

SEC Staff Issues Further Guidance on the Proxy “Unbundling” Rule

January 29, 2014 | Client Update

The SEC's Division of Corporation Finance recently released three Compliance and Disclosure Interpretations concerning the SEC's so-called unbundling rule (Exchange Act Rule 14a-4(a)(3)), which requires proxies to identify clearly and impartially each “separate matter” intended to be acted upon.

Nearly a year ago, in *Greenlight Capital, L.P. v. Apple, Inc.*, a federal court enjoined Apple from bundling four charter amendments into a single proposal. The *Apple* decision highlighted the lack of clarity in the unbundling rules and the risk that the SEC or an activist shareholder could challenge a company's presentation of proposals. The new C&DIs provide bright-line guidance for amendments to equity incentive plans but leave other situations to be considered on a facts-and-circumstances basis and, implicitly, to be discussed with the SEC Staff in cases of uncertainty.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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