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December 05, 2023

8 Things to Know Right Now



Here's our latest edition of our monthly feature – a quick snapshot of recent developments:

1. Over the week leading up to Thanksgiving, Corp Fin [issued](#) a bunch of new CDIs – and three revised CDIs – in a variety of areas in several different tranches, including:
 - One revised Proxy CDI about calculating the counting of "10 calendar days" for Rule 14a-6, clarifying that the filing date does not count as day 1 if the filing is submitted after 5:30 p.m. Eastern Time
 - One new Rule 14a-12 CDI about the legend information required in solicitations before furnishing a proxy statement
 - Three new Universal Proxy CDIs addressing how to handle overvoted and undervoted universal proxy cards
 - One new Schedule 14A CDI about when a proposal "involves" another matter within the meaning of Note A to Schedule 14A when information about the other matter that is called for by Schedule 14A is material to a voting decision on the proposal
 - Two new CDIs on exhibits; one relating to filing fees and one about linking to XBRL exhibits
 - Eight new CDIs – and two revised ones – on the pay vs. performance rules.
2. In early November, the [Fifth Circuit ruled](#) that the stock repurchase disclosure rule the SEC adopted back in May was "arbitrary and capricious" under the Administrative Procedure Act. The court gave the SEC 30 days to fix the rule, including a request that the SEC substantiate the rule's costs and benefits. The SEC did not submit a corrected rule within the 30 day period.

On Thanksgiving Eve, the SEC [announced](#) an order postponing the effectiveness of the rule pending further SEC action. Companies should expect to continue complying with existing stock repurchase disclosure requirements for the time being. We expect further clarity in the near term, although it may take

time for this dispute to shake out, including if the SEC decides to appeal the Fifth Circuit's decision or re-propose the rule.

3. Starting in early November, Corp Fin changed how it accepts no-action requests regarding exclusion of shareholder proposals under Rule 14a-8. As reflected on [Corp Fin's Shareholder Proposals no-action responses page](#), no-action requests to the Staff must now be submitted through this [web form](#). No more submissions by email.

Take note that one of the fields in the web form is the company's anticipated print date, which appears to signal that the Staff expects to follow the pattern set last year of responding to requests near the company's proxy material print date.

4. Recently, Glass Lewis [announced](#) the release of its [2024 U.S. Voting Guidelines](#). Pages 7-11 provide a summary of the 9 policy changes and 7 clarifying amendments.
5. ISS held its open comment period for [proposed changes](#) for its voting policies during November, with the comment period ending November 30th. Incredibly, ISS did not propose any changes to its voting policies in the United States.
6. We've been posting a [series of blogs](#) to help get you up-to-speed on how to use generative AI to your advantage, as well as this [55-minute interview](#) with Microsoft's Jason Barnwell on generative AI and the coming impact on how we practice (the back half of the interview includes demos).
7. We have posted the [video archive](#) for our recent webcast – "How to Prepare Now for Shareholder Activism" – during which you can learn how to gear up for shareholder activism before it happens, and what to do when it does. You also can learn a bevy of practical tips and come away from the program with the knowledge needed to nimbly move forward in a rapidly shifting environment.

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