

2025 BERKELEY FORUM ON
CORPORATE GOVERNANCE



Pre-Forum Webinars Takeaways

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Charting the Course for Crypto & Digital Asset Regulation

Part of the Pre-Event Webinar Series for the 2025 Forum on Corporate Governance

Fragmented Rules Reflect a Market Outpacing Regulation

The discussion opened with the contrast between the proposed Market Structure Bill and the newly enacted GENIUS Stablecoin Act. Panelists saw the Stablecoin Act's narrow focus as evidence that policymakers are still playing catch-up with a rapidly evolving market. While the Market Structure Bill aspires to provide a unified framework akin to the great financial statutes of the past, its deliberate exclusion of DeFi and NFTs underscores how regulators remain behind the curve—legislating incrementally as they learn the technology they seek to govern.

The SEC–CFTC Divide Reveals How Structure Determines Substance

The limits of existing regulatory frameworks may have something to do with the technology itself. In exploring decentralized finance, the panel agreed that DeFi's architecture, which is built on transparent code rather than intermediaries, renders traditional oversight frameworks inadequate. Debating institutional jurisdiction, speakers highlighted that funding models and organizational design shape regulatory capacity as much as legal authority does. The SEC's robust examination apparatus offers early detection and deterrence, but its size and politics can slow adaptation. The CFTC's leaner framework may foster innovation if bolstered with new resources, yet its limited oversight history raises concerns. The discussion concluded that effective regulation depends not only on who governs crypto, but also on how that agency is equipped and incentivized to govern.

Tax Policy Signals the State's Ambivalence Toward Innovation

Turning to taxation, the panel viewed the IRS's treatment of staking rewards as emblematic of a deeper policy confusion: does the government seek to integrate or to restrain digital assets? Treating rewards as immediate income burdens users and discourages participation in network security, suggesting a lack of alignment between fiscal policy and technological reality. The rise of "digital asset treasuries," meanwhile, demonstrates how mainstream companies are embracing crypto—but perhaps faster than regulators can ensure transparency. For some, this signals maturity; for others, a replay of the dot-com euphoria that ended in correction.

Conclusions: Shared Ground and Unresolved Questions

Despite their different professional perspectives, the panelists shared several core convictions. Fraud should be prosecuted vigorously, whatever the technological context; investor protection and market integrity remain the non-negotiable cornerstones of any financial system. They also agreed that bipartisan legislation is the only route to durable clarity and that stablecoins must maintain transparent one-to-one asset backing to preserve market confidence.

At the same time, sharp divisions persist over the contours of future governance. Whether primary oversight should rest with the SEC or the CFTC remains unsettled, as does the question of how DeFi's non-custodial model can coexist with fiduciary-based legal doctrines. Tax policy, too, continues to oscillate between experimentation and caution, mirroring the broader ambivalence of governments toward digital innovation. These unresolved tensions capture a system in flux, where law, technology, and politics are still negotiating the boundaries of legitimacy and control.

Texas Corporate Law, Jurisdictional Shifts, and the Investor Perspective

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1. Texas Innovates to Challenge Delaware's Dominance in Corporate Law

Texas is mounting the most credible challenge yet to Delaware's dominance in corporate law. Rather than imitating Delaware's jurisprudence or Nevada's lightly regulated approach, Texas is creating its own model, grounded in statutory innovation and a new business court system designed to offer management-friendly efficiency. The state emphasizes procedural streamlining and a dedicated appellate structure to handle complex cases swiftly. However, the experiment is controversial. Its elected judiciary (in contrast to Delaware's appointed judges) raises concerns about political influence and judicial independence, and early rulings will be closely watched for signs of bias or rigor. Supporters see healthy competition for Delaware's long-standing leadership on corporate governance, but critics warn of a potential race to the bottom if deference to management outweighs neutrality and precedent. Whether Texas can build the consistency and credibility that Delaware achieved over a century remains the key test of its ambitions.

2. Texas Leans Toward Management, Sparking Investor Concern

Texas's new framework departs sharply from Delaware's more balanced approach to managerial authority and shareholder rights. The 3% ownership threshold for derivative suits insulates corporate managers from shareholder actions, curbing what Texas lawmakers view as nuisance litigation but also removing a critical accountability tool. Viewed by many as the most novel reform, the option for boards to seek advance judicial rulings on director independence gives transactional certainty before conflicted deals proceed, yet this comes at the cost of revealing strategic information in a public forum. Texas also permits arbitration clauses and exclusive forum provisions, which enhance procedural flexibility but reduce transparency and the development of precedent that markets rely on. Institutional investors warn that these measures tilt governance toward management and weaken traditional checks on corporate behavior.

3. From Predictability to Pluralism: What Investors Will Watch Next

Across ongoing debates about incorporation and oversight, one theme stands out: investors and corporations value predictability more than ideology. Delaware continues to command confidence because its courts deliver speed, expertise, and consistent jurisprudence. For Texas to attract significant reincorporations, it must demonstrate not just friendliness to management but reliability for markets. Some companies are already testing its courts not only as incorporation venues but as strategic forums for litigation, which is a sign that jurisdictional choice is becoming a tool of corporate strategy as well as governance. The coming years will determine whether its business courts can maintain independence and issue decisions persuasive enough to shape national practice. If Texas succeeds, jurisdictional pluralism could replace Delaware's near-monopoly, expanding competition in corporate governance. If it falters, Delaware's balance between flexibility and accountability will remain the benchmark of American corporate law.

The Retail Investor Priorities in 2026

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The Evolving Public Markets Landscape: Technology, AI, and Regulatory Shifts

The profile of the retail investor has shifted dramatically in recent years, driven by technological democratization that has lowered barriers to entry and fundamentally changed market participation. Younger investors with smaller account balances now dominate platforms that were once accessible only to institutional players, enabled by zero-commission trading and fractional share ownership. Technology was the game changer, and Robinhood was the name changer. Yet the transformation extends beyond access. Artificial intelligence is reshaping both the mechanics of investing and the substance of investment decisions—algorithms guide portfolio construction while AI-driven companies dominate retail holdings. The regulatory environment adds another layer of complexity: the evolving posture of the SEC raises questions about whether regulators are leading investor sentiment, following it, or operating on an independent trajectory. Meanwhile, retail investors increasingly express values beyond pure financial return—as consumers, citizens, and stakeholders—prompting debates about whether this values-driven approach influences corporate issuer behavior. Beneath these shifts lies a persistent question: do investors still care about governance at all?

Expanding Investment Horizons: Private Markets, Crypto, and Alternative Assets

Access to investment classes once reserved for institutional players has opened significantly for retail investors, fundamentally altering the investment landscape. Regulatory changes around proxy statements and advice, along with evolving media channels like YouTube and Reddit, have enabled retail participation in previously restricted markets. Yet this democratization coincides with a structural transformation: private markets now exceed public markets in size, while the number of publicly traded companies has declined steadily over the past 25 years. Shareholders in companies increasingly tend to stay loyal as consumers rather than function purely as investors, and their voting behavior is correspondingly limited. The expansion into alternative assets (private equity, crypto, and other instruments) raises questions about investor protection, information asymmetry, and whether retail participants possess the sophistication these markets demand.

Financial Literacy as the Foundation: Education's Role

Voting is needed for the public corporation. There is an education needed for the investors, especially in the younger generations just starting off. The changing investor landscape demands that market participants, regulators, and corporations take an active role in financial education and communication. Investor democracy requires forums for engagement, and if corporations possess investor information, they should actively share it rather than withhold it. Investor profiles have changed fundamentally, and the infrastructure for investor education must evolve accordingly. Financial literacy determines whether democratized access becomes an equalizer or

a source of vulnerability, shaping how effectively retail investors navigate public markets, evaluate private investment opportunities, and participate meaningfully in corporate governance.

Innovative Exit Strategies in Private Equity in 2026

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Market Dynamics and Exit Challenges in 2025

Exits rebounded from a decade low and surpassed "old normal" levels in 2025, signaling a return to healthier market conditions after years of constrained activity. Yet the recovery remains uneven. Slow exits continue to extend private equity hold times, while exits through continuation funds are pacing toward a new record, reflecting both opportunity and necessity in managing conflict of interest dynamics within GP-LP relationships.

The macroeconomic and geopolitical environment continues to create obstacles for exits, widening valuation gaps between sellers and buyers. Foreign direct investment clearance considerations have emerged as critical factors in certain transactions, adding regulatory complexity to already challenging negotiations. Successfully closing deals requires strategic discipline: competitive processes, thorough due diligence, and increasingly sophisticated dual-track approaches that balance IPO preparations against strategic sale options. Each path carries distinct risks and timelines, and understanding where these processes typically conclude has become essential to managing sponsor and investor expectations.

Creative Liquidity Solutions: Dividend Recaps, Continuation Funds, and Alternative Structures

In a challenging exit environment, GPs have turned to innovative liquidity mechanisms to manage portfolio company timelines and provide returns to limited partners. Dividend recapitalizations have reemerged as a tool to extract value without full exit, though concerns persist about leverage levels and the sustainability of distributions in uncertain markets. The evolution and increased prevalence of continuation funds represent perhaps the most significant structural shift: once used sparingly for exceptional assets, continuation funds have become mainstream vehicles for extending hold periods while offering liquidity to existing LPs.

Conversations between GPs and LPs around these structures reveal competing priorities. General partners frame continuation funds as opportunities to maximize value for high-performing assets that need additional time, while limited partners weigh liquidity needs against the potential for continued upside. The decision to roll into a continuation fund or exit for immediate liquidity depends heavily on LP portfolio construction, cash flow requirements, and conviction in the GP's value creation thesis. The relative success and challenges of these instruments in current markets vary widely, with outcomes shaped by asset quality, pricing dynamics, and the credibility of the sponsoring GP. Structural advantages include alignment around concentrated conviction and removal of time pressure, but key risks involve conflicts of interest, valuation disputes, and the potential for disappointing returns if the extended hold period fails to deliver incremental value.

Looking Ahead: Exit Market Outlook and Emerging Trends

Optimism for renewed exit activity in the second half of 2025 confronted unexpected headwinds, including government dynamics that disrupted anticipated IPO windows and broader market stability. The impact of political uncertainty on dealmaking timelines and investor confidence remains an open question heading into 2026. Meanwhile, the continued relevance of ESG values in exit strategies varies by sector and buyer type, with some acquirers prioritizing sustainability credentials while others focus purely on financial performance.

Despite challenges, encouraging signs have emerged in exit markets: strategic buyers are returning with larger balance sheets, secondary market participants are deploying significant capital, and select IPO windows have opened for high-quality assets. Expert perspectives on expectations for the remainder of 2025 and into 2026 suggest cautious optimism—exits will likely remain selective, favoring well-positioned companies with strong fundamentals, but the prolonged drought appears to be ending. The market is recalibrating, and sponsors who adapt their exit strategies to this new environment stand to benefit from improved liquidity conditions ahead.

When the Government Becomes a Shareholder

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1. State Equity Raises Questions: Industrial Strategy or Political Opportunism?

The U.S. government's acquisition of a 10% stake in Intel marked a sharp departure from long-standing traditions in which the state keeps its distance from corporate ownership, and the motivations remain disputed. Some view it as a strategic move to secure taxpayer upside, showcase superior negotiation skills compared to the Biden administration's grant-only CHIPS Act approach, and align with broader goals to reshore semiconductor capacity and accelerate the AI race. Others see it as an opportunistic bargain: a deal struck after friction between Intel's CEO and the White House, designed more to demonstrate leverage than to implement policy. What unites both readings is that this intervention differs from crisis-driven bailouts like AIG or GM in 2008, or airline aid during COVID-19, as Intel was not in urgent distress. Panelists also converged on one concern: the absence of a coherent framework for government equity.

2. Political Capital Tests the Limits of Market Discipline

The return of government equity ownership has reignited debates about moral hazard and political favoritism. One concern is that state backing could distort competition, shielding Intel from market pressures and encouraging suppliers to favor a politically connected firm. Another risk is that government involvement could make companies complacent and lead to inefficient use of taxpayer funds, since the state is rarely the most efficient allocator of capital. Concerns about conflicts of interest and opacity deepened, with questions over whether political actors might influence funding decisions for personal or electoral gain. The administration is also exploring equity positions in other industries, raising fears that public ownership could extend into data-intensive sectors such as AI and media, where control over information and censorship risks are magnified. Beneath these debates lies a deeper uncertainty about whether existing statutes provide sufficient legal authority for such equity purchases.

3. Guardrails Needed Before Government Becomes a Shareholder

The Intel episode has prompted calls for formal guardrails to govern future state equity purchases and the management of existing ones. Clear performance milestones, transparency reports, and sunset clauses are essential to ensure accountability over time. Effective oversight also requires coordination among agencies such as Treasury, Commerce, and Energy to prevent fragmented decision-making and overlapping mandates. Political independence is equally critical: without insulation from electoral cycles, state investment risks becoming a partisan tool rather than a long-term policy instrument. International models and private equity governance practices offer useful reference points for developing rules-based oversight and for understanding what pitfalls to avoid. Ultimately, democratic accountability through congressional review and public disclosure remains vital to prevent strategic investment from drifting into state favoritism.

Navigating Litigation Risk Across Incorporation Jurisdictions

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1. States Compete on Corporate Law Design and Judicial Architecture

While Delaware continues to dominate corporate incorporations, jurisdictions like Texas and Nevada are carving out space through changes to both their statutory frameworks and judicial systems. Recent migrations, such as the move of roughly 20 companies in the past two years to Nevada (mainly controlled firms like TripAdvisor and the Dolan entities), reflect shifts driven by governance preferences, not a systemic exodus. Texas has advanced a pro-management agenda, tightening access to derivative suits and creating new business courts for faster dispute resolution. Nevada, meanwhile, seeks to replace elected judges with appointed business judges, a reform facing a lengthy and uncertain constitutional process. These moves reveal that competition among states is not just about incorporation, but about offering differentiated procedural environments that shape how corporate disputes are governed and resolved.

2. Litigation Risk Turns on One Factor: Judicial Stability

Judicial design—more than statutory reform—has emerged as a key driver of litigation risk across jurisdictions. Delaware’s appointed judges, long terms, and partisan balance ensure continuity and predictability, anchoring its reputation for consistent corporate jurisprudence. Texas and Nevada, by contrast, rely on systems where judges are elected or serve short appointments, raising questions about stability, specialization, and political influence. Texas’s new business courts, whose judges are appointed by the governor for two-year terms, promise efficiency but remain untested. Nevada elects judges for six-year terms, with many in major counties handling both criminal and civil dockets, a structure that can slow complex business disputes and limit specialization. For corporations weighing forum strategy, the trade-off lies between flexibility and locally responsive innovation on one hand and the predictability of more established judicial systems on the other.

3. Market Discipline Will Shape the Future of Multi-Forum Litigation

As companies diversify their places of incorporation, multi-forum litigation risk has become a defining governance challenge. Firms must navigate different procedural rules, judicial expertise, and case-law maturity. Delaware’s unified court system remains the most reliable venue for complex business disputes, while newer jurisdictions introduce innovations but also uncertainty around timing and outcomes. To contain litigation risk, companies may rely on exclusive-forum provisions, arbitration clauses, and other contractual mechanisms, although these tools can also reduce transparency and limit the body of public case law that informs market expectations. Over time, market discipline will test both corporate litigation strategies and state judicial credibility, rewarding systems that deliver efficiency and fairness while penalizing those that drift toward politicization or unpredictability. When legal environments weaken shareholder protection or predictability, capital and valuations tend to shift accordingly, pressuring states to adapt.