

WALTER SCOTT



QUARTERLY COMMENTARY

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The Council of Institutional Investors (CII) continues to grow in influence. Associate members of the body now represent US\$74tn in assets under management – roughly equivalent to the GDP of the world’s eight largest economies. Boasting impressive convening power, more than 500 of its members attended its Spring Conference in Washington, DC in March.

From an impressive line-up of speakers, attendees would have been especially keen to hear from Paul Atkins, Chair of the US Securities and Exchange Commission (SEC). Having vowed to “make IPOs great again”, Atkins has launched a campaign to roll back what he describes as “regulatory creep.” Given the CII’s position as “the leading voice for effective corporate governance and strong shareowner rights in the US”, any potential shift in the regulatory framework is likely to be of fundamental importance to its members.

While acknowledging the need for balance, Atkins takes the view that the regulator should return to basics and lighten the disclosure load – an approach he likened at the conference to “de-cluttering an attic.” A core tenet of his outlook is that disclosure rules must be anchored in financial materiality, having argued previously that decades of accretive rulemaking on non-material issues have “made the path to public ownership narrower, costlier, and saddled with rules that can create more friction than benefit.”

A counterpoint to this stance came the following day in an impassioned speech from Senator Elizabeth Warren. Arguing that too light touch an approach risked undermining confidence in America’s financial system, she called on asset owners to speak out against what she views as deliberately lax enforcement.

AI comes into regulatory view

Engaged shareholders will be watching closely how the current regulatory regime evolves. One area of particular interest will be artificial intelligence (AI). As the technology becomes integral to the global economy, there will likely be implications for all facets of the sustainability landscape – from labour relations and carbon emissions to biodiversity and governance.

On the last of these, one of the most fascinating sessions at the conference was a panel discussion exploring how investment managers manage their use of AI.

AI is reshaping every stage of the asset-management value chain – from research and portfolio construction to compliance, client reporting and operational efficiency. Industry surveys show that nearly three quarters of asset-management executives now view AI as critical to their future success.

With firms adopting increasingly powerful AI models, however, they must ensure safe, transparent and compliant use of these systems. Key considerations include accountability and human oversight, data quality and integrity, privacy controls, transparency and fairness.

As the panel argued, AI is an incredibly powerful tool that used correctly will add real value for investment managers. But to stay safely on the right side of regulators across jurisdictions it will be vital to build robust governance structures that embed these considerations into their models.

Shareholder scrutiny on the rise

The need to advance AI thoughtfully and with a clear focus on risk mitigation applies across every industry. For investors, assessing how these risks manifest at the company level, and whether they qualify as financially material, is becoming essential. The rapid growth in AI-related shareholder proposals underlines that point.

While such proposals have historically centred on technology companies, they are increasingly appearing in sectors as varied as media and entertainment, financial services, and hospitality. As AI adoption spreads, so too will the scrutiny.

Determining financial materiality, however, remains challenging. Much AI-specific legislation and regulation is still evolving, and the technology is intersecting with legal frameworks designed for a different era. Copyright law is one of the clearest examples. Are existing rules adequate for the unique issues AI creates, or does the landscape demand a new regulatory approach?

A series of high-profile lawsuits highlights the contentious questions surrounding AI, copyright, and intellectual property. The New York Times’ lawsuit against Microsoft and OpenAI – alleging misuse of Times content in AI model training – is particularly notable.

In our view, the risk of copyright infringement represents a potentially material financial exposure for companies such as Microsoft, and one that will likely grow as regulatory and legal scrutiny intensifies.

This concern informed our decision to support a shareholder proposal at Microsoft's 2024 AGM. The proposal called for a report assessing the risk – to both the company and public welfare – arising from “the real or potential unethical or improper usage of external data” in training its AI models. It marked the first time Microsoft had received a proposal specifically relating to the use of external data in AI development.

Microsoft opposed the resolution, pointing to its existing public commitments to sourcing training data “in ways that are consistent with global laws, and that respect privacy, safety, and content.” While this disclosure is welcome, it offers limited insight into how the company evaluates and manages the risk of copyright infringement. This is an issue that will continue to attract significant media attention and legal action.

Given our view that these risks would prove financially material, we believe Microsoft would benefit from taking a more proactive approach by enhancing its disclosures and providing clearer information on how it manages the risks associated with using copyrighted material in AI training.

Interestingly, the year after Microsoft received its first AI-related proposal, three of the six shareholder proposals on the company's 2025 proxy voting slate directly referred to AI. The noise around AI is building and investors will need to develop a deep understanding of potential risks and what truly constitutes materiality.

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