



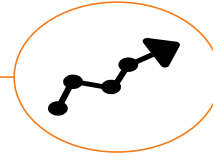
10 Intriguing Things You Need to Know

1. Corp Fin's New Director: John Coates

Wow! Professor John Coates from Harvard Law School [was tapped](#) as “Acting Director” of the SEC’s Division of Corporation Finance – even before Gary Gensler is confirmed as the SEC’s Chair. Here are a few thoughts:

- With Shelley Parratt’s [recent announcement](#) that she’ll be leaving as Corp Fin’s Deputy Director at the end of February, it was imperative to get someone in there fast for a smoother transition.
- My guess is that the “Acting” part of John’s title will disappear once Gary is confirmed. It wouldn’t make sense otherwise to have someone there for a short period of time, right?
- An academic as Corp Fin’s Director? That’s a new one. John did do deals at Wachtell way back when – so he’s definitely qualified. It’s just a surprise given that prior Directors either have been drawn from private practice or dipping into the Staff’s ranks.
- John will have his hands full. Given the virtual work environment – and four years of federal employees not being respected overall – I hear morale on the Staff is at a low ebb.

- There's that. And then there is the job itself. It ain't an easy one. A new Chair always brings in a fresh new agenda. Sometimes soon quashed as current market events – and Congressional action in response – take over. Good luck!



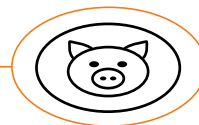
2. The SEC's New ESG Wizard: Satyam Khanna

Another big move by the SEC was [bringing in](#) Satyam Khanna to serve as the “Senior Policy Advisor for Climate and ESG.” Satyam will work this job directly out of the SEC’s Chair’s office. So clearly ESG is a big deal for the new SEC leadership team. Satyam was hired before Chair Gensler was confirmed!

I imagine Satyam will be working closely with Corp Fin when they start moving on what I think is an inevitable push to more closely regulate E&S disclosures. Satyam has prior SEC experience – and recently at that – having worked for Commissioner Robert Jackson. And Satyam was on President Biden’s banking & securities transition team – which was led by Gary Gensler.

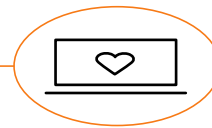
So I have to ask. Am I the first one to refer to Satyam as the SEC’s “ESG Wizard”? 😊

Working last minute on your proxy? Don't forget our “Proxy Season Spectacular.” Here is [our brochure with a list of the 30 panels](#) for this event – and here's the [page with links to all of the panels for this conference](#). Available on-demand right now – for free.



3. Environmental Engagement: “Comprehensiveness”

In this [20-minute Vid-Guide](#), BlackRock’s Michelle Edkins talks about the [latest letter](#) from BlackRock CEO Larry Fink to CEOs – and then at the 4:57 mark, she discusses engagement after companies attempt to implement their sustainability strategies but fall short. What is the “comprehensiveness” of a company’s reporting when this happens? And how we all are on a journey here on a steep learning curve...



4. D&I Engagement: The Whole Ball of Wax

In this [20-minute Vid-Guide](#), at the 7:24 mark, T. Rowe Price’s Donna Anderson talks about:

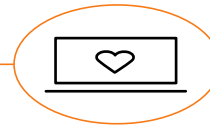
a. Four ways T. Rowe Price gets information about D&I:

- Primary research by their analysts on corporate culture
- RIIM model factors including board and management diversity, presence of D&I programs, presence of pay gap analysis, HRC rating, etc.
- Proxy voting policy to oppose non-diverse boards
- Engagement

b. Continuum of corporate responses they have observed:

- Write a check
- Post a speech by CEO on LinkedIn
- Establish Black Leadership Council tasked with identifying impact opportunities
- Enhance role of BRGs
- Initiate internal diversity dialogues
- Sponsor local incubator to foster entrepreneurship in underrepresented populations

- Build business lines around URMs, for example services focused on the needs of small businesses
- c. Three observations from 2020 engagement:
 - Companies are much more fluent and comfortable on this topic than they were just a few years ago.
 - Companies in certain industries most negatively affected by the pandemic will see their diversity figures drop in the short term because their diverse talent is easily being picked off by companies in healthier industries.
 - Companies are applying their newfound flexibility on remote work to expand their hiring pipelines into new geographies/schools/pockets of workers, but longer term it raises the question of how true belonging & inclusion will happen within those populations.



5. Virtual Annual Meetings: Resolving “Control Number” Roadblock

In this [20-minute Vid-Guide](#), at the 15:25 mark, the Council of Institutional Investor’s Amy Borrus talks about how some of the roadblocks to smooth virtual annual meetings last year have hopefully now been dismantled. Amy discusses the issues that sometimes arose with control numbers for beneficial owners.

By the way, see this [Glass Lewis blog](#) about concerns that the proxy advisor might have if there isn’t robust disclosure about shareholder participation rights in virtual shareholder meetings...



6. Virtual Annual Meetings: The Whole Shebang

Speaking of virtual annual meetings, I would be remiss in not mentioning that we now have 7 Vid-Guides about virtual annual meetings specifically:

- [Virtual Shareholder Meetings: How to Handle Q&A Sessions](#)
- [Virtual Shareholder Meetings: The Legal Aspects](#)
- [Virtual Shareholder Meetings: In the Trenches](#)
- [10 Groovy Things to Disclose About Virtual Annual Meetings in Your Proxy](#)
- [Virtual Annual Meetings: Computershare’s Perspective](#)
- [Virtual Shareholder Meetings: Broadridge’s View](#)
- [The Investors Speak on ESG](#)

And then there are over a [dozen more Vid-Guides](#) about annual shareholder meetings posted there too...



7. Confidential Treatment Requests: “Competitive Harm” Elimination Effective Soon

In this [10-minute Vid-Guide](#), White & Case’s Era Anagnosti covers the waterfront on the current process for Corp Fin processing confidential treatment requests – including the amendments to the process that are effective on March 15th when the “competitive harm” requirement is eliminated. Check it out!

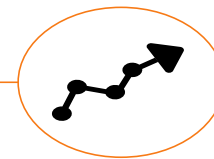


8. Shareholder Proposals: Corp Fin Revamps It's Web Page

Last week, Corp Fin did us a “solid” and updated it's “Shareholder Proposal” page in three ways:

- [Corp Fin's home page](#) has a direct link to the shareholder proposal information
- This [year's chart](#) is now in HTML rather than a PDF, making it easier to search
- There is a [new, separate landing page](#) for shareholder proposal-related materials

It's always good to see revamped webpages because that typically means there is better navigation – and that is the case here. I should note there has been no change to Corp Fin's substantive guidance as part of this...



9. Glass Lewis Launches “Governance Hub”

A few weeks ago, Glass Lewis launched the [“Governance Hub for Public Companies”](#) – which is only available to public companies and contains:

- Proxy Paper research reports as soon as they are published.
- Report Feedback Statement to deliver unedited opinions on Glass Lewis research and recommendations directly to Glass Lewis institutional investor customers.
- Issuer Data Report registration to review a data-only version of their Proxy Paper research report prior to publication to ensure data accuracy. (Note: the data review program is currently applicable in North America, Europe and some Asian markets.
- Easy scheduling of complimentary engagement meetings with the Glass Lewis research team.
- Quick access to Glass Lewis Policy Guidelines, thought leadership, and other governance content the minute they are published.

10. Merger Vote Mechanics: Hot Takes

So I've started to tape the sessions for our "Doing Deals: Hot Takes" conference – and in [this Vid-Guide](#), Kingsdale Advisors' Lydia Mulyk talks about the mechanics of merger votes, including:

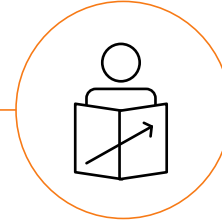
1. What's the difference between the "majority" and "majority of outstanding vote" requirements?
2. What circumstances make passing a merger proposal difficult?
3. When are merger proposals considered "routine" or "not routine" for purposes of counting broker non-votes?
4. What can be done to mitigate a low proposal turnout?

How to Best Use Zippy Point

Here's a [short video](#) explaining how to best use "Zippy Point." There are more than 530 Vid-Guides dealing with corporate & securities law, corporate governance, E&S issues and more – see the list of Vid-Guides spread throughout these categories:

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- ['33 Act/Deals](#)
- [Sustainability/E&S](#)
- [Career Advice](#)
- [Fun Party](#)

And since all the content on ZippyPoint.com is complimentary, please "[Pay-What-You-Can](#)" to help keep this fine platform alive & well...



Hard Conversations...

Shareholder Proposals: The Challenges of Electronic Shareholder Communications

Way back when – it’s over twenty years ago now – I wrote my first legal treatise. It was before my days at TheCorporateCounsel.net. It was a treatise about shareholder proposals and Aspen published it. Because shareholder proposals weren’t in vogue back then, the rights reverted back to me within a year – and I updated that treatise as a chapter in my much larger “Proxy Season Disclosure Treatise” for years and years.

Anyway, I wrote about the challenges of email submissions by shareholders in the Rule 14a-8 context. That sometimes it could be difficult to determine whether an email was a mere expression of a shareholder’s views – or whether that email was meant to be a shareholder proposal. That a request for information was not automatically excludable.

With email, communications tend to be more informal – and you may receive an email that doesn’t have the traditional trappings of a shareholder proposal. It might not specifically state it’s one. It might not mention the term “supporting statement” and the like.

Rule 14a-8 doesn’t require proposals to make reference to the rule or state they’re being submitted for inclusion in the proxy statement. So if a communication is a proposal—and the shareholder meets the timing, eligibility & procedural requirements of Rule 14a-8—a company needs to include the proposal in the proxy statement or seek no-action relief.

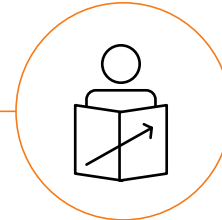
This can get hairy and you sometimes need to go back and ask: is this meant to be a shareholder proposal?

Which leads me to this [no-action request](#) on behalf of Charles Rivers Labs sent down to the Corp Fin Staff recently. In this case, the email was less a question of did this meet the standard of a proposal. However, the proponent apparently sent in a shareholder proposal to the company by email – and included an invalid email address, along with a valid one for contacting the lead

director. Since an invalid email address was part of the chain, the company's spam filter did its job- quarantined the email and later deleted it, having never been opened. As a result, the company argues that it never got the proposal by the deadline.

The incoming request cites similar circumstances where a company didn't receive a proposal because it was blocked or sent to the wrong department. So I imagine the Corp Fin Staff will side with the company on this one. But the lesson learned for proponents is to always verify that your proposal was received by the deadline!

Hat tip to Steve Pantina for this one! His new venture, Proxy Analytics, is a research and consulting firm that is using a new-age, data science approach to analyzing governance trends and institutional voting practices... some really cool stuff. Check out their website by going to Proxy-Analytics.com.



Proxy Season Roundup...

Proxy Season: What Happened This Week?

Speaking of Steve Pantina, below is his latest weekly report on shareholder meeting results and other notable governance developments for the week of February 1st. You should hit Steve up at steve@proxy-analytics.com to be included in his email distribution:

During the week, we tracked results for 31 shareholder meetings and 294 individual resolutions, all occurring at annual shareholder meetings. Highlights for the week include the following:

- **Uncontested Director Elections.** It was an unusually strong week of results for uncontested director elections. In total, Proxy Analytics tracked the results of 214 uncontested director nominees this week and found only one instance of a director receiving less than 75% of votes cast in favor. The one lower result occurred at Griffon Corporation where director Alpert received 70% of votes cast in favor. It is unclear what the exact motivation for the lowered vote was but it is worth noting that Mr. Alpert is the chair of the company's compensation committee and the company has had a few years of lower-than-average shareholder support on its say-on-pay resolutions.

- **Say-on-Pay.** In contrast, say-on-pay results for the week were, on average, lower than usual and included three instances of “red zone” say on pay results and one resolution that garnered less than majority support. At least two results appear to be related to changes made to their compensation program in light of COVID-19 concerns and both companies filed definitive additional soliciting material in support of their resolutions. Links to the additional soliciting material for Aramark and Walgreen Boots Alliance can be found [here](#) and [here](#).

The other instances of lowered shareholder support appear to relate to such issues as: pay magnitude concerns, shareholder responsiveness to prior meeting results and concerns around tax-gross up provisions that were included in recently-signed employment agreements.

- **Shareholder Resolutions.** Included in the results for this week were five shareholder resolutions. Four of the five related to governance issues while one issue related to a general environmental and social issue. Among the four shareholder resolutions was a proposal to Woodward, Inc that requested the company adopt a policy to include non-management employees on the list of prospective director nominees.

We’ve seen a few proposals on this topic in the last few months none garnering any measure of significant support. The proposal to Woodward did not perform any better than the others, receiving just 7% of votes cast in favor. None of the proposals voted on this week received majority support.

Other Notable Developments

- As we’ve mentioned in previous notes, this is the time of year where many institutional investors start issuing revised voting guidelines in preparation for the upcoming proxy season. Blackrock and State Street have already issued their annual Letters to CEOs ([State Street](#) and [Blackrock](#)) and Blackrock has already issued its revised [guidelines](#) and [stewardship expectations](#) for the upcoming year.

With so much new information coming into the market, Proxy Analytics has put together a tracking spreadsheet of institutional investor voting guidelines. The spreadsheet includes links to current guidelines, information on when guidelines were last updated and, where possible, **redlines** that show differences between the voting policies from previous versions.

In the past week we found that [Fidelity](#) and the [Ontario Teachers Pension Plan Board](#) made amendments to their guidelines that are effective as of February 2021 and [Invesco](#) and [Allianz Global Investors](#) made amendments to their guidelines in January.

In fact, we've already found 18 institutions (of the 75 currently being tracked) that have made amendments to their guidelines either this year or in the 4th quarter of 2020. Links to the current guidelines for the institutions mentioned are embedded above. Our tracking spreadsheet is *available exclusively to Premium Subscription clients* and a copy of the spreadsheet will be distributed to Premium Subscription clients under separate cover. The spreadsheet will be maintained weekly and made available in the Research & Reports section of our platform going forward.

- Among the “Big 3” index investors, Vanguard Group tends to be the most conservative in terms of making outward demands of companies and issuing memos on their perspectives. Thus, when they do issue new information, it's certainly worth mentioning.

To that end, we are passing along a new commentary released by Vanguard's Investment Stewardship team regarding the firm's approach toward evaluating shareholder resolutions. The memo is short- a simple one-page- and provides the firm's framework for assessing shareholder resolutions. In relevant part, the memo states that Vanguard will first look at how the company measures up to its governance principles, including board composition, the board's oversight of strategy and risk, executive compensation, and shareholder rights, and then asks three further questions:

- Does the proposal address a material issue relevant to the company?
- Does the proposal suggest a change that advances long-term shareholder interests?
- Does the proposal address gaps in the company's current practices or stated intentions?

Although nothing earth shattering is included in what they've disclosed, companies should keep their framework in mind when they are drafting their own statement of opposition. Also, they did include one line in their memo that we found somewhat interesting, which states, “[t]he nature of shareholder proposals changes from year to year, as do the factors that inform our analysis of each one.” It's not clear why they decided to add that line to their memo but could possibly signal a greater openness to some of the issues of the day, particularly this year around diversity and human rights issues. A link to the memo can be found [here](#).

Career Advice...

How Do You Handle Being “On the Verge”?

You’ve been working like mad. To the point that you can’t think clearly. Can’t see straight. Maybe to the point of being the verge of a nervous breakdown. What now?

So a while back, [I blogged](#) on my mindfulness blog – [RealGoodFresh.com](#) – about how its been my experience that if someone is on the verge, the best thing you can do for them is just be there for them physically, hold them, invite them to just breathe. It’s not the time for unsolicited advice, for much talking, for doing anything that doesn’t “feel right.”

It’s the equivalent of letting them “take a moment” or “take a beat.” And they may well need that “moment” to last days, weeks or months. Sometimes there’s nothing you can do but just to be there to and provide unconditional support.

You’re not there to be the person that helps “fix” them. You leave that to others, whether they be professionals or other people in their lives. At that point, your loved one just needs someone to be in their corner, no matter what the circumstances.

And it got me to thinking – what if you’re the one on the verge? What should you do? Our field isn’t easy – just like many professions aren’t – and I can think back to a number of periods during my career that I clearly was on the verge.

The hardest was being a young associate in a law firm – billing nearly 3000 hours per year – working multiple deals at once. Acting like I was Superman and never saying “no” to an assignment. Definitely prioritizing the job over my marriage, over my private life.

Closing my office door one night around 7 pm and sobbing uncontrollably. Crying my ass off. Not sure what I should do. When you’re in that hole – walking around with an eye tic, not even capable of recognizing how deep your hole is – it’s so hard to look at your own situation objectively and say to yourself “well, this is nuts, I’m crying my ass off and for what? Because I’m working so hard.”

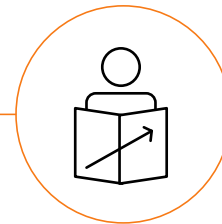
Nobody had died. No one was hurt. I was a mental mess. And it certainly was not a complicated situation. It was all built up in my head. And all I probably needed to do was go tell the partners that I needed to get off the merry-go-round. Not that they would have listened – but the fact that

they wouldn't have cared might have nudged me out of the door sooner. Who knows. I didn't do anything.

So I have no real answers. Because the answers are all so obvious once you have your wits about you. You just need to move on. Get your head straight. There's more to life and it's really not the end of the world if you leave.

There will always be other opportunities. So I say there are no real answers because when you're down there in the depths, you don't see all that. When people give you these glib – and obvious – solutions to your problem, you won't accept them, even if you know in your heart of hearts that it's true.

You're just stuck, frozen. And that's the way it is. Hopefully at some point, there will be a breaking point and you'll make your move, you way forward on your journey. Until then, I hope you have people in your life that will give you that unconditional support, that will tell you to breathe – but who won't try to fix you and throw unsolicited advice your way.



The Random...

Zippy Point is Free? Um, What's the Hitch?

One of my favorite moments in talking to folks about my plans to launch Zippy Point was when one friend abruptly stopped me when I explained the platform would be populated with instructional videos, available for free. He blurted out, "Free? What's the hitch?"

I'd been so used to the notion that all the content was complimentary – dutifully plowing ahead for several months – that I hadn't considered an answer to the question in some time. Frankly, I was at a loss for words, other than to softly say "there is no hitch."

That's because there is no hitch. My motivation for launching Zippy Point was to give back to the community. To educate the next generation. To keep our community united in tough times.

To not price out those that can't afford the alternatives that have become way too expensive in my humble opinion.

So maybe I'm a little bit crazy. That's who I am. So I'm putting my talents to use in what I love best, what I know best. I'm passionate about this stuff. I love our community. And I'm too young to hang it up quite yet.

Of course, having said all that, I am relying on the generosity of the community to donate to the cause if they find my content of value. So I can buy health care for my family, so I can recoup my operational costs.

You'll see my recommended levels of support on my "[Pay-What-You-Can](#)" page are a fraction of what other providers are charging. On Zippy Point, you should get all your programming needs met, you should be kept abreast of all the latest, you should get training in all those areas where you need some education.

And if you don't see what you need, please do drop me a line: broc@zippypoint.com. Thank you for being a part of the community – and here's [my 2-minute video](#) explaining this same concept.

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