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PRACTICE BRIEF · CORPORATE GOVERNANCE

Recent Developments in California Corporate Governance Law: 2024-2025

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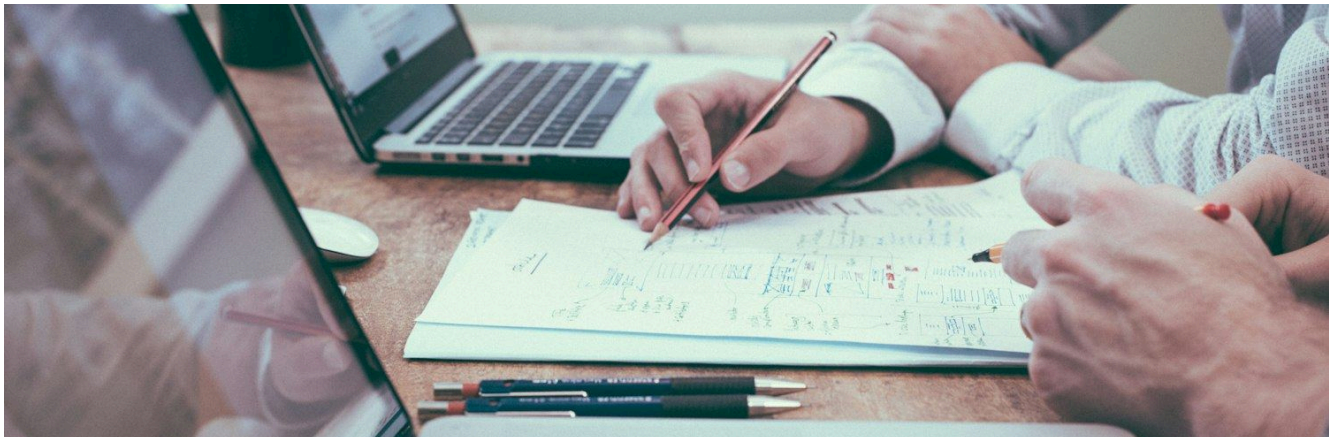

The 2024-2025 period has produced a dense and consequential set of developments in corporate governance law, particularly for companies doing business in California. From sweeping new climate disclosure mandates to federal beneficial ownership reporting, from the fallout of invalidated board diversity statutes to an intensifying ESG litigation environment and a wave of SPAC-related claims, corporate boards and their counsel face an unusually complex compliance and litigation landscape. This article surveys five of the most significant developments and their practical implications.

I. SB 253 and SB 261: California's Climate Disclosure Requirements

In October 2023, Governor Newsom signed two landmark statutes that together impose the most extensive mandatory corporate climate reporting obligations in U.S. history. The **Climate Corporate Data Accountability Act** (SB 253) and the **Climate-Related Financial Risk Act** (SB 261) are now operative, and together they reach thousands of public and private companies with California operations.

SB 253: Scope and Revenue Threshold

SB 253 applies to any entity that (1) does business in California, as defined by the Franchise Tax Board's broad nexus standards, and (2) has total annual revenues exceeding **$1 billion**. Covered entities must publicly disclose their greenhouse gas (GHG) emissions annually, broken down by scope:

- **Scope 1 emissions** (direct emissions from owned or controlled sources) and **Scope 2 emissions** (indirect emissions from purchased electricity, steam, heat, or cooling) must be reported beginning in the 2026 reporting year.
- **Scope 3 emissions** — all other indirect emissions across the company's value chain, including supply chain, employee commuting, business travel, product use, and end-of-life disposal — must be reported beginning in 2027.

Scope 3 is the most consequential compliance challenge. For most large companies, Scope 3 emissions constitute 70-90% of their total carbon footprint, and quantifying them requires data from suppliers, customers, distributors, and other business partners who may themselves have no reporting obligations. Companies without contractual audit rights over their supply chains face significant data-gathering obstacles.

SB 261: Risk Disclosure and TCFD Alignment

SB 261 applies to companies doing business in California with annual revenues exceeding **$500 million** — a lower threshold that captures a substantially larger universe of reporting entities. Covered companies must biennially publish a climate-related financial risk report aligned with the Task Force on Climate-related Financial Disclosures (TCFD) framework. Reports must address both physical climate risks (extreme weather, sea-level rise, resource scarcity) and transition risks (regulatory changes, market shifts, technological disruption, and reputational exposure arising from the low-carbon transition).

Enforcement and Penalties

Both statutes delegate enforcement authority to the **California Air Resources Board (CARB)**, which is empowered to adopt implementing regulations and levy civil penalties. SB 253 violations carry penalties of up to **$500,000 per reporting year**. SB 261 penalties reach up to $50,000 per reporting year. Neither statute creates a private right of action on its face, but indirect litigation exposure is substantial — particularly through derivative suits alleging oversight failures, securities claims arising from inconsistencies between California filings and SEC disclosures, and consumer protection claims under the UCL or CLRA where companies' marketing materials conflict with their mandatory emissions data.

AB 1305 Greenwashing Overlay and SB 219 Amendments

AB 1305, also signed in 2023, operates alongside SB 253 and SB 261 by requiring companies that market voluntary carbon offsets or make net-zero claims to substantiate those representations with detailed disclosures. The interaction between mandatory emissions reporting under SB 253 and voluntary marketing claims creates a two-front exposure risk: companies whose offset marketing is inconsistent with their mandatory filings face both CARB enforcement and consumer protection liability.

In 2024, the Legislature enacted **SB 219**, which partially amended the climate disclosure framework by granting CARB discretion over certain implementation timelines and deferring some deadlines to allow the agency to finalize its rulemaking. SB 219 did not, however, reduce the sub-

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stantive scope of either statute. The reporting obligations remain intact; only the administrative timeline has been adjusted.

II. Corporate Transparency Act Implementation and Litigation

The **Corporate Transparency Act (CTA)**, enacted as part of the Anti-Money Laundering Act of 2020, requires most domestic and foreign entities registered to do business in the United States to report their beneficial ownership information (BOI) to the Financial Crimes Enforcement Network (FinCEN). The CTA's implementing regulations took effect on **January 1, 2024**, and the compliance deadlines — and constitutional challenges — have been the defining corporate governance story at the federal level during this period.

Reporting Obligations

A "reporting company" under the CTA includes corporations, LLCs, and similar entities created by filing with a secretary of state or similar office. Each reporting company must disclose the identity of every individual who, directly or indirectly, exercises **substantial control** over the entity or owns or controls at least **25% of the ownership interests**. Required information includes the individual's full legal name, date of birth, residential address, and an identifying document number (driver's license or passport).

The CTA provides **23 exemptions** for entities already subject to substantial federal or state regulatory oversight, including SEC-reporting companies, banks, credit unions, insurance companies, registered investment advisers, and tax-exempt organizations. The exemptions are designed to avoid duplicative reporting for entities whose beneficial ownership is already transparent to regulators.

Compliance Deadlines

Entities formed or registered before January 1, 2024, were originally required to file their initial BOI reports by **January 1, 2025**. Entities formed on or after January 1, 2024, must file within **90 days of formation** (reduced from 30 days under a 2023 interim rule). Any changes to previously reported information must be updated within 30 days.

Constitutional Challenges

The CTA has faced significant litigation challenging Congress's authority to impose these requirements. In ***National Small Business United v. Yellen*** (N.D. Ala. 2024), the district court held the CTA unconstitutional as exceeding Congress's enumerated powers, issuing a nationwide injunction that was subsequently stayed pending appeal. In ***Texas Top Cop Shop, Inc. v. Garland*** (E.D. Tex. 2024), another district court issued a preliminary injunction on similar grounds, finding that the CTA likely exceeded Congress's Commerce Clause authority and raised Fourth Amendment concerns regarding the compelled disclosure of personal information.

These rulings have created significant compliance uncertainty. FinCEN has extended filing deadlines during the pendency of the litigation, and the practical enforceability of the CTA remains in flux. Companies should continue preparing to comply but must monitor appellate developments

closely, as the outcome will determine whether the BOI reporting regime survives in its current form.

III. Board Diversity Requirements (AB 979) Aftermath

California's AB 979, enacted in 2020, required publicly held corporations headquartered in California to include directors from "underrepresented communities" on their boards — defined as directors who self-identified as Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, Alaska Native, gay, lesbian, bisexual, or transgender. The statute imposed escalating minimum requirements through 2022 and authorized penalties of $100,000 for a first violation and $300,000 for subsequent violations.

Crest v. Padilla and the Equal Protection Holding

In ***Crest v. Padilla*** (2022), a Los Angeles County Superior Court struck down AB 979 on the ground that it violated the Equal Protection Clause of the California Constitution by using racial and other identity-based classifications to allocate board seats. The court applied strict scrutiny and concluded that, even assuming a compelling state interest in boardroom diversity, the statute was not narrowly tailored because less restrictive alternatives — including disclosure-based requirements — could serve the same goal without mandating racial classifications.

The state declined to appeal the ruling, leaving the decision as the final word. The practical effect has been a shift in California's approach to board diversity from mandate-based to disclosure-based frameworks.

SB 826 (Gender Diversity) and Ongoing Challenges

California's earlier board diversity statute, SB 826 (2018), which required publicly held corporations headquartered in California to have minimum numbers of female directors, was separately invalidated in *Meland v. Padilla* (C.D. Cal. 2021) on standing grounds and subsequently struck down by a Los Angeles Superior Court in *Crest v. Padilla* (2022) on equal protection grounds parallel to the AB 979 ruling. Together, these decisions have effectively eliminated California's experiment with mandatory board composition requirements.

The Shift to Disclosure-Based Approaches

In the aftermath of these rulings, the regulatory center of gravity has shifted to disclosure rather than mandates. The SEC's approval of **Nasdaq's board diversity disclosure rules** (Rule 5605(f)) provides an alternative framework: listed companies must annually disclose board-level diversity statistics using a standardized matrix, or explain why they have not met Nasdaq's diversity objectives. The Nasdaq rules do not mandate any particular board composition; they require only transparency.

Notably, despite the invalidation of California's mandates, most companies have voluntarily maintained or increased board diversity levels. Institutional investors — particularly large asset managers — continue to use proxy voting to pressure companies on board composition, and ISS

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and Glass Lewis proxy advisory policies continue to penalize boards lacking diversity. The practical effect is that market-driven diversity pressures now exceed the mandates that were struck down.

IV. ESG Litigation and Shareholder Activism

The 2024-2025 period has seen a sharp escalation in litigation and regulatory activity surrounding environmental, social, and governance (ESG) considerations. The landscape is defined by competing pressures: pro-ESG shareholder activism and derivative litigation on one side, and anti-ESG state legislation and backlash on the other.

Shareholder Proposals: Pro-ESG and Anti-ESG

The volume of ESG-related shareholder proposals submitted during the 2024 and 2025 proxy seasons has increased significantly. Pro-ESG proposals continue to demand enhanced climate transition plans, Scope 3 emissions targets, racial equity audits, and human rights due diligence in supply chains. At the same time, anti-ESG proposals — many submitted by conservative shareholder groups — have demanded that companies abandon diversity, equity, and inclusion (DEI) programs, withdraw from climate commitments, and prioritize short-term shareholder returns over stakeholder-oriented strategies.

The SEC's no-action letter process has become a key battleground. In 2024, the Commission staff narrowed the "ordinary business" exclusion, allowing more ESG proposals to proceed to a vote, while simultaneously allowing more anti-ESG proposals under the same rationale. The result is that boards face competing proposals on the same ballot, forcing difficult strategic choices about how to frame their governance narratives.

Caremark Oversight Liability for ESG Risks

Derivative suits alleging *Caremark* oversight failures with respect to ESG risks have proliferated. Under the framework established in *In re Caremark International Inc. Derivative Litigation* (Del. Ch. 1996), directors face personal liability for a sustained or systematic failure to exercise oversight over known compliance risks. Recent cases have extended this doctrine to ESG-related risks, with plaintiffs alleging that boards failed to monitor climate-related regulatory exposure, failed to oversee workplace safety and discrimination risks, or failed to ensure the accuracy of ESG disclosures that later proved misleading.

The Delaware Chancery Court's willingness to deny motions to dismiss in several recent *Caremark* cases has raised the litigation stakes. The standard remains demanding for plaintiffs — they must show a complete failure of oversight, not merely deficient oversight — but the expanding scope of what qualifies as a "mission critical" risk now clearly encompasses climate compliance and ESG disclosures.

The SEC's Climate Disclosure Rule and Legal Challenges

In March 2024, the SEC adopted its final climate disclosure rule, requiring public companies to disclose material climate-related risks, GHG emissions (Scope 1 and 2 for large accelerated and accelerated filers), and climate-related financial metrics in their annual reports. The Commission

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declined to mandate Scope 3 reporting, a significant departure from the proposed rule. Multiple challenges were filed immediately and consolidated in the **Eighth Circuit Court of Appeals**, where the rule's legality under the SEC's statutory authority, the First Amendment, and the major questions doctrine remains pending. The SEC voluntarily stayed the rule during the litigation.

State-Level Anti-ESG Legislation

A parallel development is the wave of anti-ESG legislation enacted in conservative states. Texas, Florida, West Virginia, and other states have enacted or proposed laws restricting state pension funds from investing with asset managers that "boycott" fossil fuels, prohibiting state contracts with financial institutions that adopt ESG-based lending or underwriting criteria, and imposing fiduciary duty requirements that prioritize "pecuniary" returns over ESG considerations. For companies with multi-state operations, the result is a patchwork of conflicting obligations: California mandates climate disclosure; Texas penalizes ESG-oriented financial decisions.

This regulatory fragmentation imposes real compliance costs and creates litigation exposure from multiple directions. Boards that adopt aggressive ESG commitments risk anti-ESG enforcement in red states; boards that retreat from ESG commitments risk derivative suits and proxy contests in blue states. The fiduciary challenge is to navigate these competing demands while satisfying the duty of care in every jurisdiction where the company operates.

V. SPAC Unwinding Litigation

The 2020-2021 SPAC boom has given way to a substantial wave of litigation as de-SPAC transactions have underperformed and the regulatory environment has tightened. The litigation landscape encompasses securities fraud class actions, breach of fiduciary duty claims, and enhanced regulatory scrutiny from the SEC.

Securities Fraud Claims

Numerous class action lawsuits have been filed under **Section 10(b) of the Securities Exchange Act** and **Rule 10b-5**, alleging that SPAC sponsors and target companies made materially misleading statements or omissions in connection with de-SPAC transactions. Common allegations include inflated revenue projections in investor presentations, failure to disclose material adverse trends at the target company, and inadequate due diligence by SPAC sponsors who had financial incentives to close transactions regardless of quality. The "promote" structure — under which SPAC sponsors receive approximately 20% of post-merger equity for a nominal investment — creates an inherent conflict of interest that plaintiffs have effectively leveraged in pleading scienter.

Fiduciary Duty Claims and MultiPlan

The Delaware Court of Chancery's decision in ***In re MultiPlan Corp. Stockholders Litigation*** (Del. Ch. 2022) fundamentally altered the fiduciary landscape for SPAC transactions. The court held that SPAC directors owed fiduciary duties to public stockholders, that the economic structure of the promote created a conflict of interest sufficient to trigger **entire fairness review** rather

than the more deferential business judgment standard, and that the stockholder vote to approve the de-SPAC transaction did not cleanse the conflict because stockholders lacked material information about the sponsor's economic incentives.

MultiPlan has become the template for fiduciary challenges to de-SPAC transactions. Subsequent cases have reinforced the principle that the SPAC structure itself — with its built-in conflicts between sponsors and public stockholders — demands enhanced judicial scrutiny. Boards of SPACs contemplating de-SPAC transactions must now demonstrate arm's-length negotiation, adequate disclosure of sponsor conflicts, and a process that could survive entire fairness review.

SEC Final SPAC Rules (2024)

In January 2024, the SEC adopted comprehensive final rules governing SPACs and de-SPAC transactions. The rules impose several significant requirements:

- **Enhanced disclosure obligations** regarding SPAC sponsor compensation, conflicts of interest, and dilution — including a requirement to disclose the per-share value of the sponsor's promote relative to public stockholders' investment.
- **Expanded liability** for target company directors and officers, who are now treated as co-registrants in de-SPAC registration statements — exposing them to Section 11 strict liability for material misstatements, eliminating the prior regulatory gap that allowed target companies to avoid Securities Act liability by structuring de-SPAC transactions as Exchange Act filings.
- **Projections safe harbor limitations**: the rules eliminate the PSLRA safe harbor for forward-looking statements in de-SPAC transactions, treating them like traditional IPOs for purposes of liability for projections — a direct response to the widespread use of aggressive revenue projections in SPAC investor presentations.
- **Investment company determination**: the rules provide guidance on when a SPAC's activities may cause it to be treated as an investment company under the Investment Company Act of 1940, which would impose registration requirements and operational restrictions that are incompatible with the SPAC structure.

Together, these rules substantially increase the regulatory burden and litigation risk for SPACs. The combination of *MultiPlan*'s entire fairness framework and the SEC's enhanced disclosure and liability requirements has made the SPAC structure significantly less attractive than it was during the 2020-2021 boom, and boards contemplating SPAC transactions must carefully evaluate whether the structure remains appropriate given the current legal environment.

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PRACTICAL RECOMMENDATIONS FOR CALIFORNIA CORPORATE BOARDS

- Establish dedicated board-level oversight of climate disclosure compliance under SB 253 and SB 261. Document the board's engagement with the compliance program — derivative plaintiffs will scrutinize whether a *Caremark*-adequate monitoring system was in place.
- Coordinate California climate disclosures with SEC reporting obligations. Inconsistencies between state and federal filings create securities fraud exposure and undermine credibility with regulators in both jurisdictions.
- Monitor CTA litigation developments and maintain readiness to file beneficial ownership reports promptly once appellate courts resolve the pending constitutional challenges. Companies should not assume the CTA will be permanently enjoined.
- Transition board diversity programs from mandate-compliance to voluntary governance best practices. Use Nasdaq's disclosure matrix as a framework for transparency, and ensure proxy disclosures accurately describe the board's diversity profile and governance philosophy.
- Prepare for competing ESG pressures by establishing a clear governance framework that documents the board's decision-making process. Directors who can demonstrate a deliberate, informed process for evaluating ESG considerations are better positioned to defend against both pro-ESG and anti-ESG challenges.
- For companies involved in SPAC or de-SPAC transactions, engage independent financial and legal advisors early, ensure full disclosure of sponsor conflicts, and structure the approval process to withstand entire fairness review under *MultiPlan*.

Practice	Corporate Governance
Topics	Climate Disclosure · Corporate Transparency Act · Shareholder Disputes · Fraud · Fiduciary Duty
Publication	Recent Developments · 2024-2025

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