the stock market. There were historically-high levels of new tariffs imposed and then, in some cases, repealed. There was plenty of global political volatility, the president grumbling about replacing the chairman of the Federal Reserve, a number of indications of a slowing labor market, and dozens of other big headline stories.

And yet: 2025 will likely be remembered as one of the best years for the stock market in this decade. In mid-December, executives from top U.S. banks were telling investors that their Wall Street operations were on course to post strong performances, driven by trading activity. M&A, after some early wariness in 2025, kicked into high gear while IPOs were returning to form. As per the *New York Times*, Goldman Sachs CFO Denis Coleman said Goldman would likely post its second-biggest year in history for banking fees.

The rocket fuel for the market's engine was the promise of artificial intelligence, as seen in the performance of almost any AI-related stock, and exemplified by Nvidia, the largest company in the S&P 500 and the first to get a value of $5 trillion in the stock market. While Nvidia's stock price has risen by roughly 1,000% over the past three years, from $17 to $180, what's notable is that earnings have remarkably risen even faster. Nvidia is making a habit of meeting, if not surpassing, sky-high earnings expectations this year.

And as the year was ending, Nasdaq planned to submit paperwork with the SEC to begin round-the-clock stock trading, hoping to capitalize on global demand for U.S. equities. And the central clearing hub, the U.S. Depository Trust and Clearing Corp., is scheduled to roll out nonstop clearing for stocks by the end of 2026.

Nasdaq's plan is to lengthen the trading hours of stocks and exchange-traded products from 16 hours to 23 hours, five days a week. The exchange, once it moves to its new system, would run two trading sessions: the day session starting at 4:00 a.m. and ending at 8:00 p.m., a one-hour break for maintenance, testing, and clearing of trades, and then a night session from 9:00 p.m. to 4:00 a.m.. This would allow traders to quickly react to developments occurring outside regular market hours; critics of the plan say that may not be the most ideal situation, and that having round-the-clock trading would create more volatility and liquidity crunches.

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Managing Editor

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