

Proxy C&DIs Updated by SEC Staff

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The SEC staff recently updated [Compliance and Disclosure Interpretations](#) (C&DIs) on the proxy rules and Schedules 14A/C. We understand that the SEC staff intends to review and change other C&DIs that interpret the securities laws and SEC regulations.

Few topics, including the revisions, in the proxy C&DIs affect routine annual meetings. The C&DIs continue to cover fairly specific situations, including the following annual meeting subjects, along with a sampling of the key interpretations, many of which are not new but serve as useful reminders:

- *Exempt solicitations.* Filing of a Schedule 13D precludes reliance on the 10-person solicitation exemption.
- *Use of discretionary authority.* A matter is deemed untimely if it is either late under a company's advance notice bylaws or, if the company does not have such notice provisions, under the deadline set forth in Rule 14a-4(c). Late matters can be excluded from the proxy statement and discretionary authority to vote management proxies is preserved, so long as the proxy statement discloses how management intends to exercise that authority if the matter is presented at the meeting. A company that cannot exercise discretionary authority, such as if the proponent notifies the company that it intends to deliver a proxy statement, must file a preliminary proxy statement.
- *Preliminary proxy statements.* Proposals to approve or ratify awards made under a compensation plan require a preliminary proxy statement, while proposals to approve or ratify compensation plans or amendments do not. Corporate name changes do not require a preliminary proxy statement. The date of filing is day one for purposes of the 10 calendar-day rule with respect to preliminary proxy statements.

The C&DIs also continue to include several interpretations affecting solicitations of approvals for acquisitions and Item 10 disclosure for compensation plans.

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.

Ning Chiu

+1 212 450 4908

ning.chiu@davispolk.com

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