

# SEC Rules Affecting the Governance of Public Companies

*(Updated April 2023)*

Under Chair Gensler’s leadership, the SEC has taken significant steps to implement rules that are important for corporate accountability to investors and investors’ ability to meaningfully engage in corporate governance. It is critical that the SEC remain on track and complete its agenda.

## **Executive compensation**

As the recent collapses of Silicon Valley Bank and Signature Bank reminded us, executive compensation rules play a critical role in both ensuring executive accountability when their behavior harms investors and depositors and preventing such behavior in the first place. Under Chair Gensler’s leadership, the SEC has already finalized important executive compensation rules:

1. Pay versus performance: This rule — mandated by Dodd-Frank — requires registrants to disclose information reflecting the relationship between executive compensation actually paid by a registrant and the registrant’s financial performance.
2. Recovery of erroneously awarded compensation: Another Dodd-Frank mandate, this rule requires securities exchanges to adopt listing standards that require issuers to develop and implement a policy providing for the recovery of erroneously awarded incentive-based compensation.
3. Rule 10b5-1 insider trading plans and related disclosures: These rules strengthen investor protections concerning insider trading and help shareholders understand when and how insiders are trading in securities for which they may have material nonpublic information.

In response to recent bank failures, the SEC launched an investigation that includes an examination of stock sales that SVB executives made days before the bank failed. News reports have flagged that SVB CEO Greg Becker sold SVB shares worth more than \$3.5 million less than two weeks before the bank’s collapse, raising questions about whether he ran afoul of insider trading laws.

The SEC should also finalize a key executive pay rule, section 956 of the Dodd-Frank Act. This section tasked the SEC and five other agencies with implementing a rule to ban incentive-based executive compensation that encourages “inappropriate” risk-taking. Advocates are calling the agencies to finalize a strong rule — which Congress required the agencies to complete in 2011 — this year.

## Human capital management

The SEC has human capital management disclosures for issuers on its agenda, but it has yet to propose a rule. As the Human Capital Management Coalition argued in its [rulemaking petition](#), “[t]here is broad consensus that human capital management is important to the bottom line, and a large body of empirical work has shown that skillful management of human capital is associated with better corporate performance, including better risk mitigation . . . effective human capital management [is] essential to long-term value creation and therefore material to evaluating a company’s prospects.” The SEC should propose a comprehensive rule as soon as possible to enable investors to access information about companies that is consistent, comparable, reliable, and standardized.

## Rules proposed, but not yet finalized

Under Chair Gensler’s leadership, the SEC has proposed the below important rules that have yet to be finalized. The SEC should finalize these rules as soon as possible.

- [Stock buybacks](#): This rule would require daily disclosures of stock buybacks and enhanced periodic disclosures on the rationale and policies behind their use. This rule is [important](#) to increase transparency for investors of a practice that has skyrocketed — reaching [\\$6.3 trillion](#) in the 2010s — while its specifics have remained opaque.
- [Shareholder proposals](#): By providing clarity on key elements of the shareholder proposal rule (rule 14a-8), the SEC’s proposed amendments [will help shareholders](#) exercise their rights to submit proposals for consideration by their fellow shareholders. The rule will protect investors by reducing ways companies can evade disclosure and accountability around critical topics that matter to investors and have long-term financial impacts.
- [Beneficial ownership](#) and [swaps](#): These rules would address information asymmetries between some investors and others. They would [narrow loopholes](#) hedge funds use to: 1) secretly build large ownership stakes in public companies; 2) engage in what is in essence legalized insider trading before disclosures of large ownership stakes are made public; and 3) use their newly-acquired ownership stake to extract short-term returns at the expense of long-term value.
- [ESG funds names](#) and [disclosures](#): These rules would tackle greenwashing and ESG-washing so investors can have the information necessary to choose how to invest their savings.

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