CORPORATE GOVERNANCE DEVELOPMENTS
TOP 10 TAKEAWAYS

1. Regulatory and legislative initiatives continue to provide shareholders with additional tools and increasing leverage in corporate governance matters. In light of the likelihood that majority voting and proxy access are right around the corner, as well as the prevalence of "just vote no" campaigns, the loss of broker discretionary voting in director elections, and "say on pay," it's more important than ever that boards take a close and careful look at overall structure and governance on a proactive basis.

2. It's time to take a fresh look at the lines of communication between your Board and significant shareholders. Being reasonably proactive in understanding key governance issues as seen through the eyes of shareholders can minimize potential future disruptions and make it easier to garner the support of key shareholders for critical Board decisions.

3. Consider the impact that the lack of broker discretionary voting will have on your upcoming director elections. Depending upon your particular circumstances, you may need to take additional steps, and incur additional costs, to ensure that a quorum is present and the Board's nominees receive the requisite affirmative votes.

4. Take the opportunity occasioned by the new disclosure rules to thoroughly review the qualifications and skill sets of your entire Board. Are there substantive areas of expertise or experience that your Board lacks? Remember you may need to update your D&O questionnaires to elicit the additional information necessary to comply with the new disclosure rules.

5. If your Board does not have a policy regarding diversity, consider adopting one. If you Board does have a policy regarding diversity, be prepared to discuss how that policy is implemented and how you assess its effectiveness.

6. Hostile activity is on the rise, so make sure you have recently assessed your company's takeover defense posture. Consider the impacts any actions you may take in that regard will have on your governance ratings and director elections.

7. If you have a non-independent chairman, be prepared to explain why that structure is best for your company.

8. Consider your contingency plans if legislation is passed that mandates structures you currently do not have in place. A number of bills in Congress impact corporate governance, particularly with respect to (i) annual shareholder advisory vote on executive compensation; (ii) prohibition of, or voting required on, on certain "golden parachutes"; (iii) proxy access; (iv) majority voting; (v) separation of the roles of CEO and chairman; and (vi) independent compensation committees/advisers.

9. Understand the risks inherent in your business and whether the Board's specific role(s) with regard to risk management/oversight have been defined and understood.

10. Be proactive on CEO succession planning, on both an "ordinary course" and an emergency basis.