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RELEVANT, CURRENT CASE
SUMMARIES FOR PROFESSIONAL
LINES CLAIMS PROFESSIONALS

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For the full text of these cases, visit the Professional Lines Attorney Network [Client Resources page](#)

SPOTLIGHT ON Directors & Officers.

House Acts to Exempt Small Firms and Others From New FTC Identity Theft Rules. Responding to an outcry from attorneys, on October 20, the House of Representatives made a move that exempts attorneys in small firms and other professionals from the Federal Trade Commission's "red flags" rule set to become effective November 1st.

The FTC rule requires businesses that possess sensitive identification information about their clients to safeguard that data against identity theft. These businesses are required to enact policies on how to recognize and deal with identity theft "red flags." Originally put into place to address identity theft in the financial industry, the FTC took the position that the rules would apply to other professionals including attorneys.

The House bill amending the Fair Credit Reporting Act exempts small businesses providing professional services such as health care, accounting and legal professionals in businesses with 20 or fewer employees. The bill now goes to the Senate with the American Bar Association advocating exemptions for all attorneys.

Changes in Delaware Law to Impact Directors and Officers. Amendments to the Delaware General Corporation Law (effective August 1, 2009) will affect corporations incorporated in that state, or most publicly-traded corporations. One change allows companies to adopt bylaws that require shareholder nominations for directors to be included in the company's proxy statement. The bylaws may impose conditions upon those nominations, e.g., maximum number of nominations, maximum percentage of shares owned or sought to be owned, minimum percentage of shares owned, minimum duration of ownership of a percentage of shares, and indemnification for false or misleading statements regarding information submitted regarding nominees. Another new provision allows companies to adopt bylaws providing for the reimbursement of shareholders' reasonable proxy solicitation expenses. These amendments will likely encourage shareholders to request that these bylaws be adopted.

Proposed SEC amendments to the proxy rules would allow qualifying shareholders, based principally upon percentage and duration of share ownership, to include nominees in reporting companies' proxy statements and to submit proposals to amend governing documents relating to director nominating procedures.

The SEC's proposed amendments to broker voting rules would preclude brokers from voting shares for which they have not received direction from beneficial owners. Given the high percentage of "objecting beneficial owners," the number of shares voting at director elections and on shareholder proposals may decline significantly.

All of these changes and proposed changes will increase company proxy solicitation costs and require senior management to spend more time communicating with institutional and activist shareholders. Even more significantly, they may affect the outcomes of director elections and votes on both shareholder and management proposals.

See GC California Magazine article published on August 13, 2009, [Inside Intelligence: What Concerns Company Directors](#) by Michael C. Ross.