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## THE IMPACT OF RECENT DEVELOPMENTS IN SECURITIES REGULATION ON THE PLAYING FIELD FOR ACTIVISM

*This article examines how recent developments in securities regulation have impacted activist campaigns, company responses to activist pressure, and institutional investor interactions with activists and companies. In particular, it reviews the impact of the universal proxy rules, which were adopted by the Securities and Exchange Commission in 2022; the revisions to SEC Regulations 13D-G that were promulgated in 2023; the CD&Is related to Regulations 13D-G that were issued in 2025; the 2025 SEC no-action letter regarding Exxon Mobil's retail investor voting program; and the 2025 Executive Order that directs the SEC, the Department of Labor and the Federal Trade Commission to examine whether rules relating to proxy advisors should be modified. It concludes that although these developments have caused activists, companies, and institutional investors to make adjustments and may result in further adjustments in the future, they have not dramatically altered the activism landscape. The article also reviews recent developments in activism strategy, including the increased number of "vote no" and "withhold vote" campaigns and the use of stockholder proposals, and discusses securities regulatory issues relating to these strategy developments.*

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### INTRODUCTION

The securities law statutes, the Securities and Exchange Commission ("SEC") regulations promulgated under those statutes, and the related SEC staff guidance have a significant impact on the playing field for activist funds, the companies targeted by the funds, and the investors that must decide how to respond to the funds' arguments. When the regulations change or the staff issues new guidance, activists, companies, and investors must adjust. For example, the SEC adopted rules in 2023 that reduced the time for filing beneficial

ownership reports on Schedules 13D and 13G when an investor acquires more than 5% of a company's stock.<sup>1</sup> As a result of this change, activists have less time to accumulate large positions and companies receive earlier notice that an activist is making a significant investment in their stock.

<sup>1</sup> 17 C.F.R. §§ 232, 240 (2025). The rule was originally published as Modernization of Beneficial Ownership Reporting, 80 Fed. Reg. 76896 (Nov. 7, 2023) (to be codified at 17 C.F.R. pts. 232, 240) [hereinafter 2023 Regulation 13D-G Release].

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