

Record Month for Bylaw Amendments

Changes to Advance Notice Provisions Drive Volume

December 5, 2022

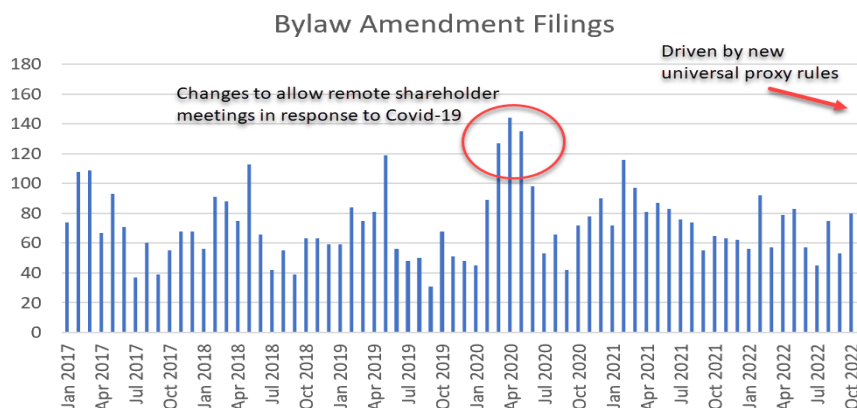
Lawyers have been recommending U.S. reporting companies update their bylaws in response to the universal proxy card rules now in effect. Judging by the record number of bylaw changes filed in November, companies are heeding this advice.

What is a Universal Proxy?

Under new SEC Rule 14a-19, a universal proxy card must include the names of all director nominees presented by management and dissident shareholders for election at an upcoming shareholder meeting. The universal proxy will allow shareholders not attending an annual meeting in person to choose between company and dissident director nominees on a single proxy card in director election contests. Previously, the shareholder would have to choose between voting on either the company proxy card or the dissident proxy card, preventing shareholders from selecting a combination of candidates from each slate. The new rules apply to all shareholder meetings involving contested director elections held after August 31, 2022. In light of the new rule, law firms have been recommending their corporate clients amend their bylaws to not only accommodate the universal proxy rules but to also review advance notice provisions to ensure that they contain "state-of-the-art" disclosure requirements and safeguards.

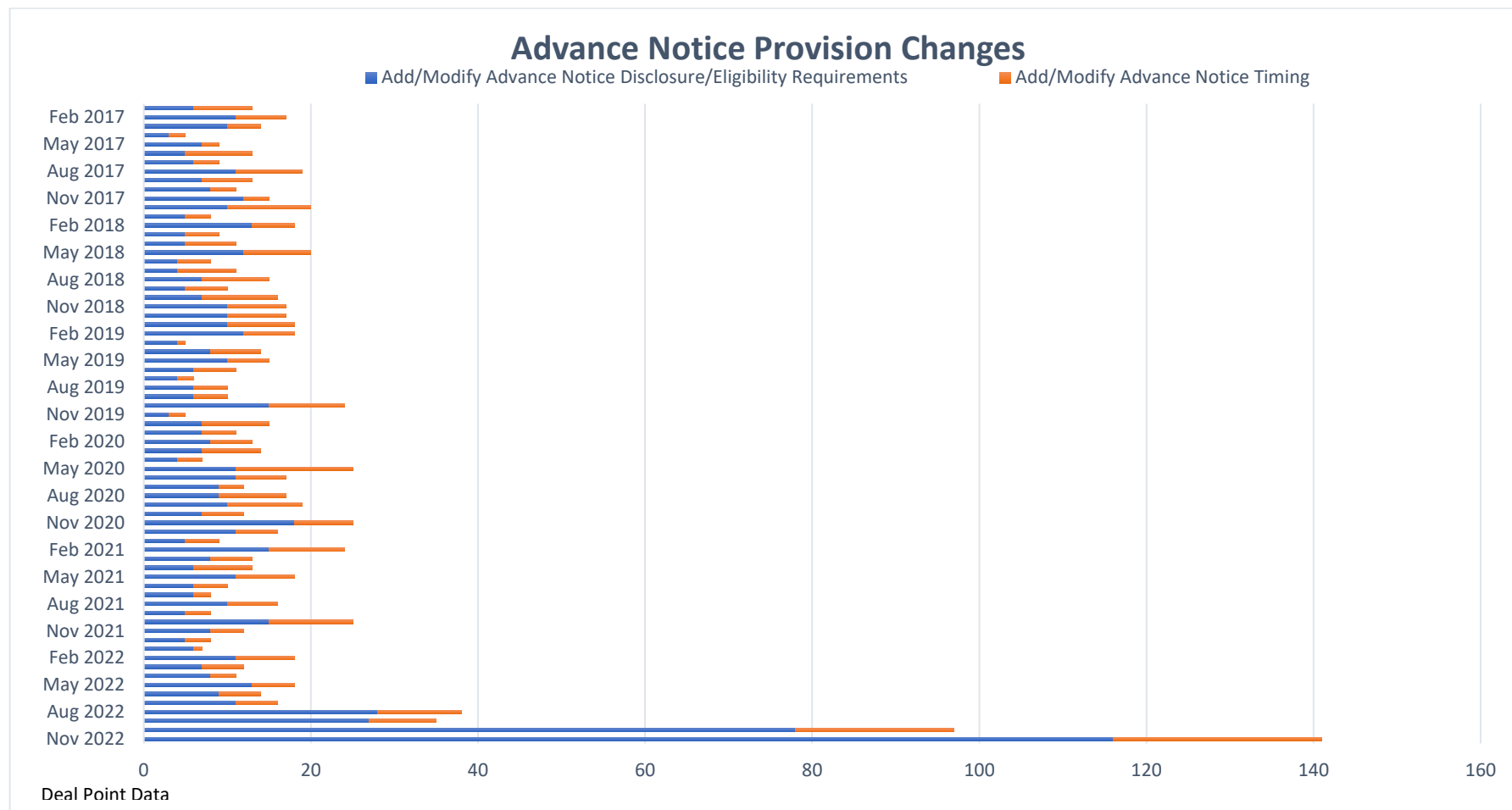
A Record Month – Bylaw Amendments

Companies make changes to their bylaws for a variety of reasons, from minor administrative tweaks to full modernization. Over the last six years, companies in Deal Point Data's coverage universe (i.e., companies included in major stock indices) have filed an average of 74 bylaw amendments per month (excluding bylaw re-filings and restatements without changes). Occasionally, a specific event will drive a significant increase in filing volume. Companies in Deal Point Data's coverage filed 160 bylaw changes during the month of November. That is the most in any single month since DPD began tracking this activity on January 1, 2017. Most of the increased volume was related to the new universal proxy rules. Of the 160 changes, 113 companies specifically disclosed that the bylaw changes were related to "14a-19" or "universal proxy" matters. The previous 3 record-breaking months for bylaw changes all occurred in the spring of 2020 (144 in April, 135 in May and 127 in March), when another specific event necessitated a wave of bylaw changes – companies needing to facilitate the holding of virtual shareholder meetings in response to the Covid-19 pandemic.



A Record Month – Advance Notice Provisions Changes

Amendments to advance notice requirements are a perennial top defense change made by U.S. companies, but there were unprecedented levels of changes in November. Changes to both advance notice disclosure and eligibility requirements (i.e., proper notice) and timeliness requirements each hit record levels during the month. Eight companies made changes to their proper notice requirements in November 2021 (based on the effective date of the change). In the same period in 2022, 116 companies made a proper notice change - a whopping 1,300% increase.





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