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March 04, 2024

8 Things to Know Right Now



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

1. It's happening! The SEC has posted this [Sunshine Act notice](#) to inform us that it will hold an open Commission meeting next Wednesday, March 6th to decide whether to adopt a final climate disclosure rule. You can attend the meeting virtually, which commences at 9:45 am Eastern (although the meeting will start with consideration of another rulemaking first).

This [Reuters article](#) reports on the rumor that the final rule might not include a Scope 3 disclosure requirement. That would not be a surprise, as SEC Chair Gensler has indicated over the past few months that investors were split over their desire for Scope 3 disclosures.

2. In a [lengthy opinion](#) that unwound an eye-popping \$55 billion compensation grant, the Delaware Court of Chancery's Chancellor Kathaleen McCormick invalidated Tesla's huge compensatory equity grant to Elon Musk, its Chair and CEO. We have distilled this 200-page opinion down to three practical "best practices" for directors to apply in reviewing the important – but less extraordinary – equity grants that CEOs and executive teams typically receive each year. [These three tips](#) apply to compensation committee members and their advisors, of public companies as well as private, and generally, whether formed in Delaware or elsewhere.
3. As we [blogged](#) at the beginning of the year, the SEC's new share repurchase rule was vacated by the Fifth Circuit Court of Appeals – and thus the new rule never took effect. The SEC hasn't yet indicated whether it intends to repropose new rules.

But Corp Fin did recently post [this announcement](#) clarifying that all of the SEC's pre-existing rules regarding share repurchases – the rules that would have been superseded by the SEC's new rule if it hadn't been vacated (i.e. Item 703 of Regulation S-K, Form 10-K, 10-Q and 20-F items) - are in effect as if the

SEC's new rule had never existed...

4. Way back in 2021, the SEC approved Nasdaq's board diversity "comply or explain" listing standard which resulted in lawsuits being filed to challenge the rulemaking in the Fifth Circuit Court of Appeals. In [October 2023](#), a three-judge panel of the Fifth Circuit denied those petitions, upholding Nasdaq's board diversity listing standard. But now the Fifth Circuit has granted a petition for a rehearing en banc and an opinion in a lower court was vacated. So the saga isn't over.
5. Here's a topic that hasn't been written about – but that we hear a lot about – so you're likely to encounter it if you do this stuff long enough. A member on your board seeks to take a prolonged leave of absence for personal or other reasons. Maybe the director has scheduled surgery and can't travel. They could be ill. Or perhaps they have an ill spouse that needs immersive care. Life happens. Here are [five considerations](#) to ponder.
6. We've all heard the term "power user." Someone who has excelled in some type of technology – or maybe they can simply type fast – that gives them a productively edge when leveraging technology. Many of us in the legal profession – at least the older generations – have long given up hope that we can become a "power user." Here are [some tips](#) on how to enhance your prowess in leveraging generative AI.
7. We have put together this "[How to Write a Comment Letter to the SEC on a Rulemaking](#)" Guide. Check it out! It covers these two topics:
 - The Mechanics of Submitting a Comment on an SEC Rule Proposal
 - How to Put Your Best Foot Forward: 8 Tips to Be Persuasive
8. We've been running a [series of "newbies" blogs](#) about corporate secretaries, who are among the most amazing people you could meet. Their wide range of skills are incredible to behold. Yet, they are among the humblest—the nicest—people around. When you look at the incredibly wide swath of things they do—the unfathomable number of hats they wear—it's surprising they elect to stay in such a difficult job. It takes a special person to be a corporate secretary.

We will be blogging soon enough about the 21 hats that we believe a corporate secretary must wear to be successful in their job—many of them overlap a tad, but there really are 21 hats...

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