
Annual Meetings of Shareholders

A corporation is generally required to hold an annual meeting of shareholders each year under:

- The laws of its state of incorporation,¹
- Applicable stock exchange listing standards (if a listed public corporation), and
- Its own charter and bylaws.

The timing of the meeting is generally set in the bylaws and/or fixed by the board of directors, and is typically linked to either the date of the prior year's annual meeting or the end of the corporation's fiscal year. Compliance with state law and, for publicly traded corporations, federal rules governing proxy solicitation will also largely determine what, how and when information is communicated to the shareholders in advance of the meeting.

State Law Requirements

All state statutes and the Model Act² address annual meetings of shareholders. In most states, the annual meeting is mandatory and the election of directors is required. Most state statutes provide for the meeting to be held at a date, time and place prescribed in or determined in accordance with the bylaws.³

Many state statutes specify that the purpose of the meeting is for the election of directors and the transaction of other business properly brought before

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the meeting. Some provide that the failure to hold a meeting will not cause the dissolution of the corporation or affect corporate actions that are otherwise valid. Delaware corporation law includes both of these provisions.⁴

Most states, including Delaware,⁵ allow the meeting to be held at any location either within or outside the state. If the bylaws or the board do not specify a place where the annual meeting is to be held, the applicable state statute will generally set the corporation's principal office as the default meeting location.⁶

If a corporation fails to hold its annual meeting at the specified time or within a specified time frame, 44 jurisdictions and the Model Act⁷ expressly provide for court-ordered meetings under various circumstances.⁸ In Delaware, if a meeting is not held within 30 days of a date designated in the bylaws or a board resolution, or 13 months since the last annual meeting, any shareholder or director may seek an order from the Delaware Court of Chancery for a meeting, at which a quorum will be deemed established by whatever shareholders holding stock entitled to vote at the meeting are actually present in person or by proxy.⁹ The Court's statutory authority includes designating the meeting time and place, record date and form of notice.¹⁰

Stock Exchange Requirements

The New York Stock Exchange (NYSE) requires its listed corporations to hold an annual shareholders' meeting during each fiscal year.¹¹ The corporate governance requirements for companies listed on The NASDAQ Stock Market® (NASDAQ) state that each listed corporation is required to hold an annual meeting of shareholders no later than one year after the end of the corporation's prior fiscal year.¹²

Both organizations also address the types of matters that must be placed before shareholders for approval and require that certain information be distributed to shareholders in connection with a meeting. (*See* Chapter 3 of this *Handbook*.)

Requirements of Corporate Charters and Bylaws

Typical corporate bylaw provisions require an annual shareholders' meeting. Often the bylaws establish a time and place for the annual meeting, subject to the board's setting another time and place. The charter and bylaws may also include other provisions regarding notice, quorum and vote requirements. Those topics are addressed more fully elsewhere in this *Handbook*.

Requirements of Federal Securities Laws for Public Companies

While not regulating annual meetings directly, the federal securities laws address the proxy solicitation process in great detail. The federal proxy rules¹³ are intended to ensure that companies registered under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), provide their shareholders with sufficient and accurate information, in an understandable form, to allow them to make informed voting decisions.¹⁴ These rules cover both the format and the content of the proxy statement and the form of proxy. They also require that the corporation deliver an annual report containing audited financial statements prior to or with the proxy or information statement.¹⁵ Companies must file these documents with (or, in the case of the annual report, furnish to) the Securities and Exchange Commission and distribute them to shareholders in advance of the meeting.

The federal proxy rules govern the right of shareholders to place certain proposals before the meeting for a vote through the corporation's proxy material. Rule 14a-8 specifies timing and other requirements applicable to the submission of such proposals.¹⁶ Shareholder-submitted proposals are beyond this *Handbook's* scope.

Contested Annual Meetings

The election of directors and the approval of proposals submitted for a vote at annual meetings are sometimes contested. In general, the most important action taken by a corporation's shareholders at the annual meeting is the election of directors. The board of directors will generally propose a slate of candidates to be elected or reelected as directors. Shareholders who wish to nominate alternative candidates or to propose other business to be conducted at the annual meeting will have an opportunity to do so, provided they comply with the advance notice (if any) and other requirements of the corporation's charter and bylaws.¹⁷

If the charter and bylaws of a corporation do not allow shareholders to call a special meeting or act by written consent, then the annual meeting is the primary opportunity for shareholders to directly and significantly influence the management and governance of the corporation. In any case, the annual meeting is the focus of attention of shareholders seeking board representation and/or governance changes. Parties considering "hostile" takeover bids may also seek to replace directors and/or remove takeover defenses to facilitate those transactions.

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Historically, contested meetings have involved each side filing and mailing its own separate proxy solicitation materials. An alternative course that has become popular in recent years is for dissident shareholders not to nominate alternative candidates, but rather to seek to have shareholders withhold their votes from or vote against the board's candidates.

If the corporation has a director resignation bylaw or policy applicable to incumbent board nominees who receive more against or withheld votes than votes for their election, a "withhold the vote" campaign may cause a director to lose his or her seat without dissident shareholders incurring the cost of a full proxy contest. Recent changes in law may facilitate contested director elections using only the corporation's proxy materials, in effect making the corporation's proxy a "universal proxy."¹⁸ (See Chapter 9 of this *Handbook* for a discussion of shareholder access to the corporation's proxy materials.)

A contested annual meeting is conducted under the same rules and procedures as any other annual meeting. The fact of the contest obviously raises the risk of a dispute about procedures and necessitates special attention to full compliance with all the required procedures. Procedural matters are further complicated in a contested election with alternative slates and dual proxy solicitations.

Endnotes

1. Under state statutes, shareholders may also be able to act by written consent in lieu of an annual meeting of shareholders. DEL. CODE ANN. tit. 8, § 211(b) (2009) ("Stockholders may, unless the certificate of incorporation otherwise provides, act by written consent to elect directors; provided, however, that, if such consent is less than unanimous, such action by written consent may be in lieu of holding an annual meeting only if all of the directorships to which directors could be elected at an annual meeting held at the effective time of such action are vacant and are filled by such action.") See also MODEL BUS. CORP. ACT ANN. § 7.04 (2008); CAL. CORP. CODE § 603 (West 2009); N.Y. BUS. CORP. LAW § 615 (McKinney 2009).
2. The Model Business Corporation Act (the Model Act) was first published in 1950 by the Committee on Corporate Laws of the American Bar Association's Section on Business Law. The Model Act has been adopted substantially in its entirety by more than 30 states in the United States, and in important respects by many other states. The Model Act has played an important role in the development of corporate law in the United States and elsewhere. The Committee on Corporate Laws serves as the permanent editorial board for the Model Act, reviewing, revising and updating its provisions on a continuing basis.
3. DEL. CODE ANN. tit. 8, § 211(b) (2009) ("Unless directors are elected by written consent in lieu of an annual meeting as permitted by this subsection, an annual meeting of stockholders shall be held for the election of directors on a date and at a time designated by or in the manner provided in the bylaws.") See also, CAL. CORP.

- CODE § 600(b) (West 2009); MASS. GEN. LAWS ANN. ch. 156D § 7.01 (2009); N.Y. BUS. CORP. LAW § 602(b) (McKinney 2009); OHIO REV. CODE ANN. § 1701.39 (LEXISNEXIS 2009). In Minnesota and North Dakota, the meeting is optional. MINN. STAT. ANN. §§ 302A.431, .436 (West 2008); N.D. CENT. CODE § 10-19.1-71 (2009).
4. DEL. CODE ANN. tit. 8, § 211(b) - (c) (2009).
 5. DEL. CODE ANN. tit. 8, § 211(a) (2009).
 6. E.g. MODEL BUS. CORP. ACT ANN. § 7.01(b) (2008); CAL. CORP. CODE § 600(a) (West 2009).
 7. MODEL BUS. CORP. ACT ANN. § 7.03 (2008).
 8. See MODEL BUS. CORP. ACT ANN. § 7.03 Statutory Comparison, 7-29 to 7-31 (2008).
 9. DEL. CODE ANN. tit. 8, § 211(c) (2009).
 10. *Id.*
 11. NYSE, Inc., Listed Company Manual § 302.00 (1999).
 12. NASDAQ, Inc., Marketplace Rule 5620(a) (2009).
 13. Securities Exchange Act of 1934, 17 C.F.R. § 240.14a-12 (2008) (covering solicitations of holders of securities registered under Exchange Act §12).
 14. See *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438 (1976).
 15. The Delaware courts have held that a corporation's inability to publish the audited financial information that is required by the federal proxy rules is not a defense against an action seeking a court-ordered meeting. *Newcastle Partners, L.P. v. Vesta Ins. Group, Inc.*, 887 A.2d 975, 981-982 (Del. Ch. 2005), *aff'd*, 906 A.2d 807 (Del. 2005); *Meredith v. Sec. Am. Corp.*, C.A. No. 6606, 1981 WL 7634 (Del. Ch. Nov. 18, 1981); *Algeran, Inc. v. Connolly*, C.A. No. 6557, 1981 WL 15073 (Del. Ch. Oct. 5, 1981).
 16. 17 C.F.R. § 240.14a-8 (2009).
 17. See also Chapter 4 of this *Handbook* and SEC Rule 14a-8, 17 C.F.R. § 240 (2009).
 18. DEL. CODE ANN tit. 8, § 112 (2009). Note also Securities and Exchange Commission actions on May 20, 2009, to propose Exchange Act Rule 14a-11, allowing shareholders access to a corporation's proxy material for director nomination if certain conditions are met, and to propose an amendment to Rule 14a-8(i)(8) "election exclusion," allowing shareholder access to a corporation's proxy materials under certain circumstances for the inclusion of a shareholder proposal to amend a corporation's governing documents relating to director nomination. SEC Release No. 33-9046, June 10, 2009, 74 F.R. 29024 and SEC Release No. 34-60089, June 10, 2009, 74 F.R. 29024. See also Report of the Committee on Corporate Laws, Changes in the Model Business Corporation Act - Proposed Shareholder Proxy Access Amendments to Chapters 2 and 10, 64 Bus. Law. 1157 (2009) (proposing amendments), 65 Bus. Law. ____ (forthcoming, 2010) (announcing adoption of amendments).

