Shareholder Proposals for the Election of Corporate Directors: A Transatlantic View

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Maurizio Bianchini
Associate Professor of Business Law, School of Law
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Maurizio Bianchini is associate professor of Business Law at the School of Law of the University of Padova (Italy), where he teaches Comparative Company Law and IP and Competition Law courses. Maurizio graduated magna cum laude at the Bologna University School of Law; he holds a Master of Comparative Jurisprudence and a LL.M., both from New York University School of Law, and a Diploma in English Law from the University of Kent at Canterbury (UK). He is admitted to the New York Bar and to the Italian Bar (Venice Chapter). After almost ten years in professional practice—he practiced law in New York as an international associate at Proskauer in 1997-1998, and then at various International law firms in Milan, Italy—Maurizio entered academia as an assistant professor of Business Law at the University of Padova. He published a book on business contracts and firm organization and authored several articles and notes on company and securities laws, copyright law and antitrust law. He lectured and presented in international symposia in Europe and Latin America. He sits on the board of the PhD School of Padova (Private Law curriculum), and is a member of the editorial board of two important Italian Business Law Reviews (“Banca, Borsa, Titoli di Credito” and “Giurisprudenza Commerciale”).

Martin Gelter
Professor of Law
Fordham Law School

An expert in comparative corporate law and governance, Professor Martin Gelter joined Fordham Law School in 2009. He teaches Corporations, Partnership and LLC Law, Comparative Corporate Law, and Accounting for Lawyers. Previously, he was an Assistant Professor in the Department of Civil Law and Business Law at the WU Vienna University of Economics. He also has been a Terence M. Considine Fellow in Law and Economics and a John M. Olin Fellow in Law and Economics at Harvard Law School, a Visiting Fellow at the University of Bologna, and a Visiting Professor at Université Paris-II Panthéon-Assas. His research, which has been published in journals and book chapters both in the United States and Europe, focuses on comparative corporate law and governance, legal issues of accounting and auditing, and economic analysis of private law. He has been a Research Associate of the European Corporate Governance Institute since 2006, and he is a member of the New York bar. At Fordham, he works closely with the Corporate Law Center and is a co-director of the Center on European Union Law.
Section I:

U.S. Law Materials
§240.14a-1 Definitions.

Unless the context otherwise requires, all terms used in this regulation have the same meanings as in the Act or elsewhere in the general rules and regulations thereunder. In addition, the following definitions apply unless the context otherwise requires:

(a) *Associate.* The term "associate," used to indicate a relationship with any person, means:

(1) Any corporation or organization (other than the registrant or a majority owned subsidiary of the registrant) of which such person is an officer or partner or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities;

(2) Any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity; and

(3) Any relative or spouse of such person, or any relative of such spouse, who has the same home as such person or who is a director or officer of the registrant or any of its parents or subsidiaries.

(b) *Employee benefit plan.* For purposes of §§240.14a-13, 240.14b-1 and 240.14b-2, the term "employee benefit plan" means any purchase, savings, option, bonus, appreciation, profit sharing, thrift, incentive, pension or similar plan primarily for employees, directors, trustees or officers.

(c) *Entity that exercises fiduciary powers.* The term "entity that exercises fiduciary powers" means any entity that holds securities in nominee name or otherwise on behalf of a beneficial owner but does not include a clearing agency registered pursuant to section 17A of the Act or a broker or a dealer.

(d) *Exempt employee benefit plan securities.* For purposes of §§240.14a-13, 240.14b-1 and 240.14b-2, the term "exempt employee benefit plan securities" means:

(1) Securities of the registrant held by an employee benefit plan, as defined in paragraph (b) of this section, where such plan is established by the registrant; or

(2) If notice regarding the current solicitation has been given pursuant to §240.14a-13(a)(1)(ii)(C) or if notice regarding the current request for a list of names, addresses and securities positions of beneficial owners has been given pursuant to §240.14a-13(b)(3), securities of the registrant held by an employee benefit plan, as defined in paragraph (b) of this section, where such plan is established by an affiliate of the registrant.

(e) *Last fiscal year.* The term "last fiscal year" of the registrant means the last fiscal year of the registrant ending prior to the date of the meeting for which proxies are to be solicited or if the solicitation involves written authorizations or consents in lieu of a meeting, the earliest date they may be used to effect corporate action.

(f) *Proxy.* The term "proxy" includes every proxy, consent or authorization within the meaning of section 14(a) of the Act. The consent or authorization may take the form of failure to object or to dissent.

(g) *Proxy statement.* The term "proxy statement" means the statement required by §240.14a-3(a) whether or not contained in a single document.

(h) *Record date.* The term "record date" means the date as of which the record holders of securities entitled to vote at a meeting or by written consent or authorization shall be determined.

(i) *Record holder.* For purposes of §§240.14a-13, 240.14b-1 and 240.14b-2, the term "record holder" means any broker, dealer, voting trustee, bank, association or other entity that exercises fiduciary powers which holds securities of record in nominee name or otherwise or as a participant in a clearing agency registered pursuant to section 17A of the Act.

(j) *Registrant.* The term "registrant" means the issuer of the securities in respect of which proxies are to be solicited.

(k) *Respondent bank.* For purposes of §§240.14a-13, 240.14b-1 and 240.14b-2, the term "respondent bank" means any bank, association or other entity that exercises fiduciary powers which holds securities on behalf of beneficial owners and deposits such securities for safekeeping with another bank, association or other entity that exercises fiduciary powers.
(i) Any request for a proxy whether or not accompanied by or included in a form of proxy:

(ii) Any request to execute or not to execute, or to revoke, a proxy; or

(iii) The furnishing of a form of proxy or other communication to security holders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy.

(2) The terms do not apply, however, to:

(i) The furnishing of a form of proxy to a security holder upon the unsolicited request of such security holder;

(ii) The performance by the registrant of acts required by §240.14a-7;

(iii) The performance by any person of ministerial acts on behalf of a person soliciting a proxy; or

(iv) A communication by a security holder who does not otherwise engage in a proxy solicitation (other than a solicitation exempt under §240.14a-2) stating how the security holder intends to vote and the reasons therefor, provided that the communication:

(A) Is made by means of speeches in public forums, press releases, published or broadcast opinions, statements, or advertisements appearing in a broadcast media, or newspaper, magazine or other bona fide publication disseminated on a regular basis,

(B) Is directed to persons to whom the security holder owes a fiduciary duty in connection with the voting of securities of a registrant held by the security holder, or

(C) Is made in response to unsolicited requests for additional information with respect to a prior communication by the security holder made pursuant to this paragraph (i)(2)(iv).


Need assistance?
Title 17 → Chapter II → Part 240 → §240.14a-2

Title 17: Commodity and Securities Exchanges
PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

§240.14a-2 Solicitations to which §240.14a-3 to §240.14a-15 apply.

Sections 240.14a-3 to 240.14a-15, except as specified, apply to every solicitation of a proxy with respect to securities registered pursuant to section 12 of the Act (15 U.S.C. 78l), whether or not trading in such securities has been suspended. To the extent specified below, certain of these sections also apply to roll-up transactions that do not involve an entity with securities registered pursuant to section 12 of the Act.

(a) Sections 240.14a-3 to 240.14a-15 do not apply to the following:

(1) Any solicitation by a person in respect to securities carried in his name or in the name of his nominee (otherwise than as voting trustee) or held in his custody, if such person—

(i) Receives no commission or remuneration for such solicitation, directly or indirectly, other than reimbursement of reasonable expenses,

(ii) Furnishes promptly to the person solicited (or such person’s household in accordance with §240.14a-3(e)(1)) a copy of all soliciting material with respect to the same subject matter or meeting received from all persons who shall furnish copies thereof for such purpose and who shall, if requested, defray the reasonable expenses to be incurred in forwarding such material, and

(iii) In addition, does no more than impartially instruct the person solicited to forward a proxy to the person, if any, to whom the person solicited desires to give a proxy, or impartially request from the person solicited instructions as to the authority to be conferred by the proxy and state that a proxy will be given if no instructions are received by a certain date.

(2) Any solicitation by a person in respect of securities of which he is the beneficial owner;

(3) Any solicitation involved in the offer and sale of securities registered under the Securities Act of 1933: Provided, That this paragraph shall not apply to securities to be issued in any transaction of the character specified in paragraph (a) of Rule 145 under that Act;

(4) Any solicitation with respect to a plan of reorganization under Chapter 11 of the Bankruptcy Reform Act of 1978, as amended, if made after the entry of an order approving the written disclosure statement concerning a plan of reorganization pursuant to section 1125 of said Act and after, or concurrently with, the transmittal of such disclosure statement as required by section 1125 of said Act;

(5) [Reserved]

(6) Any solicitation through the medium of a newspaper advertisement which informs security holders of a source from which they may obtain copies of a proxy statement, form of proxy and any other soliciting material and does no more than:

(i) Name the registrant,

(ii) State the reason for the advertisement, and

(iii) Identify the proposal or proposals to be acted upon by security holders.

(b) Sections 240.14a-3 to 240.14a-6 (other than paragraphs 14a-6(g) and 14a-6(p)), §240.14a-8, §240.14a-10, and §§240.14a-12 to 240.14a-15 do not apply to the following:

(1) Any solicitation by or on behalf of any person who does not, at any time during such solicitation, seek directly or indirectly, either on its own or another’s behalf, the power to act as proxy for a security holder and does not furnish or otherwise request, or act on behalf of a person who furnishes or requests, a form of revocation, abstention, consent or authorization. Provided, however, That the exemption set forth in this paragraph shall not apply to:

(i) The registrant or an affiliate or associate of the registrant (other than an officer or director or any person serving in a similar capacity);

(ii) An officer or director of the registrant or any person serving in a similar capacity engaging in a solicitation financed directly or indirectly by the registrant;
(iii) An officer, director, affiliate or associate of a person that is ineligible to rely on the exemption set forth in this paragraph (other than persons specified in paragraph (b)(1)(i) of this section), or any person serving in a similar capacity;

(iv) Any nominee for whose election as a director proxies are solicited;

(v) Any person soliciting in opposition to a merger, recapitalization, reorganization, sale of assets or other extraordinary transaction recommended or approved by the board of directors of the registrant who is proposing or intends to propose an alternative transaction to which such person or one of its affiliates is a party;

(vi) Any person who is required to report beneficial ownership of the registrant's equity securities on a Schedule 13D (§240.13d-101), unless such person has filed a Schedule 13D and has not disclosed pursuant to Item 4 thereto an intent, or reserved the right, to engage in a control transaction, or any contested solicitation for the election of directors;

(vii) Any person who receives compensation from an ineligible person directly related to the solicitation of proxies, other than pursuant to §240.14a-13;

(viii) Where the registrant is an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), an “interested person” of that investment company, as that term is defined in section 2(a)(19) of the Investment Company Act (15 U.S.C. 80a-2);

(ix) Any person who, because of a substantial interest in the subject matter of the solicitation, is likely to receive a benefit from a successful solicitation that would not be shared pro rata by all other holders of the same class of securities, other than a benefit arising from the person's employment with the registrant; and

(x) Any person acting on behalf of any of the foregoing.

(2) Any solicitation made otherwise than on behalf of the registrant where the total number of persons solicited is not more than ten;

(3) The furnishing of proxy voting advice by any person (the “advisor”) to any other person with whom the advisor has a business relationship, if:

(i) The advisor renders financial advice in the ordinary course of his business;

(ii) The advisor discloses to the recipient of the advice any significant relationship with the registrant or any of its affiliates, or a security holder proponent of the matter on which advice is given, as well as any material interests of the advisor in such matter;

(iii) The advisor receives no special commission or remuneration for furnishing the proxy voting advice from any person other than a recipient of the advice and other persons who receive similar advice under this subsection; and

(iv) The proxy voting advice is not furnished on behalf of any person soliciting proxies or on behalf of a participant in an election subject to the provisions of §240.14a-12(c); and

(4) Any solicitation in connection with a roll-up transaction as defined in Item 901(c) of Regulation S-K (§229.901 of this chapter) in which the holder of a security that is the subject of a proposed roll-up transaction engages in preliminary communications with other holders of securities that are the subject of the same limited partnership roll-up transaction for the purpose of determining whether to solicit proxies, consents, or authorizations in opposition to the proposed limited partnership roll-up transaction; provided, however, that:

(i) This exemption shall not apply to a security holder who is an affiliate of the registrant or general partner or sponsor; and

(ii) This exemption shall not apply to a holder of five percent (5%) or more of the outstanding securities of a class that is the subject of the proposed roll-up transaction who engages in the business of buying and selling limited partnership interests in the secondary market unless that holder discloses to the persons to whom the communications are made such ownership interest and any relations of the holder to the parties of the transaction or to the transaction itself, as required by §240.14a-6(n)(1) and specified in the Notice of Exempt Preliminary Roll-up Communication (§240.14a-104). If the communication is oral, this disclosure may be provided to the security holder orally. Whether the communication is written or oral, the notice required by §240.14a-6(n) and §240.14a-104 shall be furnished to the Commission.

(5) Publication or distribution by a broker or a dealer of a research report in accordance with Rule 138 (§230.138 of this chapter) or Rule 139 (§230.139 of this chapter) during a transaction in which the broker or dealer or its affiliate participates or acts in an advisory role.

(6) Any solicitation by or on behalf of any person who does not seek directly or indirectly, either on its own or another's behalf, the power to act as proxy for a shareholder and does not furnish or otherwise request, or act on behalf of a person who furnishes or requests, a form of revocation, abstention, consent, or authorization in an electronic shareholder forum that is established, maintained or operated pursuant to the provisions of §240.14a-17, provided that the solicitation is made more than 60 days prior to the date announced by a registrant for its next annual or special meeting of shareholders. If the registrant announces the date of its next annual or special meeting of shareholders less than 60 days before the meeting date, then the solicitation may not be made more than two days following the date of the registrant's announcement of the meeting date. Participation in an electronic shareholder forum does not eliminate a person's eligibility to solicit proxies after the date that this
exemption is no longer available, or is no longer being relied upon, provided that any such solicitation is conducted in accordance with this regulation.

(7) Any solicitation by or on behalf of any shareholder in connection with the formation of a nominating shareholder group pursuant to §240.14a-11, provided that:

(i) The soliciting shareholder is not holding the registrant’s securities with the purpose, or with the effect, of changing control of the registrant or to gain a number of seats on the board of directors that exceeds the maximum number of nominees that the registrant could be required to include under §240.14a-11(d);

(ii) Each written communication includes no more than:

(A) A statement of each soliciting shareholder’s intent to form a nominating shareholder group in order to nominate one or more directors under §240.14a-11;

(B) Identification of, and a brief statement regarding, the potential nominee or nominees or, where no nominee or nominees have been identified, the characteristics of the nominee or nominees that the shareholder intends to nominate, if any;

(C) The percentage of voting power of the registrant’s securities that are entitled to be voted on the election of directors that each soliciting shareholder holds or the aggregate percentage held by any group to which the shareholder belongs; and

(D) The means by which shareholders may contact the soliciting party.

(iii) Any written soliciting material published, sent or given to shareholders in accordance with this paragraph must be filed by the shareholder with the Commission, under the registrant’s Exchange Act file number, or, in the case of a registrant that is an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), under the registrant’s Investment Company Act file number, no later than the date the material is first published, sent or given to shareholders. Three copies of the material must at the same time be filed with, or mailed for filing to, each national securities exchange upon which any class of securities of the registrant is listed and registered. The soliciting material must include a cover page in the form set forth in Schedule 14N (§240.14n-101) and the appropriate box on the cover page must be marked.

(iv) In the case of an oral solicitation made in accordance with the terms of this section, the nominating shareholder must file a cover page in the form set forth in Schedule 14N (§240.14n-101), with the appropriate box on the cover page marked, under the registrant’s Exchange Act file number (or in the case of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), under the registrant’s Investment Company Act file number), no later than the date of the first such communication.

INSTRUCTION TO PARAGRAPH (b)(7). The exemption provided in paragraph (b)(7) of this section shall not apply to a shareholder that subsequently engages in soliciting or other nominating activities outside the scope of §240.14a-2(b)(8) and §240.14a-11 in connection with the subject election of directors or is or becomes a member of any other group, as determined under section 13(d)(3) of the Act (15 U.S.C. 78m(d)(3) and §240.13d-5(b)), or otherwise, with persons engaged in soliciting or other nominating activities in connection with the subject election of directors.

(8) Any solicitation by or on behalf of a nominating shareholder or nominating shareholder group in support of its nominee that is included or that will be included on the registrant’s form of proxy in accordance with §240.14a-11 or for or against the registrant’s nominee or nominees, provided that:

(i) The soliciting party does not, at any time during such solicitation, seek directly or indirectly, either on its own or another’s behalf, the power to act as proxy for a shareholder and does not furnish or otherwise request, or act on behalf of a person who furnishes or requests, a form of revocation, abstention, consent or authorization;

(ii) Any written communication includes:

(A) The identity of each nominating shareholder and a description of his or her direct or indirect interests, by security holdings or otherwise;

(B) A prominent legend in clear, plain language advising shareholders that a shareholder nominee is or will be included in the registrant’s proxy statement and that they should read the registrant’s proxy statement when available because it includes important information (or, if the registrant’s proxy statement is publicly available, advising shareholders of that fact and encouraging shareholders to read the registrant’s proxy statement because it includes important information). The legend also must explain to shareholders that they can find the registrant’s proxy statement, other soliciting material, and any other relevant documents at no charge on the Commission’s Web site; and

(iii) Any written soliciting material published, sent or given to shareholders in accordance with this paragraph must be filed by the nominating shareholder or nominating shareholder group with the Commission, under the registrant’s Exchange Act file number, or, in the case of a registrant that is an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), under the registrant’s Investment Company Act file number, no later than the date the material is first published, sent or given to shareholders. Three copies of the material must at the same time be filed with, or mailed for filing to, each national securities exchange upon which any class of securities of the registrant is listed and registered. The soliciting material must include a cover page in the form set forth in Schedule 14N (§240.14n-101) and the appropriate box on the cover page must be marked.
INSTRUCTION 1 TO PARAGRAPH (b)(8). A nominating shareholder or nominating shareholder group may rely on the exemption provided in paragraph (b)(8) of this section only after receiving notice from the registrant in accordance with §240.14a-11(g)(1) or §240.14a-11(g)(3) (iv) that the registrant will include the nominating shareholder's or nominating shareholder group's nominee or nominees in its form of proxy.

INSTRUCTION 2 TO PARAGRAPH (b)(8). Any solicitation by or on behalf of a nominating shareholder or nominating shareholder group in support of its nominee included or to be included on the registrant's form of proxy in accordance with §240.14a-11 or for or against the registrant's nominee or nominees must be made in reliance on the exemption provided in paragraph (b)(8) of this section and not on any other exemption.

INSTRUCTION 3 TO PARAGRAPH (b)(8). The exemption provided in paragraph (b)(8) of this section shall not apply to a person that subsequently engages in soliciting or other nominating activities outside the scope of §240.14a-11 in connection with the subject election of directors or is or becomes a member of any other group, as determined under section 13(d)(3) of the Act (15 U.S.C. 78m(d)(3) and §240.13d-5(b)), or otherwise, with persons engaged in soliciting or other nominating activities in connection with the subject election of directors.


Need assistance?
§240.14a-3  Information to be furnished to security holders.

(a) No solicitation subject to this regulation shall be made unless each person solicited is concurrently furnished or has previously been furnished with:

(1) A publicly-filed preliminary or definitive proxy statement, in the form and manner described in §240.14a-16, containing the information specified in Schedule 14A (§240.14a-101);

(2) A preliminary or definitive written proxy statement included in a registration statement filed under the Securities Act of 1933 on Form S-4 or F-4 (§239.25 or §239.34 of this chapter) or Form N-14 (§239.23 of this chapter) and containing the information specified in such Form; or

(3) A publicly-filed preliminary or definitive proxy statement, not in the form and manner described in §240.14a-16, containing the information specified in Schedule 14A (§240.14a-101), if:

(i) The solicitation relates to a business combination transaction as defined in §230.165 of this chapter, as well as transactions for cash consideration requiring disclosure under Item 14 of §240.14a-101.

(ii) The solicitation may not follow the form and manner described in §240.14a-16 pursuant to the laws of the state of incorporation of the registrant;

(b) If the solicitation is made on behalf of the registrant, other than an investment company registered under the Investment Company Act of 1940, and relates to an annual (or special meeting in lieu of the annual) meeting of security holders, or written consent in lieu of such meeting, at which directors are to be elected, each proxy statement furnished pursuant to paragraph (a) of this section shall be accompanied or preceded by an annual report to security holders as follows:

(1) The report shall include, for the registrant and its subsidiaries, consolidated and audited balance sheets as of the end of the two most recent fiscal years and audited statements of income and cash flows for each of the three most recent fiscal years prepared in accordance with Regulation S-X (part 210 of this chapter), except that the provisions of Article 3 (other than §§210.3-03(e), 210.3-04 and 210.3-20) and Article 11 shall not apply. Any financial statement schedules or exhibits or separate financial statements which may otherwise be required in filings with the Commission may be omitted. If the financial statements of the registrant and its subsidiaries consolidated in the annual report filed or to be filed with the Commission are not required to be audited, the financial statements required by this paragraph may be unaudited. A smaller reporting company may provide the information in Article 8 of Regulation S-X (§210.8 of this chapter) in lieu of the financial information required by this paragraph 9(b)(1).

   NOTE 1 TO PARAGRAPH (b)(1): If the financial statements for a period prior to the most recently completed fiscal year have been examined by a predecessor accountant, the separate report of the predecessor accountant may be omitted in the report to security holders, provided the registrant has obtained from the predecessor accountant a reissued report covering the prior period presented and the successor accountant clearly indicates in the scope paragraph of his or her report (a) that the financial statements of the prior period were examined by other accountants, (b) the date of their report, (c) the type of opinion expressed by the predecessor accountant and (d) the substantive reasons therefore, if it was other than unqualified. It should be noted, however, that the separate report of any predecessor accountant is required in filings with the Commission. If, for instance, the financial statements in the annual report to security holders are incorporated by reference in a Form 10-K, the separate report of a predecessor accountant shall be filed in Part II or in Part IV as a financial statement schedule.

   NOTE 2 TO PARAGRAPH (b)(1): For purposes of complying with §240.14a-3, if the registrant has changed its fiscal closing date, financial statements covering two years and one period of 9 to 12 months shall be deemed to satisfy the requirements for statements of income and cash flows for the three most recent fiscal years.

   (2)(i) Financial statements and notes thereto shall be presented in roman type at least as large and as legible as 10-point modern type. If necessary for convenient presentation, the financial statements may be in roman type as large and as legible as 8-point modern type. All type shall be leaded at least 2 points.

   (ii) Where the annual report to security holders is delivered through an electronic medium, issuers may satisfy legibility requirements applicable to printed documents, such as type size and font, by presenting all required information in a format readily communicated to investors.

   (3) The report shall contain the supplementary financial information required by item 302 of Regulation S-K (§229.302 of this chapter).
(4) The report shall contain information concerning changes in and disagreements with accountants on accounting and financial disclosure required by Item 304 of Regulation S-K (§229.304 of this chapter).

(5)(i) The report shall contain the selected financial data required by Item 301 of Regulation S-K (§229.301 of this chapter).

(ii) The report shall contain management's discussion and analysis of financial condition and results of operations required by Item 303 of Regulation S-K (§229.303 of this chapter).

(iii) The report shall contain the quantitative and qualitative disclosures about market risk required by Item 305 of Regulation S-K (§229.305 of this chapter).

(6) The report shall contain a brief description of the business done by the registrant and its subsidiaries during the most recent fiscal year which will, in the opinion of management, indicate the general nature and scope of the business of the registrant and its subsidiaries.

(7) The report shall contain information relating to the registrant's industry segments, classes of similar products or services, foreign and domestic operations and exports sales required by paragraphs (b), (c)(1)(i) and (d) of Item 101 of Regulation S-K (§229.101 of this chapter).

(8) The report shall identify each of the registrant's directors and executive officers, and shall indicate the principal occupation or employment of each such person and the name and principal business of any organization by which such person is employed.

(9) The report shall contain the market price of and dividends on the registrant's common equity and related security holder matters required by Items 201(a), (b) and (c) of Regulation S-K (§229.201(a), (b) and (c) of this chapter). If the report precedes or accompanies a proxy statement or information statement relating to an annual meeting of security holders at which directors are to be elected (or special meeting or written consents in lieu of such meeting), furnish the performance graph required by Item 201(e) (§229.201(e) of this chapter).

(10) The registrant's proxy statement, or the report, shall contain an undertaking in bold face or otherwise reasonably prominent type to provide without charge to each person solicited upon the written request of any such person, a copy of the registrant's annual report on Form 10-K, including the financial statements and the financial statement schedules, required to be filed with the Commission pursuant to Rule 13a-1 (§240.13a-1 of this chapter) under the Act for the registrant's most recent fiscal year, and shall indicate the name and address (including title or department) of the person to whom such a written request is to be directed. In the discretion of management, a registrant need not undertake to furnish without charge copies of all exhibits to its Form 10-K, provided that the copy of the annual report on Form 10-K furnished without charge to requesting security holders is accompanied by a list briefly describing all the exhibits not contained therein and indicating that the registrant will furnish any exhibit upon the payment of a specified reasonable fee, which fee shall be limited to the registrant's reasonable expenses in furnishing such exhibit. If the registrant's annual report to security holders complies with all of the disclosure requirements of Form 10-K and is filed with the Commission in satisfaction of its Form 10-K filing requirements, such registrant need not furnish a separate Form 10-K to security holders who receive a copy of such annual report.

NOTE TO PARAGRAPH (b)(10): Pursuant to the undertaking required by paragraph (b)(10) of this section, a registrant shall furnish a copy of its annual report on Form 10-K (§249.310 of this chapter) to a beneficial owner of its securities upon receipt of a written request from such person. Each request must set forth a good faith representation that, as of the record date for the solicitation requiring the furnishing of the annual report to security holders pursuant to paragraph (b) of this section, the person making the request was a beneficial owner of securities entitled to vote.

(11) Subject to the foregoing requirements, the report may be in any form deemed suitable by management and the information required by paragraphs (b)(5) to (10) of this section may be presented in an appendix or other separate section of the report, provided that the attention of security holders is called to such presentation.

NOTE: Registrants are encouraged to utilize tables, schedules, charts and graphic illustrations of present financial information in an understandable manner. Any presentation of financial information must be consistent with the data in the financial statements contained in the report and, if appropriate, should refer to relevant portions of the financial statements and notes thereto.

(12) [Reserved]

(13) Paragraph (b) of this section shall not apply, however, to solicitations made on behalf of the registrant before the financial statements are available if a solicitation is being made at the same time in opposition to the registrant and if the registrant's proxy statement includes an undertaking in bold face type to furnish such annual report to security holders to all persons being solicited at least 20 calendar days before the date of the meeting or, if the solicitation refers to a written consent or authorization in lieu of a meeting, at least 20 calendar days prior to the earliest date on which it may be used to effect corporate action.

(c) Seven copies of the report sent to security holders pursuant to this rule shall be mailed to the Commission, solely for its information, not later than the date on which such report is first sent or given to security holders or the date on which preliminary copies, or definitive copies, if preliminary filing was not required, of solicitation material are filed with the Commission pursuant to Rule 14a-6, whichever date is later. The report is not deemed to be “soliciting material” or to be “filed” with the Commission or subject to this regulation otherwise than as provided in this Rule, or to the liabilities of section 18 of the Act, except to the extent that the registrant specifically requests that it be treated as a part of the proxy soliciting material or incorporates it in the proxy statement or other filed report by reference.
(d) An annual report to security holders prepared on an integrated basis pursuant to General Instruction H to Form 10-K (§249.310 of this chapter) may also be submitted in satisfaction of this section. When filed as the annual report on Form 10-K, responses to the items of that form are subject to section 18 of the Act notwithstanding paragraph (c) of this section.

(e)(1)(i) A registrant will be considered to have delivered an annual report to security holders, proxy statement or Notice of Internet Availability of Proxy Materials, as described in §240.14a-16, to all security holders of record who share an address if:

(A) The registrant delivers one annual report to security holders, proxy statement or Notice of Internet Availability of Proxy Materials, as applicable, to the shared address;

(B) The registrant addresses the annual report to security holders, proxy statement or Notice of Internet Availability of Proxy Materials, as applicable, to the security holders as a group (for example, “ABC Fund [or Corporation] Security Holders,” “Jane Doe and Household,” “The Smith Family”), to each of the security holders individually (for example, “John Doe and Richard Jones”) or to the security holders in a form to which each of the security holders has consented in writing;

NOTE TO PARAGRAPH (e)(1)(i)(B): Unless the registrant addresses the annual report to security holders, proxy statement or Notice of Internet Availability of Proxy Materials to the security holders as a group or to each of the security holders individually, it must obtain, from each security holder to be included in the household group, a separate affirmative written consent to the specific form of address the registrant will use.

(C) The security holders consent, in accordance with paragraph (e)(1)(ii) of this section, to delivery of one annual report to security holders or proxy statement, as applicable;

(D) With respect to delivery of the proxy statement or Notice of Internet Availability of Proxy Materials, the registrant delivers, together with or subsequent to delivery of the proxy statement, a separate proxy card for each security holder at the shared address; and

(E) The registrant includes an undertaking in the proxy statement to deliver promptly upon written or oral request a separate copy of the annual report to security holders, proxy statement or Notice of Internet Availability of Proxy Materials, as applicable, to a security holder at a shared address to which a single copy of the document was delivered.

(ii) Consent—(A) Affirmative written consent. Each security holder must affirmatively consent, in writing, to delivery of one annual report to security holders or proxy statement, as applicable. A security holder’s affirmative written consent will be considered valid only if the security holder has been informed of:

(1) The duration of the consent;

(2) The specific types of documents to which the consent will apply;

(3) The procedures the security holder must follow to revoke consent; and

(4) The registrant’s obligation to begin sending individual copies to a security holder within thirty days after the security holder revokes consent.

(B) Implied consent. The registrant need not obtain affirmative written consent from a security holder for purposes of paragraph (e)(1)(ii)(A) of this section if all of the following conditions are met:

(1) The security holder has the same last name as the other security holders at the shared address or the registrant reasonably believes that the security holders are members of the same family;

(2) The registrant has sent the security holder a notice at least 60 days before the registrant begins to rely on this section concerning delivery of annual reports to security holders, proxy statements or Notices of Internet Availability of Proxy Materials to that security holder. The notice must:

(i) Be a separate written document;

(ii) State that only one annual report to security holders, proxy statement or Notice of Internet Availability of Proxy Materials, as applicable, will be delivered to the shared address unless the registrant receives contrary instructions;

(iii) Include a toll-free telephone number, or be accompanied by a reply form that is pre-addressed with postage provided, that the security holder can use to notify the registrant that the security holder wishes to receive a separate annual report to security holders, proxy statement or Notice of Internet Availability of Proxy Materials;

(iv) State the duration of the consent;

(v) Explain how a security holder can revoke consent;

(vi) State that the registrant will begin sending individual copies to a security holder within thirty days after the security holder revokes consent; and

(vii) Contain the following prominent statement, or similar clear and understandable statement, in bold-face type: “Important Notice Regarding Delivery of Security Holder Documents.” This statement also must appear on the envelope in which the notice
is delivered. Alternatively, if the notice is delivered separately from other communications to security holders, this statement may appear either on the notice or on the envelope in which the notice is delivered.

NOTE TO PARAGRAPH (e)(1)(ii)(B)(2): The notice should be written in plain English. See §230.421(d)(2) of this chapter for a discussion of plain English principles.

(3) The registrant has not received the reply form or other notification indicating that the security holder wishes to continue to receive a copy of the annual report to security holders, proxy statement or Notice of Internet Availability of Proxy Materials, as applicable, within 60 days after the registrant sent the notice required by paragraph (e)(1)(ii)(B)(2) of this section; and

(4) The registrant delivers the document to a post office box or residential street address.

NOTE TO PARAGRAPH (e)(1)(ii)(B)(4): The registrant can assume that a street address is residential unless the registrant has information that indicates the street address is a business.

(iii) Revocation of consent. If a security holder, orally or in writing, revokes consent to delivery of one annual report to security holders, proxy statement or Notice of Internet Availability of Proxy Materials to a shared address, the registrant must begin sending individual copies to that security holder within 30 days after the registrant receives revocation of the security holder’s consent.

(iv) Definition of address. Unless otherwise indicated, for purposes of this section, address means a street address, a post office box number, an electronic mail address, a facsimile telephone number or other similar destination to which paper or electronic documents are delivered, unless otherwise provided in this section. If the registrant has reason to believe that the address is a street address of a multi-unit building, the address must include the unit number.

NOTE TO PARAGRAPH (e)(1): A person other than the registrant making a proxy solicitation may deliver a single proxy statement to security holders of record or beneficial owners who have separate accounts and share an address if: (a) the registrant or intermediary has followed the procedures in this section; and (b) the registrant or intermediary makes available the shared address information to the person in accordance with §240.14a-7(a)(2)(i) and (ii).

(2) Notwithstanding paragraphs (a) and (b) of this section, unless state law requires otherwise, a registrant is not required to send an annual report to security holders, proxy statement or Notice of Internet Availability of Proxy Materials to a security holder if:

(i) An annual report to security holders and a proxy statement, or a Notice of Internet Availability of Proxy Materials, for two consecutive annual meetings; or

(ii) All, and at least two, payments (if sent by first class mail) of dividends or interest on securities, or dividend reinvestment confirmations, during a twelve month period, have been mailed to such security holder’s address and have been returned as undeliverable. If any such security holder delivers or causes to be delivered to the registrant written notice setting forth his then current address for security holder communications purposes, the registrant’s obligation to deliver an annual report to security holders, a proxy statement or a Notice of Internet Availability of Proxy Materials under this section is reinstated.

(f) The provisions of paragraph (a) of this section shall not apply to a communication made by means of speeches in public forums, press releases, published or broadcast opinions, statements, or advertisements appearing in a broadcast media, newspaper, magazine or other bona fide publication disseminated on a regular basis, provided that:

(1) No form of proxy, consent or authorization or means to execute the same is provided to a security holder in connection with the communication; and

(2) At the time the communication is made, a definitive proxy statement is on file with the Commission pursuant to §240.14a-6(b).

[39 FR 40788, Nov. 20, 1974]

EDITORIAL NOTE: For Federal Register citations affecting §240.14a-3, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

Need assistance?
Title 17 → Chapter II → Part 240 → §240.14a-4

Title 17: Commodity and Securities Exchanges
PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

§240.14a-4 Requirements as to proxy.

(a) The form of proxy (1) shall indicate in bold-face type whether or not the proxy is solicited on behalf of the registrant’s board of directors or, if provided other than by a majority of the board of directors, shall indicate in bold-face type on whose behalf the solicitation is made;

(2) Shall provide a specifically designated blank space for dating the proxy card; and

(3) Shall identify clearly and impartially each separate matter intended to be acted upon, whether or not related to or conditioned on the approval of other matters, and whether proposed by the registrant or by security holders. No reference need be made, however, to proposals as to which discretionary authority is conferred pursuant to paragraph (c) of this section.

NOTE TO PARAGRAPH (a)(3) (ELECTRONIC FilERS): Electronic filers shall satisfy the filing requirements of Rule 14a-6(a) or (b) (§240.14a-6(a) or (b)) with respect to the form of proxy by filing the form of proxy as an appendix at the end of the proxy statement. Forms of proxy shall not be filed as exhibits or separate documents within an electronic submission.

(b)(1) Means shall be provided in the form of proxy whereby the person solicited is afforded an opportunity to specify by boxes a choice between approval or disapproval of, or abstention with respect to each separate matter referred to therein as intended to be acted upon, other than elections to office and votes to determine the frequency of shareholder votes on executive compensation pursuant to §240.14a-21(b) of this chapter. A proxy may confer discretionary authority with respect to matters as to which a choice is not specified by the security holder provided that the form of proxy states in bold-face type how it is intended to vote the shares represented by the proxy in each such case.

(2) A form of proxy that provides for the election of directors shall set forth the names of persons nominated for election as directors, including any person whose nomination by a shareholder or shareholder group satisfies the requirements of §240.14a-11, an applicable state or foreign law provision, or a registrant’s governing documents as they relate to the inclusion of shareholder director nominees in the registrant’s proxy materials. Such form of proxy shall clearly provide any of the following means for security holders to withhold authority to vote for each nominee:

(i) A box opposite the name of each nominee which may be marked to indicate that authority to vote for such nominee is withheld; or

(ii) An instruction in bold-face type which indicates that the security holder may withhold authority to vote for any nominee by lining through or otherwise striking out the name of any nominee; or

(iii) Designated blank spaces in which the security holder may enter the names of nominees with respect to whom the security holder chooses to withhold authority to vote; or

(iv) Any other similar means, provided that clear instructions are furnished indicating how the security holder may withhold authority to vote for any nominee.

Such form of proxy also may provide a means for the security holder to grant authority to vote for the nominees set forth, as a group, provided that there is a similar means for the security holder to withhold authority to vote for such group of nominees. Any such form of proxy which is executed by the security holder in such manner as not to withhold authority to vote for the election of any nominee shall be deemed to grant such authority, provided that the form of proxy so states in bold-face type. Means to grant authority to vote for any nominees as a group or to withhold authority for any nominees as a group may not be provided if the form of proxy includes one or more shareholder nominees in accordance with §240.14a-11, an applicable state or foreign law provision, or a registrant’s governing documents as they relate to the inclusion of shareholder director nominees in the registrant’s proxy materials.

Instructions. 1. Paragraph (2) does not apply in the case of a merger, consolidation or other plan if the election of directors is an integral part of the plan.

2. If applicable state law gives legal effect to votes cast against a nominee, then in lieu of, or in addition to, providing a means for security holders to withhold authority to vote, the registrant should provide a similar means for security holders to vote against each nominee.

(3) A form of proxy which provides for a shareholder vote on the frequency of shareholder votes to approve the compensation of executives required by section 14A(a)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78n-1(a)(2)) shall
provide means whereby the person solicited is afforded an opportunity to specify by boxes a choice among 1, 2 or 3 years, or abstain.

(c) A proxy may confer discretionary authority to vote on any of the following matters:

(1) For an annual meeting of shareholders, if the registrant did not have notice of the matter at least 45 days before the date on which the registrant first sent its proxy materials for the prior year’s annual meeting of shareholders (or date specified by an advance notice provision), and a specific statement to that effect is made in the proxy statement or form of proxy. If during the prior year the registrant did not hold an annual meeting, or if the date of the meeting has changed more than 30 days from the prior year, then notice must not have been received a reasonable time before the registrant sends its proxy materials for the current year.

(2) In the case in which the registrant has received timely notice in connection with an annual meeting of shareholders (as determined under paragraph (c)(1) of this section), if the registrant includes, in the proxy statement, advice on the nature of the matter and how the registrant intends to exercise its discretion to vote on each matter. However, even if the registrant includes this information in its proxy statement, it may not exercise discretionary voting authority on a particular proposal if the proponent:

(i) Provides the registrant with a written statement, within the time-frame determined under paragraph (c)(1) of this section, that the proponent intends to deliver a proxy statement and form of proxy to holders of at least the percentage of the company’s voting shares required under applicable law to carry the proposal;

(ii) Includes the same statement in its proxy materials filed under §240.14a-6; and

(iii) Immediately after soliciting the percentage of shareholders required to carry the proposal, provides the registrant with a statement from any solicitor or other person with knowledge that the necessary steps have been taken to deliver a proxy statement and form of proxy to holders of at least the percentage of the company’s voting shares required under applicable law to carry the proposal.

(3) For solicitations other than for annual meetings or for solicitations by persons other than the registrant, matters which the persons making the solicitation do not know, a reasonable time before the solicitation, are to be presented at the meeting, if a specific statement to that effect is made in the proxy statement or form of proxy.

(4) Approval of the minutes of the prior meeting if such approval does not amount to ratification of the action taken at that meeting;

(5) The election of any person to any office for which a bona fide nominee is named in the proxy statement and such nominee is unable to serve or for good cause will not serve.

(6) Any proposal omitted from the proxy statement and form of proxy pursuant to §240.14a-8 or §240.14a-9 of this chapter.

(7) Matters incident to the conduct of the meeting.

(d) No proxy shall confer authority:

(1) To vote for the election of any person to any office for which a bona fide nominee is not named in the proxy statement,

(2) To vote at any annual meeting other than the next annual meeting (or any adjournment thereof) to be held after the date on which the proxy statement and form of proxy are first sent or given to security holders,

(3) To vote with respect to more than one meeting (and any adjournment thereof) or more than one consent solicitation or

(4) To consent to or authorize any action other than the action proposed to be taken in the proxy statement, or matters referred to in paragraph (c) of this rule. A person shall not be deemed to be a bona fide nominee and he shall not be named as such unless he has consented to being named in the proxy statement and to serve if elected. Provided, however, That nothing in this section 240.14a-4 shall prevent any person soliciting in support of nominees who, if elected, would constitute a minority of the board of directors, from seeking authority to vote for nominees named in the registrant’s proxy statement, so long as the soliciting party:

(i) Seeks authority to vote in the aggregate for the number of director positions then subject to election;

(ii) Represents that it will vote for all the registrant nominees, other than those registrant nominees specified by the soliciting party;

(iii) Provides the security holder an opportunity to withhold authority with respect to any other registrant nominee by writing the name of that nominee on the form of proxy; and

(iv) States on the form of proxy and in the proxy statement that there is no assurance that the registrant’s nominees will serve if elected with any of the soliciting party’s nominees.

(e) The proxy statement or form of proxy shall provide, subject to reasonable specified conditions, that the shares represented by the proxy will be voted and that where the person solicited specifies by means of a ballot provided pursuant to
paragraph (b) of this section a choice with respect to any matter to be acted upon, the shares will be voted in accordance with
the specifications so made.

(f) No person conducting a solicitation subject to this regulation shall deliver a form of proxy, consent or authorization to any
security holder unless the security holder concurrently receives, or has previously received, a definitive proxy statement that
has been filed with the Commission pursuant to §240.14a-6(b).

Sept. 16, 2010]

Need assistance?
Title 17 → Chapter II → Part 240 → §240.14a-5

§240.14a-5 Presentation of information in proxy statement.

(a) The information included in the proxy statement shall be clearly presented and the statements made shall be divided into groups according to subject matter and the various groups of statements shall be preceded by appropriate headings. The order of items and sub-items in the schedule need not be followed. Where practicable and appropriate, the information shall be presented in tabular form. All amounts shall be stated in figures. Information required by more than one applicable item need not be repeated. No statement need be made in response to any item or sub-item which is inapplicable.

(b) Any information required to be included in the proxy statement as to terms of securities or other subject matter which from a standpoint of practical necessity must be determined in the future may be stated in terms of present knowledge and intention. To the extent practicable, the authority to be conferred concerning each such matter shall be confined within limits reasonably related to the need for discretionary authority. Subject to the foregoing, information which is not known to the persons on whose behalf the solicitation is to be made and which it is not reasonably within the power of such persons to ascertain or procure may be omitted, if a brief statement of the circumstances rendering such information unavailable is made.

(c) Any information contained in any other proxy soliciting material which has been furnished to each person solicited in connection with the same meeting or subject matter may be omitted from the proxy statement, if a clear reference is made to the particular document containing such information.

(d)(1) All printed proxy statements shall be in roman type at least as large and as legible as 10-point modern type, except that to the extent necessary for convenient presentation financial statements and other tabular data, but not the notes thereto, may be in roman type at least as large and as legible as 8-point modern type. All such type shall be leaded at least 2 points.

(2) Where a proxy statement is delivered through an electronic medium, issuers may satisfy legibility requirements applicable to printed documents, such as type size and font, by presenting all required information in a format readily communicated to investors.

(e) All proxy statements shall disclose, under an appropriate caption, the following dates:

(1) The deadline for submitting shareholder proposals for inclusion in the registrant’s proxy statement and form of proxy for the registrant’s next annual meeting, calculated in the manner provided in §240.14a-8(e)(Question 5);

(2) The date after which notice of a shareholder proposal submitted outside the processes of §240.14a-8 is considered untimely, either calculated in the manner provided by §240.14a-4(c)(1) or as established by the registrant’s advance notice provision, if any, authorized by applicable state law; and

(3) The deadline for submitting nominees for inclusion in the registrant’s proxy statement and form of proxy pursuant to §240.14a-11, an applicable state or foreign law provision, or a registrant’s governing documents as they relate to the inclusion of shareholder director nominees in the registrant’s proxy materials for the registrant’s next annual meeting of shareholders.

(f) If the date of the next annual meeting is subsequently advanced or delayed by more than 30 calendar days from the date of the annual meeting to which the proxy statement relates, the registrant shall, in a timely manner, inform shareholders of such change, and the new dates referred to in paragraphs (e)(1) and (e)(2) of this section, by including a notice, under item 5, in its earliest possible quarterly report on Form 10-Q (§249.308a of this chapter), or, in the case of investment companies, in a shareholder report under §270.30d-1 of this chapter under the Investment Company Act of 1940, or, if impracticable, any means reasonably calculated to inform shareholders.

Title 17 → Chapter II → Part 240 → §240.14a-6

Title 17: Commodity and Securities Exchanges
PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

§240.14a-6 Filing requirements.

(a) Preliminary proxy statement. Five preliminary copies of the proxy statement and form of proxy shall be filed with the Commission at least 10 calendar days prior to the date definitive copies of such material are first sent or given to security holders, or such shorter period prior to that date as the Commission may authorize upon a showing of good cause thereunder. A registrant, however, shall not file with the Commission a preliminary proxy statement, form of proxy or other soliciting material to be furnished to security holders concurrently therewith if the solicitation relates to an annual (or special meeting in lieu of the annual) meeting, or for an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) or a business development company, if the solicitation relates to any meeting of security holders at which the only matters to be acted upon are:

1. The election of directors;
2. The election, approval or ratification of accountant(s);
3. A security holder proposal included pursuant to Rule 14a-8 (§240.14a-8 of this chapter);
4. A shareholder nominee for director included pursuant to §240.14a-11, an applicable state or foreign law provision, or a registrant’s governing documents as they relate to the inclusion of shareholder director nominees in the registrant’s proxy materials.
5. The approval or ratification of a plan as defined in paragraph (a)(6)(ii) of Item 402 of Regulation S-K (§229.402(a)(6)(ii) of this chapter) or amendments to such a plan;
6. With respect to an investment company registered under the Investment Company Act of 1940 or a business development company, a proposal to continue, without change, any advisory or other contract or agreement that previously has been the subject of a proxy solicitation for which proxy material was filed with the Commission pursuant to this section;
7. With respect to an open-end investment company registered under the Investment Company Act of 1940, a proposal to increase the number of shares authorized to be issued; and/or
8. A vote to approve the compensation of executives as required pursuant to section 14A(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78n-1(a)(1)) and §240.14a-21(a) of this chapter, or pursuant to section 111(e)(1) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5221(e)(1)) and §240.14a-20 of this chapter, a vote to determine the frequency of shareholder votes to approve the compensation of executives as required pursuant to Section 14A(a)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78n-1(a)(2)) and §240.14a-21(b) of this chapter, or any other shareholder advisory vote on executive compensation.

This exclusion from filing preliminary proxy material does not apply if the registrant comments upon or refers to a solicitation in opposition in connection with the meeting in its proxy material.

NOTE 1 TO PARAGRAPH (a): The filing of revised material does not recommence the ten day time period unless the revised material contains material revisions or material new proposal(s) that constitute a fundamental change in the proxy material.

NOTE 2 TO PARAGRAPH (a): The official responsibility for the preparation of the proxy material should make every effort to verify the accuracy and completeness of the information required by the applicable rules. The preliminary material should be filed with the Commission at the earliest practicable date.

NOTE 3 TO PARAGRAPH (a): Solicitation in Opposition. For purposes of the exclusion from filing preliminary proxy material, a "solicitation in opposition" includes: (a) Any solicitation opposing a proposal supported by the registrant; and (b) any solicitation supporting a proposal that the registrant does not expressly support, other than a security holder proposal included in the registrant's proxy material pursuant to Rule 14a-8 (§240.14a-8 of this chapter). The inclusion of a security holder proposal in the registrant's proxy material pursuant to Rule 14a-8 does not constitute a "solicitation in opposition," even if the registrant opposes the proposal and/or includes a statement in opposition to the proposal. The inclusion of a shareholder nominee in the registrant's proxy materials pursuant to §240.14a-11, an applicable state or foreign law provision, or a registrant's governing documents as they relate to the inclusion of shareholder director nominees in the registrant's proxy materials does not constitute a "solicitation in opposition" for purposes of Rule 14a-6(a) (§240.14a-6(a)), even if the registrant opposes the shareholder nominee and solicits against the shareholder nominee and in favor of a registrant nominee.

NOTE 4 TO PARAGRAPH (a): A registrant that is filing proxy material in preliminary form only because the registrant has commented on or referred to a solicitation in opposition should indicate that fact in a transmittal letter when filing the preliminary material with the Commission.
(b) Definitive proxy statement and other soliciting material. Eight definitive copies of the proxy statement, form of proxy and all other soliciting materials, in the same form as the materials sent to security holders, must be filed with the Commission no later than the date they are first sent or given to security holders. Three copies of these materials also must be filed with, or mailed for filing to, each national securities exchange on which the registrant has a class of securities listed and registered.

(c) Personal solicitation materials. If part or all of the solicitation involves personal solicitation, then eight copies of all written instructions or other materials that discuss, review or comment on the merits of any matter to be acted on, that are furnished to persons making the actual solicitation for their use directly or indirectly in connection with the solicitation, must be filed with the Commission no later than the date the materials are first sent or given to these persons.

(d) Release dates. All preliminary proxy statements and forms of proxy filed pursuant to paragraph (a) of this section shall be accompanied by a statement of the date on which definitive copies thereof filed pursuant to paragraph (b) of this section are intended to be released to security holders. All definitive material filed pursuant to paragraph (b) of this section shall be accompanied by a statement of the date on which copies of such material were released to security holders, or, if not released, the date on which copies thereof are intended to be released. All material filed pursuant to paragraph (c) of this section shall be accompanied by a statement of the date on which copies thereof were released to the individual who will make the actual solicitation or if not released, the date on which copies thereof are intended to be released.

(e)(1) Public availability of information. All copies of preliminary proxy statements and forms of proxy filed pursuant to paragraph (a) of this section shall be clearly marked “Preliminary Copies,” and shall be deemed immediately available for public inspection unless confidential treatment is obtained pursuant to paragraph (e)(2) of this section.

(2) Confidential treatment. If action will be taken on any matter specified in Item 14 of Schedule 14A (§240.14a-101), all copies of the preliminary proxy statement and form of proxy filed under paragraph (a) of this section will be for the information of the Commission only and will not be deemed available for public inspection until filed with the Commission in definitive form so long as:

(i) The proxy statement does not relate to a matter or proposal subject to §240.13e-3 or a roll-up transaction as defined in Item 901(c) of Regulation S-K (§229.901(c) of this chapter);

(ii) Neither the parties to the transaction nor any persons authorized to act on their behalf have made any public communications relating to the transaction except for statements where the content is limited to the information specified in §230.135 of this chapter; and

(iii) The materials are filed in paper and marked “Confidential, For Use of the Commission Only.” In all cases, the materials may be disclosed to any department or agency of the United States Government and to the Congress, and the Commission may make any inquiries or investigation into the materials as may be necessary to conduct an adequate review by the Commission.

INSTRUCTION TO PARAGRAPH (e)(2): If communications are made publicly that go beyond the information specified in §230.135 of this chapter, the preliminary proxy materials must be re-filed promptly with the Commission as public materials.

(f) Communications not required to be filed. Copies of replies to inquiries from security holders requesting further information and copies of communications which do no more than request that forms of proxy theretofore solicited be signed and returned need not be filed pursuant to this section.

(g) Solicitations subject to §240.14a-2(b)(1). (1) Any person who:

(i) Engages in a solicitation pursuant to §240.14a-2(b)(1), and

(ii) At the commencement of that solicitation owns beneficially securities of the class which is the subject of the solicitation with a market value of over $5 million,

shall furnish or mail to the Commission, not later than three days after the date the written solicitation is first sent or given to any security holder, five copies of a statement containing the information specified in the Notice of Exempt Solicitation (§240.14a-103) which statement shall attach as an exhibit all written soliciting materials. Five copies of an amendment to such statement shall be furnished or mailed to the Commission, in connection with dissemination of any additional communications, not later than three days after the date the additional material is first sent or given to any security holder. Three copies of the Notice of Exempt Solicitation and amendments thereto shall, at the same time the materials are furnished or mailed to the Commission, be furnished or mailed to each national securities exchange upon which any class of securities of the registrant is listed and registered.

(2) Notwithstanding paragraph (g)(1) of this section, no such submission need be made with respect to oral solicitations (other than with respect to scripts used in connection with such oral solicitations), speeches delivered in a public forum, press releases, published or broadcast opinions, statements, and advertisements appearing in a broadcast media, or a newspaper, magazine or other bona fide publication disseminated on a regular basis.

(h) Revised material. Where any proxy statement, form of proxy or other material filed pursuant to this section is amended or revised, two of the copies of such amended or revised material filed pursuant to this section (or in the case of investment companies registered under the Investment Company Act of 1940, three of such copies) shall be marked to indicate clearly and
precisely the changes effected therein. If the amendment or revision alters the text of the material the changes in such text shall be indicated by means of underscoring or in some other appropriate manner.

(i) Fees. At the time of filing the proxy solicitation material, the persons upon whose behalf the solicitation is made, other than investment companies registered under the Investment Company Act of 1940, shall pay to the Commission the following applicable fee:

(1) For preliminary proxy material involving acquisitions, mergers, spinoffs, consolidations or proposed sales or other dispositions of substantially all the assets of the company, a fee established in accordance with Rule 0-11 (§240.0-11 of this chapter) shall be paid. No refund shall be given.

(2) For all other proxy submissions and submissions made pursuant to §240.14a-6(g), no fee shall be required.

(j) Merger proxy materials. (1) Any proxy statement, form of proxy or other soliciting material required to be filed by this section that also is either

(i) Included in a registration statement filed under the Securities Act of 1933 on Forms S-4 (§239.25 of this chapter), F-4 (§239.34 of this chapter) or N-14 (§239.23 of this chapter); or

(ii) Filed under §230.424, §230.425 or §230.497 of this chapter is required to be filed only under the Securities Act, and is deemed filed under this section.

(2) Under paragraph (j)(1) of this section, the fee required by paragraph (i) of this section need not be paid.

(k) Computing time periods. In computing time periods beginning with the filing date specified in Regulation 14A (§240.14a-1 to 240.14b-1 of this chapter), the filing date shall be counted as the first day of the time period and midnight of the last day shall constitute the end of the specified time period.

(l) Roll-up transactions. If a transaction is a roll-up transaction as defined in Item 901(c) of Regulation S-K (17 CFR 229.901(c)) and is registered (or authorized to be registered) on Form S-4 (17 CFR 229.25) or Form F-4 (17 CFR 229.34), the proxy statement of the sponsor or the general partner as defined in Item 901(d) and Item 901(a), respectively, of Regulation S-K (17 CFR 229.901) must be distributed to security holders no later than the lesser of 60 calendar days prior to the date on which the meeting of security holders is held or action is taken, or the maximum number of days permitted for giving notice under applicable state law.

(m) Cover page. Proxy materials filed with the Commission shall include a cover page in the form set forth in Schedule 14A (§240.14a-101 of this chapter). The cover page required by this paragraph need not be distributed to security holders.

(n) Solicitations subject to §240.14a-2(b)(4). Any person who:

(1) Engages in a solicitation pursuant to §240.14a-2(b)(4); and

(2) At the commencement of that solicitation both owns five percent (5%) or more of the outstanding securities of a class that is the subject of the proposed roll-up transaction, and engages in the business of buying and selling limited partnership interests in the secondary market, shall furnish or mail to the Commission, not later than three days after the date an oral or written solicitation by that person is first made, sent or provided to any security holder, five copies of a statement containing the information specified in the Notice of Exempt Preliminary Roll-up Communication (§240.14a-104). Five copies of any amendment to such statement shall be furnished or mailed to the Commission not later than three days after a communication containing revised material is first made, sent or provided to any security holder.

(o) Solicitations before furnishing a definitive proxy statement. Solicitations that are published, sent or given to security holders before they have been furnished a definitive proxy statement must be made in accordance with §240.14a-12 unless there is an exemption available under §240.14a-2.

(p) Solicitations subject to §240.14a-11. Any soliciting material that is published, sent or given to shareholders in connection with §240.14a-2(b)(7) or (b)(8) must be filed with the Commission as specified in that section.

[17 FR 11432, Dec. 18, 1952]

EDITORIAL NOTE: For Federal Register citations affecting §240.14a-6, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov

Need assistance?
Obligations of registrants to provide a list of, or mail soliciting material to, security holders.

(a) If the registrant has made or intends to make a proxy solicitation in connection with a security holder meeting or action by consent or authorization, upon the written request by any record or beneficial holder of securities of the class entitled to vote at the meeting or to execute a consent or authorization to provide a list of security holders or to mail the requesting security holder’s materials, regardless of whether the request references this section, the registrant shall:

(1) Deliver to the requesting security holder within five business days after receipt of the request:

(i) Notification as to whether the registrant has elected to mail the security holder’s soliciting materials or provide a security holder list if the election under paragraph (b) of this section is to be made by the registrant;

(ii) A statement of the approximate number of record holders and beneficial holders, separated by type of holder and class, owning securities in the same class or classes as holders which have been or are to be solicited on management’s behalf, or any more limited group of such holders designated by the security holder if available or retrievable under the registrant’s or its transfer agent’s security holder data systems; and

(iii) The estimated cost of mailing a proxy statement, form of proxy or other communication to such holders, including to the extent known or reasonably available, the estimated costs of any bank, broker, and similar person through whom the registrant has solicited or intends to solicit beneficial owners in connection with the security holder meeting or action;

(2) Perform the acts set forth in either paragraphs (a)(2)(i) or (a)(2)(ii) of this section, at the registrant’s or requesting security holder’s option, as specified in paragraph (b) of this section:

(i) Send copies of any proxy statement, form of proxy, or other soliciting material, including a Notice of Internet Availability of Proxy Materials (as described in §240.14a-16), furnished by the security holder to the record holders, including banks, brokers, and similar entities, designated by the security holder. A sufficient number of copies must be sent to the banks, brokers, and similar entities for distribution to all beneficial owners designated by the security holder. The security holder may designate only record holders and/or beneficial owners who have not requested paper and/or e-mail copies of the proxy statement. If the registrant has received affirmative written or implied consent to deliver a single proxy statement to security holders at a shared address in accordance with the procedures in §240.14a-3(e)(1), a single copy of the proxy statement or Notice of Internet Availability of Proxy Materials furnished by the security holder shall be sent to that address, provided that if multiple copies of the Notice of Internet Availability of Proxy Materials are furnished by the security holder for that address, the registrant shall deliver those copies in a single envelope to that address. The registrant shall send the security holder material with reasonable promptness after tender of the material to be sent, envelopes or other containers therefore, postage or payment for postage and other reasonable expenses of effecting such distribution. The registrant shall not be responsible for the content of the material; or

(ii) Deliver the following information to the requesting security holder within five business days of receipt of the request:

(A) A reasonably current list of the names, addresses and security positions of the record holders, including banks, brokers and similar entities holding securities in the same class or classes as holders which have been or are to be solicited on management’s behalf, or any more limited group of such holders designated by the security holder if available or retrievable under the registrant’s or its transfer agent’s security holder data systems;

(B) The most recent list of names, addresses and security positions of beneficial owners as specified in §240.14a-13(b), in the possession, or which subsequently comes into the possession, of the registrant;

(C) The names of security holders at a shared address that have consented to delivery of a single copy of proxy materials to a shared address, if the registrant has received written or implied consent in accordance with §240.14a-3(e)(1); and

(D) If the registrant has relied on §240.14a-16, the names of security holders who have requested paper copies of the proxy materials for all meetings and the names of security holders who, as of the date that the registrant receives the request, have requested paper copies of the proxy materials only for the meeting to which the solicitation relates.

(iii) All security holder list information shall be in the form requested by the security holder to the extent that such form is available to the registrant without undue burden or expense. The registrant shall furnish the security holder with updated record holder information on a daily basis or, if not available on a daily basis, at the shortest reasonable intervals; provided, however,
the registrant need not provide beneficial or record holder information more current than the record date for the meeting or action.

(b)(1) The requesting security holder shall have the options set forth in paragraph (a)(2) of this section, and the registrant shall have corresponding obligations, if the registrant or general partner or sponsor is soliciting or intends to solicit with respect to:

(i) A proposal that is subject to §240.13e-3;

(ii) A roll-up transaction as defined in Item 901(c) of Regulation S-K (§229.901(c) of this chapter) that involves an entity with securities registered pursuant to Section 12 of the Act (15 U.S.C. 78l); or

(iii) A roll-up transaction as defined in Item 901(c) of Regulation S-K (§229.901(c) of this chapter) that involves a limited partnership, unless the transaction involves only:

(A) Partnerships whose investors will receive new securities or securities in another entity that are not reported under a transaction reporting plan declared effective before December 17, 1993 by the Commission under Section 11A of the Act (15 U.S.C. 78k-1); or

(B) Partnerships whose investors' securities are reported under a transaction reporting plan declared effective before December 17, 1993 by the Commission under Section 11A of the Act (15 U.S.C. 78k-1).

(2) With respect to all other requests pursuant to this section, the registrant shall have the option to either mail the security holder's material or furnish the security holder list as set forth in this section.

(c) At the time of a list request, the security holder making the request shall:

(1) If holding the registrant's securities through a nominee, provide the registrant with a statement by the nominee or other independent third party, or a copy of a current filing made with the Commission and furnished to the registrant, confirming such holder's beneficial ownership; and

(2) Provide the registrant with an affidavit, declaration, affirmation or other similar document provided for under applicable state law identifying the proposal or other corporate action that will be the subject of the security holder's solicitation or communication and attesting that:

(i) The security holder will not use the list information for any purpose other than to solicit security holders with respect to the same meeting or action by consent or authorization for which the registrant is soliciting or intends to solicit or to communicate with security holders with respect to a solicitation commenced by the registrant; and

(ii) The security holder will not disclose such information to any person other than a beneficial owner for whom the request was made and an employee or agent to the extent necessary to effectuate the communication or solicitation.

(d) The security holder shall not use the information furnished by the registrant pursuant to paragraph (a)(2)(ii) of this section for any purpose other than to solicit security holders with respect to the same meeting or action by consent or authorization for which the registrant is soliciting or intends to solicit or to communicate with security holders with respect to a solicitation commenced by the registrant; or disclose such information to any person other than an employee, agent, or beneficial owner for whom a request was made to the extent necessary to effectuate the communication or solicitation. The security holder shall return the information provided pursuant to paragraph (a)(2)(ii) of this section and shall not retain any copies thereof or of any information derived from such information after the termination of the solicitation.

(e) The security holder shall reimburse the reasonable expenses incurred by the registrant in performing the acts requested pursuant to paragraph (a) of this section.

Note 1 to §240.14A-7. Reasonably prompt methods of distribution to security holders may be used instead of mailing. If an alternative distribution method is chosen, the costs of that method should be considered where necessary rather than the costs of mailing.

Note 2 to §240.14A-7 When providing the information required by §240.14A-7(a)(1)(ii), if the registrant has received affirmative written or implied consent to delivery of a single copy of proxy materials to a shared address in accordance with §240.14A-3(e)(1), it shall exclude from the number of record holders those to whom it does not have to deliver a separate proxy statement.


Need assistance?
§240.14a-8 Shareholder proposals.

This section addresses when a company must include a shareholder’s proposal in its proxy statement and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company’s proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured this section in a question-and-answer format so that it is easier to understand. The references to “you” are to a shareholder seeking to submit the proposal.

(a) Question 1: What is a proposal? A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company’s shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company’s proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word “proposal” as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).

(b) Question 2: Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible? (1) In order to be eligible to submit a proposal, you must have continuously held at least $2,000 in market value, or 1%, of the company’s securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal. You must continue to hold those securities through the date of the meeting.

(2) If you are the registered holder of your securities, which means that your name appears in the company’s records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the securities through the date of the meeting of shareholders. However, if like many shareholders you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

(i) The first way is to submit to the company a written statement from the “record” holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held the securities for at least one year. You must also include your own written statement that you intend to continue to hold the securities through the date of the meeting of shareholders; or

(ii) The second way to prove ownership applies only if you have filed a Schedule 13D (§240.13d-101), Schedule 13G (§240.13d-102), Form 3 (§249.103 of this chapter), Form 4 (§249.104 of this chapter) and/or Form 5 (§249.105 of this chapter), or amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins. If you have filed one of these documents with the SEC, you may demonstrate your eligibility by submitting to the company:

(A) A copy of the schedule and/or form, and any subsequent amendments reporting a change in your ownership level;

(B) Your written statement that you continuously held the required number of shares for the one-year period as of the date of the statement; and

(C) Your written statement that you intend to continue ownership of the shares through the date of the company’s annual or special meeting.

(c) Question 3: How many proposals may I submit? Each shareholder may submit no more than one proposal to a company for a particular shareholders’ meeting.

(d) Question 4: How long can my proposal be? The proposal, including any accompanying supporting statement, may not exceed 500 words.

(e) Question 5: What is the deadline for submitting a proposal? (1) If you are submitting your proposal for the company’s annual meeting, you can in most cases find the deadline in last year’s proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year’s meeting, you can usually find the deadline in one of the company’s quarterly reports on Form 10-Q (§249.308a of this chapter), or in
shareholder reports of investment companies under §270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

(2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.

(3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.

(f) Question 6: What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section? (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under §240.14a-8 and provide you with a copy under Question 10 below, §240.14a-8(j).

(2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.

(g) Question 7: Who has the burden of persuading the Commission or its staff that my proposal can be excluded? Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.

(h) Question 8: Must I appear personally at the shareholders' meeting to present the proposal? (1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

(2) If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.

(3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.

(i) Question 9: If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal? (1) Improper under state law: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

NOTE TO PARAGRAPH (j)(1): Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

(2) Violation of law: If the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject;

NOTE TO PARAGRAPH (j)(2): We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law would result in a violation of any state or federal law.

(3) Violation of proxy rules: If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including §240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;

(4) Personal grievance; special interest: If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;

(5) Relevance: If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;

(6) Absence of power/authority: If the company would lack the power or authority to implement the proposal;

(7) Management functions: If the proposal deals with a matter relating to the company's ordinary business operations;
(8) **Director elections:** If the proposal:

(i) Would disqualified a nominee who is standing for election;

(ii) Would remove a director from office before his or her term expired;

(iii) Questions the competence, business judgment, or character of one or more nominees or directors;

(iv) Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or

(v) Otherwise could affect the outcome of the upcoming election of directors.

(9) **Conflicts with company's proposal:** If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;

**Note to Paragraph (i)(9):** A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

(10) **Substantially implemented:** If the company has already substantially implemented the proposal;

**Note to Paragraph (ii)(10):** A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S-K (§229.402 of this chapter) or any successor to Item 402 (a "say-on-pay vote") or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by §240.14a-21(b) of this chapter a single year (i.e., one, two, or three years) received approval of a majority of the votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by §240.14a-21(b) of this chapter.

(11) **Duplication:** If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;

(12) **Resubmissions:** If the proposal deals with substantially the same subject matter as another proposal or proposals that has or have been previously included in the company's proxy materials within the preceding 5 calendar years, a company may exclude it from its proxy materials for any meeting held within 3 calendar years of the last time it was included if the proposal received:

(i) Less than 3% of the vote if proposed once within the preceding 5 calendar years;

(ii) Less than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years; or

(iii) Less than 10% of the vote on its last submission to shareholders if proposed three times or more previously within the preceding 5 calendar years; and

(13) **Specific amount of dividends:** If the proposal relates to specific amounts of cash or stock dividends.

(i) **Question 10:** What procedures must the company follow if it intends to exclude my proposal? (1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

(2) The company must file six paper copies of the following:

(i) The proposal;

(ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and

(iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

(k) **Question 11:** May I submit my own statement to the Commission responding to the company's arguments?

Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

(l) **Question 12:** If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?

(1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.
(2) The company is not responsible for the contents of your proposal or supporting statement.

(m) Question 13: What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?

(1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal’s supporting statement.

(2) However, if you believe that the company’s opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, §240.14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company’s statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company’s claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

(3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:

(i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or

(ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under §240.14a-6.


Need assistance?
§240.14a-9 False or misleading statements.

(a) No solicitation subject to this regulation shall be made by means of any proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading.

(b) The fact that a proxy statement, form of proxy or other soliciting material has been filed with or examined by the Commission shall not be deemed a finding by the Commission that such material is accurate or complete or not false or misleading, or that the Commission has passed upon the merits of or approved any statement contained therein or any matter to be acted upon by security holders. No representation contrary to the foregoing shall be made.

(c) No nominee, nominating shareholder or nominating shareholder group, or any member thereof, shall cause to be included in a registrant's proxy materials, either pursuant to the Federal proxy rules, an applicable state or foreign law provision, or a registrant's governing documents as they relate to including shareholder nominees for director in a registrant's proxy materials, include in a notice on Schedule 14N (§240.14n-101), or include in any other related communication, any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to a solicitation for the same meeting or subject matter which has become false or misleading.

NOTE: The following are some examples of what, depending upon particular facts and circumstances, may be misleading within the meaning of this section.

a. Predictions as to specific future market values.

b. Material which directly or indirectly impugns character, integrity or personal reputation, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation.

c. Failure to so identify a proxy statement, form of proxy and other soliciting material as to clearly distinguish it from the soliciting material of any other person or persons soliciting for the same meeting or subject matter.

d. Claims made prior to a meeting regarding the results of a solicitation.

§240.14a-10  Prohibition of certain solicitations.

No person making a solicitation which is subject to §§240.14a-1 to 240.14a-10 shall solicit:

(a) Any undated or postdated proxy; or

(b) Any proxy which provides that it shall be deemed to be dated as of any date subsequent to the date on which it is signed by the security holder.

[17 FR 11434, Dec. 18, 1952]
§240.14a-12 Solicitation before furnishing a proxy statement.

(a) Notwithstanding the provisions of §240.14a-3(a), a solicitation may be made before furnishing security holders with a proxy statement meeting the requirements of §240.14a-3(a) if:

(1) Each written communication includes:

(i) The identity of the participants in the solicitation (as defined in Instruction 3 to Item 4 of Schedule 14A (§240.14a-101)) and a description of their direct or indirect interests, by security holdings or otherwise, or a prominent legend in clear, plain language advising security holders where they can obtain that information; and

(ii) A prominent legend in clear, plain language advising security holders to read the proxy statement when it is available because it contains important information. The legend also must explain to investors that they can get the proxy statement, and any other relevant documents, for free at the Commission’s web site and describe which documents are available free from the participants; and

(2) A definitive proxy statement meeting the requirements of §240.14a-3(a) is sent or given to security holders solicited in reliance on this section before or at the same time as the forms of proxy, consent or authorization are furnished to or requested from security holders.

(b) Any soliciting material published, sent or given to security holders in accordance with paragraph (a) of this section must be filed with the Commission no later than the date the material is first published, sent or given to security holders. Three copies of the material must at the same time be filed with, or mailed for filing to, each national securities exchange upon which any class of securities of the registrant is listed and registered. The soliciting material must include a cover page in the form set forth in Schedule 14A (§240.14a-101) and the appropriate box on the cover page must be marked. Soliciting material in connection with a registered offering is required to be filed only under §230.424 or §230.425 of this chapter, and will be deemed filed under this section.

(c) Solicitations by any person or group of persons for the purpose of opposing a solicitation subject to this regulation by any other person or group of persons with respect to the election or removal of directors at any annual or special meeting of security holders also are subject to the following provisions:

(1) Application of this rule to annual report to security holders. Notwithstanding the provisions of §240.14a-3 (b) and (c), any portion of the annual report to security holders referred to in §240.14a-3(b) that comments upon or refers to any solicitation subject to this rule, or to any participant in the solicitation, other than the solicitation by the management, must be filed with the Commission as proxy material subject to this regulation. This must be filed in electronic format unless an exemption is available under Rules 201 or 202 of Regulation S-T (§232.201 or §232.202 of this chapter).

(2) Use of reprints or reproductions. In any solicitation subject to this §240.14a-12(c), soliciting material that includes, in whole or part, any reprints or reproductions of any previously published material must:

(i) State the name of the author and publication, the date of prior publication, and identify any person who is quoted without being named in the previously published material.

(ii) Except in the case of a public or official document or statement, state whether or not the consent of the author and publication has been obtained to the use of the previously published material as proxy soliciting material.

(iii) If any participant using the previously published material, or anyone on his or her behalf, paid, directly or indirectly, for the preparation or prior publication of the previously published material, or has made or proposed to make any payments or give any other consideration in connection with the publication or republication of the material, state the circumstances.

INSTRUCTION 1 TO §240.14a-12. If paper filing is permitted, file eight copies of the soliciting material with the Commission, except that only three copies of the material specified by §240.14a-12(c)(1) need be filed.

INSTRUCTION 2 TO §240.14a-12. Any communications made under this section after the definitive proxy statement is on file but before it is disseminated also must specify that the proxy statement is publicly available and the anticipated date of dissemination.

INSTRUCTION 3 TO §240.14a-12. Inclusion of a nominee pursuant to §240.14a-11, an applicable state or foreign law provision, or a registrant’s governing documents as they relate to the inclusion of shareholder director nominees in the registrant’s proxy materials, or
solicitations by a nominating shareholder or nominating shareholder group that are made in connection with that nomination constitute
solicitations in opposition subject to §240.14a-12(c), except for purposes of §240.14a-6(a).


Need assistance?
§240.14a-13 Obligation of registrants in communicating with beneficial owners.

(a) If the registrant knows that securities of any class entitled to vote at a meeting (or by written consents or authorizations if no meeting is held) with respect to which the registrant intends to solicit proxies, consents or authorizations are held of record by a broker, dealer, voting trustee, bank, association, or other entity that exercises fiduciary powers in nominee name or otherwise, the registrant shall:

1. By first class mail or other equally prompt means:
   
   (i) Inquire of each such record holder:

   (A) Whether other persons are the beneficial owners of such securities and if so, the number of copies of the proxy and other soliciting material necessary to supply such material to such beneficial owners;

   (B) In the case of an annual (or special meeting in lieu of the annual) meeting, or written consents in lieu of such meeting, at which directors are to be elected, the number of copies of the annual report to security holders necessary to supply such report to beneficial owners to whom such reports are to be distributed by such record holder or its nominee and not by the registrant;

   (C) If the record holder has an obligation under §240.14b-1(b)(3) or §240.14b-2(b)(4)(ii) and (iii), whether an agent has been designated to act on its behalf in fulfilling such obligation and, if so, the name and address of such agent; and

   (D) Whether it holds the registrant’s securities on behalf of any respondent bank and, if so, the name and address of each such respondent bank;

   (ii) Indicate to each such record holder:

   (A) Whether the registrant, pursuant to paragraph (c) of this section, intends to distribute the annual report to security holders to beneficial owners of its securities whose names, addresses and securities positions are disclosed pursuant to §240.14b-1(b)(3) or §240.14b-2(b)(4)(ii) and (iii);

   (B) The record date; and

   (C) At the option of the registrant, any employee benefit plan established by an affiliate of the registrant that holds securities of the registrant that the registrant elects to treat as exempt employee benefit plan securities;

2. Upon receipt of a record holder’s or respondent bank’s response indicating, pursuant to §240.14b-2(b)(1)(i), the names and addresses of its respondent banks, within one business day after the date such response is received, make an inquiry of and give notification to each such respondent bank in the same manner required by paragraph (a)(1) of this section; Provided, however, the inquiry required by paragraphs (a)(1) and (a)(2) of this section shall not cover beneficial owners of exempt employee benefit plan securities;

3. Make the inquiry required by paragraph (a)(1) of this section at least 20 business days prior to the record date of the meeting of security holders, or

   (i) If such inquiry is impracticable 20 business days prior to the record date of a special meeting, as many days before the record date of such meeting as is practicable or,

   (ii) If consents or authorizations are solicited, and such inquiry is impracticable 20 business days before the earliest date on which they may be used to effect corporate action, as many days before that date as is practicable, or

   (iii) At such later time as the rules of a national securities exchange on which the class of securities in question is listed may permit for good cause shown; Provided, however, That if a record holder or respondent bank has informed the registrant that a designated office(s) or department(s) is to receive such inquiries, the inquiry shall be made to such designated office(s) or department(s); and

4. Supply, in a timely manner, each record holder and respondent bank of whom the inquiries required by paragraphs (a) (1) and (a)(2) of this section are made with copies of the proxy, other proxy soliciting material, and/or the annual report to security holders, in such quantities, assembled in such form and at such place(s), as the record holder or respondent bank may...
reasonably request in order to send such material to each beneficial owner of securities who is to be furnished with such material by the record holder or respondent bank; and

(5) Upon the request of any record holder or respondent bank that is supplied with proxy soliciting material and/or annual reports to security holders pursuant to paragraph (a)(4) of this section, pay its reasonable expenses for completing the sending of such material to beneficial owners.

NOTE 1: If the registrant's list of security holders indicates that some of its securities are registered in the name of a clearing agency registered pursuant to Section 17A of the Act (e.g., "Cede & Co.", nominee for the Depository Trust Company), the registrant shall make appropriate inquiry of the clearing agency and thereafter of the participants in such clearing agency who may hold on behalf of a beneficial owner or respondent bank, and comply with the above paragraph with respect to any such participant (see §240.14a-1(i)).

NOTE 2: The attention of registrants is called to the fact that each broker, dealer, bank, association, and other entity that exercises fiduciary powers has an obligation pursuant to §240.14b-1 and §240.14b-2 (except as provided therein with respect to exempt employee benefit plan securities held in nominee name) and, with respect to brokers and dealers, applicable self-regulatory organization requirements to obtain and forward, within the time periods prescribed therein, (a) proxies (or in lieu thereof requests for voting instructions) and proxy soliciting materials to beneficial owners on whose behalf it holds securities, and (b) annual reports to security holders to beneficial owners on whose behalf it holds securities, unless the registrant has notified the record holder or respondent bank that it has assumed responsibility to send such material to beneficial owners whose names, addresses, and securities positions are disclosed pursuant to §240.14b-1(b)(3) and §240.14b-2(b)(4)(ii) and (iii).

NOTE 3: The attention of registrants is called to the fact that registrants have an obligation, pursuant to paragraph (d) of this section, to cause proxies (or in lieu thereof requests for voting instructions), proxy soliciting material and annual reports to security holders to be furnished, in a timely manner, to beneficial owners of exempt employee benefit plan securities.

(b) Any registrant requesting pursuant to §240.14b-1(b)(3) or §240.14b-2(b)(4)(ii) and (iii) a list of names, addresses and securities positions of beneficial owners of its securities who either have consented or have not objected to disclosure of such information shall:

(1) By first class mail or other equally prompt means, inquire of each record holder and each respondent bank identified to the registrant pursuant to §240.14b-2(b)(4)(i) whether such record holder or respondent bank holds the registrant's securities on behalf of any respondent banks and, if so, the name and address of each such respondent bank;

(2) Request such list to be compiled as of a date no earlier than five business days after the date the registrant's request is received by the record holder or respondent bank; Provided, however, That if the record holder or respondent bank has informed the registrant that a designated office(s) or department(s) is to receive such requests, the request shall be made to such designated office(s) or department(s);

(3) Make such request to the following persons that hold the registrant's securities on behalf of beneficial owners: all brokers, dealers, banks, associations and other entities that exercises fiduciary powers; Provided however, such request shall not cover beneficial owners of exempt employee benefit plan securities as defined in §240.14a-1(d)(1); and, at the option of the registrant, such request may give notice of any employee benefit plan established by an affiliate of the registrant that holds securities of the registrant that the registrant elects to treat as exempt employee benefit plan securities;

(4) Use the information furnished in response to such request exclusively for purposes of corporate communications; and

(5) Upon the request of any record holder or respondent bank to whom such request is made, pay the reasonable expenses, both direct and indirect, of providing beneficial owner information.

NOTE: A registrant will be deemed to have satisfied its obligations under paragraph (b) of this section by requesting consenting and non-objecting beneficial owner lists from a designated agent acting on behalf of the record holder or respondent bank and paying to that designated agent the reasonable expenses of providing the beneficial owner information.

(c) A registrant, at its option, may send its annual report to security holders to the beneficial owners whose identifying information is provided by record holders and respondent banks, pursuant to §240.14b-1(b)(3) or §240.14b-2(b)(4)(ii) and (iii), provided that such registrant notifies the record holders and respondent banks, at the time it makes the inquiry required by paragraph (a) of this section, that the registrant will send the annual report to security holders to the beneficial owners so identified.

(d) If a registrant solicits proxies, consents or authorizations from record holders and respondent banks who hold securities on behalf of beneficial owners, the registrant shall cause proxies (or in lieu thereof requests or voting instructions), proxy soliciting material and annual reports to security holders to be furnished, in a timely manner, to beneficial owners of exempt employee benefit plan securities.


Need assistance?
§240.14a-16 Internet availability of proxy materials.

Link to an amendment published at 83 FR 29204, June 22, 2018.

(a)(1) A registrant shall furnish a proxy statement pursuant to §240.14a-3(a), or an annual report to security holders pursuant to §240.14a-3(b), to a security holder by sending the security holder a Notice of Internet Availability of Proxy Materials, as described in this section, 40 calendar days or more prior to the security holder meeting date, or if no meeting is to be held, 40 calendar days or more prior to the date the votes, consents or authorizations may be used to effect the corporate action, and complying with all other requirements of this section.

(2) Unless the registrant chooses to follow the full set delivery option set forth in paragraph (n) of this section, it must provide the record holder or respondent bank with all information listed in paragraph (d) of this section in sufficient time for the record holder or respondent bank to prepare, print and send a Notice of Internet Availability of Proxy Materials to beneficial owners at least 40 calendar days before the meeting date.

(b)(1) All materials identified in the Notice of Internet Availability of Proxy Materials must be publicly accessible, free of charge, at the Web site address specified in the notice or before the time that the notice is sent to the security holder and such materials must remain available on that Web site through the conclusion of the meeting of security holders.

(2) All additional soliciting materials sent to security holders or made public after the Notice of Internet Availability of Proxy Materials has been sent must be made publicly accessible at the specified Web site address no later than the day on which such materials are first sent to security holders or made public.

(3) The Web site address relied upon for compliance under this section may not be the address of the Commission's electronic filing system.

(4) The registrant must provide security holders with a means to execute a proxy as of the time the Notice of Internet Availability of Proxy Materials is first sent to security holders.

(c) The materials must be presented on the Web site in a format, or formats, convenient for both reading online and printing on paper.

(d) The Notice of Internet Availability of Proxy Materials must contain the following:

(1) A prominent legend in bold-face type that states "Important Notice Regarding the Availability of Proxy Materials for the Shareholder Meeting To Be Held on [insert meeting date];"

(2) An indication that the communication is not a form for voting and presents only an overview of the more complete proxy materials, which contain important information and are available on the Internet or by mail, and encouraging a security holder to access and review the proxy materials before voting;

(3) The Internet Web site address where the proxy materials are available;

(4) Instructions regarding how a security holder may request a paper or e-mail copy of the proxy materials at no charge, including the date by which they should make the request to facilitate timely delivery, and an indication that they will not otherwise receive a paper or e-mail copy;

(5) The date, time, and location of the meeting, or if corporate action is to be taken by written consent, the earliest date on which the corporate action may be effected;

(6) A clear and impartial identification of each separate matter intended to be acted on and the soliciting person's recommendations, if any, regarding those matters, but no supporting statements;

(7) A list of the materials being made available at the specified Web site;

(8) A toll-free telephone number, an e-mail address, and an Internet Web site where the security holder can request a copy of the proxy statement, annual report to security holders, and form of proxy, relating to all of the registrant's future security holder meetings and for the particular meeting to which the proxy materials being furnished relate;

(9) Any control/identification numbers that the security holder needs to access his or her form of proxy;
(10) Instructions on how to access the form of proxy, provided that such instructions do not enable a security holder to execute a proxy without having access to the proxy statement and, if required by §240.14a-3(b), the annual report to security holders; and

(11) Information on how to obtain directions to be able to attend the meeting and vote in person.

(e)(1) The Notice of Internet Availability of Proxy Materials may not be incorporated into, or combined with, another document, except that it may be incorporated into, or combined with, a notice of security holder meeting required under state law, unless state law prohibits such incorporation or combination.

(2) The Notice of Internet Availability of Proxy Materials may contain only the information required by paragraph (d) of this section and any additional information required to be included in a notice of security holders meeting under state law; provided that:

(i) The registrant must revise the information on the Notice of Internet Availability of Proxy Materials, including any title to the document, to reflect the fact that:

(A) The registrant is conducting a consent solicitation rather than a proxy solicitation; or

(B) The registrant is not soliciting proxy or consent authority, but is furnishing an information statement pursuant to §240.14c-2; and

(ii) The registrant may include a statement on the Notice to educate security holders that no personal information other than the identification or control number is necessary to execute a proxy.

(f)(1) Except as provided in paragraph (h) of this section, the Notice of Internet Availability of Proxy Materials must be sent separately from other types of security holder communications and may not accompany any other document or materials, including the form of proxy.

(2) Notwithstanding paragraph (f)(1) of this section, the registrant may accompany the Notice of Internet Availability of Proxy Materials with:

(i) A pre-addressed, postage-paid reply card for requesting a copy of the proxy materials;

(ii) A copy of any notice of security holder meeting required under state law if that notice is not combined with the Notice of Internet Availability of Proxy Materials;

(iii) In the case of an investment company registered under the Investment Company Act of 1940, the company’s prospectus, a summary prospectus that satisfies the requirements of §230.498(b) of this chapter, or a report that is required to be transmitted to stockholders by section 30(e) of the Investment Company Act (15 U.S.C. 80a-29(e)) and the rules thereunder; and

(iv) An explanation of the reasons for a registrant’s use of the rules detailed in this section and the process of receiving and reviewing the proxy materials and voting as detailed in this section.

(g) Plain English: (1) To enhance the readability of the Notice of Internet Availability of Proxy Materials, the registrant must use plain English principles in the organization, language, and design of the notice.

(2) The registrant must draft the language in the Notice of Internet Availability of Proxy Materials so that, at a minimum, it substantially complies with each of the following plain English writing principles:

(i) Short sentences;

(ii) Definite, concrete, everyday words;

(iii) Active voice;

(iv) Tabular presentation or bullet lists for complex material, whenever possible;

(v) No legal jargon or highly technical business terms; and

(vi) No multiple negatives.

(3) In designing the Notice of Internet Availability of Proxy Materials, the registrant may include pictures, logos, or similar design elements so long as the design is not misleading and the required information is clear.

(h) The registrant may send a form of proxy to security holders if:

(1) At least 10 calendar days or more have passed since the date it first sent the Notice of Internet Availability of Proxy Materials to security holders and the form of proxy is accompanied by a copy of the Notice of Internet Availability of Proxy Materials; or
(2) The form of proxy is accompanied or preceded by a copy, via the same medium, of the proxy statement and any annual report to security holders that is required by §240.14a-3(b).

(i) The registrant must file a form of the Notice of Internet Availability of Proxy Materials with the Commission pursuant to §240.14a-6(b) no later than the date that the registrant first sends the notice to security holders.

(j) **Obligation to provide copies.** (1) The registrant must send, at no cost to the record holder or respondent bank and by U.S. first class mail or other reasonably prompt means, a paper copy of the proxy statement, information statement, annual report to security holders, and form of proxy (to the extent each of those documents is applicable) to any record holder or respondent bank requesting such a copy within three business days after receiving a request for a paper copy.

(2) The registrant must send, at no cost to the record holder or respondent bank and via e-mail, an electronic copy of the proxy statement, information statement, annual report to security holders, and form of proxy (to the extent each of those documents is applicable) to any record holder or respondent bank requesting such a copy within three business days after receiving a request for an electronic copy via e-mail.

(3) The registrant must provide copies of the proxy materials for one year after the conclusion of the meeting or corporate action to which the proxy materials relate, provided that, if the registrant receives the request after the conclusion of the meeting or corporate action to which the proxy materials relate, the registrant need not send copies via First Class mail and need not respond to such request within three business days.

(4) The registrant must maintain records of security holder requests to receive materials in paper or via e-mail for future solicitations and must continue to provide copies of the materials to a security holder who has made such a request until the security holder revokes such request.

(k) **Security holder information.** (1) A registrant or its agent shall maintain the Internet Web site on which it posts its proxy materials in a manner that does not infringe on the anonymity of a person accessing such Web site.

(2) The registrant and its agents shall not use any e-mail address obtained from a security holder solely for the purpose of requesting a copy of proxy materials pursuant to paragraph (j) of this section for any purpose other than to send a copy of those materials to that security holder. The registrant shall not disclose such information to any person other than an employee or agent to the extent necessary to send a copy of the proxy materials pursuant to paragraph (j) of this section.

(i) A person other than the registrant may solicit proxies pursuant to the conditions imposed on registrants by this section, provided that:

(1) A soliciting person other than the registrant is required to provide copies of its proxy materials only to security holders to whom it has sent a Notice of Internet Availability of Proxy Materials; and

(2) A soliciting person other than the registrant must send its Notice of Internet Availability of Proxy Materials by the later of:

(i) 40 Calendar days prior to the security holder meeting date or, if no meeting is to be held, 40 calendar days prior to the date the votes, consents, or authorizations may be used to effect the corporate action; or

(ii) The date on which it files its definitive proxy statement with the Commission, provided its preliminary proxy statement is filed no later than 10 calendar days after the date that the registrant files its definitive proxy statement.

(3) **Content of the soliciting person’s Notice of Internet Availability of Proxy Materials.** (i) If, at the time a soliciting person other than the registrant sends its Notice of Internet Availability of Proxy Materials, the soliciting person is not aware of all matters on the registrant’s agenda for the meeting of security holders, the soliciting person’s Notice on Internet Availability of Proxy Materials must provide a clear and impartial identification of each separate matter on the agenda to the extent known by the soliciting person at that time. The soliciting person’s notice also must include a clear statement indicating that there may be additional agenda items of which the soliciting person is not aware and that the security holder cannot direct a vote for those items on the soliciting person’s proxy card provided at that time.

(ii) If a soliciting person other than the registrant sends a form of proxy not containing all matters intended to be acted upon, the Notice of Internet Availability of Proxy Materials must clearly state whether execution of the form of proxy will invalidate a security holder’s prior vote on matters not presented on the form of proxy.

(m) This section shall not apply to a proxy solicitation in connection with a business combination transaction, as defined in §230.165 of this chapter, as well as transactions for cash consideration requiring disclosure under Item 14 of §240.14a-101.

(n) **Full Set Delivery Option.** (1) For purposes of this paragraph (n), the term full set of proxy materials shall include all of the following documents:

(i) A copy of the proxy statement;

(ii) A copy of the annual report to security holders if required by §240.14a-3(b); and

(iii) A form of proxy.

(2) Notwithstanding paragraphs (e) and (f)(2) of this section, a registrant or other soliciting person may:
(i) Accompany the Notice of Internet Availability of Proxy Materials with a full set of proxy materials; or

(ii) Send a full set of proxy materials without a Notice of Internet Availability of Proxy Materials if all of the information required in a Notice of Internet Availability of Proxy Materials pursuant to paragraphs (d) and (n)(4) of this section is incorporated in the proxy statement and the form of proxy.

(3) A registrant or other soliciting person that sends a full set of proxy materials to a security holder pursuant to this paragraph (n) need not comply with

(i) The timing provisions of paragraphs (a) and (l)(2) of this section; and

(ii) The obligation to provide copies pursuant to paragraph (j) of this section.

(4) A registrant or other soliciting person that sends a full set of proxy materials to a security holder pursuant to this paragraph (n) need not include in its Notice of Internet Availability of Proxy Materials, proxy statement, or form of proxy the following disclosures:

(i) Instructions regarding the nature of the communication pursuant to paragraph (d)(2) of this section;

(ii) Instructions on how to request a copy of the proxy materials; and

(iii) Instructions on how to access the form of proxy pursuant to paragraph (d)(10) of this section.

§240.14a-17  Electronic shareholder forums.

(a) A shareholder, registrant, or third party acting on behalf of a shareholder or registrant may establish, maintain, or operate an electronic shareholder forum to facilitate interaction among the registrant's shareholders and between the registrant and its shareholders as the shareholder or registrant deems appropriate. Subject to paragraphs (b) and (c) of this section, the forum must comply with the federal securities laws, including Section 14(a) of the Act and its associated regulations, other applicable federal laws, applicable state laws, and the registrant's governing documents.

(b) No shareholder, registrant, or third party acting on behalf of a shareholder or registrant, by reason of establishing, maintaining, or operating an electronic shareholder forum, will be liable under the federal securities laws for any statement or information provided by another person to the electronic shareholder forum. Nothing in this section prevents or alters the application of the federal securities laws, including the provisions for liability for fraud, deception, or manipulation, or other applicable federal and state laws to the person or persons that provide a statement or information to an electronic shareholder forum.

(c) Reliance on the exemption in §240.14a-2(b)(6) to participate in an electronic shareholder forum does not eliminate a person's eligibility to solicit proxies after the date that the exemption in §240.14a-2(b)(6) is no longer available, or is no longer being relied upon, provided that any such solicitation is conducted in accordance with this regulation.

[73 FR 4458, Jan. 25, 2008]
§240.14a-18 Disclosure regarding nominating shareholders and nominees submitted for inclusion in a registrant's proxy materials pursuant to applicable state or foreign law, or a registrant's governing documents.

To have a nominee included in a registrant's proxy materials pursuant to a procedure set forth under applicable state or foreign law, or the registrant's governing documents addressing the inclusion of shareholder director nominees in the registrant's proxy materials, the nominating shareholder or nominating shareholder group must provide notice to the registrant of its intent to do so on a Schedule 14N (§240.14n-101) and file that notice, including the required disclosure, with the Commission on the date first transmitted to the registrant. This notice shall be postmarked or transmitted electronically to the registrant by the date specified by the registrant's advance notice provision or, where no such provision is in place, no later than 120 calendar days before the anniversary of the date that the registrant mailed its proxy materials for the prior year's annual meeting, except that, if the registrant did not hold an annual meeting during the prior year, or if the date of the meeting has changed by more than 30 calendar days from the prior year, then the nominating shareholder or nominating shareholder group must provide notice a reasonable time before the registrant mails its proxy materials, as specified by the registrant in a Form 8-K (§249.308 of this chapter) filed pursuant to Item 5.08 of Form 8-K.

INSTRUCTION TO §240.14a-18. The registrant is not responsible for any information provided in the Schedule 14N (§240.14n-101) by the nominating shareholder or nominating shareholder group, which is submitted as required by this section or otherwise provided by the nominating shareholder or nominating shareholder group that is included in the registrant's proxy materials.

[75 FR 56787, Sept. 16, 2010]
§ 102 Contents of certificate of incorporation [Effective until Aug. 1, 2019]

(a) The certificate of incorporation shall set forth:

(1) The name of the corporation, which (i) shall contain 1 of the words "association," "company," "corporation," "club," "foundation," "fund," "incorporated," "institute," "society," "union," "syndicate," or "limited," (or abbreviations thereof, with or without punctuation), or words (or abbreviations thereof, with or without punctuation) of like import of foreign countries or jurisdictions (provided they are written in roman characters or letters); provided, however, that the Division of Corporations in the Department of State may waive such requirement (unless it determines that such name is, or might otherwise appear to be, that of a natural person) if such corporation executes, acknowledges and files with the Secretary of State in accordance with § 103 of this title a certificate stating that its total assets, as defined in § 503(i) of this title, are not less than $10,000,000, or, in the sole discretion of the Division of Corporations in the Department of State, if the corporation is both a nonprofit nonstock corporation and an association of professionals, (ii) shall be such as to distinguish it upon the records in the office of the Division of Corporations in the Department of State from the names that are reserved on such records and from the names on such records of each other corporation, partnership, limited partnership, limited liability company or statutory trust organized or registered as a domestic or foreign corporation, partnership, limited partnership, limited liability company or statutory trust under the laws of this State, except with the written consent of the person who has reserved such name or such other foreign corporation or domestic or foreign partnership, limited partnership, limited liability company or statutory trust, executed, acknowledged and filed with the Secretary of State in accordance with § 103 of this title, or except that, without prejudicing any rights of the person who has reserved
such name or such other foreign corporation or domestic or foreign partnership, limited partnership, limited liability company or statutory trust, the Division of Corporations in the Department of State may waive such requirement if the corporation demonstrates to the satisfaction of the Secretary of State that the corporation or a predecessor entity previously has made substantial use of such name or a substantially similar name, that the corporation has made reasonable efforts to secure such written consent, and that such waiver is in the interest of the State, (iii) except as permitted by § 395 of this title, shall not contain the word "trust," and (iv) shall not contain the word "bank," or any variation thereof, except for the name of a bank reporting to and under the supervision of the State Bank Commissioner of this State or a subsidiary of a bank or savings association (as those terms are defined in the Federal Deposit Insurance Act, as amended, at 12 U.S.C. § 1813), or a corporation regulated under the Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1841 et seq., or the Home Owners' Loan Act, as amended, 12 U.S.C. § 1461 et seq.; provided, however, that this section shall not be construed to prevent the use of the word "bank," or any variation thereof, in a context clearly not purporting to refer to a banking business or otherwise likely to mislead the public about the nature of the business of the corporation or to lead to a pattern and practice of abuse that might cause harm to the interests of the public or the State as determined by the Division of Corporations in the Department of State;

(2) The address (which shall be stated in accordance with § 131(c) of this title) of the corporation's registered office in this State, and the name of its registered agent at such address;

(3) The nature of the business or purposes to be conducted or promoted. It shall be sufficient to state, either alone or with other businesses or purposes, that the purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware, and by such statement all lawful acts and activities shall be within the purposes of the corporation, except for express limitations, if any;

(4) If the corporation is to be authorized to issue only 1 class of stock, the total number of shares of stock which the corporation shall have authority to issue and the par value of each of such shares, or a statement that all such shares are to be without par value. If the corporation is to be authorized to issue more than 1 class of stock, the certificate of incorporation shall set forth the total number of shares of all classes of stock which the corporation shall have authority to issue and the number of shares of each class and shall specify each class the shares of which are to be without par value and each class the shares of which are to have par value and the par value of the shares of each such class. The certificate of incorporation shall also set forth a statement of the designations and the powers, preferences and rights, and the qualifications, limitations or restrictions thereof, which are permitted by § 151 of this title in respect of any class or classes of stock or any series of any class of stock of the corporation and the fixing of which by the certificate of
incorporation is desired, and an express grant of such authority as it may then be desired to
grant to the board of directors to fix by resolution or resolutions any thereof that may be
desired but which shall not be fixed by the certificate of incorporation. The foregoing
provisions of this paragraph shall not apply to nonstock corporations. In the case of nonstock
corporations, the fact that they are not authorized to issue capital stock shall be stated in the
certificate of incorporation. The conditions of membership, or other criteria for identifying
members, of nonstock corporations shall likewise be stated in the certificate of incorporation
or the bylaws. Nonstock corporations shall have members, but failure to have members shall
not affect otherwise valid corporate acts or work a forfeiture or dissolution of the corporation.
Nonstock corporations may provide for classes or groups of members having relative rights,
powers and duties, and may make provision for the future creation of additional classes or
groups of members having such relative rights, powers and duties as may from time to time
be established, including rights, powers and duties senior to existing classes and groups of
members. Except as otherwise provided in this chapter, nonstock corporations may also
provide that any member or class or group of members shall have full, limited, or no voting
rights or powers, including that any member or class or group of members shall have the
right to vote on a specified transaction even if that member or class or group of members
does not have the right to vote for the election of the members of the governing body of the
corporation. Voting by members of a nonstock corporation may be on a per capita, number,
financial interest, class, group, or any other basis set forth. The provisions referred to in the 3
preceding sentences may be set forth in the certificate of incorporation or the bylaws. If
neither the certificate of incorporation nor the bylaws of a nonstock corporation state the
conditions of membership, or other criteria for identifying members, the members of the
corporation shall be deemed to be those entitled to vote for the election of the members of
the governing body pursuant to the certificate of incorporation or bylaws of such corporation
otherwise until thereafter otherwise provided by the certificate of incorporation or the
bylaws;

(5) The name and mailing address of the incorporator or incorporators;

(6) If the powers of the incorporator or incorporators are to terminate upon the filing of the
certificate of incorporation, the names and mailing addresses of the persons who are to
serve as directors until the first annual meeting of stockholders or until their successors are
elected and qualify.

(b) In addition to the matters required to be set forth in the certificate of incorporation by
subsection (a) of this section, the certificate of incorporation may also contain any or all of the
following matters:

(1) Any provision for the management of the business and for the conduct of the affairs of
the corporation, and any provision creating, defining, limiting and regulating the powers of
the corporation, the directors, and the stockholders, or any class of the stockholders, or the
governing body, members, or any class or group of members of a nonstock corporation; if such provisions are not contrary to the laws of this State. Any provision which is required or permitted by any section of this chapter to be stated in the bylaws may instead be stated in the certificate of incorporation;

(2) \textit{omissis};

(3) Such provisions as may be desired granting to the holders of the stock of the corporation, or the holders of any class or series of a class thereof, the preemptive right to subscribe to any or all additional issues of stock of the corporation of any or all classes or series thereof, or to any securities of the corporation convertible into such stock. No stockholder shall have any preemptive right to subscribe to an additional issue of stock or to any security convertible into such stock unless, and except to the extent that, such right is expressly granted to such stockholder in the certificate of incorporation. All such rights in existence on July 3, 1967, shall remain in existence unaffected by this paragraph unless and until changed or terminated by appropriate action which expressly provides for the change or termination;

(4) Provisions requiring for any corporate action, the vote of a larger portion of the stock or of any class or series thereof, or of any other securities having voting power, or a larger number of the directors, than is required by this chapter;

(5) A provision limiting the duration of the corporation's existence to a specified date; otherwise, the corporation shall have perpetual existence;

(6) A provision imposing personal liability for the debts of the corporation on its stockholders to a specified extent and upon specified conditions; otherwise, the stockholders of a corporation shall not be personally liable for the payment of the corporation's debts except as they may be liable by reason of their own conduct or acts;

(7) A provision eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided that such provision shall not eliminate or limit the liability of a director: (i) For any breach of the director's duty of loyalty to the corporation or its stockholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (iii) under § 174 of this title; or (iv) for any transaction from which the director derived an improper personal benefit. No such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provision becomes effective. All references in this paragraph to a director shall also be deemed to refer to such other person or persons, if any, who, pursuant to a provision of the certificate of incorporation in accordance with § 141(a) of this title, exercise or perform any of the powers or duties otherwise conferred or imposed upon the board of directors by this title.
(c) It shall not be necessary to set forth in the certificate of incorporation any of the powers conferred on corporations by this chapter.

(d) Except for provisions included pursuant to paragraphs (a)(1), (a)(2), (a)(5), (a)(6), (b)(2), (b)(5), (b)(7) of this section, and provisions included pursuant to paragraph (a)(4) of this section specifying the classes, number of shares, and par value of shares a corporation other than a nonstock corporation is authorized to issue, any provision of the certificate of incorporation may be made dependent upon facts ascertainable outside such instrument, provided that the manner in which such facts shall operate upon the provision is clearly and explicitly set forth therein. The term “facts,” as used in this subsection, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

(e) (omissis).

(f) The certificate of incorporation may not contain any provision that would impose liability on a stockholder for the attorneys’ fees or expenses of the corporation or any other party in connection with an internal corporate claim, as defined in § 115 of this title.


§ 109 Bylaws.

(a) The original or other bylaws of a corporation may be adopted, amended or repealed by the incorporators, by the initial directors of a corporation other than a nonstock corporation or initial members of the governing body of a nonstock corporation if they were named in the certificate of incorporation, or, before a corporation other than a nonstock corporation has received any payment for any of its stock, by its board of directors. After a corporation other than a nonstock corporation has received any payment for any of its stock, the power to adopt, amend or repeal bylaws shall be in the stockholders entitled to vote. In the case of a nonstock corporation, the power to adopt, amend or repeal bylaws shall be in its members entitled to vote. Notwithstanding the foregoing, any corporation may, in its certificate of incorporation, confer the power to adopt, amend or repeal bylaws upon the directors or, in the case of a nonstock corporation, upon its governing body. The fact that such power has been so conferred upon the directors or governing body, as the case may be, shall not divest the stockholders or members of the power, nor limit their power to adopt, amend or repeal bylaws.
(b) The bylaws may contain any provision, not inconsistent with law or with the certificate of incorporation, relating to the business of the corporation, the conduct of its affairs, and its rights or powers or the rights or powers of its stockholders, directors, officers or employees. The bylaws may not contain any provision that would impose liability on a stockholder for the attorneys' fees or expenses of the corporation or any other party in connection with an internal corporate claim, as defined in § 115 of this title.

8 Del. C. 1953, § 109; 56 Del. Laws, c. 50; 59 Del. Laws, c. 437, § 1; 77 Del. Laws, c. 253, § 8; 80 Del. Laws, c. 40, § 3;

§ 112 Access to proxy solicitation materials.

The bylaws may provide that if the corporation solicits proxies with respect to an election of directors, it may be required, to the extent and subject to such procedures or conditions as may be provided in the bylaws, to include in its proxy solicitation materials (including any form of proxy it distributes), in addition to individuals nominated by the board of directors, 1 or more individuals nominated by a stockholder. Such procedures or conditions may include any of the following:

(1) A provision requiring a minimum record or beneficial ownership, or duration of ownership, of shares of the corporation's capital stock, by the nominating stockholder, and defining beneficial ownership to take into account options or other rights in respect of or related to such stock;

(2) A provision requiring the nominating stockholder to submit specified information concerning the stockholder and the stockholder's nominees, including information concerning ownership by such persons of shares of the corporation's capital stock, or options or other rights in respect of or related to such stock;

(3) A provision conditioning eligibility to require inclusion in the corporation's proxy solicitation materials upon the number or proportion of directors nominated by stockholders or whether the stockholder previously sought to require such inclusion;

(4) A provision precluding nominations by any person if such person, any nominee of such person, or any affiliate or associate of such person or nominee, has acquired or publicly proposed to acquire shares constituting a specified percentage of the voting power of the corporation's outstanding voting stock within a specified period before the election of directors;

(5) A provision requiring that the nominating stockholder undertake to indemnify the corporation in respect of any loss arising as a result of any false or misleading information or statement submitted by the nominating stockholder in connection with a nomination; and
(6) Any other lawful condition.

77 Del. Laws, c. 14, § 1;

§ 113 Proxy expense reimbursement.

(a) The bylaws may provide for the reimbursement by the corporation of expenses incurred by a stockholder in soliciting proxies in connection with an election of directors, subject to such procedures or conditions as the bylaws may prescribe, including:

(1) Conditioning eligibility for reimbursement upon the number or proportion of persons nominated by the stockholder seeking reimbursement or whether such stockholder previously sought reimbursement for similar expenses;

(2) Limitations on the amount of reimbursement based upon the proportion of votes cast in favor of 1 or more of the persons nominated by the stockholder seeking reimbursement, or upon the amount spent by the corporation in soliciting proxies in connection with the election;

(3) Limitations concerning elections of directors by cumulative voting pursuant to § 214 of this title; or

(4) Any other lawful condition.

(b) No bylaw so adopted shall apply to elections for which any record date precedes its adoption.

77 Del. Laws, c. 14, § 2;

(omissis)

Subchapter IV. Directors and Officers

§ 141 Board of directors; powers; number, qualifications, terms and quorum; committees; classes of directors; nonstock corporations; reliance upon books; action without meeting; removal.

(a) The business and affairs of every corporation organized under this chapter shall be managed by or under the direction of a board of directors, except as may be otherwise provided in this chapter or in its certificate of incorporation. If any such provision is made in the certificate of incorporation, the powers and duties conferred or imposed upon the board of directors by this
chapter shall be exercised or performed to such extent and by such person or persons as shall be provided in the certificate of incorporation.

(b) The board of directors of a corporation shall consist of 1 or more members, each of whom shall be a natural person. The number of directors shall be fixed by, or in the manner provided in, the bylaws, unless the certificate of incorporation fixes the number of directors, in which case a change in the number of directors shall be made only by amendment of the certificate. Directors need not be stockholders unless so required by the certificate of incorporation or the bylaws. The certificate of incorporation or bylaws may prescribe other qualifications for directors. Each director shall hold office until such director's successor is elected and qualified or until such director's earlier resignation or removal. Any director may resign at any time upon notice given in writing or by electronic transmission to the corporation. A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. A resignation which is conditioned upon the director failing to receive a specified vote for reelection as a director may provide that it is irrevocable. A majority of the total number of directors shall constitute a quorum for the transaction of business unless the certificate of incorporation or the bylaws require a greater number. Unless the certificate of incorporation provides otherwise, the bylaws may provide that a number less than a majority shall constitute a quorum which in no case shall be less than 1/3 of the total number of directors. The vote of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors unless the certificate of incorporation or the bylaws shall require a vote of a greater number.

(c)(1) All corporations incorporated prior to July 1, 1996, shall be governed by this paragraph (c)(1) of this section, provided that any such corporation may by a resolution adopted by a majority of the whole board elect to be governed by paragraph (c)(2) of this section, in which case this paragraph (c)(1) of this section shall not apply to such corporation. All corporations incorporated on or after July 1, 1996, shall be governed by paragraph (c)(2) of this section. The board of directors may, by resolution passed by a majority of the whole board, designate 1 or more committees, each committee to consist of 1 or more of the directors of the corporation. The board may designate 1 or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. The bylaws may provide that in the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not the member or members present constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the board of directors, or in the bylaws of the corporation, shall have and may exercise all the powers and authority of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to amending the certificate of incorporation (except that a committee may, to the extent authorized in the resolution or
resolutions providing for the issuance of shares of stock adopted by the board of directors as provided in § 151(a) of this title, fix the designations and any of the preferences or rights of such shares relating to dividends, redemption, dissolution, any distribution of assets of the corporation or the conversion into, or the exchange of such shares for, shares of any other class or classes or any other series of the same or any other class or classes of stock of the corporation or fix the number of shares of any series of stock or authorize the increase or decrease of the shares of any series), adopting an agreement of merger or consolidation under § 251, § 252, § 254, § 256, § 257, § 258, § 263 or § 264 of this title, recommending to the stockholders the sale, lease or exchange of all or substantially all of the corporation's property and assets, recommending to the stockholders a dissolution of the corporation or a revocation of a dissolution, or amending the bylaws of the corporation; and, unless the resolution, bylaws or certificate of incorporation expressly so provides, no such committee shall have the power or authority to declare a dividend, to authorize the issuance of stock or to adopt a certificate of ownership and merger pursuant to § 253 of this title.

(2) The board of directors may designate 1 or more committees, each committee to consist of 1 or more of the directors of the corporation. The board may designate 1 or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. The bylaws may provide that in the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the board of directors, or in the bylaws of the corporation, shall have and may exercise all the powers and authority of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to the following matter: (i) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by this chapter to be submitted to stockholders for approval or (ii) adopting, amending or repealing any bylaw of the corporation.

(3) Unless otherwise provided in the certificate of incorporation, the bylaws or the resolution of the board of directors designating the committee, a committee may create 1 or more subcommittees, each subcommittee to consist of 1 or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee. Except for references to committees and members of committees in subsection (c) of this section, every reference in this chapter to a committee of the board of directors or a member of a committee shall be deemed to include a reference to a subcommittee or member of a subcommittee.
(4) A majority of the directors then serving on a committee of the board of directors or on a subcommittee of a committee shall constitute a quorum for the transaction of business by the committee or subcommittee, unless the certificate of incorporation, the bylaws, a resolution of the board of directors or a resolution of a committee that created the subcommittee requires a greater or lesser number, provided that in no case shall a quorum be less than 1/3 of the directors then serving on the committee or subcommittee. The vote of the majority of the members of a committee or subcommittee present at a meeting at which a quorum is present shall be the act of the committee or subcommittee, unless the certificate of incorporation, the bylaws, a resolution of the board of directors or a resolution of a committee that created the subcommittee requires a greater number.

(d) The directors of any corporation organized under this chapter may, by the certificate of incorporation or by an initial bylaw, or by a bylaw adopted by a vote of the stockholders, be divided into 1, 2 or 3 classes; the term of office of those of the first class to expire at the first annual meeting held after such classification becomes effective; of the second class 1 year thereafter; of the third class 2 years thereafter; and at each annual election held after such classification becomes effective, directors shall be chosen for a full term, as the case may be, to succeed those whose terms expire. The certificate of incorporation or bylaw provision dividing the directors into classes may authorize the board of directors to assign members of the board already in office to such classes at the time such classification becomes effective. The certificate of incorporation may confer upon holders of any class or series of stock the right to elect 1 or more directors who shall serve for such term, and have such voting powers as shall be stated in the certificate of incorporation. The terms of office and voting powers of the directors elected separately by the holders of any class or series of stock may be greater than or less than those of any other director or class of directors. In addition, the certificate of incorporation may confer upon 1 or more directors, whether or not elected separately by the holders of any class or series of stock, voting powers greater than or less than those of other directors. Any such provision conferring greater or lesser voting power shall apply to voting in any committee, unless otherwise provided in the certificate of incorporation or bylaws. If the certificate of incorporation provides that 1 or more directors shall have more or less than 1 vote per director on any matter, every reference in this chapter to a majority or other proportion of the directors shall refer to a majority or other proportion of the votes of the directors.

(e) A member of the board of directors, or a member of any committee designated by the board of directors, shall, in the performance of such member's duties, be fully protected in relying in good faith upon the records of the corporation and upon such information, opinions, reports or statements presented to the corporation by any of the corporation's officers or employees, or committees of the board of directors, or by any other person as to matters the member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the corporation.
(f) Unless otherwise restricted by the certificate of incorporation or bylaws, any action required or permitted to be taken at any meeting of the board of directors or of any committee thereof may be taken without a meeting if all members of the board or committee, as the case may be, consent thereto in writing, or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the board, or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form. Any person (whether or not then a director) may provide, whether through instruction to an agent or otherwise, that a consent to action will be effective at a future time (including a time determined upon the happening of an event), no later than 60 days after such instruction is given or such provision is made and such consent shall be deemed to have been given for purposes of this subsection at such effective time so long as such person is then a director and did not revoke the consent prior to such time. Any such consent shall be revocable prior to its becoming effective.

(g) Unless otherwise restricted by the certificate of incorporation or bylaws, the board of directors of any corporation organized under this chapter may hold its meetings, and have an office or offices, outside of this State.

(h) Unless otherwise restricted by the certificate of incorporation or bylaws, the board of directors shall have the authority to fix the compensation of directors.

(i) Unless otherwise restricted by the certificate of incorporation or bylaws, members of the board of directors of any corporation, or any committee designated by the board, may participate in a meeting of such board, or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at the meeting.

(j) The certificate of incorporation of any nonstock corporation may provide that less than 1/3 of the members of the governing body may constitute a quorum thereof and may otherwise provide that the business and affairs of the corporation shall be managed in a manner different from that provided in this section. Except as may be otherwise provided by the certificate of incorporation, this section shall apply to such a corporation, and when so applied, all references to the board of directors, to members thereof, and to stockholders shall be deemed to refer to the governing body of the corporation, the members thereof and the members of the corporation, respectively; and all references to stock, capital stock, or shares thereof shall be deemed to refer to memberships of a nonprofit nonstock corporation and to membership interests of any other nonstock corporation.

(k) Any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors, except as follows:
(1) Unless the certificate of incorporation otherwise provides, in the case of a corporation whose board is classified as provided in subsection (d) of this section, stockholders may effect such removal only for cause; or

(2) In the case of a corporation having cumulative voting, if less than the entire board is to be removed, no director may be removed without cause if the votes cast against such director's removal would be sufficient to elect such director if then cumulatively voted at an election of the entire board of directors, or, if there be classes of directors, at an election of the class of directors of which such director is a part.

Whenever the holders of any class or series are entitled to elect 1 or more directors by the certificate of incorporation, this subsection shall apply, in respect to the removal without cause of a director or directors so elected, to the vote of the holders of the outstanding shares of that class or series and not to the vote of the outstanding shares as a whole.


(omissis)

Subchapter VII. Meetings, Elections, Voting and Notice

§ 211 Meetings of stockholders.

(a)(1) Meetings of stockholders may be held at such place, either within or without this State as may be designated by or in the manner provided in the certificate of incorporation or bylaws, or if not so designated, as determined by the board of directors. If, pursuant to this paragraph or the certificate of incorporation or the bylaws of the corporation, the board of directors is authorized to determine the place of a meeting of stockholders, the board of directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as authorized by paragraph (a)(2) of this section.
(2) If authorized by the board of directors in its sole discretion, and subject to such
guidelines and procedures as the board of directors may adopt, stockholders and
proxyholders not physically present at a meeting of stockholders may, by means of remote
communication:

a. Participate in a meeting of stockholders; and

b. Be deemed present in person and vote at a meeting of stockholders, whether such
meeting is to be held at a designated place or solely by means of remote communication,
provided that (i) the corporation shall implement reasonable measures to verify that each
person deemed present and permitted to vote at the meeting by means of remote
communication is a stockholder or proxyholder, (ii) the corporation shall implement
reasonable measures to provide such stockholders and proxyholders a reasonable
opportunity to participate in the meeting and to vote on matters submitted to the
stockholders, including an opportunity to read or hear the proceedings of the meeting
substantially concurrently with such proceedings, and (iii) if any stockholder or
proxyholder votes or takes other action at the meeting by means of remote
communication, a record of such vote or other action shall be maintained by the
corporation.

(b) 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. 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. Any other proper business may be transacted at the
annual meeting.

(c) A failure to hold the annual meeting at the designated time or to elect a sufficient number of
directors to conduct the business of the corporation shall not affect otherwise valid corporate
acts or work a forfeiture or dissolution of the corporation except as may be otherwise
specifically provided in this chapter. If the annual meeting for election of directors is not held on
the date designated therefor or action by written consent to elect directors in lieu of an annual
meeting has not been taken, the directors shall cause the meeting to be held as soon as is
conveniet. If there be a failure to hold the annual meeting or to take action by written consent
to elect directors in lieu of an annual meeting for a period of 30 days after the date designated
for the annual meeting, or if no date has been designated, for a period of 13 months after the
latest to occur of the organization of the corporation, its last annual meeting or the last action by
written consent to elect directors in lieu of an annual meeting, the Court of Chancery may
summarily order a meeting to be held upon the application of any stockholder or director. The
shares of stock represented at such meeting, either in person or by proxy, and entitled to vote thereat, shall constitute a quorum for the purpose of such meeting, notwithstanding any provision of the certificate of incorporation or bylaws to the contrary. The Court of Chancery may issue such orders as may be appropriate, including, without limitation, orders designating the time and place of such meeting, the record date or dates for determination of stockholders entitled to notice of the meeting and to vote thereat, and the form of notice of such meeting.

(d) Special meetings of the stockholders may be called by the board of directors or by such person or persons as may be authorized by the certificate of incorporation or by the bylaws.

(e) All elections of directors shall be by written ballot unless otherwise provided in the certificate of incorporation; if authorized by the board of directors, such requirement of a written ballot shall be satisfied by a ballot submitted by electronic transmission, provided that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder or proxy holder.


§ 212 Voting rights of stockholders; proxies; limitations.

(a) Unless otherwise provided in the certificate of incorporation and subject to § 213 of this title, each stockholder shall be entitled to 1 vote for each share of capital stock held by such stockholder. If the certificate of incorporation provides for more or less than 1 vote for any share, on any matter, every reference in this chapter to a majority or other proportion of stock, voting stock or shares shall refer to such majority or other proportion of the votes of such stock, voting stock or shares.

(b) Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after 3 years from its date, unless the proxy provides for a longer period.

(c) Without limiting the manner in which a stockholder may authorize another person or persons to act for such stockholder as proxy pursuant to subsection (b) of this section, the following shall constitute a valid means by which a stockholder may grant such authority:

(1) A stockholder may execute a writing authorizing another person or persons to act for such stockholder as proxy. Execution may be accomplished by the stockholder or such stockholder's authorized officer, director, employee or agent signing such writing or causing such person's signature to be affixed to such writing by any reasonable means including, but not limited to, by facsimile signature.
(2) A stockholder may authorize another person or persons to act for such stockholder as proxy by transmitting or authorizing the transmission of a telegram, cablegram, or other means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such telegram, cablegram or other means of electronic transmission must either set forth or be submitted with information from which it can be determined that the telegram, cablegram or other electronic transmission was authorized by the stockholder. If it is determined that such telegrams, cablegrams or other electronic transmissions are valid, the inspectors or, if there are no inspectors, such other persons making that determination shall specify the information upon which they relied.

(d) Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to subsection (c) of this section may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

(e) A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the corporation generally.


(omissis)

§ 214 Cumulative voting.

The certificate of incorporation of any corporation may provide that at all elections of directors of the corporation, or at elections held under specified circumstances, each holder of stock or of any class or classes or of a series or series thereof shall be entitled to as many votes as shall equal the number of votes which (except for such provision as to cumulative voting) such holder would be entitled to cast for the election of directors with respect to such holder's shares of stock multiplied by the number of directors to be elected by such holder, and that such holder may cast all of such votes for a single director or may distribute them among the number to be voted for, or for any 2 or more of them as such holder may see fit.
§ 216 Quorum and required vote for stock corporations.

Subject to this chapter in respect of the vote that shall be required for a specified action, the certificate of incorporation or bylaws of any corporation authorized to issue stock may specify the number of shares and/or the amount of other securities having voting power the holders of which shall be present or represented by proxy at any meeting in order to constitute a quorum for, and the votes that shall be necessary for, the transaction of any business, but in no event shall a quorum consist of less than 1/3 of the shares entitled to vote at the meeting, except that, where a separate vote by a class or series or classes or series is required, a quorum shall consist of no less than 1/3 of the shares of such class or series or classes or series. In the absence of such specification in the certificate of incorporation or bylaws of the corporation:

(1) A majority of the shares entitled to vote, present in person or represented by proxy, shall constitute a quorum at a meeting of stockholders;

(2) In all matters other than the election of directors, the affirmative vote of the majority of shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders;

(3) Directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors; and

(4) Where a separate vote by a class or series or classes or series is required, a majority of the outstanding shares of such class or series or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter and, in all matters other than the election of directors, the affirmative vote of the majority of shares of such class or series or classes or series present in person or represented by proxy at the meeting shall be the act of such class or series or classes or series.

A bylaw amendment adopted by stockholders which specifies the votes that shall be necessary for the election of directors shall not be further amended or repealed by the board of directors.
§ 222 Notice of meetings and adjourned meetings.

(a) Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting, if such date is different from the record date for determining stockholders entitled to notice of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called.

(b) Unless otherwise provided in this chapter, the written notice of any meeting shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the corporation. An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent of the corporation that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

(c) When a meeting is adjourned to another time or place, unless the bylaws otherwise require, notice need not be given of the adjourned meeting if the time, place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the board of directors shall fix a new record date for notice of such adjourned meeting in accordance with § 213(a) of this title, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

(a) Unless otherwise provided in the certificate of incorporation or bylaws:

(1) Vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a single class may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director;

(2) Whenever the holders of any class or classes of stock or series thereof are entitled to elect 1 or more directors by the certificate of incorporation, vacancies and newly created directorships of such class or classes or series may be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected.

If at any time, by reason of death or resignation or other cause, a corporation should have no directors in office, then any officer or any stockholder or an executor, administrator, trustee or guardian of a stockholder, or other fiduciary entrusted with like responsibility for the person or estate of a stockholder, may call a special meeting of stockholders in accordance with the certificate of incorporation or the bylaws, or may apply to the Court of Chancery for a decree summarily ordering an election as provided in § 211 or § 215 of this title.

(b) In the case of a corporation the directors of which are divided into classes, any directors chosen under subsection (a) of this section shall hold office until the next election of the class for which such directors shall have been chosen, and until their successors shall be elected and qualified.

(c) If, at the time of filling any vacancy or any newly created directorship, the directors then in office shall constitute less than a majority of the whole board (as constituted immediately prior to any such increase), the Court of Chancery may, upon application of any stockholder or stockholders holding at least 10 percent of the voting stock at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office as aforesaid, which election shall be governed by § 211 or § 215 of this title as far as applicable.

(d) Unless otherwise provided in the certificate of incorporation or bylaws, when 1 or more directors shall resign from the board, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in this section in the filling of other vacancies.

§ 225 Contested election of directors; proceedings to determine validity.

(a) Upon application of any stockholder or director, or any officer whose title to office is contested, the Court of Chancery may hear and determine the validity of any election, appointment, removal or resignation of any director or officer of any corporation, and the right of any person to hold or continue to hold such office, and, in case any such office is claimed by more than 1 person, may determine the person entitled thereto; and to that end make such order or decree in any such case as may be just and proper, with power to enforce the production of any books, papers and records of the corporation relating to the issue. In case it should be determined that no valid election has been held, the Court of Chancery may order an election to be held in accordance with § 211 or § 215 of this title. In any such application, service of copies of the application upon the registered agent of the corporation shall be deemed to be service upon the corporation and upon the person whose title to office is contested and upon the person, if any, claiming such office; and the registered agent shall forward immediately a copy of the application to the corporation and to the person whose title to office is contested and to the person, if any, claiming such office, in a postpaid, sealed, registered letter addressed to such corporation and such person at their post-office addresses last known to the registered agent or furnished to the registered agent by the applicant stockholder. The Court may make such order respecting further or other notice of such application as it deems proper under the circumstances.

(b) Upon application of any stockholder or upon application of the corporation itself, the Court of Chancery may hear and determine the result of any vote of stockholders upon matters other than the election of directors or officers. Service of the application upon the registered agent of the corporation shall be deemed to be service upon the corporation, and no other party need be joined in order for the Court to adjudicate the result of the vote. The Court may make such order respecting notice of the application as it deems proper under the circumstances.

(c) If 1 or more directors has been convicted of a felony in connection with the duties of such director or directors to the corporation, or if there has been a prior judgment on the merits by a court of competent jurisdiction that 1 or more directors has committed a breach of the duty of loyalty in connection with the duties of such director or directors to that corporation, then, upon application by the corporation, or derivatively in the right of the corporation by any stockholder, in a subsequent action brought for such purpose, the Court of Chancery may remove from office such director or directors if the Court determines that the director or directors did not act in good faith in performing the acts resulting in the prior conviction or judgment and judicial removal is necessary to avoid irreparable harm to the corporation. In connection with such removal, the Court may make such orders as are necessary to effect such removal. In any such application, service of copies of the application upon the registered agent of the corporation shall be deemed to be service upon the corporation and upon the director or directors whose
removal is sought; and the registered agent shall forward immediately a copy of the application to the corporation and to such director or directors, in a postpaid, sealed, registered letter addressed to such corporation and such director or directors at their post office addresses last known to the registered agent or furnished to the registered agent by the applicant. The Court may make such order respecting further or other notice of such application as it deems proper under the circumstances.


(omissis)

§ 242 Amendment of certificate of incorporation after receipt of payment for stock; nonstock corporations.

(a) After a corporation has received payment for any of its capital stock, or after a nonstock corporation has members, it may amend its certificate of incorporation, from time to time, in any and as many respects as may be desired, so long as its certificate of incorporation as amended would contain only such provisions as it would be lawful and proper to insert in an original certificate of incorporation filed at the time of the filing of the amendment; and, if a change in stock or the rights of stockholders, or an exchange, reclassification, subdivision, combination or cancellation of stock or rights of stockholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification, subdivision, combination or cancellation. In particular, and without limitation upon such general power of amendment, a corporation may amend its certificate of incorporation, from time to time, so as:

(1) To change its corporate name; or

(2) To change, substitute, enlarge or diminish the nature of its business or its corporate powers and purposes; or

(3) To increase or decrease its authorized capital stock or to reclassify the same, by changing the number, par value, designations, preferences, or relative, participating, optional, or other special rights of the shares, or the qualifications, limitations or restrictions of such rights, or by changing shares with par value into shares without par value, or shares without par value into shares with par value either with or without increasing or decreasing the number of shares, or by subdividing or combining the outstanding shares of any class or series of a class of shares into a greater or lesser number of outstanding shares; or
(4) To cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared; or

(5) To create new classes of stock having rights and preferences either prior and superior or subordinate and inferior to the stock of any class then authorized, whether issued or unissued; or

(6) To change the period of its duration; or

(7) To delete:

   a. Such provisions of the original certificate of incorporation which named the incorporator or incorporators, the initial board of directors and the original subscribers for shares; and

   b. Such provisions contained in any amendment to the certificate of incorporation as were necessary to effect a change, exchange, reclassification, subdivision, combination or cancellation of stock, if such change, exchange, reclassification, subdivision, combination or cancellation has become effective.

Any or all such changes or alterations may be effected by 1 certificate of amendment.

(b) Every amendment authorized by subsection (a) of this section shall be made and effected in the following manner:

(1) If the corporation has capital stock, its board of directors shall adopt a resolution setting forth the amendment proposed, declaring its advisability, and either calling a special meeting of the stockholders entitled to vote in respect thereof for the consideration of such amendment or directing that the amendment proposed be considered at the next annual meeting of the stockholders; provided, however, that unless otherwise expressly required by the certificate of incorporation, no meeting or vote of stockholders shall be required to adopt an amendment that effects only changes described in paragraph (a)(1) or (7) of this section. Such special or annual meeting shall be called and held upon notice in accordance with § 222 of this title. The notice shall set forth such amendment in full or a brief summary of the changes to be effected thereby unless such notice constitutes a notice of internet availability of proxy materials under the rules promulgated under the Securities Exchange Act of 1934 [15 U.S.C. § 78a et seq.]. At the meeting a vote of the stockholders entitled to vote thereon shall be taken for and against any proposed amendment that requires adoption by stockholders. If no vote of stockholders is required to effect such amendment, or if a majority of the outstanding stock entitled to vote thereon, and a majority of the outstanding stock of each class entitled to vote thereon as a class has been voted in favor of the amendment, a certificate setting forth the amendment and certifying that such amendment has been duly adopted in accordance with this section shall be executed, acknowledged and filed and shall become effective in accordance with § 103 of this title.
(2) The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the certificate of incorporation, if the amendment would increase or decrease the aggregate number of authorized shares of such class, increase or decrease the par value of the shares of such class, or alter or change the powers, preferences, or special rights of the shares of such class so as to affect them adversely. If any proposed amendment would alter or change the powers, preferences, or special rights of 1 or more series of any class so as to affect them adversely, but shall not so affect the entire class, then only the shares of the series so affected by the amendment shall be considered a separate class for the purposes of this paragraph. The number of authorized shares of any such class or classes of stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of the corporation entitled to vote irrespective of this subsection, if so provided in the original certificate of incorporation, in any amendment thereto which created such class or classes of stock or which was adopted prior to the issuance of any shares of such class or classes of stock, or in any amendment thereto which was authorized by a resolution or resolutions adopted by the affirmative vote of the holders of a majority of such class or classes of stock.

(3) If the corporation is a nonstock corporation, then the governing body thereof shall adopt a resolution setting forth the amendment proposed and declaring its advisability. If a majority of all the members of the governing body shall vote in favor of such amendment, a certificate thereof shall be executed, acknowledged and filed and shall become effective in accordance with § 103 of this title. The certificate of incorporation of any nonstock corporation may contain a provision requiring any amendment thereto to be approved by a specified number or percentage of the members or of any specified class of members of such corporation in which event such proposed amendment shall be submitted to the members or to any specified class of members of such corporation in the same manner, so far as applicable, as is provided in this section for an amendment to the certificate of incorporation of a stock corporation; and in the event of the adoption thereof by such members, a certificate evidencing such amendment shall be executed, acknowledged and filed and shall become effective in accordance with § 103 of this title.

(4) Whenever the certificate of incorporation shall require for action by the board of directors of a corporation other than a nonstock corporation or by the governing body of a nonstock corporation, by the holders of any class or series of shares or by the members, or by the holders of any other securities having voting power the vote of a greater number or proportion than is required by any section of this title, the provision of the certificate of incorporation requiring such greater vote shall not be altered, amended or repealed except by such greater vote.

(c) The resolution authorizing a proposed amendment to the certificate of incorporation may provide that at any time prior to the effectiveness of the filing of the amendment with the
Secretary of State, notwithstanding authorization of the proposed amendment by the stockholders of the corporation or by the members of a nonstock corporation, the board of directors or governing body may abandon such proposed amendment without further action by the stockholders or members.


(omissis)
Excerpt from the

ABA Model Business Corporation Act (2016 Revision)
(as of December 9, 2016)

(omissis)

§ 2.02 Articles of Incorporation

(a) The articles of incorporation must set forth:
   (1) a corporate name for the corporation that satisfies the requirements of section 4.01;
   (2) the number of shares the corporation is authorized to issue;
   (3) the street and mailing addresses of the corporation’s initial registered office and the name of its
       initial registered agent at that office; and
   (4) the name and address of each incorporator.

(b) The articles of incorporation may set forth:
   (1) the names and addresses of the individuals who are to serve as the initial directors;
   (2) provisions not inconsistent with law regarding:
       (i) the purpose or purposes for which the corporation is organized;
       (ii) managing the business and regulating the affairs of the corporation;
       (iii) defining, limiting, and regulating the powers of the corporation, its board of directors, and
           shareholders;
       (iv) a par value for authorized shares or classes of shares; or
       (v) the imposition of interest holder liability on shareholders;
   (3) any provision that under this Act is required or permitted to be set forth in the bylaws;
   (4) a provision eliminating or limiting the liability of a director to the corporation or its shareholders
       for money damages for any action taken, or any failure to take any action, as a director, except
       liability for (i) the amount of a financial benefit received by a director to which the director is not
       entitled; (ii) an intentional infliction of harm on the corporation or the shareholders; (iii) a violation
       of section 8.32; or (iv) an intentional violation of criminal law;
   (5) a provision permitting or making obligatory indemnification of a director for liability as defined
       in section 8.50 to any person for any action taken, or any failure to take any action, as a director,
       except liability for (i) receipt of a financial benefit to which the director is not entitled, (ii) an
       intentional infliction of harm on the corporation or its shareholders, (iii) a violation of section 8.32,
       or (iv) an intentional violation of criminal law; and
   (6) a provision limiting or eliminating any duty of a director or any other person to offer the
       corporation the right to have or participate in any, or one or more classes or categories of, business
       opportunities, before the pursuit or taking of the opportunity by the director or other person; provided
       that any application of such a provision to an officer or a related person of that officer (i) also
       requires approval of that application by the board of directors, subsequent to the effective date of the
       provision, by action of qualified directors taken in compliance with the same procedures as are set
       forth in section 8.62, and (ii) may be limited by the authorizing action of the board.

(c) The articles of incorporation need not set forth any of the corporate powers enumerated in this Act.

(d) Provisions of the articles of incorporation may be made dependent upon facts objectively
    ascertainable outside the articles of incorporation in accordance with section 1.20(k).

(e) As used in this section, “related person” has the meaning specified in section 8.60.

CROSS-REFERENCES
Amendment of articles of incorporation, see ch. 10A.
Classes of shares, see § 6.01.
Corporate powers, see § 3.02.
Duration of corporate existence, see § § 3.02.
Filing requirements, see § 1.20.
Incorporators, see § 2.01.

(omissis)

§ 2.06 Bylaws
(a) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.
(b) The bylaws of a corporation may contain any provision that is not inconsistent with law or the articles of incorporation.
(c) The bylaws may contain one or both of the following provisions:
(1) a requirement that if the corporation solicits proxies or consents with respect to an election of directors, the corporation include in its proxy statement and any form of its proxy or consent, to the extent and subject to such procedures or conditions as are provided in the bylaws, one or more individuals nominated by a shareholder in addition to individuals nominated by the board of directors; and
(2) a requirement that the corporation reimburse the expenses incurred by a shareholder in soliciting proxies or consents in connection with an election of directors, to the extent and subject to such procedures and conditions as are provided in the bylaws, provided that no bylaw so adopted shall apply to elections for which any record date precedes its adoption.
(d) Notwithstanding section 10.20(b)(2), the shareholders in amending, repealing, or adopting a bylaw described in subsection § 2.06(c) may not limit the authority of the board of directors to amend or repeal any condition or procedure set forth in or to add any procedure or condition to such a bylaw to provide for a reasonable, practical, and orderly process.

CROSS-REFERENCES
Amendment of bylaws, see § 10.20, 10.21 and 10.22.
Emergency bylaws, see § 2.07.
“Expenses” defined, see § 1.40.
Organizing corporation, see § 2.05.

(omissis)

§ 7.01 Annual Meeting
(a) Unless directors are elected by written consent in lieu of an annual meeting as permitted by section 7.04, a corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws at which directors shall be elected.
(b) Annual meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is so stated or fixed, annual meetings shall be held at the corporation’s principal office.
(c) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation’s bylaws does not affect the validity of any corporate action.

CROSS-REFERENCES
Action without meeting, see § 7.04.
Annual election of directors, see § 8.03.
Court-ordered meeting, see § 7.03.
Director holdover terms, see § 8.05.
Notice of meeting, see § 7.05.
“Principal office”: defined, see § 1.40.
designated in annual report, see § 16.21.
Proxies, see § 7.22.
Quorum and voting requirements, see §§ 7.25 through § 7.28.
Shareholders’ list for meeting, see § 7.20.
Special meeting, see § 7.02.
Voting entitlement of shares, see § 7.21.
“Voting group” defined, see § 1.40.

(omissis)

§ 7.05 Notice of Meeting
(a) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders’ meeting no fewer than 10 nor more than 60 days before the meeting date. If the board of directors has authorized participation by means of remote communication pursuant to section 7.09 for holders of any class or series of shares, the notice to the holders of such class or series of shares must describe the means of remote communication to be used. The notice must include the record date for determining the shareholders entitled to vote at the meeting, if such date is different from the record date for determining shareholders entitled to notice of the meeting. Unless this Act or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting as of the record date for determining the shareholders entitled to notice of the meeting.
(b) Unless this Act or the articles of incorporation require otherwise, the notice of an annual meeting of shareholders need not include a description of the purpose or purposes for which the meeting is called.
(c) Notice of a special meeting of shareholders must include a description of the purpose or purposes for which the meeting is called.
(d) If not otherwise fixed under section 7.03 or 7.07, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders’ meeting is the day before the first notice is delivered to shareholders.
(e) Unless the bylaws require otherwise, if an annual or special shareholders’ meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section 7.07, however, notice of the adjourned meeting shall be given under this section to shareholders entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

CROSS-REFERENCES
Annual meeting, see § 7.01.
“Deliver” defined, see § 1.40.
Notice otherwise required:
amendment of articles of incorporation, see § 10.03.
appraisal rights, see §§ 13.20 and 13.22.
conversion, see § 9.32.
disposition of assets, see § 12.02.
dissolution, see § 14.02.
domestication, see § 9.21.
merger and share exchange, see § 10.04.
Notices and other communications, see § 1.41.
Remote participation in shareholders’ meetings, see § 7.09.
Special meeting, see § 7.02.
Waiver of notice, see § 7.06.

§ 7.22 Proxies
(a) A shareholder may vote the shareholder’s shares in person or by proxy.
(b) A shareholder, or the shareholder’s agent or attorney-in-fact, may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form, or by an electronic transmission. An electronic transmission must contain or be accompanied by information from which the recipient can determine the date of the transmission and that the transmission was authorized by the sender or the sender’s agent or attorney-in-fact.
(c) An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the inspector of election or the officer or agent of the corporation authorized to count votes. An appointment is valid for the term provided in the appointment form, and, if no term is provided, is valid for 11 months unless the appointment is irrevocable under subsection § 7.22(d).
(d) An appointment of a proxy is revocable unless the appointment form or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:
(1) a pledgee;
(2) a person who purchased or agreed to purchase the shares;
(3) a creditor of the corporation who extended it credit under terms requiring the appointment;
(4) an employee of the corporation whose employment contract requires the appointment; or
(5) a party to a voting agreement created under section 7.31.
(e) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy’s authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.
(f) An appointment made irrevocable under subsection § 7.22(d) is revoked when the interest with which it is coupled is extinguished.
(g) Unless it otherwise provides, an appointment made irrevocable under subsection § 7.22(d) continues in effect after a transfer of the shares and a transferee takes subject to the appointment, except that a transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when acquiring the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.
(h) Subject to section 7.24 and to any express limitation on the proxy’s authority stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy’s vote or other action as that of the shareholder making the appointment.

CROSS-REFERENCES
Acceptance of proxy votes, see § 7.24.
Certificateless shares, see § 6.26.
“Conspicuous” defined, see § 1.40.
“Electronic transmission” defined, see § 1.40.
Information on share certificates, see § 6.25.
Notices and other communications, see § 1.41.
“Sign” defined, see § 1.40.
§ 7.28 Voting for Directors; Cumulative Voting
(a) Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.
(b) Shareholders do not have a right to cumulate their votes for directors unless the articles of incorporation so provide.
(c) A statement included in the articles of incorporation that “[all] [a designated voting group of] shareholders are entitled to cumulate their votes for directors” (or words of similar import) means that the shareholders designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two or more candidates.
(d) Shares otherwise entitled to vote cumulatively may not be voted cumulatively at a particular meeting unless:
(1) the meeting notice or proxy statement accompanying the notice states conspicuously that cumulative voting is authorized; or
(2) a shareholder who has the right to cumulate the shareholder’s votes gives notice to the corporation not less than 48 hours before the time set for the meeting of the shareholder’s intent to cumulate votes during the meeting, and if one shareholder gives this notice all other shareholders in the same voting group participating in the election are entitled to cumulate their votes without giving further notice.

CROSS-REFERENCES
“Conspicuous” defined, see § 1.40.
Notice of meeting, see § 7.05.
Notices and other communications, see § 1.41.
Proxies, see § 7.22.
Quorum of shareholders, see § 7.25.
Voting for directors by voting group, see § 8.04.
“Voting group” defined, see § 1.40.

§ 8.01 Requirement for and Functions of Board of Directors
(a) Except as may be provided in an agreement authorized under section 7.32, each corporation shall have a board of directors.
(b) Except as may be provided in an agreement authorized under section 7.32, and subject to any limitation in the articles of incorporation permitted by section 2.02(b), all corporate powers shall be exercised by or under the authority of the board of directors, and the business and affairs of the corporation shall be managed by or under the direction, and subject to the oversight, of the board of directors.

CROSS-REFERENCES
Director standards of conduct, see § 8.30.
Indemnification, see §§ 8.50 through 8.59.
§ 8.03 Number and Election of Directors
(a) A board of directors shall consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.
(b) The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or bylaws.
(c) Directors are elected at the first annual shareholders’ meeting and at each annual shareholders’ meeting thereafter unless elected by written consent in lieu of an annual meeting as permitted by section 7.04 or unless their terms are staggered under section 8.06.

CROSS-REFERENCES
Annual shareholders’ meeting, see § 7.01.
Classification of board of directors, see § 8.06.
Cumulative voting, see § 7.28.
Deadlocked board of directors as ground for dissolution, see § 14.30.
Staggered terms for directors, see § 8.06.
Terms of directors generally, see § 8.05.
Voting for directors, see § 7.28.

§ 8.04 Election of Directors by Certain Classes or Series of Shares
If the articles of incorporation or action by the board of directors pursuant to section 6.02 authorize dividing the shares into classes or series, the articles of incorporation may also authorize the election of all or a specified number of directors by the holders of one or more authorized classes or series of shares. A class or series (or multiple classes or series) of shares entitled to elect one or more directors is a separate voting group for purposes of the election of directors.

CROSS-REFERENCES
Classes and series of shares, see § 6.01.
Cumulative voting, see § 7.28.
Removal of directors, see §§ 8.08 and 8.09.
Voting by voting groups, see §§ 7.25 and 7.26.
Voting for directors, see § 7.28.
“Voting group” defined, see § 1.40.

§ 8.05 Terms of Directors Generally
(a) The terms of the initial directors of a corporation expire at the first shareholders’ meeting at which directors are elected.
(b) The terms of all other directors expire at the next, or if their terms are staggered in accordance with section 8.06, at the applicable second or third, annual shareholders’ meeting following their election, except to the extent (i) provided in section 10.22 if a bylaw electing to be governed by that section is in effect, or (ii) a shorter term is specified in the articles of incorporation in the event of a director nominee failing to receive a specified vote for election.
(c) A decrease in the number of directors does not shorten an incumbent director’s term.
(d) The term of a director elected to fill a vacancy expires at the next shareholders’ meeting at which directors are elected.
(e) Except to the extent otherwise provided in the articles of incorporation or under section

§ 8.06 Staggered Terms for Directors
The articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into two or three groups, with each group containing half or one-third of the total, as near as may be practicable. In that event, the terms of directors in the first group expire at the first annual shareholders’ meeting after their election, the terms of the second group expire at the second annual shareholders’ meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders’ meeting after their election. At each annual shareholders’ meeting held thereafter, directors shall be elected for a term of two years or three years, as the case may be, to succeed those whose terms expire.

CROSS-REFERENCES
Annual shareholders’ meeting, see § 7.01.
Cumulative voting, see § 7.28.
Election of directors, see § 7.28.
Number of directors, see § 8.03.
Removal of directors, see §§ 8.08 and 8.09.
Resignation of directors, see § 8.07.
Terms of directors, see § 8.05.
Vacancies on board of directors, see § 8.10.

(omissis)

§ 8.08 Removal of Directors by Shareholders
(a) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.
(b) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove that director.
(c) A director may be removed if the number of votes cast to remove exceeds the number of votes cast not to remove the director, except to the extent the articles of incorporation or bylaws require a greater number; provided that if cumulative voting is authorized, a director may not be removed if, in the case of a meeting, the number of votes sufficient to elect the director under cumulative voting is voted against removal and, if action is taken by less than unanimous written consent, voting shareholders entitled to the number of votes sufficient to elect the director under cumulative voting do not consent to the removal.
(d) A director may be removed by the shareholders only at a meeting called for the purpose of removing the director and the meeting notice must state that removal of the director is a purpose of the meeting.

CROSS-REFERENCES
Cumulative voting, see § 7.28.
Election of directors by certain classes or series of shares, see § 8.04.
Election of directors, see § 7.28.
Notice of meeting, see § 7.05.
Quorum and voting requirements for voting groups, see § 7.25.
Removal of directors by judicial proceeding, see § 8.09.
Shareholders’ meetings, see §§ 7.01 through 7.03.
“Voting group” defined, see § 1.40.
§ 10.01 Authority to Amend
(a) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation as of the effective date of the amendment or to delete a provision that is not required to be contained in the articles of incorporation.
(b) A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement, or purpose or duration of the corporation.

CROSS-REFERENCES
Amendment:
before issuance of shares, see § 10.02.
by board of directors and shareholders, see § 10.03.
by board of directors, see § 10.05.
pursuant to court reorganization, see § 10.08.
Appraisal rights, see ch. 13.
Articles of incorporation, see § 2.02.
Effective date of amendment, see § 1.23.
Procedure for amendment, see §§ 10.02 through 10.07.
Restatement of articles, see § 10.07.
Share transfer restrictions, see § 6.27.
Voting by voting groups, see §§ 7.25, 7.26, and 10.04.
“Voting group” defined, see § 1.40.

§ 10.03 Amendment by Board of Directors and Shareholders
If a corporation has issued shares, an amendment to the articles of incorporation shall be adopted in the following manner:
(a) The proposed amendment shall first be adopted by the board of directors.
(b) Except as provided in sections 10.05, § 10.07, and § 10.08, the amendment shall then be approved by the shareholders. In submitting the proposed amendment to the shareholders for approval, the board of directors shall recommend that the shareholders approve the amendment, unless (i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, or (ii) section 8.26 applies. If either (i) or (ii) applies, the board must inform the shareholders of the basis for its so proceeding.
(c) The board of directors may set conditions for the approval of the amendment by the shareholders or the effectiveness of the amendment.
(d) If the amendment is required to be approved by the shareholders, and the approval is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the amendment is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the amendment. The notice must contain or be accompanied by a copy of the amendment.
(e) Unless the articles of incorporation, or the board of directors acting pursuant to subsection § 10.03(c), require a greater vote or a greater quorum, approval of the amendment requires the approval of
the shareholders at a meeting at which a quorum consisting of a majority of the votes entitled to be cast on the amendment exists, and, if any class or series of shares is entitled to vote as a separate group on the amendment, except as provided in section 10.04(c), the approval of each such separate voting group at a meeting at which a quorum of the voting group exists consisting of a majority of the votes entitled to be cast on the amendment by that voting group.

(f) If as a result of an amendment of the articles of incorporation one or more shareholders of a domestic corporation would become subject to new interest holder liability, approval of the amendment requires the signing in connection with the amendment, by each such shareholder, of a separate written consent to become subject to such new interest holder liability, unless in the case of a shareholder that already has interest holder liability the terms and conditions of the new interest holder liability (i) are substantially identical to those of the existing interest holder liability, or (ii) are substantially identical to those of the existing interest holder liability (other than changes that eliminate or reduce such interest holder liability).

(g) For purposes of subsection § 10.03(f) and section 10.09, “new interest holder liability” means interest holder liability of a person resulting from an amendment of the articles of incorporation if (i) the person did not have interest holder liability before the amendment becomes effective, or (ii) the person had interest holder liability before the amendment becomes effective, the terms and conditions of which are changed when the amendment becomes effective.

CROSS-REFERENCES
“Interest holder liability” defined, see § 1.40.
Notice of shareholders’ meeting, see § 7.05.
Notices and other communications, see § 1.41.
Quorum and voting requirements for shareholders, see §§ 7.25 and 7.27.
Restatement of articles of incorporation, see § 10.07.
Submission of matters to shareholders, see § 8.26.
Voting by voting group, see §§ 7.25, 7.26 and 10.04.
Voting entitlement of shares, see § 7.21.
“Voting group” defined, see § 1.40.

§ 10.04 Voting on Amendments by Voting Groups
(a) The holders of the outstanding shares of a class are entitled to vote as a separate voting group (if shareholder voting is otherwise required by this Act) on a proposed amendment to the articles of incorporation if the amendment would:
(1) effect an exchange or reclassification of all or part of the shares of the class into shares of another class;
(2) effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class;
(3) change the rights, preferences, or limitations of all or part of the shares of the class;
(4) change the shares of all or part of the class into a different number of shares of the same class;
(5) create a new class of shares having rights or preferences with respect to distributions that are prior or superior to the shares of the class;
(6) increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions that are prior or superior to the shares of the class;
(7) limit or deny an existing preemptive right of all or part of the shares of the class; or
(8) cancel or otherwise affect rights to distributions that have accumulated but not yet been authorized on all or part of the shares of the class.
(b) If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection § 10.04(a), the holders of shares of that series are entitled to vote as a separate voting group on the proposed amendment.
(c) If a proposed amendment that entitles the holders of two or more classes or series of shares to vote as separate voting groups under this section would affect those two or more classes or series in the same or
a substantially similar way, the holders of shares of all the classes or series so affected shall vote
together as a single voting group on the proposed amendment, unless otherwise provided in the articles
of incorporation or added as a condition by the board of directors pursuant to section 10.03(c).
(d) A class or series of shares is entitled to the voting rights granted by this section even if the articles of
incorporation provide that the shares are nonvoting shares.

CROSS-REFERENCES
Authorized shares, see § 6.01.
Classes and series of shares, see §§ 6.01 and 6.02.
Share rights and limitations, see § 6.01.
Voting by voting groups, see §§ 7.25 and 7.26.
“Voting group” defined, see § 1.40.

§ 10.05 Amendment by Board of Directors
Unless the articles of incorporation provide otherwise, a corporation’s board of directors may adopt
amendments to the corporation’s articles of incorporation without shareholder approval:
(a) to extend the duration of the corporation if it was incorporated at a time when limited duration was
required by law;
(b) to delete the names and addresses of the initial directors;
(c) to delete the name and address of the initial registered agent or registered office, if a statement of
change is on file with the secretary of state;
(d) if the corporation has only one class of shares outstanding:
(1) to change each issued and unissued authorized share of the class into a greater number of whole
shares of that class; or
(2) to increase the number of authorized shares of the class to the extent necessary to permit the issuance
of shares as a share dividend;
(e) to change the corporate name by substituting the word “corporation,” “incorporated,” “company,”
“limited,” or the abbreviation “corp.,” “inc.,” “co.,” or “Ltd.,” for a similar word or abbreviation in the
name, or by adding, deleting, or changing a geographical attribution for the name;
(f) to reflect a reduction in authorized shares, as a result of the operation of section 6.31(b), when the
corporation has acquired its own shares and the articles of incorporation prohibit the reissue of the
acquired shares;
(g) to delete a class of shares from the articles of incorporation, as a result of the operation of section
6.31(b), when there are no remaining shares of the class because the corporation has acquired all shares
of the class and the articles of incorporation prohibit the reissue of the acquired shares; or
(h) to make any change expressly permitted by section 6.02(a) or (b) to be made without shareholder
approval.

CROSS-REFERENCES
Acquisition of shares, see § 6.31.
Classes and series of shares, see §§ 6.01 and 6.02.
Duration of corporate existence, see § 3.02.
Effective date of amendment, see § 1.23.
Name of corporation, see ch. 4.
Registered office and agent, see ch. 5.
Restatement of articles, see § 10.07.
Terms of class or series determined by board of directors, see § 6.02.

(omissis)
§ 10.20 Authority to Amend [by-laws]
(a) A corporation’s shareholders may amend or repeal the corporation’s bylaws.
(b) A corporation’s board of directors may amend or repeal the corporation’s bylaws, unless:
(1) the articles of incorporation, section 10.21 or, if applicable, section 10.22 reserve that power exclusively to the shareholders in whole or part; or
(2) except as provided in section 2.06(d), the shareholders in amending, repealing, or adopting a bylaw expressly provide that the board of directors may not amend, repeal, or adopt that bylaw.
(c) A shareholder of the corporation does not have a vested property right resulting from any provision in the bylaws.

CROSS-REFERENCES
Action by:
board of directors, see §§ 8.20 through 8.24.
shareholders, see §§ 7.01 through 7.04.
Bylaw provisions relating to the election of directors, see § 10.22.
Increase in quorum and voting requirements for directors, see § 10.21.

(omissis)

§ 10.21 Bylaw Increasing Quorum or Voting Requirement for Directors
(a) A bylaw that increases a quorum or voting requirement for the board of directors may be amended or repealed:
(1) if originally adopted by the shareholders, only by the shareholders, unless the bylaw otherwise provides; or
(2) if adopted by the board of directors, either by the shareholders or by the board of directors.
(b) A bylaw adopted or amended by the shareholders that increases a quorum or voting requirement for the board of directors may provide that it can be amended or repealed only by a specified vote of either the shareholders or the board of directors.
(c) Action by the board of directors under subsection § 10.21(a) to amend or repeal a bylaw that changes a quorum or voting requirement for the board of directors shall meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

CROSS-REFERENCES
Modifying quorum and voting requirements for shareholders, see § 7.23.
Quorum and voting of directors, see § 8.24.

§ 10.22 Bylaw Provisions Relating to the Election of Directors
(a) Unless the articles of incorporation (i) specifically prohibit the adoption of a bylaw pursuant to this section, (ii) alter the vote specified in section 7.28(a), or (iii) provide for cumulative voting, a corporation may elect in its bylaws to be governed in the election of directors as follows:
(1) each vote entitled to be cast may be voted for or against up to that number of candidates that is equal to the number of directors to be elected, or a shareholder may indicate an abstention, but without cumulating the votes;
(2) to be elected, a nominee shall have received a plurality of the votes cast by holders of shares entitled to vote in the election at a meeting at which a quorum is present, provided that a nominee who is elected
but receives more votes against than for election shall serve as a director for a term that shall terminate on the date that is the earlier of (i) 90 days from the date on which the voting results are determined pursuant to section 7.29(b)(5) or (ii) the date on which an individual is selected by the board of directors to fill the office held by such director, which selection shall be deemed to constitute the filling of a vacancy by the board to which section 8.10 applies. Subject to subsection § 10.22(a)(3), a nominee who is elected but receives more votes against than for election shall not serve as a director beyond the 90-day period referenced above; and
(3) the board of directors may select any qualified individual to fill the office held by a director who received more votes against than for election.
(b) Subsection (a) does not apply to an election of directors by a voting group if (i) at the expiration of the time fixed under a provision requiring advance notification of director candidates, or (ii) absent such a provision, at a time fixed by the board of directors which is not more than 14 days before notice is given of the meeting at which the election is to occur, there are more candidates for election by the voting group than the number of directors to be elected, one or more of whom are properly proposed by shareholders. An individual shall not be considered a candidate for purposes of this subsection if the board of directors determines before the notice of meeting is given that such individual’s candidacy does not create a bona fide election contest.
(c) A bylaw electing to be governed by this section may be repealed:
(1) if originally adopted by the shareholders, only by the shareholders, unless the bylaw otherwise provides;
(2) if adopted by the board of directors, by the board of directors or the shareholders.

CROSS REFERENCES
Cumulative voting, see § 7.28.
Inspectors of election, see § 7.29.
Resignation of directors, see § 8.07.
Vacancy on board of directors, see § 8.11§ 8.10.
Voting for directors, see § 7.28.
Voting for directors by voting group, see § 8.04.
“Voting group” defined, see § 1.40.
Rule 452. Giving Proxies by Member Organization

A member organization shall give or authorize the giving of a proxy for stock registered in its name, or in the name of its nominee, at the direction of the beneficial owner. If the stock is not in the control or possession of the member organization, satisfactory proof of the beneficial ownership as of the record date may be required.

Voting member organization holdings as executor, etc.

A member organization may give or authorize the giving of a proxy to vote any stock registered in its name, or in the name of its nominee, if such member organization holds such stock as executor, administrator, guardian, trustee, or in a similar representative or fiduciary capacity with authority to vote.

Voting procedure without instructions

A member organization which has transmitted proxy soliciting material to the beneficial owner of stock or to an investment adviser, registered either under the Investment Advisers Act of 1940 or under the laws of a state, who exercises investment discretion pursuant to an advisory contract for the beneficial owner and has been designated in writing by the beneficial owner of such stock (hereinafter "designated investment adviser") to receive soliciting material in lieu of the beneficial owner and solicited voting instructions in accordance with the provisions of Rule 451, and which has not received instructions from the beneficial owner or from the beneficial owner's designated investment adviser by the date specified in the statement accompanying such material, may give or authorize the giving of a proxy to voted such stock, provided the person in the member organization giving or authorizing the giving of the proxy has no knowledge of any contest as to the action to be taken at the meeting and provided such action is adequately disclosed to stockholders and does not include authorization for a merger, consolidation or any other matter which may affect substantially the rights or privileges of such stock.

Instructions on stock in names of other member organizations

A member organization which has in its possession or control stock registered in the name of another member organization, and which has solicited voting instructions in accordance with the provisions of Rule 451(b)(1), shall

(1) Forward to the second member organization any voting instructions received from the beneficial owner, or

(2) if the proxy-soliciting material has been transmitted to the beneficial owner of the stock in accordance with Rule 451 and no instructions have been received by the date specified in the statement accompanying such material, notify the second member organization of such fact in order that such member organization may give the proxy as provided in the third paragraph of this rule.

Signed proxies for stock in names of other member organizations

A member organization which has in its possession or control stock registered in the name of another member organization, and which desires to transmit signed proxies pursuant to the provisions of Rule 451(b)(2), shall obtain the requisite number of signed proxies from such holder of record.

Amendments.

January 11, 1968.


March 6, 2003 (NYSE-2002-50).
Supplementary Material:  

Giving a Proxy To Vote Stock

.10 When member organization may vote without customer instructions.— Rule 452, above, provides that a member organization may give a proxy to vote stock provided that:

(1) It has transmitted proxy soliciting material to the beneficial owner of stock or to the beneficial owner's designated investment adviser in accordance with Rule 451, and

(2) it has not received voting instructions from the beneficial owner or from the beneficial owner's designated investment adviser, by the date specified in the statement accompanying such material, and

(3) the person in the member organization giving or authorizing the giving of the proxy has no knowledge of any contest as to the action to be taken at the meeting and provided such action is adequately disclosed to stockholders and does not include authorization for a merger, consolidation of any matter which may affect substantially the rights or privileges of such stock.

Amendments.

January 11, 1968.


.11 When member organization may not vote without customer instructions.—In the list of meetings of stockholders appearing in the Weekly Bulletin, after proxy material has been reviewed by the Exchange, each meeting will be designated by an appropriate symbol to indicate either (a) that members may vote a proxy without instructions of beneficial owners, (b) that members may not vote specific matters on the proxy, or (c) that members may not vote the entire proxy.

Generally speaking, a member organization may not give or authorize a proxy to vote without instructions from beneficial owners when the matter to be voted upon:

(1) is not submitted to stockholders by means of a proxy statement comparable to that specified in Schedule 14-A of the Securities and Exchange Commission;

(2) is the subject of a counter-solicitation, or is part of a proposal made by a stockholder which is being opposed by management (i.e., a contest);

(3) relates to a merger or consolidation (except when the company's proposal is to merge with its own wholly owned subsidiary, provided its shareholders dissenting thereto do not have rights of appraisal);

(4) involves right of appraisal;

(5) authorizes mortgaging of property;

(6) authorizes or creates indebtedness or increases the authorized amount of indebtedness;

(7) authorizes or creates a preferred stock or increases the authorized amount of an existing preferred stock;

(8) alters the terms or conditions of existing stock or indebtedness;
(9) involves waiver or modification of preemptive rights (except when the company's proposal is to waive such rights with respect to shares being offered pursuant to stock option or purchase plans involving the additional issuance of not more than 5% of the company's outstanding common shares (see Item 12));

(10) changes existing quorum requirements with respect to stockholder meetings;

(11) alters voting provisions or the proportionate voting power of a stock, or the number of its votes per share (except where cumulative voting provisions govern the number of votes per share for election of directors and the company's proposal involves a change in the number of its directors by not more than 10% or not more than one);

(12) authorizes the implementation of any equity compensation plan, or any material revision to the terms of any existing equity compensation plan (whether or not stockholder approval of such plan is required by subsection 8 of Section 303A of the Exchange's Listed Company Manual);

Commentary to Item 12 - A member organization may not give or authorize a proxy to vote without instructions on a matter relating to executive compensation, even if such matter would otherwise qualify for an exception from the requirements of Item 12, Item 13 or any other Item under this Rule 452. See Item 21.

(13) authorizes

a. a new profit-sharing or special remuneration plan, or a new retirement plan, the annual cost of which will amount to more than 10% of average annual income before taxes for the preceding five years, or

b. the amendment of an existing plan which would bring its cost above 10% of such average annual income before taxes.

Exceptions may be made in cases of

a. retirement plans based on agreement or negotiations with labor unions (or which have been or are to be approved by such unions); and

b. any related retirement plan for benefit of non-union employees having terms substantially equivalent to the terms of such union-negotiated plan, which is submitted for action of stockholders concurrently with such union-negotiated plan;

Commentary to Item 13 - A member organization may not give or authorize a proxy to vote without instructions on a matter relating to executive compensation, even if such matter would otherwise qualify for an exception from the requirements of Item 12, Item 13 or any other Item under this Rule 452. See Item 21.

(14) changes the purposes or powers of a company to an extent which would permit it to change to a materially different line of business and it is the company's stated intention to make such a change;

(15) authorizes the acquisition of property, assets, or a company, where the consideration to be given has a fair value approximating 20% or more of the market value of the previously outstanding shares;

(16) authorizes the sale or other disposition of assets or earning power approximating 20% or more of those existing prior to the transaction.

(17) authorizes a transaction not in the ordinary course of business in which an officer, director or substantial security holder has a direct or indirect interest;

(18) reduces earned surplus by 51% or more, or reduces earned surplus to an amount less than the aggregate of three years' common stock dividends computed at the current dividend rate; or
(19) is the election of directors, provided, however, that this prohibition shall not apply in the case of a company registered under the Investment Company Act of 1940;

Commentary to Item 19 - This item will be applicable to proxy voting for shareholder meetings held on or after January 1, 2010, except to the extent that a meeting was originally scheduled to be held prior to such effective date but was properly adjourned to a date on or after such effective date.

(20) materially amends an investment advisory contract with an investment company; or

Commentary to Item 20 - A material amendment to an investment advisory contract would include any proposal to obtain shareholder approval of an investment company’s investment advisory contract with a new investment adviser, which approval is required by the Investment Company Act of 1940, as amended (the "1940 Act"), and the rules thereunder. Such approval will be deemed to be a "matter which may affect substantially the rights or privileges of such stock" for purposes of this rule so that a member organization may not give or authorize a proxy to vote shares registered in its name absent instruction from the beneficial holder of the shares. As a result, for example, a member organization may not give or authorize a proxy to vote shares registered in its name, absent instruction from the beneficial holder of the shares, on any proposal to obtain shareholder approval required by the 1940 Act of an investment advisory contract between an investment company and a new investment adviser due to an assignment of the investment company’s investment advisory contract, including an assignment caused by a change in control of the investment adviser that is party to the assigned contract.

(21) relates to executive compensation.

Commentary to Item 21 - A matter relating to executive compensation would include, among other things, the items referred to in Section 14A of the Exchange Act (added by Section 951 of the Dodd-Frank Wall Street Reform and Consumer Protection Act), including (i) an advisory vote to approve the compensation of executives, (ii) a vote on whether to hold such an advisory vote every one, two or three years, and (iii) an advisory vote to approve any type of compensation (whether present, deferred, or contingent) that is based on or otherwise relates to an acquisition, merger, consolidation, sale, or other disposition of all or substantially all of the assets of an issuer and the aggregate total of all such compensation that may (and the conditions upon which it may) be paid or become payable to or on behalf of an executive officer. In addition, a member organization may not give or authorize a proxy to vote without instructions on a matter relating to executive compensation, even if such matter would otherwise qualify for an exception from the requirements of Item 12, Item 13 or any other Item under this Rule 452. Any vote on these or similar executive compensation-related matters is subject to the requirements of Rule 452.

Amendments.

January 11, 1968.


September 9, 2010 (NYSE-2010-59).

.12 Proportionate voting for auction rate preferred securities.—

Notwithstanding any other provision of Rule 452, a member organization may vote auction rate preferred securities with auction reset periods of one year or less in proportion to the voting instructions received from holders of the same class (or of the same series where the item must be voted upon separately by each series), in accordance with the provisions established below:

(1) It has transmitted proxy soliciting material to the beneficial owner of the auction rate preferred securities or to the beneficial owner’s designated investment adviser in accordance with Rule 451, and
(2) It has not received voting instructions from the beneficial owner or from the beneficial owner’s designated investment adviser, by the date specified in the statement accompanying such material, and

(3) A minimum of 30% of the outstanding shares of the same class or series (where a series vote may be required) has been voted by preferred security holders, and

(4) Less than 10% of the outstanding shares of the same class or series (where a series vote may be required) voted against the proposal, and

(5) For any proposal as to which both the common and preferred holders vote as a single class. Proportional voting will not be allowed unless common shareholders approve the proposal, and

(6) A majority of the independent directors of the issuer's board of directors approved the matter, and

(7) Adequate disclosure of proportional voting has been provided to beneficial holders.

.13 Discretionary and non-discretionary proposals in one proxy form.—In some cases, a proxy form may contain proposals, some of which may be acted upon at the discretion of the member organization in the absence of instructions, and others which may be voted only in accordance with the directions of the beneficial owner. This should be indicated in the letter of transmittal. In such cases, the member organization may vote the proxy in the absence of instructions if it physically crosses out those portions where it does not have discretion.

.14 Cancellation of discretionary proxy where counter-solicitation develops.—Where a discretionary proxy has been given in good faith under the rules and counter-solicitation develops at a later date, thereby creating a “contest,” the question as to whether or not the discretionary proxy should then be cancelled is a matter which each member organization must decide for itself. After a contest has developed no further proxies should be given except at the direction of beneficial owners.

.15 Subsequent proxy.—Where a member organization gives a subsequent proxy, it should clearly indicate whether the proxy is in addition to, in substitution for or in revocation of any prior proxy.

.16 Signing and dating a proxy—designating shares covered.—All proxies should be dated and should show the number of shares voted. Since manual signatures are sometimes illegible, a member organization should also either type or rubber-stamp its name on such proxy.

.17 Proxy records.—Records covering the solicitation of proxies shall show the following:

(1) The date of receipt of the proxy material from the issuer or other person soliciting the proxies;

(2) names of customers to whom the material is sent together with date of mailing;

(3) all voting instructions showing whether verbal or written; and

(4) a summary of all proxies voted by the member organization clearly setting forth total shares voted for or against or not voted for each proposal to be acted upon at the meeting.

Verbal voting instructions may be accepted provided a record is kept of the instructions of the beneficial owner and the instructions are retained by the member organization. The record shall also indicate the date of the receipt of the instructions and the name of the recipient.

Instructions from beneficial owners may also be accepted by member organizations or their agents through the use of an automated telephone voting system, which has been approved by the Exchange. Such a system shall utilize an identification code for beneficial owners and provide an opportunity for beneficial owners to validate votes to ensure that
they were received correctly. Records of voting including the date of receipt of instructions and the name of the recipient must be retained by the member organization or their agent.

.20 Retention of records.—All proxy solicitation records, originals of all communications received and copies of all communications sent relating to such solicitation, shall be retained for a period of not less than three years, the first two years in an easily accessible place.

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Amendments.


March 22, 1996.

July 1, 2009 (NYSE-2006-92).
Section II:
European Law Materials
DIRECTIVE 2007/36/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 11 July 2007

on the exercise of certain rights of shareholders in listed companies

(OJ L 184, 14.7.2007, p. 17)

Amended by:

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DIRECTIVE 2007/36/EC OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL
of 11 July 2007
on the exercise of certain rights of shareholders in listed companies

CHAPTER I
GENERAL PROVISIONS

Article 1

Subject-matter and scope

1. This Directive establishes requirements in relation to the exercise of certain shareholder rights attached to voting shares in relation to general meetings of companies which have their registered office in a Member State and the shares of which are admitted to trading on a regulated market situated or operating within a Member State. It also establishes specific requirements in order to encourage shareholder engagement, in particular in the long term. Those specific requirements apply in relation to identification of shareholders, transmission of information, facilitation of exercise of shareholders rights, transparency of institutional investors, asset managers and proxy advisors, remuneration of directors and related party transactions.

2. The Member State competent to regulate matters covered in this Directive shall be the Member State in which the company has its registered office, and references to the ‘applicable law’ are references to the law of that Member State.

For the purpose of application of Chapter Ib, the competent Member State shall be defined as follows:

(a) for institutional investors and asset managers, the home Member State as defined in any applicable sector-specific Union legislative act;

(b) for proxy advisors, the Member State in which the proxy advisor has its registered office, or, where the proxy advisor does not have its registered office in a Member State, the Member State in which the proxy advisor has its head office, or, where the proxy advisor has neither its registered office nor its head office in a Member State, the Member State in which the proxy advisor has an establishment.

3. Member States may exempt from this Directive the following types of companies:

(a) undertakings for collective investment in transferable securities (UCITS) within the meaning of Article 1(2) of Directive 2009/65/EC of the European Parliament and of the Council (1);

(b) collective investment undertakings within the meaning of point (a) of Article 4(1) of Directive 2011/61/EU of the European Parliament and of the Council (¹);

(c) cooperative societies.

3a. The companies referred to in paragraph 3 shall not be exempted from the provisions laid down in Chapter Ib.

4. Member States shall ensure that this Directive does not apply in the case of the use of resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU of the European Parliament and of the Council (²).

5. Chapter Ia shall apply to intermediaries in so far they provide services to shareholders or other intermediaries with respect to shares of companies which have their registered office in a Member State and the shares of which are admitted to trading on a regulated market situated or operating within a Member State.

6. Chapter Ib shall apply to:

(a) institutional investors, to the extent that they invest directly or through an asset manager in shares traded on a regulated market;

(b) asset managers, to the extent that they invest in such shares on behalf of investors; and

(c) proxy advisors, to the extent that they provide services to shareholders with respect to shares of companies which have their registered office in a Member State and the shares of which are admitted to trading on a regulated market situated or operating within a Member State.

7. The provisions of this Directive are without prejudice to the provisions laid down in any sector-specific Union legislative act regulating specific types of company or specific types of entity. Where this Directive provides for more specific rules or adds requirements compared to the provisions laid down by any sector-specific Union legislative act, those provisions shall be applied in conjunction with the provisions of this Directive.

Article 2

Definitions

For the purposes of this Directive the following definitions shall apply:


'regulated market' means a regulated market as defined in point (21) of Article 4(1) of Directive 2014/65/EU of the European Parliament and of the Council (1);

'shareholder' means the natural or legal person that is recognised as a shareholder under the applicable law;

'proxy' means the empowerment of a natural or legal person by a shareholder to exercise some or all rights of that shareholder in the general meeting in his name;

'intermediary' means a person, such as an investment firm as defined in point (1) of Article 4(1) of Directive 2014/65/EU, a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council (2) and a central securities depository as defined in point (1) of Article 2(1) of Regulation (EU) No 909/2014 of the European Parliament and of the Council (3), which provides services of safekeeping of shares, administration of shares or maintenance of securities accounts on behalf of shareholders or other persons;

'institutional investor' means:

(i) an undertaking carrying out activities of life assurance within the meaning of points (a), (b) and (c) of Article 2(3) of Directive 2009/138/EC of the European Parliament and of the Council (4), and of reinsurance as defined in point (7) of Article 13 of that Directive provided that those activities cover life-insurance obligations, and which is not excluded pursuant to that Directive;

(ii) an institution for occupational retirement provision falling within the scope of Directive (EU) 2016/2341 of the European Parliament and of the Council (5) in accordance with Article 2 thereof, unless a Member State has chosen not to apply that Directive in whole or in parts to that institution in accordance with Article 5 of that Directive;

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(f) ‘asset manager’ means an investment firm as defined in point (1) of Article 4(1) of Directive 2014/65/EU that provides portfolio management services to investors, an AIFM (alternative investment fund manager) as defined in point (b) of Article 4(1) of Directive 2011/61/EU that does not fulfil the conditions for an exemption in accordance with Article 3 of that Directive or a management company as defined in point (b) of Article 2(1) of Directive 2009/65/EC, or an investment company that is authorised in accordance with Directive 2009/65/EC provided that it has not designated a management company authorised under that Directive for its management;

(g) ‘proxy advisor’ means a legal person that analyses, on a professional and commercial basis, the corporate disclosure and, where relevant, other information of listed companies with a view to informing investors’ voting decisions by providing research, advice or voting recommendations that relate to the exercise of voting rights;

(h) ‘related party’ has the same meaning as in the international accounting standards adopted in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council (\(^1\));

(i) ‘director’ means:

(i) any member of the administrative, management or supervisory bodies of a company;

(ii) where they are not members of the administrative, management or supervisory bodies of a company, the chief executive officer and, if such function exists in a company, the deputy chief executive officer;

(iii) where so determined by a Member State, other persons who perform functions similar to those performed under point (i) or (ii);

(j) ‘information regarding shareholder identity’ means information allowing the identity of a shareholder to be established, including at least the following information:

(i) name and contact details (including full address and, where available, email address) of the shareholder, and, where it is a legal person, its registration number, or, if no registration number is available, its unique identifier, such as legal entity identifier;

(ii) the number of shares held; and

(iii) only insofar they are requested by the company, one or more of the following details: the categories or classes of the shares held or the date from which the shares have been held.

Further national measures

This Directive shall not prevent Member States from imposing further obligations on companies or from otherwise taking further measures to facilitate the exercise by shareholders of the rights referred to in this Directive.

CHAPTER Ia
IDENTIFICATION OF SHAREHOLDERS, TRANSMISSION OF INFORMATION AND FACILITATION OF EXERCISE OF SHAREHOLDER RIGHTS

Article 3a
Identification of shareholders

1. Member States shall ensure that companies have the right to identify their shareholders. Member States may provide for companies having a registered office on their territory to be only allowed to request the identification of shareholders holding more than a certain percentage of shares or voting rights. Such a percentage shall not exceed 0.5%.

2. Member States shall ensure that, on the request of the company or of a third party nominated by the company, the intermediaries communicate without delay to the company the information regarding shareholder identity.

3. Where there is more than one intermediary in a chain of intermediaries, Member States shall ensure that the request of the company, or of a third party nominated by the company, is transmitted between intermediaries without delay and that the information regarding shareholder identity is transmitted directly to the company or to a third party nominated by the company without delay by the intermediary who holds the requested information. Member States shall ensure that the company is able to obtain information regarding shareholder identity from any intermediary in the chain that holds the information.

Member States may provide for the company to be allowed to request the central securities depository or another intermediary or service provider to collect the information regarding shareholder identity, including from the intermediaries in the chain of intermediaries and to transmit the information to the company.

Member States may additionally provide that, at the request of the company, or of a third party nominated by the company, the intermediary is to communicate to the company without delay the details of the next intermediary in the chain of intermediaries.

4. The personal data of shareholders shall be processed pursuant to this Article in order to enable the company to identify its existing shareholders in order to communicate with them directly with the view to facilitating the exercise of shareholder rights and shareholder engagement with the company.

Without prejudice to any longer storage period laid down by any sector-specific Union legislative act, Member States shall ensure that companies and intermediaries do not store the personal data of shareholders transmitted to them in accordance with this Article for the
5. Member States shall ensure that legal persons have the right of rectification of incomplete or inaccurate information regarding their shareholder identity.

6. Member States shall ensure that an intermediary that discloses information regarding shareholder identity in accordance with the rules laid down in this Article is not considered to be in breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision.

7. By 10 June 2019, Member States shall provide the European Supervisory Authority (European Securities and Markets Authority) (ESMA), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council (1) with information on whether they have limited shareholder identification to shareholders holding more than a certain percentage of the shares or voting rights in accordance with paragraph 1 and, if so, the applicable percentage. ESMA shall publish that information on its website.

8. The Commission shall be empowered to adopt implementing acts to specify the minimum requirements to transmit the information laid down in paragraph 2 as regards the format of information to be transmitted, the format of the request, including their security and interoperability, and the deadlines to be complied with. Those implementing acts shall be adopted by 10 September 2018 in accordance with the examination procedure referred to in Article 14a(2).

Article 3b

Transmission of information

1. Member States shall ensure that the intermediaries are required to transmit the following information, without delay, from the company to the shareholder or to a third party nominated by the shareholder:

(a) the information which the company is required to provide to the shareholder, to enable the shareholder to exercise rights flowing from its shares, and which is directed to all shareholders in shares of that class; or

(b) where the information referred to in point (a) is available to shareholders on the website of the company, a notice indicating where on the website that information can be found.

2. Member States shall require companies to provide intermediaries in a standardised and timely manner with the information referred to in point (a) of paragraph 1 or the notice referred to in point (b) of that paragraph.

3. However, Member States shall not require that the information referred to in point (a) of paragraph 1 or the notice referred to in point (b) of that paragraph be transmitted or provided in accordance with paragraphs 1 and 2 where companies send that information or that notice directly to all their shareholders or to a third party nominated by the shareholder.

4. Member States shall oblige intermediaries to transmit, without delay, to the company, in accordance with the instructions received from the shareholders, the information received from the shareholders related to the exercise of the rights flowing from their shares.

5. Where there is more than one intermediary in a chain of intermediaries, information referred to in paragraphs 1 and 4 shall be transmitted between intermediaries without delay, unless the information can be directly transmitted by the intermediary to the company or to the shareholder or to a third party nominated by the shareholder.

6. The Commission shall be empowered to adopt implementing acts to specify the minimum requirements to transmit information laid down in paragraphs 1 to 5 of this Article as regards the types and format of information to be transmitted, including their security and interoperability, and the deadlines to be complied with. Those implementing acts shall be adopted by 10 September 2018 in accordance with the examination procedure referred to in Article 14a(2).

**Article 3c**

**Facilitation of the exercise of shareholder rights**

1. Member States shall ensure that the intermediaries facilitate the exercise of the rights by the shareholder, including the right to participate and vote in general meetings, which shall comprise at least one of the following:

(a) the intermediary makes the necessary arrangements for the shareholder or a third party nominated by the shareholder to be able to exercise themselves the rights;

(b) the intermediary exercises the rights flowing from the shares upon the explicit authorisation and instruction of the shareholder and for the shareholder’s benefit.

2. Member States shall ensure that when votes are cast electronically an electronic confirmation of receipt of the votes is sent to the person that casts the vote.

Member States shall ensure that after the general meeting the shareholder or a third party nominated by the shareholder can obtain, at least upon request, confirmation that their votes have been validly recorded and counted by the company, unless that information is already
available to them. Member States may establish a deadline for requesting such confirmation. Such a deadline shall not be longer than three months from the date of the vote.

Where the intermediary receives confirmation as referred to in the first or second subparagraph, it shall transmit it without delay to the shareholder or a third party nominated by the shareholder. Where there is more than one intermediary in the chain of intermediaries the confirmation shall be transmitted between intermediaries without delay, unless the confirmation can be directly transmitted to the shareholder or a third party nominated by the shareholder.

3. The Commission shall be empowered to adopt implementing acts to specify the minimum requirements to facilitate the exercise of shareholder rights laid down in paragraphs 1 and 2 of this Article as regards the types of the facilitation, the format of the electronic confirmation of receipt of the votes, the format for the transmission of the confirmation that the votes have been validly recorded and counted through the chain of intermediaries, including their security and interoperability, and the deadlines to be complied with. Those implementing acts shall be adopted by 10 September 2018 in accordance with the examination procedure referred to in Article 14a(2).

Article 3d
Non-discrimination, proportionality and transparency of costs

1. Member States shall require intermediaries to disclose publicly any applicable charges for services provided for under this Chapter separately for each service.

2. Member States shall ensure that any charges levied by an intermediary on shareholders, companies and other intermediaries shall be non-discriminatory and proportionate in relation to the actual costs incurred for delivering the services. Any differences between the charges levied between domestic and cross-border exercise of rights shall be permitted only where duly justified and where they reflect the variation in actual costs incurred for delivering the services.

3. Member States may prohibit intermediaries from charging fees for the services provided for under this Chapter.

Article 3e
Third-country intermediaries

This Chapter also applies to intermediaries which have neither their registered office nor their head office in the Union when they provide services referred to in Article 1(5).
Article 3f

Information on implementation

1. Competent authorities shall inform the Commission of substantial practical difficulties in enforcement of the provisions of this Chapter or non-compliance with the provisions of this Chapter by Union or third-country intermediaries.

2. The Commission shall, in close cooperation with ESMA and the European Supervisory Authority (European Banking Authority), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council (¹), submit a report to the European Parliament and to the Council on the implementation of this Chapter, including its effectiveness, difficulties in practical application and enforcement, while taking into account relevant market developments at the Union and international level. The report shall also address the appropriateness of the scope of application of this Chapter in relation to third-country intermediaries. The Commission shall publish the report by 10 June 2023.

CHAPTER Ib

TRANSPARENCY OF INSTITUTIONAL INVESTORS, ASSET MANAGERS AND PROXY ADVISORS

Article 3g

Engagement policy

1. Member States shall ensure that institutional investors and asset managers either comply with the requirements set out in points (a) and (b) or publicly disclose a clear and reasoned explanation why they have chosen not to comply with one or more of those requirements.

(a) Institutional investors and asset managers shall develop and publicly disclose an engagement policy that describes how they integrate shareholder engagement in their investment strategy. The policy shall describe how they monitor investee companies on relevant matters, including strategy, financial and non-financial performance and risk, capital structure, social and environmental impact and corporate governance, conduct dialogues with investee companies, exercise voting rights and other rights attached to shares, cooperate with other shareholders, communicate with relevant stakeholders of the investee companies and manage actual and potential conflicts of interests in relation to their engagement.

(b) Institutional investors and asset managers shall, on an annual basis, publicly disclose how their engagement policy has been implemented, including a general description of voting behaviour, an explanation of the most significant votes and the use of the services of proxy advisors. They shall publicly disclose how they have cast votes in the general meetings of companies in which they hold shares. Such disclosure may exclude votes that are insignificant due to the subject matter of the vote or the size of the holding in the company.

2. The information referred to in paragraph 1 shall be available free of charge on the institutional investor’s or asset manager’s website. Member States may provide for the information to be published, free of charge, by other means that are easily accessible online.

Where an asset manager implements the engagement policy, including voting, on behalf of an institutional investor, the institutional investor shall make a reference as to where such voting information has been published by the asset manager.

3. Conflicts of interests rules applicable to institutional investors and asset managers, including Article 14 of Directive 2011/61/EU, point (b) of Article 12(1) and point (d) of 14(1) of Directive 2009/65/EC and the relevant implementing rules, and Article 23 of Directive 2014/65/EU shall also apply with regard to engagement activities.

Article 3h

Investment strategy of institutional investors and arrangements with asset managers

1. Member States shall ensure that institutional investors publicly disclose how the main elements of their equity investment strategy are consistent with the profile and duration of their liabilities, in particular long-term liabilities, and how they contribute to the medium to long-term performance of their assets.

2. Member States shall ensure that where an asset manager invests on behalf of an institutional investor, whether on a discretionary client-by-client basis or through a collective investment undertaking, the institutional investor publicly discloses the following information regarding its arrangement with the asset manager:

(a) how the arrangement with the asset manager incentivises the asset manager to align its investment strategy and decisions with the profile and duration of the liabilities of the institutional investor, in particular long-term liabilities;

(b) how that arrangement incentivises the asset manager to make investment decisions based on assessments about medium to long-term financial and non-financial performance of the investee company and to engage with investee companies in order to improve their performance in the medium to long-term;
(c) how the method and time horizon of the evaluation of the asset manager’s performance and the remuneration for asset management services are in line with the profile and duration of the liabilities of the institutional investor, in particular long-term liabilities, and take absolute long-term performance into account;

(d) how the institutional investor monitors portfolio turnover costs incurred by the asset manager and how it defines and monitors a targeted portfolio turnover or turnover range;

(e) the duration of the arrangement with the asset manager.

Where the arrangement with the asset manager does not contain one or more of such elements, the institutional investor shall give a clear and reasoned explanation why this is the case.

3. The information referred to in paragraphs 1 and 2 of this Article shall be available, free of charge, on the institutional investor’s website and shall be updated annually unless there is no material change. Member States may provide for that information to be available, free of charge, through other means that are easily accessible online.

Member States shall ensure that institutional investors regulated by Directive 2009/138/EC are allowed to include this information in their report on solvency and financial condition referred to in Article 51 of that Directive.

*Article 3i*

**Transparency of asset managers**

1. Member States shall ensure that asset managers disclose, on an annual basis, to the institutional investor with which they have entered into the arrangements referred to in Article 3h how their investment strategy and implementation thereof complies with that arrangement and contributes to the medium to long-term performance of the assets of the institutional investor or of the fund. Such disclosure shall include reporting on the key material medium to long-term risks associated with the investments, on portfolio composition, turnover and turnover costs, on the use of proxy advisors for the purpose of engagement activities and their policy on securities lending and how it is applied to fulfil its engagement activities if applicable, particularly at the time of the general meeting of the investee companies. Such disclosure shall also include information on whether and, if so, how, they make investment decisions based on evaluation of medium to long-term performance of the investee company, including non-financial performance, and on whether and, if so, which conflicts of interests have arisen in connection with engagements activities and how the asset managers have dealt with them.
2. Member States may provide for the information in paragraph 1 to be disclosed together with the annual report referred to in Article 68 of Directive 2009/65/EC or in Article 22 of Directive 2011/61/EU, or periodic communications referred to in Article 25(6) of Directive 2014/65/EU.

Where the information disclosed pursuant to paragraph 1 is already publicly available, the asset manager is not required to provide the information to the institutional investor directly.

3. Member States may where the asset manager does not manage the assets on a discretionary client-by-client basis, require that the information disclosed pursuant to paragraph 1 also be provided to other investors of the same fund at least upon request.

Article 3j

Transparency of proxy advisors

1. Member States shall ensure that proxy advisors publicly disclose reference to a code of conduct which they apply and report on the application of that code of conduct.

Where proxy advisors do not apply a code of conduct, they shall provide a clear and reasoned explanation why this is the case. Where proxy advisors apply a code of conduct but depart from any of its recommendations, they shall declare from which parts they depart, provide explanations for doing so and indicate, where appropriate, any alternative measures adopted.

Information referred to in this paragraph shall be made publicly available, free of charge, on the websites of proxy advisors and shall be updated on an annual basis.

2. Member States shall ensure that, in order to adequately inform their clients about the accuracy and reliability of their activities, proxy advisors publicly disclose on an annual basis at least all of the following information in relation to the preparation of their research, advice and voting recommendations:

(a) the essential features of the methodologies and models they apply;

(b) the main information sources they use;

(c) the procedures put in place to ensure quality of the research, advice and voting recommendations and qualifications of the staff involved;

(d) whether and, if so, how they take national market, legal, regulatory and company-specific conditions into account;

(e) the essential features of the voting policies they apply for each market;
(f) whether they have dialogues with the companies which are the object of their research, advice or voting recommendations and with the stakeholders of the company, and, if so, the extent and nature thereof;

(g) the policy regarding the prevention and management of potential conflicts of interests.

The information referred to in this paragraph shall be made publicly available on the websites of proxy advisors and shall remain available free of charge for at least three years from the date of publication. The information does not need to be disclosed separately where it is available as part of the disclosure under paragraph 1.

3. Member States shall ensure that proxy advisors identify and disclose without delay to their clients any actual or potential conflicts of interests or business relationships that may influence the preparation of their research, advice or voting recommendations and the actions they have undertaken to eliminate, mitigate or manage the actual or potential conflicts of interests.

4. This Article also applies to proxy advisors that have neither their registered office nor their head office in the Union which carry out their activities through an establishment located in the Union.

Article 3k

Review

1. The Commission shall submit a report to the European Parliament and to the Council on the implementation of Articles 3g, 3h and 3i, including the assessment of the need to require asset managers to publicly disclose certain information under Article 3i, taking into account relevant Union and international market developments. The report shall be published by 10 June 2022 and shall be accompanied, if appropriate, by legislative proposals.

2. The Commission shall, in close cooperation with ESMA, submit a report to the European Parliament and to the Council on the implementation of Article 3j, including the appropriateness of its scope of application and its effectiveness and the assessment of the need for establishing regulatory requirements for proxy advisors, taking into account relevant Union and international market developments. The report shall be published by 10 June 2023 and shall be accompanied, if appropriate, by legislative proposals.

CHAPTER II

GENERAL MEETINGS OF SHAREHOLDERS

Article 4

Equal treatment of shareholders

The company shall ensure equal treatment for all shareholders who are in the same position with regard to participation and the exercise of voting rights in the general meeting.
Article 5

Information prior to the general meeting

1. Without prejudice to Articles 9(4) and 11(4) of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (1), Member States shall ensure that the company issues the convocation of the general meeting in one of the manners specified in paragraph 2 of this Article not later than on the 21st day before the day of the meeting.

Member States may provide that, where the company offers the facility for shareholders to vote by electronic means accessible to all shareholders, the general meeting of shareholders may decide that it shall issue the convocation of a general meeting which is not an annual general meeting in one of the manners specified in paragraph 2 of this Article not later than on the 14th day before the day of the meeting. This decision is to be taken by a majority of not less than two thirds of the votes attaching to the shares or the subscribed capital represented and for a duration not later than the next annual general meeting.

Member States need not apply the minimum periods referred to in the first and second subparagraphs for the second or subsequent convocation of a general meeting issued for lack of a quorum required for the meeting convened by the first convocation, provided that this Article has been complied with for the first convocation and no new item is put on the agenda, and that at least 10 days elapse between the final convocation and the date of the general meeting.

2. Without prejudice to further requirements for notification or publication laid down by the competent Member State as defined in Article 1(2), the company shall be required to issue the convocation referred to in paragraph 1 of this Article in a manner ensuring fast access to it on a non-discriminatory basis. The Member State shall require the company to use such media as may reasonably be relied upon for the effective dissemination of information to the public throughout the Community. The Member State may not impose an obligation to use only media whose operators are established on its territory.

The Member State need not apply the first subparagraph to companies that are able to identify the names and addresses of their shareholders from a current register of shareholders, provided that the company is under an obligation to send the convocation to each of its registered shareholders.

In either case the company may not charge any specific cost for issuing the convocation in the prescribed manner.

3. The convocation referred to in paragraph 1 shall at least:

(a) indicate precisely when and where the general meeting is to take place, and the proposed agenda for the general meeting;

(b) contain a clear and precise description of the procedures that shareholders must comply with in order to be able to participate and to cast their vote in the general meeting. This includes information concerning:

(i) the rights available to shareholders under Article 6, to the extent that those rights can be exercised after the issuing of the convocation, and under Article 9, and the deadlines by which those rights may be exercised; the convocation may confine itself to stating only the deadlines by which those rights may be exercised, provided it contains a reference to more detailed information concerning those rights being made available on the Internet site of the company;

(ii) the procedure for voting by proxy, notably the forms to be used to vote by proxy and the means by which the company is prepared to accept electronic notifications of the appointment of proxy holders; and

(iii) where applicable, the procedures for casting votes by correspondence or by electronic means;

(c) where applicable, state the record date as defined in Article 7(2) and explain that only those who are shareholders on that date shall have the right to participate and vote in the general meeting;

(d) indicate where and how the full, unabridged text of the documents and draft resolutions referred to in points (c) and (d) of paragraph 4 may be obtained;

(e) indicate the address of the Internet site on which the information referred to in paragraph 4 will be made available.

4. Member States shall ensure that, for a continuous period beginning not later than on the 21 day before the day of the general meeting and including the day of the meeting, the company shall make available to its shareholders on its Internet site at least the following information:

(a) the convocation referred to in paragraph 1;

(b) the total number of shares and voting rights at the date of the convocation (including separate totals for each class of shares where the company’s capital is divided into two or more classes of shares);

(c) the documents to be submitted to the general meeting;
(d) a draft resolution or, where no resolution is proposed to be adopted, a comment from a competent body within the company, to be designated by the applicable law, for each item on the proposed agenda of the general meeting; moreover, draft resolutions tabled by shareholders shall be added to the Internet site as soon as practicable after the company has received them:

(e) where applicable, the forms to be used to vote by proxy and to vote by correspondence, unless those forms are sent directly to each shareholder.

Where the forms referred to in point (e) cannot be made available on the Internet for technical reasons, the company shall indicate on its Internet site how the forms can be obtained on paper. In this case the company shall be required to send the forms by postal services and free of charge to every shareholder who so requests.

Where, pursuant to Articles 9(4) or 11(4) of Directive 2004/25/EC, or to the second subparagraph of paragraph 1 of this Article, the convocation of the general meeting is issued later than on the 21st day before the meeting, the period specified in this paragraph shall be shortened accordingly.

5. Member States shall ensure that for the purposes of Directive 2014/59/EU the general meeting may, by a majority of two-thirds of the votes validly cast, issue a convocation to a general meeting, or modify the statutes to prescribe that a convocation to a general meeting is issued, at shorter notice than as laid down in paragraph 1 of this Article, to decide on a capital increase, provided that that meeting does not take place within ten calendar days of the convocation, that the conditions of Article 27 or 29 of Directive 2014/59/EU are met, and that the capital increase is necessary to avoid the conditions for resolution laid down in Articles 32 and 33 of that Directive.

6. For the purposes of paragraph 5, the obligation on each Member State to set a single deadline in Article 6(3), the obligation to ensure timely availability of a revised agenda in Article 6(4) and the obligation on each Member State to set a single record date in Article 7(3) shall not apply.

Article 6

Right to put items on the agenda of the general meeting and to table draft resolutions

1. Member States shall ensure that shareholders, acting individually or collectively:

(a) have the right to put items on the agenda of the general meeting, provided that each such item is accompanied by a justification or a draft resolution to be adopted in the general meeting; and
(b) have the right to table draft resolutions for items included or to be
included on the agenda of a general meeting.

Member States may provide that the right referred to in point (a) may be
exercised only in relation to the annual general meeting, provided that
shareholders, acting individually or collectively, have the right to call,
or to require the company to call, a general meeting which is not an
annual general meeting with an agenda including at least all the items
requested by those shareholders.

Member States may provide that those rights shall be exercised in
writing (submitted by postal services or electronic means).

2. Where any of the rights specified in paragraph 1 is subject to the
condition that the relevant shareholder or shareholders hold a minimum
stake in the company, such minimum stake shall not exceed 5 % of the
share capital.

3. Each Member State shall set a single deadline, with reference to a
specified number of days prior to the general meeting or the
convocation, by which shareholders may exercise the right referred to
in paragraph 1, point (a). In the same manner each Member State may
set a deadline for the exercise of the right referred to in paragraph 1,
point (b).

4. Member States shall ensure that, where the exercise of the right
referred to in paragraph 1, point (a) entails a modification of the agenda
for the general meeting already communicated to shareholders, the
company shall make available a revised agenda in the same manner
as the previous agenda in advance of the applicable record date as
defined in Article 7(2) or, if no record date applies, sufficiently in
advance of the date of the general meeting so as to enable other share-
holders to appoint a proxy or, where applicable, to vote by correspon-
dence.

**Article 7**

**Requirements for participation and voting in the general meeting**

1. Member States shall ensure:

   (a) that the rights of a shareholder to participate in a general meeting
       and to vote in respect of any of his shares are not subject to any
       requirement that his shares be deposited with, or transferred to, or
       registered in the name of, another natural or legal person before the
       general meeting; and

   (b) that the rights of a shareholder to sell or otherwise transfer his
       shares during the period between the record date, as defined in
       paragraph 2, and the general meeting to which it applies are not
       subject to any restriction to which they are not subject at other
times.

2. Member States shall provide that the rights of a shareholder to
participate in a general meeting and to vote in respect of his shares shall
be determined with respect to the shares held by that shareholder on a
specified date prior to the general meeting (the record date).
Member States need not apply the first subparagraph to companies that are able to identify the names and addresses of their shareholders from a current register of shareholders on the day of the general meeting.

3. Each Member State shall ensure that a single record date applies to all companies. However, a Member State may set one record date for companies which have issued bearer shares and another record date for companies which have issued registered shares, provided that a single record date applies to each company which has issued both types of shares. The record date shall not lie more than 30 days before the date of the general meeting to which it applies. In implementing this provision and Article 5(1), each Member State shall ensure that at least eight days elapse between the latest permissible date for the convocation of the general meeting and the record date. In calculating that number of days those two dates shall not be included. In the circumstances described in Article 5(1), third subparagraph, however, a Member State may require that at least six days elapse between the latest permissible date for the second or subsequent convocation of the general meeting and the record date. In calculating that number of days those two dates shall not be included.

4. Proof of qualification as a shareholder may be made subject only to such requirements as are necessary to ensure the identification of shareholders and only to the extent that they are proportionate to achieving that objective.

**Article 8**

**Participation in the general meeting by electronic means**

1. Member States shall permit companies to offer to their shareholders any form of participation in the general meeting by electronic means, notably any or all of the following forms of participation:

   (a) real-time transmission of the general meeting;

   (b) real-time two-way communication enabling shareholders to address the general meeting from a remote location;

   (c) a mechanism for casting votes, whether before or during the general meeting, without the need to appoint a proxy holder who is physically present at the meeting.

2. The use of electronic means for the purpose of enabling shareholders to participate in the general meeting may be made subject only to such requirements and constraints as are necessary to ensure the identification of shareholders and the security of the electronic communication, and only to the extent that they are proportionate to achieving those objectives.

This is without prejudice to any legal rules which Member States have adopted or may adopt concerning the decision-making process within the company for the introduction or implementation of any form of participation by electronic means.
Article 9

Right to ask questions

1. Every shareholder shall have the right to ask questions related to items on the agenda of the general meeting. The company shall answer the questions put to it by shareholders.

2. The right to ask questions and the obligation to answer are subject to the measures which Member States may take, or allow companies to take, to ensure the identification of shareholders, the good order of general meetings and their preparation and the protection of confidentiality and business interests of companies. Member States may allow companies to provide one overall answer to questions having the same content.

Member States may provide that an answer shall be deemed to be given if the relevant information is available on the company’s Internet site in a question and answer format.

Article 9a

Right to vote on the remuneration policy

1. Member States shall ensure that companies establish a remuneration policy as regards directors and that shareholders have the right to vote on the remuneration policy at the general meeting.

2. Member States shall ensure that the vote by the shareholders at the general meeting on the remuneration policy is binding. Companies shall pay remuneration to their directors only in accordance with a remuneration policy that has been approved by the general meeting.

Where no remuneration policy has been approved and the general meeting does not approve the proposed policy, the company may continue to pay remuneration to its directors in accordance with its existing practices and shall submit a revised policy for approval at the following general meeting.

Where an approved remuneration policy exists and the general meeting does not approve the proposed new policy, the company shall continue to pay remuneration to its directors in accordance with the existing approved policy and shall submit a revised policy for approval at the following general meeting.

3. However, Member States may provide for the vote at the general meeting on the remuneration policy to be advisory. In that case, companies shall pay remuneration to their directors only in accordance with a remuneration policy that has been submitted to such a vote at the general meeting. Where the general meeting rejects the proposed remuneration policy, the company shall submit a revised policy to a vote at the following general meeting.
4. Member States may allow companies, in exceptional circumstances, to temporarily derogate from the remuneration policy, provided that the policy includes the procedural conditions under which the derogation can be applied and specifies the elements of the policy from which a derogation is possible.

Exceptional circumstances as referred to in the first subparagraph shall cover only situations in which the derogation from the remuneration policy is necessary to serve the long-term interests and sustainability of the company as a whole or to assure its viability.

5. Member States shall ensure that companies submit the remuneration policy to a vote by the general meeting at every material change and in any case at least every four years.

6. The remuneration policy shall contribute to the company’s business strategy and long-term interests and sustainability and shall explain how it does so. It shall be clear and understandable and describe the different components of fixed and variable remuneration, including all bonuses and other benefits in whatever form, which can be awarded to directors and indicate their relative proportion.

The remuneration policy shall explain how the pay and employment conditions of employees of the company were taken into account when establishing the remuneration policy.

Where a company awards variable remuneration, the remuneration policy shall set clear, comprehensive and varied criteria for the award of the variable remuneration. It shall indicate the financial and non-financial performance criteria, including, where appropriate, criteria relating to corporate social responsibility, and explain how they contribute to the objectives set out in the first subparagraph, and the methods to be applied to determine to which extent the performance criteria have been fulfilled. It shall specify information on any deferral periods and on the possibility for the company to reclaim variable remuneration.

Where the company awards share-based remuneration, the policy shall specify vesting periods and where applicable retention of shares after vesting and explain how the share based remuneration contributes to the objectives set out in the first subparagraph.

The remuneration policy shall indicate the duration of the contracts or arrangements with directors and the applicable notice periods, the main characteristics of supplementary pension or early retirement schemes and the terms of the termination and payments linked to termination.

The remuneration policy shall explain the decision-making process followed for its determination, review and implementation, including, measures to avoid or manage conflicts of interests and, where applicable, the role of the remuneration committee or other committees
concerned. Where the policy is revised, it shall describe and explain all significant changes and how it takes into account the votes and views of shareholders on the policy and reports since the most recent vote on the remuneration policy by the general meeting of shareholders.

7. Member States shall ensure that after the vote on the remuneration policy at the general meeting the policy together with the date and the results of the vote is made public without delay on the website of the company and remains publicly available, free of charge, at least as long as it is applicable.

Article 9b
Information to be provided in and right to vote on the remuneration report

1. Member States shall ensure that the company draws up a clear and understandable remuneration report, providing a comprehensive overview of the remuneration, including all benefits in whatever form, awarded or due during the most recent financial year to individual directors, including to newly recruited and to former directors, in accordance with the remuneration policy referred to in Article 9a.

Where applicable, the remuneration report shall contain the following information regarding each individual director’s remuneration:

(a) the total remuneration split out by component, the relative proportion of fixed and variable remuneration, an explanation how the total remuneration complies with the adopted remuneration policy, including how it contributes to the long-term performance of the company, and information on how the performance criteria were applied;

(b) the annual change of remuneration, the performance of the company, and of average remuneration on a full-time equivalent basis of employees of the company other than directors over at least the five most recent financial years, presented together in a manner which permits comparison;

(c) any remuneration from any undertaking belonging to the same group as defined in point (11) of Article 2 of Directive 2013/34/EU of the European Parliament and of the Council (1);

(d) the number of shares and share options granted or offered, and the main conditions for the exercise of the rights including the exercise price and date and any change thereof;

(e) information on the use of the possibility to reclaim variable remuneration;

(f) information on any deviations from the procedure for the implementation of the remuneration policy referred to in Article 9a(6) and on any derogations applied in accordance with Article 9a(4), including the explanation of the nature of the exceptional circumstances and the indication of the specific elements derogated from.

2. Member States shall ensure that companies do not include in the remuneration report special categories of personal data of individual directors within the meaning of Article 9(1) of Regulation (EU) 2016/679 of the European Parliament and of the Council (1) or personal data which refer to the family situation of individual directors.

3. Companies shall process the personal data of directors included in the remuneration report pursuant to this Article for the purpose of increasing corporate transparency as regards directors’ remuneration with the view to enhancing directors’ accountability and shareholder oversight over directors’ remuneration.

Without prejudice to any longer period laid down by any sector-specific Union legislative act, Member States shall ensure that companies no longer make publicly available pursuant to paragraph 5 of this Article the personal data of directors included in the remuneration report in accordance with this Article after 10 years from the publication of the remuneration report.

Member States may provide by law for processing of the personal data of directors for other purposes.

4. Member States shall ensure that the annual general meeting has the right to hold an advisory vote on the remuneration report of the most recent financial year. The company shall explain in the following remuneration report how the vote by the general meeting has been taken into account.

However, for small and medium-sized companies as defined, respectively, in Article 3(2) and (3) of Directive 2013/34/EU, Member States may provide, as an alternative to a vote, for the remuneration report of the most recent financial year to be submitted for discussion in the annual general meeting as a separate item of the agenda. The company shall explain in the following remuneration report how the discussion in the general meeting has been taken into account.

5. Without prejudice to Article 5(4), after the general meeting the companies shall make the remuneration report publicly available on their website, free of charge, for a period of 10 years, and may choose to keep it available for a longer period provided it no longer contains the personal data of directors. The statutory auditor or audit firm shall check that the information required by this Article has been provided.

Member States shall ensure that the directors of the company, acting within its field of competence assigned to them by national law, have collective responsibility for ensuring that the remuneration report is drawn up and published in accordance with the requirements of this Directive. Member States shall ensure that their laws, regulations and administrative provisions on liability, at least towards the company, apply to the directors of the company for breach of the duties referred to in this paragraph.

6. The Commission shall, with a view to ensuring harmonisation in relation to this Article, adopt guidelines to specify the standardised presentation of the information laid down in paragraph 1.

Article 9c

Transparency and approval of related party transactions

1. Member States shall define material transactions for the purposes of this Article, taking into account:

(a) the influence that the information about the transaction may have on the economic decisions of shareholders of the company;

(b) the risk that the transaction creates for the company and its shareholders who are not a related party, including minority shareholders.

When defining material transactions Member States shall set one or more quantitative ratios based on the impact of the transaction on the financial position, revenues, assets, capitalisation, including equity, or turnover of the company or take into account the nature of transaction and the position of the related party.

Member States may adopt different materiality definitions for the application of paragraph 4 than those for the application of paragraphs 2 and 3 and may differentiate the definitions according to the company size.

2. Member States shall ensure that companies publicly announce material transactions with related parties at the latest at the time of the conclusion of the transaction. The announcement shall contain at least information on the nature of the related party relationship, the name of the related party, the date and the value of the transaction and other information necessary to assess whether or not the transaction is fair and reasonable from the perspective of the company and of the shareholders who are not a related party, including minority shareholders.

3. Member States may provide for the public announcement referred to in paragraph 2 to be accompanied by a report assessing whether or not the transaction is fair and reasonable from the perspective of the company and of the shareholders who are not a related party, including minority shareholders, and explaining the assumptions it is based upon together with the methods used.

The report shall be produced by one of the following:

(a) an independent third party;

(b) the administrative or supervisory body of the company;
(c) the audit committee or any committee the majority of which is composed of independent directors.

Member States shall ensure that the related parties do not take part in the preparation of the report.

4. Member States shall ensure that material transactions with related parties are approved by the general meeting or by the administrative or supervisory body of the company according to procedures which prevent the related party from taking advantage of its position and provide adequate protection for the interests of the company and of the shareholders who are not a related party, including minority shareholders.

Member States may provide for shareholders in the general meeting to have the right to vote on material transactions with related parties which have been approved by the administrative or supervisory body of the company.

Where the related party transaction involves a director or a shareholder, the director or shareholder shall not take part in the approval or the vote.

Member States may allow the shareholder who is a related party to take part in the vote provided that national law ensures appropriate safeguards which apply before or during the voting process to protect the interests of the company and of the shareholders who are not a related party, including minority shareholders, by preventing the related party from approving the transaction despite the opposing opinion of the majority of the shareholders who are not a related party or despite the opposing opinion of the majority of the independent directors.

5. Paragraphs 2, 3 and 4 shall not apply to transactions entered into in the ordinary course of business and concluded on normal market terms. For such transactions the administrative or supervisory body of the company shall establish an internal procedure to periodically assess whether these conditions are fulfilled. The related parties shall not take part in that assessment.

However, Member States may provide for companies to apply the requirements in paragraph 2, 3 or 4 to transactions entered into in the ordinary course of business and concluded on normal market terms.

6. Member States may exclude, or may allow companies to exclude, from the requirements in paragraphs 2, 3 and 4:

(a) transactions entered into between the company and its subsidiaries provided that they are wholly owned or that no other related party of the company has an interest in the subsidiary undertaking or that national law provides for adequate protection of interests of the company, of the subsidiary and of their shareholders who are not a related party, including minority shareholders in such transactions;
(b) clearly defined types of transactions for which national law requires approval by the general meeting, provided that fair treatment of all shareholders and the interests of the company and of the shareholders who are not a related party, including minority shareholders, are specifically addressed and adequately protected in such provisions of law;

(c) transactions regarding remuneration of directors, or certain elements of remuneration of directors, awarded or due in accordance with Article 9a;

(d) transactions entered into by credit institutions on the basis of measures, aiming at safeguarding their stability, adopted by the competent authority in charge of the prudential supervision within the meaning of Union law;

(e) transactions offered to all shareholders on the same terms where equal treatment of all shareholders and protection of the interests of the company is ensured.

7. Member States shall ensure that companies publicly announce material transactions concluded between the related party of the company and that company’s subsidiary. Member States may also provide that the announcement is accompanied by a report assessing whether or not the transaction is fair and reasonable from the perspective of the company and of the shareholders who are not a related party, including minority shareholders and explaining the assumptions it is based upon together with the methods used. The exemptions provided in paragraph 5 and 6 shall also apply to the transactions specified in this paragraph.

8. Member States shall ensure that transactions with the same related party that have been concluded in any 12-month period or in the same financial year and have not been subject to the obligations listed in paragraph 2, 3 or 4 are aggregated for the purposes of those paragraphs.

9. This Article is without prejudice to the rules on public disclosure of inside information as referred to in Article 17 of Regulation (EU) No 596/2014 of the European Parliament and of the Council (1).

Article 10
Proxy voting

1. Every shareholder shall have the right to appoint any other natural or legal person as a proxy holder to attend and vote at a general meeting in his name. The proxy holder shall enjoy the same rights to speak and ask questions in the general meeting as those to which the shareholder thus represented would be entitled.

Apart from the requirement that the proxy holder possess legal capacity, Member States shall abolish any legal rule which restricts, or allows companies to restrict, the eligibility of persons to be appointed as proxy holders.

2. Member States may limit the appointment of a proxy holder to a single meeting, or to such meetings as may be held during a specified period.

Without prejudice to Article 13(5), Member States may limit the number of persons whom a shareholder may appoint as proxy holders in relation to any one general meeting. However, if a shareholder has shares of a company held in more than one securities account, such limitation shall not prevent the shareholder from appointing a separate proxy holder as regards shares held in each securities account in relation to any one general meeting. This does not affect rules prescribed by the applicable law that prohibit the casting of votes differently in respect of shares held by one and the same shareholder.

3. Apart from the limitations expressly permitted in paragraphs 1 and 2, Member States shall not restrict or allow companies to restrict the exercise of shareholder rights through proxy holders for any purpose other than to address potential conflicts of interest between the proxy holder and the shareholder, in whose interest the proxy holder is bound to act, and in doing so Member States shall not impose any requirements other than the following:

(a) Member States may prescribe that the proxy holder disclose certain specified facts which may be relevant for the shareholders in assessing any risk that the proxy holder might pursue any interest other than the interest of the shareholder;

(b) Member States may restrict or exclude the exercise of shareholder rights through proxy holders without specific voting instructions for each resolution in respect of which the proxy holder is to vote on behalf of the shareholder;

(c) Member States may restrict or exclude the transfer of the proxy to another person, but this shall not prevent a proxy holder who is a legal person from exercising the powers conferred upon it through any member of its administrative or management body or any of its employees.

A conflict of interest within the meaning of this paragraph may in particular arise where the proxy holder:

(i) is a controlling shareholder of the company, or is another entity controlled by such shareholder;

(ii) is a member of the administrative, management or supervisory body of the company, or of a controlling shareholder or controlled entity referred to in point (i);
(iii) is an employee or an auditor of the company, or of a controlling shareholder or controlled entity referred to in (i);

(iv) has a family relationship with a natural person referred to in points (i) to (iii).

4. The proxy holder shall cast votes in accordance with the instructions issued by the appointing shareholder.

Member States may require proxy holders to keep a record of the voting instructions for a defined minimum period and to confirm on request that the voting instructions have been carried out.

5. A person acting as a proxy holder may hold a proxy from more than one shareholder without limitation as to the number of shareholders so represented. Where a proxy holder holds proxies from several shareholders, the applicable law shall enable him to cast votes for a certain shareholder differently from votes cast for another shareholder.

Article 11

Formalities for proxy holder appointment and notification

1. Member States shall permit shareholders to appoint a proxy holder by electronic means. Moreover, Member States shall permit companies to accept the notification of the appointment by electronic means, and shall ensure that every company offers to its shareholders at least one effective method of notification by electronic means.

2. Member States shall ensure that proxy holders may be appointed, and that such appointment be notified to the company, only in writing. Beyond this basic formal requirement, the appointment of a proxy holder, the notification of the appointment to the company and the issuance of voting instructions, if any, to the proxy holder may be made subject only to such formal requirements as are necessary to ensure the identification of the shareholder and of the proxy holder, or to ensure the possibility of verifying the content of voting instructions, respectively, and only to the extent that they are proportionate to achieving those objectives.

3. The provisions of this Article shall apply mutatis mutandis for the revocation of the appointment of a proxy holder.

Article 12

Voting by correspondence

Member States shall permit companies to offer their shareholders the possibility to vote by correspondence in advance of the general meeting. Voting by correspondence may be made subject only to such requirements and constraints as are necessary to ensure the identification of shareholders and only to the extent that they are proportionate to achieving that objective.
**Article 13**

**Removal of certain impediments to the effective exercise of voting rights**

1. This Article applies where a natural or legal person who is recognised as a shareholder by the applicable law acts in the course of a business on behalf of another natural or legal person (the client).

2. Where the applicable law imposes disclosure requirements as a prerequisite for the exercise of voting rights by a shareholder referred to in paragraph 1, such requirements shall not go beyond a list disclosing to the company the identity of each client and the number of shares voted on his behalf.

3. Where the applicable law imposes formal requirements on the authorisation of a shareholder referred to in paragraph 1 to exercise voting rights, or on voting instructions, such formal requirements shall not go beyond what is necessary to ensure the identification of the client, or the possibility of verifying the content of voting instructions, respectively, and is proportionate to achieving those objectives.

4. A shareholder referred to in paragraph 1 shall be permitted to cast votes attaching to some of the shares differently from votes attaching to the other shares.

5. Where the applicable law limits the number of persons whom a shareholder may appoint as proxy holders in accordance with Article 10(2), such limitation shall not prevent a shareholder referred to in paragraph 1 of this Article from granting a proxy to each of his clients or to any third party designated by a client.

**Article 14**

**Voting results**

1. The company shall establish for each resolution at least the number of shares for which votes have been validly cast, the proportion of the share capital represented by those votes, the total number of votes validly cast as well as the number of votes cast in favour of and against each resolution and, where applicable, the number of abstentions.

However, Member States may provide or allow companies to provide that if no shareholder requests a full account of the voting, it shall be sufficient to establish the voting results only to the extent needed to ensure that the required majority is reached for each resolution.

2. Within a period of time to be determined by the applicable law, which shall not exceed 15 days after the general meeting, the company shall publish on its Internet site the voting results established in accordance with paragraph 1.
3. This Article is without prejudice to any legal rules that Member States have adopted or may adopt concerning the formalities required in order for a resolution to become valid or the possibility of a subsequent legal challenge to the voting result.

CHAPTER IIa

IMPLEMENTING ACTS AND PENALTIES

Article 14a

Committee procedure

1. The Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC (1). That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council (2).

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 14b

Measures and penalties

Member States shall lay down the rules on measures and penalties applicable to infringements of national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented.

The measures and penalties provided for shall be effective, proportionate and dissuasive. Member States shall, by 10 June 2019, notify the Commission of those rules and of those implementing measures and shall notify it, without delay, of any subsequent amendment affecting them.

CHAPTER III

FINAL PROVISIONS

Article 15

Transposition

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 3 August 2009 at the latest. They shall forthwith communicate to the Commission the text of those measures.


Notwithstanding the first paragraph, Member States which on 1 July 2006 had in force national measures restricting or prohibiting the appointment of a proxy holder in the case of Article 10(3), second subparagraph, point (ii), shall bring into force the laws, regulations and administrative provisions necessary in order to comply with Article 10(3) as concerns such restriction or prohibition by 3 August 2012 at the latest.

Member States shall forthwith communicate the number of days specified under Articles 6(3) and 7(3), and any subsequent changes thereof, to the Commission, which shall publish this information in the *Official Journal of the European Union*.

When Member States adopt the measures referred to in the first paragraph, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

*Article 16*

**Entry into force**

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

*Article 17*

**Addressees**

This Directive is addressed to the Member States.
Section III:
Italian Law Materials
EXEMPLARY OF THE
LEGISLATIVE DECREE No. 58, OF 24 FEBRUARY 1998

“Consolidated Law on Finance”, as amended
[current as of 29 September, 2018 (footnotes omitted)]

(omissis)

PART III - REGULATION OF MARKETS

(omissis)

Chapter IV - Centralised management of financial instruments

(omissis)

Section I - Dematerialised centralised management

(omissis)

Article 83-undecies
Issuer obligations

1. Issuers of shares update the shareholders' register in compliance with the communications and notifications made by the intermediaries in accordance with article 83-novies, paragraph 1, letters b), c), d), e), f) and g), of article 83-duodecies and, in the event of the demand for proxies promoted by the issuer, in compliance with the communications made by the intermediaries in accordance with article 144, paragraph 1, within thirty days of their receipt[551].

2. Without prejudice to Article 2421 of the Civil Code, even if the shareholders' register is not set up or maintained by electronic means, the results of that shareholders' register shall be made available to shareholders, on request, also on electronic support media in a commercially-used format[552].

3. Paragraph 1 does not apply to cooperatives [553].

4. All of the above without prejudice to the provisions of Article 7, Law no. 1745 of 29 December 1962.

Article 83-duodecies
Shareholder identification
1. Where envisaged in the Articles of Association, Italian companies with shares admitted for trading with the consent of the issuer on regulated markets or multilateral trading facilities in Italy or another European Union country, may ask, may at any time and at their own expense call upon intermediaries – through a central depository – to provide data identifying shareholders that have not specifically denied consent to such disclosures, together with the number of shares registered on accounts in their names.\textsuperscript{554}.

2. The disclosures referred to in paragraph 1 must reach the issuer within ten trading days of the date of the request, or other deadline established by CONSOB by regulation issued in agreement with the Bank of Italy.\textsuperscript{555}

3. Where the Articles of Association envisage the option indicated in paragraph 1, the company shall make the same request if asked to do so by a number of shareholders representing at least half the minimum investment established by CONSOB pursuant to Article 147-ter, paragraph 1. The related costs shall be divided between the company and the shareholders concerned according to criteria established by CONSOB regulation, with due regard to the requirement not to encourage the use of this tool by shareholders for purposes not consistent with the aim of facilitating coordination between such shareholders for the exercise of rights calling for a professional investment.\textsuperscript{556}

4. Companies shall publish promptly, according to the procedures established by CONSOB in its regulations, a disclosure confirming that a request for identification has been made, providing reasons if the request is made pursuant to paragraph 1, or the identity and total investment of requesting shareholders for requests made pursuant to paragraph 3. The data received shall be made available to shareholders on a commonly-used electronic storage device free of charge, without prejudice to the obligation to update the shareholders’ register.\textsuperscript{557}

5. This article shall not apply to cooperatives.

\textit{(omissis)}

\textbf{PART IV - REGULATION OF ISSUERS}

\textit{(omissis)}

\textbf{Chapter II - Listed companies}

\textit{(omissis)}

\textbf{Section I - Ownership structures}

\textbf{Article 120}

Notification requirements for major holdings

1. For the purposes of this section, the capital of joint stock companies shall mean that represented by voting shares. In companies whose articles of association allow for
increased voting rights or which contemplate the issue of multiple-voting rights, capital refers to the total number of voting rights[762].

2. Persons who hold more than three per cent of the capital of a listed issuer with Italy as home Member State shall notify the investee company and CONSOB. If the issuer is an SME, this threshold is five percent[763].

2-bis. CONSOB may, by means of measures justified by needs to protect the investors as well as corporate control market and capital market efficiency and transparency, envisage – for a limited period of time – thresholds lower than that indicated in paragraph 2 for companies with an elevated current market value and particularly extensive shareholding structure[764].

3. …omissis…[765].

4. CONSOB, taking account of the characteristics of the investors, shall lay down in a regulation:

a) the variations in the holdings referred to in paragraph 2 that must be notified[766];

b) the criteria for the calculation of the stakes, also taking into account the shares held indirectly, if the voting right is held or attributed to a subject other than the shareholder or where there are increased voting rights[767];

c) the content of and procedures for notifications and public announcements and any exemptions applicable to the latter;

d) the terms for the communication and for disclosure to the public[768];

d-bis) the cases in which notifications are due from owners of financial instruments carrying the rights referred to in the last paragraph of Article 2351 of the Civil Code.[769]

d-ter) cases in which a holding of derivatives is subject to reporting obligations[770];

d-quater) situations exempt from the application of these provisions[771].

4-bis In the case of the purchase of a stake in quoted issuers equal or above the thresholds of 10%, 20% and 25% of the relevant share capital in listed companies, except as provided for in Article 106, subsection 1-bis, the entity carrying out the communications referred to in paragraphs 2 and 3 of this article shall state the objectives it intends to pursue in the following six months. The declaration shall state under the responsibility of the declarant:

a) the means of financing the acquisition;

b) whether acting alone or in concert;

c) whether it intends to stop or continue its purchases, and whether it intends to acquire control of the issuer or anyway have an influence on the management of the company and, in such cases, the strategy it intends to adopt and the transactions to be carried out;

d) its intentions as to any agreements and shareholders’ agreements to which it is party;

e) whether it intends to propose the integration or revocation of the issuer’s administrative or control bodies.

CONSOB can identify, with its own regulation, the cases where the aforementioned declaration is not due, taking into account the characteristics of the entity making the declaration or of the company whose shares have been purchased.
The declaration shall be transmitted to the company whose shares have been purchased and to CONSOB, as well declaration must be subject to public disclosure in accordance with the terms and conditions established by Consob Regulation issued pursuant to paragraph 4, letters c) and d).

Without prejudice to Article 185, if within six months of the communication of the declaration changes of intentions are made on the basis of objective circumstances that have occurred, a new reasoned statement must be addressed without delay to the company and CONSOB and brought to the knowledge of the public in the same manner. The new declaration shall resume the six-month period mentioned in the first paragraph of this paragraph [772].

5. Voting rights attached to listed shares or to financial instruments which have not been notified pursuant to paragraph 2 or the declaration required by subsection 4-bis may not be exercised. In the event of non-compliance, Article 14(5) shall apply. The challenge may also be initiated by CONSOB within the time limit specified in Article 14(6). [773]

6. Paragraph 2 shall not apply to shares held by the Ministry of the Economy and Finance [774] through companies it controls. The related notification requirements shall be fulfilled by the companies controlled.

(omissis)

Section II - Shareholder rights [794]

Article 125
Calling of shareholders' meetings at the request of minority shareholders

…omissis…[795]

[please refer to Article 2367 of Italian Civil Code, providing that any shareholder or group thereof holding at least 5% of the voting shares (or the lower percentage of voting shares as specifically indicated in the company's by-laws) of a listed company ("issuer"), may require the board of directors to call a shareholder meeting “without delay”. However, the right to the shareholders’ meeting cannot be exercised as to any proposal to be tabled by the Board of Directors and/or to any resolution to be adopted by the Shareholders on the basis of a project, plan, or report drafted by the Board of Directors]

Article 125-bis [796]
Notice of call to shareholders' meetings

1. The shareholders' meeting is convened by notice published on the company's website within thirty days of the date of the meeting and by other means and within the terms established by CONSOB with regulation issued in accordance with article 113-ter, paragraph 3, including the publication in extract form in the daily newspapers [797].

2. For shareholders' meetings called to appoint, by means of list voting, members of the board of directors and internal control bodies, the time limit for publication of the notice of call shall be at least forty days prior to the date of the meeting. [798].
3. For shareholders’ meetings envisaged in Articles 2446, 2447 and 2448 of the Civil Code, the time limit indicated in paragraph 1 shall become at least twenty-one days prior to the date of the meeting.

4. The notice of call shall contain:

a) the indication of the day, time and place of the meeting and the list of matters on the agenda;

b) a clear, precise description of the procedures to be applied in order to attend and vote at the shareholders' meeting, including information concerning:

1) the terms for exercising the right to raise questions prior to the meeting and the right to have additional items placed on the agenda or to present further proposals on items already on the agenda and, also by reference to the company's website, any additional methods by which to exercise these rights;

2) the procedure for the exercise of the vote by proxy and, in particular, the methods for collecting the forms that can be used, optionally, for voting by proxy and the methods, including electronic methods, for communicating any notification of voting by proxy;

3) the procedure for the conferral of proxy to the party appointed by the company in accordance with article 135-undecies, with the specification that the power of proxy shall have no effect for proposals for which no voting instructions have been given;

4) the procedures for voting by correspondence or using electronic means, if envisaged by the Articles of Association;

c) the date specified in article 83-sexies, paragraph 2, with the specification that those who become holders of shares only after that date shall not have the right to attend and vote at the shareholders' meeting;

d) the terms and conditions for collecting the full text of the proposed resolutions, together with the explanatory reports and documents to be submitted to the shareholders' meeting;

d-bis) the terms and conditions for presenting lists to elect the members of the board of directors and minority members of the board of auditors or the supervisory board;

f) the address of the website specified in article 125-quater;

f) the other information which must be indicated in the notice calling the meeting pursuant to other provisions.[799]

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**Article 125-ter [800]**
**Disclosure of items on the agenda**

1. Unless required under the terms of other legal provisions, by the date of publication of the notice of call to the shareholders' meeting envisaged by virtue of each of the items on the agenda, the board of directors shall make a report on each of the items on items of the agenda available to the public at the company's registered office, on the company web site and by other means envisaged by CONSOB regulation[801].

2. The reports prepared in accordance with law shall be made available to the public by the deadlines specified in such legal provisions, by the means envisaged in paragraph 1. The report pursuant to Article 2446, paragraph 1 of the Civil Code shall be made available
to the public at least twenty-one days prior to the shareholders’ meeting. The provisions of Article 154-ter, paragraphs 1, 1-bis and 1-ter shall remain valid.

3. In the event of shareholders' meetings convened in accordance with article 2367 of the Italian Civil Code, the report on the items on the agenda is prepared by shareholders requiring the convening of the meeting. The administrative body or auditors or supervisory board or management control committee, where they convened the meeting in accordance with article 2367, second paragraph, first sentence, of the Italian Civil Code, shall make available to the public the report, accompanied by their assessments if appropriate, at the same time as publishing the notice calling the shareholders' meeting in the ways set out by supervisory board 1\[802\].

Article 125-quater [803]
Web site

1. Without prejudice to the provisions of articles 125-bis and 125-ter, the following are made available on the company’s website:

a) within the terms for the publication of the notice calling the meeting, as envisaged for each of the items on the agenda to which they refer, or subsequent terms as envisaged by the law for publication, the documents that will be submitted to the shareholders' meeting;

b) within the terms for the publication of the notice calling the meeting, the forms that can be optionally used for voting by proxy and, where envisaged by the Articles of Association, for correspondence voting; where the forms cannot be made available in electronic format for technical reasons, the same website will specify how to obtain hard copies and, in this case, the company must send them free of charge, on request, by mail, also through the intermediaries;

c) within the terms of publication of the notice calling the meeting, information on the amount of the share capital specifying the number and categories of shares into which it is divided.

2. A summary report of the votes containing the number of shares represented at the shareholders' meeting and the shares on which a vote was expressed, the percentage of capital represented by those shares, the number of votes in favour and against the resolution and the number of abstentions, shall be made available on the company web site within five days the date of the meeting. The minutes of the shareholders’ meeting pursuant to Article 2375 of the Civil Code shall in any event be made available on the web site within thirty days of the date of the meeting\[804\].

(omissis)

Article 126-bis [812]
Integration of the agenda of the shareholders' meeting and presentation of new proposed resolutions

1. Shareholders, who individually or jointly account for one fortieth of the share capital may ask, within ten days of publication of the notice calling the shareholders' meeting, or within five days in the event of calling the meeting in accordance with article 125-bis, paragraph 3 or article 104, paragraph 2, for the integration of the list of items on the agenda, specifying
in the request, the additional items they propose or presenting proposed resolution on items already on the agenda. The requests, together with the certificate attesting ownership of the share, are presented in writing, by correspondence or electronically, in compliance with any requirements strictly necessary for the identification of the applicants indicated by the company. Those with voting rights may individually present proposed resolutions in the shareholders’ meeting. For cooperatives the amount of the capital is determined by the statutes also in derogation of article 135[813].

2. Integrations to the agenda or the presentation of further proposed resolutions on items already on the agenda, in accordance with paragraph 1, are disclosed in the same ways as prescribed for the publication of the notice calling the meeting, at least fifteen days prior to the date scheduled for the shareholders’ meeting. Additional proposed resolutions on items already on the agenda are made available to the public in the ways pursuant to article 125-ter, paragraph 1, at the same time as publishing news of the presentation. Terms are reduced to seven days in the case of shareholders’ meetings called in accordance with article 104, paragraph 2 or in the case of a shareholders’ meeting convened in accordance with article 125-bis, paragraph 3.

3. The agenda cannot be supplemented with items on which, in accordance with the law, the shareholders’ meeting resolved on proposal of the administrative body or on the basis of a project or report prepared by it, other than those specified under article 125-ter, paragraph 1.

4. Shareholders requesting integration in accordance with paragraph 1 shall prepare a report giving the reason for the proposed resolutions on the new items for which it proposes discussion or the reason relating to additional proposed resolutions presented on items already on the agenda. The report is sent to the administrative body within the final terms for presentation of the request for integration. The administrative body makes the report available to the public, accompanied by any assessments, at the same time as publishing news of the integration or presentation, in the ways pursuant to article 125-ter, paragraph 1.

5. If the administrative body, or should it fail to take action, the board of auditors or supervisory board or management control committee fail to supplement the agenda with the new items or proposals presented in accordance with paragraph 1, the court, having heard the members of the board of directors and internal control bodies, where their refusal to do so should prove to be unjustified, orders the integration by decree. The decree is published in the ways set out by article 125-ter, paragraph 1.

Article 127
Postal or electronic voting

1. By regulation CONSOB shall establish the methods for exercising votes and the procedures for shareholders’ meeting in cases envisaged in Article 2370, paragraph 4 of the Civil Code[814].

Article 127-bis
Voidability of resolutions and right to withdrawal

1. For the purpose of Article 2377 of the Civil Code, any person on whose behalf shares are registered after the date indicated in Article 83-sexies, paragraph 2 and prior to opening of the shareholders’ meeting, shall be considered absent from that meeting.

2. For the purpose of the right to withdrawal envisaged in Article 2437 of the Civil Code, any person on whose behalf shares are registered after the date indicated in Article 83-
sexies, paragraph 2 and prior to opening of the shareholders’ meeting, registration of those shares shall not be calculated for the approval of resolutions.

3. This provision shall also apply to Italian companies with shares admitted to multilateral trading facilities in Italy or in other EU countries with the consent of the issuer.\[819\]

Article 127-ter

Right to submit questions prior to the shareholders' meeting

1. All those with voting rights may submit questions on the items on the agenda even prior to the shareholders' meeting. Questions received before the meeting will be answered at the latest during the said meeting. The company may provide a single reply to questions with the same content.

1-bis. The notice calling the meeting specifies the terms within which questions raised prior to the shareholders' meeting must reach the company. The terms must be no less than three days prior to the date of the first or only calling of the shareholders' meeting or five days if the notice of calling establishes that the company should provide a reply to the questions received before the actual meeting. In this case, replies are provided at least two days prior to the shareholders' meeting also by publication in a specific section of the company website.

2. No reply is necessary, even in the shareholders' meeting, to questions raised prior to it, where the information required is already available in "FAQ" format in the section of the company's website specified in paragraph 1-bis or when the answer has been published in accordance with said paragraph.

3. The reply attached to the minutes is considered as given during the meeting when is made available at the beginning of the meeting, by each of those entitle to vote.\[816\]

(omissis)

Section II-ter Proxies\[844\]

Article 135-novies

Representation at the shareholders' meeting

1. Any person with the right to vote may indicate one representative for each shareholders' meeting, without prejudice to the right to specify one or more replacements.\[845\]

2. As an exception to paragraph 1, any person with the right to vote may appoint a different representative for each account, used to record financial instrument transactions, valid where the communication envisaged in Article 83-sexies [record date] has been issued.

3. As a further exception to paragraph 1, if the person indicated as owner of the shares in the communication envisaged in Article 83-sexies acts alone or through registered trustees on behalf of his or her customers, the person in question may indicate others on whose behalf he/she acts, or one or more third parties indicated by such customers, as their representative.
4. If the proxy form envisages such an option, the proxy may arrange for personal substitution by another person of his or her choice, without prejudice to compliance with Article 135-decies paragraph 3 and to the right of the person represented to indicate one or more substitutes.\cite{846}

5. In place of the original, the representative may deliver or transmit a copy of the proxy, also in electronic format, confirming his or her liability in compliance of the proxy form to the original and the identity of the delegating party. The representative shall retain the original of the proxy form and keep track of any voting instructions received for a period of one year from closure of the shareholders' meetings concerned.

6. The appointment may be made with a document in an electronic format with a digital signature in accordance with article 21, paragraph 2 of Italian Legislative Decree 82 of 7 March 2005. The companies specify in the Articles of Association at least one way of electronic notification of the proxy.\cite{847}

7. Paragraphs 1, 2, 3 and 4 shall also apply to cases of share transfer by proxy.

8. All of the above without prejudice to the provisions of Article 2372 of the Italian Civil Code. As an exception to article 2372, second paragraph of the Italian Civil Code, asset management companies, SICAVs, harmonized management companies and non-EU parties providing collective investment management services may grant representation for more than one shareholders' meeting.\cite{848}

**Article 135-decies**

Conflict of interest of the representative and substitutes

1. Conferring proxy upon a representative in conflict of interest is permitted provided that the representative informs the shareholder in writing of the circumstances giving rise to such conflict of interest and provided specific voting instructions are provided for each resolution in which the representative is expected to vote on behalf of the shareholder. The representative shall have the onus of proof regarding disclosure to the shareholder of the circumstances giving rise to the conflict of interest. Article 1711, second paragraph of the Italian Civil Code does not apply.\cite{849}

2. In any event, for the purposes of this article, conflict of interest exists where the representative or substitute:

a) has sole or joint control of the company, or is controlled or is subject to joint control by that company;

b) is associated with the company or exercises significant influence over that company or the latter exercises significant influence over the representative; \cite{850}

c) is a member of the board of directors or control body of the company or of the persons indicated in paragraphs a) and b);

d) is an employee or auditor of the company or of the persons indicated in paragraph a);
e) is the spouse, close relative or is related by up to four times removed of the persons indicated in paragraphs a) to c);

f) is bound to the company or to persons indicated in paragraphs a), b), c) and e) by independent or employee relations or other relations of a financial nature that compromise independence.

3. Replacement of the representative by a substitute in conflict of interest is permitted only if the substitute is indicated by the shareholder. In such cases, paragraph 1 shall apply. Disclosure obligations and related onus of proof in any event remain with the representative.

4. This article shall also apply in cases of share transfer by proxy.

**Article 135-undecies**

Appointed representative of a listed company

1. Unless the Articles of Association decree otherwise, companies with listed shares designate a party to whom the shareholders may, for each shareholders' meeting and within the end of the second trading day prior to the date scheduled for the shareholders' meeting, including for callings subsequent to the first, a proxy with voting instructions on all or some of the proposals on the agenda. The proxy shall be valid only for proposals on which voting instructions are conferred[^51].

2. Proxy is conferred by signing a proxy form, the content of which is governed by a CONSOB regulation. Conferring proxy shall be free of charge to the shareholder. The proxy and voting instructions may be cancelled within the time limit indicated in paragraph 1[^52].

3. Shares for which full or partial proxy is conferred are calculated for the purpose of determining due constitution of the shareholders' meeting. With regard to proposals for which no voting instructions are given, the shares are not considered in calculating the majority and the percentage of capital required for the resolutions to be carried[^53].

4. The person appointed as representative shall any interest, personal or on behalf of third parties, that he or she may have with respect to the resolution proposals on the agenda. The representative must also maintain confidentiality of the content of voting instructions received until scrutiny commences, without prejudice to the option of disclosing such information to his or her employees or collaborators, who shall also be subject to confidentiality obligations. The party appointed as representative may not be assigned proxies except in compliance with this article[^54].

5. By regulation pursuant to paragraph 2, CONSOB may establish cases in which a representative failing to meet the indicated terms of Article 135-decies may express a vote other than that indicated in the voting instructions[^55].

*(omissis)*
Section II - Solicitation of proxies

Article 136
Definitions

1. For the purposes of this section, the following definitions shall apply:

a) “proxy”, means of representation conferred for the exercise of votes at shareholders’ meetings;

b) “solicitation”, a request to more than two hundred shareholders for proxy to be conferred in relation to specific voting proposals, or accompanied by recommendations, statements or other indications capable of influencing the vote;

c) “promoter”, the person or persons, including the issuer, acting in concert to promote the solicitation.[859]

Article 137
General provisions

1. For the purposes of this section, Articles 135-novies and 135-decies shall apply to proxies.[850]

2. Articles of Association that in any way limit representation in shareholders' meetings shall not apply to proxies given pursuant to the provisions of this chapter.

3. The Articles of Association may contain rules aimed at facilitating voting by proxy by employee shareholders.[860]

4. The provisions of this section shall not apply to cooperatives.

4-bis. The provisions of this section also apply to Italian companies with financial instruments other than shares admitted with the consent of the issuer to trading on regulated markets in Italy or other European Union Member States with regards to the conferral of representation to exercise voting rights in shareholders' meeting by the owners of the said financial instruments.[861]

Article 138
Solicitation

1. Solicitation is performed by the promoter through dissemination of a statement and a proxy form.

2. The vote relating to shares for which proxy is conferred is exercised by the promoter. The promoter may be substituted only by a person specifically indicated in the proxy form and in the solicitation statement.[862]

Article 139
Requirements for promoters
Article 140
Persons authorised to engage in solicitation

Article 141
Shareholders’ associations

1. Requests for proxy are accompanied by recommendations, statements or other indications capable of influencing the vote shall not constitute solicitation pursuant to Article 136, paragraph 1, paragraph b) by shareholders' associations, targeting their own members, which:

a) are constituted by authenticated simple agreement;

b) do not exercise business activities other than those directly instrumental to the purpose of the association;

c) are composed of at least fifty natural persons, each of which owning a number of shares not exceeding 0.1 per cent of the share capital represented by shares with voting rights.

2. Proxy conferred upon the association by shareholders pursuant to paragraph 1 shall not be considered in calculating the limit of two hundred shareholders envisaged in Article 136, paragraph 1, paragraph b) [865].

Article 142
Proxies

1. Proxies shall be signed by the givers, may be revoked and may be given only for one shareholders' meeting that has already been called, remaining effective for subsequent calls where applicable; they may not be given blank and shall show the date, the name of the appointee and the voting instructions.

2. Proxy may also be conferred for only a number of the voting proposals indicated in the proxy form or for only certain items on the agenda. The representative shall vote on behalf of the person conferring proxy also on items of the agenda for which he or she has received instructions, even if not included in the solicitation. Shares for which full or partial proxy is conferred are calculated for the purpose of determining due constitution of the shareholders’ meeting [866].

Article 143
Liability

1. The information contained in the proxy statement or the proxy form and any sent out during a solicitation or collection of proxies must enable shareholders to make an informed decision; its suitability for this purpose shall be the liability of the promoter [867].

2. The promoter shall be liable for the completeness of information sent out during a solicitation [868].
3. In actions for damages arising from violation of the provisions of this section and the related regulations the burden of proof of having acted with the due diligence required shall be on the promoter.\footnote{869}

Article 144
Performance of solicitations and collections of proxies

1. CONSOB shall issue a regulation on the transparency and correctness of solicitations and collections of proxies. In particular, the regulation shall lay down rules for:

a) the content of proxy statements and proxy forms and the procedures for their distribution;

b) the procedures for solicitation and the collection of proxies, and the conditions and procedures for casting proxy votes and revoking proxies;

c) the forms of cooperation between the promoter and the persons possessing the information on the identity of shareholders in order to permit the performance of solicitations\footnote{870}.

2. CONSOB may:

a) request that the statement and proxy form include additional information to establish their specific dissemination methods;

b) suspend solicitation activities in the event of a grounded suspicion of breach of the provisions of this section or prohibit it in the event of ascertained breach of said provisions\footnote{871};

c) exercise the powers envisaged in Article 114 paragraph 5 and Article 115 paragraph 1 against the promoters\footnote{872}.

3. …omissis…\footnote{873}.

4. In cases in which the law envisages forms of control over investments in company share capital, a copy of the statement and proxy form must be sent to the competent supervisory authority prior to solicitation. The authorities shall prohibit any solicitation that compromises the purpose of the control of capital investments\footnote{874}.

\textit{(omissis)}

Section IV-bis\footnote{885} - Administration bodies

\textbf{Article 147-ter} \footnote{886}
Election and composition of the Board of Directors

1. The Statute provides for members of the Board of Directors to be elected on the basis of the list of candidates and defines the minimum participation share required for their presentation, at an extent not above a fortieth of the share capital or at a different extent established by CONSOB with the regulation taking into account capitalization, floating funds and ownership structures of listed companies. The lists indicate which are the
directors holding independent requisites established by law and by the Statute. The Statute may also provide that with regard to the sector for directors to be elected, what is not to be taken into account are the lists which have not reached a percentage of votes at least equal to half of the one required by the Statute for the presentation of same; for cooperatives the percentage is established by the statutes also in derogation from article 135. [887]

1-bis. Lists are deposited with the issuer, also by means of remote communication, in compliance with any requirements strictly necessary to identify the applicants indicated by the company, by the twenty-fifth day prior to the date of the meeting called to resolve on the appointment of the members of the board of directors and made available to the public at the company's headquarters, on the company's website and in the other ways envisaged by CONSOB by regulation, at least twenty-one days prior to the date of the shareholders' meeting. Ownership of the minimum investment envisaged by paragraph 1 is determined concerning the shares recorded in favour of the shareholder on the day on which the lists are deposited with the issuer. Related certification may also be submitted after filing, provided submission is within the time limit established for publication of the lists by the issuer[888].

1-ter. The Statute also lays down that the division of directors to be elected be made on the basis of a criterion that ensures a balance between genders. The less-represented gender must obtain at least one third of the directors elected. This division criterion applies for three consecutive mandates. If the composition of the board of directors resulting from the election does not comply with the division criterion provided for in the present section, CONSOB warns the company involved to comply with this criterion within the maximum term of four months from the warning. In the event of non-compliance with the warning, CONSOB applies a fine of from Euro 100,000 to Euro 1,000,000, according to criteria and methods laid down in its own regulations and sets a new term of three months for compliance. In the event of further non-compliance with respect to the new warning, the members elected lose their position. The statute regulates the methods of formation of the lists and the cases of replacement during a mandate in order to guarantee compliance with the division criterion provided for in the present section. CONSOB lays down regulations on the subject of infringement, application and observance of the rules on gender quotas, also with reference to the preliminary phase and the procedures to be adopted, on the basis of its own regulations to be adopted within six months from the date of entry into force of the rules contained in the present section. The rules of the present section apply also to companies organised according to the monistic system[889].

2. ...omissis...[890]

3. Except as provided for in Article 2409-septiesdecies of the Civil Code, at least one member shall be elected from the minority slate that obtained the largest number of votes and is not linked in any way, even indirectly, with the shareholders who presented or voted the list which resulted first by the number of votes. In companies organised under the one-tier system, the member elected from the minority slate must satisfy the integrity, experience and independence requirements established pursuant to Articles 148(3) and 148(4). Failure to satisfy the requirements shall result in disqualification from the position. [891]

4. In addition to what is provided for in paragraph 3, at least one of the members of the Board of Directors, or two if the Board of Directors is composed of more than seven
members, should satisfy the independence requirements established for members of the board of auditors in Article 148(3) and, if provided for in the Articles of Association, the additional requirements established in codes of conduct drawn up by regulated stock exchange companies or by trade associations. This paragraph shall not apply to the boards of directors of companies organised under the one-tier system, which shall continue to be subject to the second paragraph of Article 2409-septiesdecies of the Civil Code. The independent director who, following his or her nomination, loses those requisites of independence should immediately inform the Board of Directors about this and, in any case falls from his/her office. [892]

**Article 147-quater** [893]
Composition of the management board

1. If the management board has more than four members, at least one of them must satisfy the independence requirements established for members of the board of auditors in Article 148(3) and, if provided for in the Articles of Association, the additional requirements established in codes of conduct drawn up by regulated stock exchange companies or by trade associations.

1-bis. If the management board has not less than three members, the rules of article 147-ter, paragraph 1-ter apply to it [894].

**Article 147-quinquies**
Integrity requirements

1. Persons who perform an administrative or management role must satisfy the integrity requirements established for members of internal control bodies in the regulation issued by the Minister of Justice pursuant to Article 148, paragraph 4.

2. Failure to satisfy the requirements shall result in disqualification from the position. [895]
EXCERPT OF THE

CONSOB REGULATION NO. 11971/1999,
CONCERNING THE DISCIPLINE OF ISSUERS

(adopted by CONSOB Resolution No. 11971, of 14 May 1999, as amended)

[current as of January 1st, 2019])

(omissis)

PART III – ISSUERS

(omissis)

TITLE III

(omissis)

Chapter III - Identification of the shareholders

Article 133-bis (Allocation of costs)

1. If the articles of association of Italian companies with shares traded in regulated markets or in a multi-lateral trading facility provide for the option indicated in article 83-duodecies, subparagraph 1 of the Consolidated Law, they will regulate the cost allocation between shareholders and the company in the event the request is made by the shareholders in accordance with sub-paragraph 3 of said Article, subject to the provisions of sub-paragraph 2 below.

2. If the option provided under Article 83-duodecies, sub-paragraph 3 of the Consolidated Act is exercised by the shareholders in the six months following closure of the fiscal year, and in any case prior to the annual ordinary shareholders' meeting, and no identification request pursuant to Article 83-duodecies of the Consolidated Act is made in the same period, the company will fully incur the costs for disclosure of the shareholder identification data and the number of shares registered on the securities accounts.

3. If the articles of association of the companies indicated in sub-paragraph 1 do not regulate the cost allocation principles for the cases provided under Article 83-duodecies, subparagraph 3 of the Consolidated Act, these charges will be fully borne by the company.
TITLE IV

VOTING RIGHTS

Chapter I - Proxy voting

Article 134 - (Representative appointed by the company with listed shares)

1. The proxy form provided under Article 135-undecies of the Consolidated Law shall contain at least the information provided by the model set out in Annex 5A.

2. The representative that does not have any conflicts of interest as set out under Article 135-decies of the Consolidated Act, where expressly authorised by the delegating party, may express a vote not aligned to the instructions in case significant events occur that were not known at the time the proxy was issued, and that cannot be communicated to the delegating party, provided that it could be reasonably inferred that, had the delegating party known of these significant events, it would have given its approval, or in the event of changes or additions to the proposals submitted to the shareholders’ meeting.

3. When sub-paragraph 2 applies, the representative will state at the meeting:
   a) the number of votes not expressed in accordance with the instructions received, or, in the event of a new proposal, expressed without instructions, with respect to the total number of votes exercised, distinguishing between abstentions, votes against and votes in favour;
   b) the reasons behind the vote not expressed in accordance with the instructions received or in the absence of instructions.***

Chapter II

Solicitation of proxies

Article 135 (Definitions)

1. For the purposes of this Chapter, the definitions of “intermediary", "participant" and "last intermediary" established in Article 1 of the Regulations governing the central depository, settlement and guarantee systems and related management companies, as adopted by the Bank of Italy and CONSOB on 22 February 2008 and subsequently amended, apply.

Article 136 (Solicitation procedure)

1. Anyone intending to promote a proxy solicitation shall send a notice to the issuing company, that promptly publishes it on its Internet site, to CONSOB, to market operator and to the central depository company.

2. The notice shall indicate:
   a) the identity of the promoter and the company issuing the shares for which the proxies are sought;
   b) the date of the shareholders’ meeting and the list of items at the agenda;
   c) how the proxy statement and the proxy form are published as well as the Internet site that these documents are available on;
d) the date beginning from which the party with the voting right may request the prospectus and the delegation form from the promoter or view it at the market operator; 637

e) the proposals for which the solicitation is to be carried out.

3. The prospectus and the form, containing at least the information provided under the schedules in Annexes 5B and 5C, will be published through the contextual transmission to the issuing company, CONSOB, the market operator and the central depository, and made promptly available on the Internet site indicated by the promoter in accordance with subparagraph 2, letter c). This Internet site may be the issuer's Internet site if the issuer so agrees. The central depository will promptly inform the intermediaries of the availability of the proxy prospectus and the proxy form 638.

4. …omissis… 639

5. The promoter shall deliver the form along with the prospectus to whomever requests it 640.

6. Any change in the prospectus and form made necessary by circumstances that have arisen shall be immediately communicated with the procedures set forth in subsection 3. 641

7. Upon request of the promoter:

a) the central depository shall communicate the identification details of the participating intermediaries on the accounts of which the issuing company shares are registered, in addition to the relative quantity of shares, using computer support and within one business day of receiving the request;

b) the intermediaries will communicate receipt of the request, using computer support and within three business days from receiving the request:

- the identification details of the parties that have the voting rights, and that have not expressly prohibited communication of their details, in relation to which they operate as last intermediaries, in addition to the number of shares of the issuing company registered on the respective accounts;

- the identification details of the parties that have opened accounts as intermediaries and the quantity of shares of the issuing company respectively registered on said accounts;

- the issuing company will make the identification details of the shareholders and the other records on the shareholders' register and the other disclosures received in accordance with the law or regulations available on computer support and within three business days from receipt of the request.

8. Starting from when the notice provided under sub-paragraph 1 has been published, anyone who releases information that is pertinent to the solicitation will simultaneously notify the market operator and CONSOB, who may request publication of more details or clarifications 642.

9. The promoter will bear the solicitation related costs.

10. The mere decision, by more than one party, to jointly promote a solicitation is irrelevant for the purposes of the duties provided under Article 122 of the Consolidated Act 643.

Article 137 (Conduct obligations)

1. The promoter will act with diligence, correctness and transparency.
2. In its contacts with the solicited parties, the promoter will abstain from carrying out its activity with persons who declare that they are not interested, provide comprehensible responses to requests for clarifications and explain the reasons for the solicitation, making clear in every case the implications resulting from business or shareholding relationships with it or persons belonging to its group, with the issuing company or entities belonging to its group.

3. If the promoter is different from the issuing company, it will note that, where expressly authorised by the solicited party, if significant events occur which were not known when the proxy was being issued, and cannot be communicated to the solicited party, and it could be reasonably inferred that if this party had known of these significant events it would have given its approval, the vote may be exercised differently from the way it was proposed.

4. The promoter will keep the results of the solicitation secret.

5. The promoter will announce how it voted with a press release, issued without delay in the manner indicated in Article 136, sub-paragraph 3, in addition to the reasons behind any vote exercised differently to what had been proposed in accordance with sub-paragraph 3, and the result of the voting.

6. In accordance with Article 142.2 of the Consolidated Act, anyone who exercises the vote at shareholders’ meetings must also vote on behalf of the delegating party for matters on the agenda that the promoter has not made proposals on, in accordance with the wish expressed by the delegating party in the proxy form in accordance with Article 138.3.

7. The promoter may not acquire voting proxies in accordance with Article 2372 of the Italian Civil Code 644.

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**Article 138**

(Conferring and revoking proxies)

1. For the conferment of the delegate, the subject with the voting right transmits to the promoter the delegation form, also as an electronic document signed in electronic mode, in accordance with Article 21, subsection 2, of Italian Legislative Decree n° 82 of 7 March 2005645.

2. The promoter will decide whether to exercise the vote even in a way that does not reflect the actual proposal and will note this choice in the proxy statement. If the proxy solicitation has been promoted by the issuing company, it must exercise the vote, even if it does not reflect the actual proposals.

3. The party with voting rights who has given a full or partial proxy, may use the same proxy form to vote for the items on the agenda for which the promoter has not requested the proxy. The promoter may not make recommendations, declarations or give other indications which could influence the vote regarding these items.

4. In the cases provided under sub-paragraphs 2 and 3, the promoter, if different from the issuing company, may express, where expressly authorised by the delegating party, a different vote to the one indicated in the instructions if significant events should occur that were not known when issuing the proxy, and that cannot be communicated to the delegating party, and it could be reasonably inferred that if the delegating party had known of these significant events it would have
given its approval, or in the event of changes or additions to the proposed motions submitted to the shareholders’ meeting.

5. In the cases provided under sub-paragraph 4, the promoter will state at the meeting:
   a) the number of votes expressed differently to the instructions received, or, in the event of additions to the proposed motions submitted to the shareholders’ meeting, expressed without instructions, with respect to the total number of votes exercised, distinguishing between abstentions, votes against and votes in favour;
   b) the reasons behind the vote expressed differently to the instructions received or in the absence of instructions.

6. In the cases provided in sub-paragraphs 3 and 4, in relation to the proposals for motions for which voting instructions were not given and where authorisation was not provided to express a different vote to the one indicated in the instructions, the shares will in any case be used to calculate whether a quorum has been reached to form the shareholders' meeting; however these shares will not be used in order to calculate majorities and the capital quota required to approve resolutions.

7. The proxy will be revoked by written statement, issued as prescribed by subsection 1, made known to the promoter at least the day before the shareholders’ meetings.

Article 139
(Interruption of the solicitation)

1. In the case of the interruption, for any reason whatsoever, of the soliciting, the promoter discloses the same with the procedures contemplated by Article 136, subsection 3.

2. Unless there is a provision to the contrary in the proxy statement, the promoter will exercise the vote pertaining to the shares that the proxy was given for prior to publication of the notice provided under sub-paragraph 1. This provision is not applied if the interruption of the soliciting is provided for by Article 144, subsection 2, letter b), of the Consolidated Law on Finance.

Chapter III - Voting by correspondence or by electronic means

Article 140
(Voting by correspondence)

1. Companies that permit voting by correspondence may condition this solely on existence of the requirements for identification of the parties with voting rights, in proportion to the extent to which the objectives are to be achieved.

2. The vote by correspondence will be exercised, in accordance with the provisions provided in the notice convening the shareholders’ meeting, by sending a ballot card, prepared so as to ensure the secrecy of the vote until the counting begins and containing the indication of the issuing company, the details of the meeting, the identity of the person entitled to exercise voting rights, specifying the number of shares held, and the motion proposals, the vote cast, the date and the signature.

3. Without prejudice to publication on its Internet site in accordance with Article 125-quater of the Consolidated Law, the issuing company will ensure that the ballot card is issued to any person, authorised to take part in the meeting, and who so requests.
Article 141 (Exercise of vote by correspondence)

1. Voting by correspondence will be exercised directly by the owner and expressed separately for each of the motion proposals.

2. The ballot must be received by the company by the day prior to the meeting.

3. The vote expressed will remain secret until counting starts at the meeting, and will remain valid for subsequent calls of the same meeting.

4. The vote may be revoked by making a written declaration brought to the awareness of the company at least the day before the meeting or by declaration expressed by the interested party during the meeting 650.

Article 142
(Formalities preliminary to shareholders’ meetings)

1. The date of receipt will be confirmed by the head of the office assigned to receive the ballot cards, and the revocation declarations made prior to the meeting.

2. The chairman of the control body and the employees and assistants of the chairman will be responsible for the safekeeping and secrecy of the ballot cards and revocation declarations up to when counting starts at the meeting 651.

Article 143
(Progress of the shareholders’ meeting)

1. Ballot cards that arrive after the time limits established or that are not signed will not be taken into consideration for the purposes of establishing a quorum for the meeting or for voting purposes.

2. The provisions of Article 138.6 will apply to the failure to express a vote on a resolution.

3. The holder of a voting right who expressed a vote may express its wish in the event of amendments or additions to the motion proposals submitted to the meeting choosing between:
   a) confirmation of the vote already expressed;
   b) change of the vote already expressed or the exercise of the vote indicating abstention, a vote against or a vote in favour of the motion proposals expressed by an administrative body or another shareholder;
   c) revocation of the vote already expressed with the effect provided under Article 138.6.

If there is no expression of will, the vote already expressed will be understood to be confirmed 652.

Article 143-bis
(Participation at the shareholders’ meeting through electronic means)

1. The articles of association may provide for the use of electronic means to permit one or more of the following types of participation at the shareholders’ meetings:
   a) transmission of the shareholders’ meeting in real time;
b) participation at the meeting from another location through two-way communication systems in real time;
c) exercise of the right to vote before the meeting or during it, without the need to appoint a representative to be physically present.

2. Companies that permit the use of electronic means may condition this solely on existence of the requirements for identification of the parties with voting rights, and for security of the communications, in proportion to the extent to which the objectives are to be achieved.

Article 143-ter
(Exercise of the vote before the shareholders’ meeting using electronic means)

1. Articles 141.1, 2 and 3, and 143.2 and 3 will apply to exercise of the vote expressed before the meeting, in accordance with Article 143-bis, sub-paragraph 1, letter c).

2. The vote may be revoked in the same way as it was exercised by the day before the shareholders’ meeting or by declaration expressed by the interested party during the meeting.

3. The company will guarantee that it will keep the information regarding the votes exercised by electronic means and revocations made before the shareholders’ meeting, including the date of receipt.

4. The chairman of the control body and its employees and assistants are responsible, until the start of the scrutiny vote at the meeting, of the confidentiality of records of the votes exercised by electronic means, and withdrawals.

5. The votes that arrive after the time limits established will not be taken into consideration for the purposes of establishing a quorum for the meeting or for voting purposes.

Chapter III-bis
Increased voting rights

Article 143-quater
(Contents of the list)

1. In companies which allow for increased voting rights, the list contemplated by Article 127-quinquies, paragraph 2, of the Consolidated Law, contains at least the following information:
   a) the identification data of the shareholders who have requested listing;
   b) the number of shares for which listing has been requested with indication of the transfers and the restrictions relative to the same;
   c) the listing date.

2. In a special section of the list, the following are also indicated:
   a) the identification data of the shareholders who have obtained increased voting rights;
   b) the number of shares with increased voting rights, with indication of the transfers and of the restrictions relative to the same, as well as the deeds of renunciation;
   c) the date on which the increased voting rights were obtained.

3. The companies update the list according to the communications and reports made by the intermediaries, as contemplated by the Consolidated Law and by the relative implementation
regulations, and on the basis of any communications received from the shareholders, within the term contemplated by the articles of association, if such is contemplated, and in any case in compliance with the provisions of Article 85-bis, paragraph 4-bis.

4. The contents of the list are made available to the shareholders, at their request, also on electronic support in a commonly used format.

5. Without prejudice to the provisions of the preceding subsection, the companies make known, by publication on their own Internet sites, of the identification data of the shareholders who have requested inclusion on the list, with indication of the relative stakes, which, in any case, must be above the threshold indicated under Article 120, paragraph 2, of the Consolidated Law, and of the entry data, within the term contemplated by paragraph 3656.

TITLE V-BIS - MANAGEMENT AND CONTROL BODIES 670

Chapter I - Appointment of management and control bodies

Section I - General Provisions

Article 144-ter (Definitions)

1. In this Chapter:
   a) “listed shares” shall mean: the shares listed on regulated markets in Italy or other EU countries that give the right to vote in shareholders’ meetings involving the appointment of the members of administrative and control bodies;
   b) “share capital” shall mean: the capital made up by the listed shares;
   c) “market capitalisation” shall mean: the average capitalisation of the listed shares during the last quarter of the financial year;
   d) “float” shall mean: the percentage share capital made up of shares with voting rights not represented by significant holdings pursuant to Article 120 of the Consolidated Law and by holdings assigned by shareholders’ agreements pursuant to Article 122 of the Consolidated Law;
   e) “reference shareholders” shall mean: the shareholders who have submitted or voted the list that received the highest number of votes;
   f) “group” shall mean: the parent company, its subsidiaries and the companies subject to joint control;
   g) “family relationships” shall mean: the relationship between a shareholder and those family members who are deemed capable of influencing, or being influenced by, said shareholder. These family members may include: the spouse if not legally separated, the spouse’s children, the cohabiting partner and the cohabiting partner’s children, the dependants of the shareholder, of the spouse if not legally separated and of the cohabiting partner.

2. All references in this Chapter to the board of statutory auditors or the statutory auditors shall also encompass the supervisory board and its members, unless otherwise specified.

Section II

Shareholdings for the presentation of lists for the election of the board of directors

Article 144-quater671

(Equity interest share)
1. Without prejudice to any lesser percentage established in the Articles of Association, the interest share required for the presentation of the lists of candidates for the election of the board of directors in accordance with Article 147-ter of the Consolidated Law:
a) is 0.5% of the share capital for companies with market capitalization in excess of fifteen billion euro;
b) is 1% of the share capital for companies with market capitalization in excess of one billion euro and less than or equal to fifteen billion euro;
c) is 2.5% of the share capital for companies with market capitalization is less than or equal to one billion euro.

2. Without prejudice to the smaller percentage envisaged by the articles of association, the investment share is equal to 4.5% of the share capital for companies for which the market capitalization is less than or equal to three hundred and seventy-five million euro where, at the year end date, the following conditions are all met:
a) floating capital is in excess of 25%;
b) there is no shareholder or more than one shareholder adhering to a shareholders' agreement as envisaged by Article 122 of the Consolidated Law which have the majority of the voting rights that can be exercised in the meeting resolutions concerning the appointment of the members of the administrative body.

3. Where the conditions indicated under paragraph 2 are not met, without prejudice to the lesser percentage envisaged by the articles of association, the investment share is 2.5% of the share capital.

4. …omissis...672

5. …omissis...673

6. As an exception to the provisions of this Article, the companies requiring admission to listing may provide, for the first renewal subsequent to this, that the investment share required for the presentation of the lists of candidates for the election of the board of directors, in accordance with Article 147-ter of the Consolidated Law is equal to a percentage of no more than 2.5%.

Section III
Election of the internal control body

Article 144-quinquies (Relationships of affiliation between reference shareholders and minority shareholders)

1. The material relationships of affiliation pursuant to Article 148, subsection 2, of the Consolidated Law between one or more reference shareholders and one or more minority shareholders shall be deemed to exist in at least the following cases:
a) family relationships;
b) membership of the same group;
c) control relationships between a company and those who jointly control it;
d) relationships of affiliation pursuant to Article 2359, subsection 3 of the Italian Civil Code, including with persons belonging to the same group;
e) the performance, by a shareholder, of management or executive functions, with the assumption of strategic responsibilities, within a group that another shareholder belongs to;
f) participation in the same shareholders’ agreement provided for in Article 122 of the Consolidated Law involving shares of the issuer, of its parent company or one of its subsidiaries.

2. When a person affiliated to the reference shareholder has voted for a minority shareholder list, the existence of such relationship of affiliation shall only be deemed to be material when the vote is decisive for the election of the auditor.

Article 144-sexies
(Election of the minority statutory auditors by list voting)

1. Except for replacements, the election of the statutory auditor representing minority shareholders pursuant to Article 148, subsection 2 of the Consolidated Law shall take place at the same time as the election of the other members of the control body.

2. Each shareholder may submit a list for the appointment of members of the board of statutory auditors. The articles of association may establish that the shareholder or shareholders submitting a list must possess a shareholding at the time of the submission not exceeding the amount established pursuant to Article 147-ter, subsection 1 of the Consolidated Law.

3. The lists shall contain the names:
   a) of one or more candidates for the office of acting statutory auditor and alternate statutory auditor, for the election of the board of statutory auditors;
   b) of two or more candidates, for the election of the supervisory board.
   The names of the candidates shall be accompanied by consecutive numbers and shall not in any case exceed the number of members of the body to be elected.

4. The lists shall be filed at the registered office by the twenty-fifth day before the shareholders’ meeting date set for the shareholders’ meeting called to approve the appointment of the statutory auditors, together with:
   a) the details of the identity of the shareholders who have submitted the lists, specifying the overall percentage shareholding held and a certification specifying the ownership of said shareholding;
   b) a declaration from the shareholders other than those who, jointly or otherwise, possess a controlling or relative majority shareholding, certifying the absence of any relationships of affiliation with the latter pursuant to Article 144-quinquies;
   c) detailed information on the personal traits and professional qualifications of the candidates, together with a declaration from said candidates certifying their possession of the requirements under the law and their acceptance of the nomination.\textsuperscript{674}

4-bis. \ldots omissis... \textsuperscript{675}

4-ter. Companies will allow shareholders who wish to present lists to file them using at least one long distance means of communication, in accordance with the manner that it has established, and noted in the notice convening the shareholders’ meeting, which will allow identification of the parties that will be doing the filings.\textsuperscript{676}

4-quater. The ownership of all the shareholdings held indicated in paragraph 4, letter a), is also confirmed after the deposit of the lists, provided it is confirmed at least twenty-one days before the date of the shareholders’ meeting, by the forwarding of the communications contemplated by article 23 of the Regulation governing the services of centralised management, liquidation, guarantee
systems and the relative management companies adopted by the Bank of Italy and by the CONSOB on 22 February 2008, as successively amended67.

5. If, on the final date of the term indicated in paragraph 4, only one list has been deposited, or only lists presented by shareholders who, pursuant to the ruling of paragraph 4, are connected to each other as contemplated by article 144-quinquies, lists can be presented until the third day following that date, without prejudice to the provision of article 147-ter, paragraph 1-bis, last sentence, of the Consolidated Law. In such a case any thresholds contemplated by the articles of association, pursuant to paragraph 2, shall be reduced by half68.

6. A shareholder may not submit or vote for more than one list, including through nominees or trust companies. Shareholders belonging to the same group and shareholders participating in a shareholder agreement involving the shares of the issuer may not submit or vote for more than one list, including through nominees or trust companies. A candidate may only be present in one list, under penalty of ineligibility.

7. The candidate at the top of the list that has obtained the highest number of votes from amongst the lists submitted and voted by shareholders who are not affiliated to the reference shareholders pursuant to Article 148, subsection 2 of the Consolidated Law shall be elected as acting statutory auditor. The candidate for alternate statutory auditor at the top of the same list shall be elected to said office.

FOOTNOTES
1-629 (omissis).
630 Chapter added by CONSOB resolution no. 17592 of 14.12.2010.
631 (omissis).
632 Title first replaced by CONSOB resolution no. 17592 of 14.12.2010 and then amended by CONSOB resolutions no. 17730 of 31.3.2011, no. 18612 of 17.7.2013, no. 19084 of 19.12.2014 in the terms indicated in the successive notes.
633 List thus replaced by CONSOB resolution no. 19084 of 19.12.2014.
634 See note at Title IV.
635 See note at Title IV.
636 Paragraph thus amended by art. 3 of Resolution no. 20621 of 10.10.2018, which replaced the words “stock exchange company” with the words “market operator”.
637 Letter first amended with CONSOB resolution 17730 of 31 March 2011 which cancelled the phrase: “including through the last intermediary” and then by art. 2 of Resolution no. 20621 of 10.10.2018, which replaced the words “stock exchange company” with the words “market operator”.
638 Paragraph thus amended by art. 3 of Resolution no. 20621 of 10.10.2018, which replaced the words “stock exchange operator” with the words “market operator”.
639 Subsection repealed with CONSOB resolution 17730 of 31 March 2011.
640 Subsection amended with CONSOB resolution 17730 of 31 March 2011, which cancelled the phrase: “also through the most recent intermediaries”.
641 Letter modified with CONSOB resolution 17730 of 31 March 2011 which cancelled the phrase: “The last intermediaries shall promptly notify the parties to whom solicitation was made of the availability of the changed proxy statement and proxy forms”.
642 Paragraph thus amended by art. 3 of Resolution no. 20621 of 10.10.2018, which replaced the words “stock exchange company” with the words “market operator”.
643 See note at Title IV. Point II of CONSOB resolution 17730 of 31 March 2011 sets forth that: “It becomes effective on the day after its publication in the Official Gazette and also applies to solicitations for voting mandates for which the notice required by article 136 of the issuers’ regulation has been published.
644 See note at Title IV.
645 Subsection first amended by CONSOB resolution no. 17730 of 31.3.2011 and then replaced by CONSOB resolution no. 18612 of 17.7.2013.
646 Subsection amended by CONSOB resolution no. 18612 of 17.7.2013. See note at Title IV.
647 Subsection amended by CONSOB resolution no. 18612 of 17.7.2013. See note at Title IV.
648 Subsection amended by CONSOB resolution no. 18612 of 17.7.2013. See note at Title IV.
649 See note at Title IV.
650 See note at Title IV.
651 See note at Title IV.
652 See note at Title IV.
653 See note at Title IV.
654 See note at Title IV.
655 Chapter inserted by CONSOB resolution no. 19084 of 19.12.2014.
656 Article added by CONSOB resolution no. 19084 of 19.12.2014.
657-657 (omissis)
658 Article added by CONSOB resolution n. 19925 of the 22.3.2017.
659 Article added by CONSOB resolution n. 19925 of the 22.3.2017.

Article first amended by CONSOB resolution no. 17326 of 13.5.2010; subsequently replaced by CONSOB resolution no. 18214 of 9.5.2012 and finally amended by CONSOB resolution no. 18523 of 10.4.2013 in accordance with the terms of the subsequent notes.

Subsection repealed by CONSOB resolution no. 18523 of 10.4.2013.

Sub-Subsection amended in this manner with CONSOB resolution no. 17592 of 14.12.2010 that replaced the words: “at least fifteen days before the date set for the shareholders’ meeting” with the words: “by the twenty-fifth day prior to the date of the shareholders’ meeting” and at letter a) the following words were deleted: “and a certification specifying the ownership of said shareholding”.

Subsection first introduced by CONSOB resolution no. 17592 of 14.12.2010 and then amended by CONSOB resolution no. 18523 of 10.4.2013.

Sub-Subsection added by CONSOB resolution no. 17592 of 14.12.2010.

Subsection first introduced by CONSOB resolution no. 17592 of 14.12.2010 and then thus amended by CONSOB resolution no. 18523 of 10.4.2013 which has deleted the words: “or at least ten days before for cooperative companies.”

Subsection first replaced by CONSOB resolution no. 17592 of 14.12.2010 and then by CONSOB resolution no. 18523 of 10.4.2013.
Corporate Governance Committee

CORPORATE GOVERNANCE CODE

July 2018
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Main Principles and temporary regime
Article 1 – Role of the Board of Directors
Article 2 – Composition of the Board of Directors
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Article 6 – Remuneration of directors
Article 7 – Internal control and risk management system
Article 8 – Statutory auditors
Article 9 – Relations with the shareholders
Article 10 – Two-tier and one-tier systems
**Article 2 – Composition of the Board of Directors**

**Principles**

2.P.1. The Board of Directors shall be made up of executive and non-executive directors, who should be adequately competent and professional.

2.P.2. Non-executive directors shall bring their specific expertise to Board discussions and contribute to the adoption of fully informed decisions paying particular care to the areas where conflicts of interest may exist.

2.P.3. The number, competence, authority and time availability of non-executive directors shall be such as to ensure that their judgement may have a significant impact on the taking of Board’s decisions.

2.P.4. The issuer applies diversity criteria, including those related to gender, for the composition of the Board of Directors, taking into due consideration the primary goal of ensuring adequate competence and professional skills of its members.

2.P.5. It is appropriate to avoid the concentration of corporate offices in one single individual.

2.P.6. Where the Board of Directors has delegated management powers to the chairman, it shall disclose adequate information in the Corporate Governance Report on the reasons for such organisational choice.

**Criteria**

2.C.1. The following are qualified executive directors for the issuer:

- the managing directors of the issuer or a subsidiary having strategic relevance, including the relevant chairmen when these are granted individual management powers or when they play a specific role in the definition of the business strategies;

- the directors vested with management duties within the issuer or in one of its subsidiaries having strategic relevance, or in a controlling company when the office concerns also the issuer;

- the directors who are members of the executive committee of the issuer, when no managing director is appointed or when the participation in the executive committee, taking into account the frequency of the meetings and the scope of the relevant resolutions, entails, as a matter of fact, the systematic involvement of its members in the day-to-day management of the issuer.

The granting of deputy powers or powers in cases of urgency to directors, who are not provided with management powers is not enough, *per se*, to cause them to be identified as executive directors, provided however, that such powers are not actually exercised with considerable frequency.
2.C.2. The directors shall know the duties and responsibilities relating to their office.

The chairman of the Board of Directors shall use his best efforts to allow the directors and the statutory auditors, after the election and during their mandate, to participate, in the ways deemed appropriate, in initiatives aimed at providing them with an adequate knowledge of the business sector where the issuer operates, of the corporate dynamics and the relevant evolutions, of the principles of proper risk-management as well as the relevant regulatory and self-regulatory framework.

The issuer shall describe in the Corporate Governance Report the type and organizational manners of the activities that took place during the fiscal year of reference.

2.C.3. The Board of Directors shall have at least one third of directors of the less-represented gender.

2.C.4. The Board shall designate an independent director as lead independent director, in the following circumstances: (i) in the event that the chairman of the Board of Directors is the chief executive officer of the company; (ii) in the event that the office of chairman is held by the person controlling the issuer.

The Board of Directors of issuers belonging to FTSE-Mib index shall designate a lead independent director whether requested by the majority of independent directors, except in the case of a different and grounded assessment carried out by the Board to be reported in the Corporate Governance Report.

2.C.5. The lead independent director:

(a) represents a reference and coordination point for the requests and contributions of non-executive directors and, in particular, those who are independent pursuant to Article 3 below;

(b) cooperates with the Chairman of the Board of Directors in order to guarantee that directors receive timely and complete information.

2.C.6. The chief executive officer of issuer (A) shall not be appointed director of another issuer (B) not belonging to the same corporate group, in the event that the chief executive officer of issuer (B) is a director of issuer (A).

Comment

The Committee wishes that the shareholders, when preparing the lists and subsequently appointing directors, evaluate, also in light of the opinion expressed by the Board on such an item and the diversity criteria identified by the issuer, the professional characteristics, the experience, including managerial competencies, and the gender of the candidates, in relation to the size of the issuer, the complexity and specificity of the business sector in which the issuer operates, as well as the size of the Board of Directors.

An adequate composition of the Board of Directors is crucial for an effective management of the company. To this end, the Code identifies the principles that shall steer shareholders and the Board itself towards the best Board’s composition, defining the priorities amongst them.
Principle 2.P.1. recognises the priority of competence and professional skills, as crucial elements for an adequate Board’s composition.

The goals of a diverse Board’s composition – regarding elements such as gender, managerial and professional skills, also international ones, different ranges of age and tenure – shall be achieved taking into due consideration the priority of adequate competence and professional skills of all directors.

As to the gender diversity, Law n. 120/2011 aimed at ensuring a balanced composition of all corporate bodies. Such legal provision achieved a significant increase of the female Board membership and made companies and its shareholders aware of gender diversity as a value that might be encouraged and safeguarded in order to ensure the efficient functioning of corporate bodies.

Nevertheless, the effects of Law n. 120/2011 are limited in time, as they are subject to a sunset clause.

Therefore, the Committee considers it appropriate that the Board of Directors is made up of at least one third of directors of the less-represented gender, both on appointment and during the whole mandate. The issuer, considering also its ownership structure, applies the most adequate tool for achieving such goal, adopting by-laws provisions and/or diversity policies and/or a guidance to shareholders and/or a slate of candidates submitted by the Board itself, and requires the subject submitting the slate of candidates to provide for adequate information, within the documentation attached to the slate, about the compliance of such slate with the diversity goals identified by the issuer.

Moreover, the Committee wishes for issuers to adopt measures to promote equal treatment and opportunities regardless of gender within the company’s structure, monitoring their concrete application.

The non-executive directors enrich the Board’s discussion with competences formed outside the company, having a general strategic character or a specific technical one. Such competences permit to analyse the different matters under discussion from different standpoints and, therefore, contribute to nourish the dialectics that is the distinctive precondition for a meditated informed corporate decision.

The contribution of non-executive directors appears to be useful on such subject matters in which the interests of executive directors and those of the shareholders may not coincide, such as the remuneration of the executive directors and in relation to the internal control and risk management systems.

With particular reference to the efficiency of the committees set up within the Board of Directors, issuer’s shareholders may consider the need to ensure management continuity through a diversification of the expiry of all or part of the Board members, provided that this does not jeopardize the different shareholders’ rights.

Within the Board of Directors, the figure of the chairman, to whom law and practice entrust duties of organization of the Board’s works and of liaison between executive and non-executive directors, takes up a fundamental importance. The international best practice recommends to avoid the concentration of offices in one single individual without adequate
counterbalances; in particular, the separation is often recommended of the roles of chairman and chief executive officer, the latter meant as a director who, by virtue of the delegations of powers received and the concrete exercise of these, is the main responsible officer for the management of the issuer (CEO). The Committee is of the opinion that, also in Italy, the separation of the above-mentioned roles may strengthen the characteristics of impartiality and balance that are required from the chairman of the Board of Directors. The Committee, in acknowledging that the existence of situations of accumulation of the two roles may satisfy, in particular in issuers of smaller size, valuable organizational requirements, recommends that, should this be the case, the figure of the lead independent director be created.

The Committee also recommends the designation of a lead independent director in either the event that the chairman is the person controlling the issuer - a circumstance which, per se, takes up no negative characteristics, but which requires, however, the creation of adequate counterweights - or, as far as companies belonging to FTSE-Mib index are concerned, it is requested by the majority of directors.

The lead independent director is granted, inter alia, with the power to convene, autonomously or upon demand of other directors, appropriate meetings of independent directors only for the discussion of subject matters judged of interest regarding the functioning of the Board of Directors or the company's operations.

Finally, the Committee recommends that the chief executive officer of an Italian company listed on a regulated market (the “issuer”) (A) shall not be appointed director of another issuer (B) not belonging to the same corporate group, in the event that the chief executive officer of issuer (B) is a director of the issuer (A). Such circumstances may cause potential conflicts of interests; however, it is not possible to exclude that, depending on the circumstances, sometimes they may be justified.
OMISSIS
Article 9 – Relations with the Shareholders

Principles

9.P.1. The Board of Directors shall take initiatives aimed at promoting the broadest participation possible of the shareholders in the shareholders’ meetings and making easier the exercise of the shareholders’ rights.

9.P.2. The Board of Directors shall endeavour to develop a continuing dialogue with the shareholders based on the understanding of their reciprocal roles.

Criteria

9.C.1 The Board of Directors shall ensure that a person is identified as responsible for handling the relationships with the shareholders and shall evaluate from time to time whether it would be advisable to establish a business structure responsible for such function.

9.C.2. All the directors usually participate in the shareholders’ meetings. The shareholders’ meetings are also an opportunity for disclosing to the shareholders information concerning the issuer, in compliance with the rules governing price-sensitive information. In particular, the Board of Directors shall report to the shareholders’ meeting the activity performed and planned and shall use its best efforts for ensuring that the shareholders receive adequate information about the necessary elements for them to adopt in an informed manner the resolutions that are the competence of the shareholders’ meeting.

9.C.3. The Board of Directors should propose to the approval of the shareholders’ meeting rules laying down the procedures to be followed in order to permit an orderly and effective conduct of the shareholders’ meetings of the issuer, without prejudice, at the same time, to the right of each shareholder to express his or her opinion on the matters under discussion.

9.C.4. In the event of significant changes in the market capitalization of the company’s shares or in the composition of its shareholders, the Board of Directors shall assess whether proposals should be submitted to the shareholders’ meeting to amend the by-laws in respect to the majorities required for exercising actions and rights provided for the protection of minority interests.

Comment

The Committee believes that it is in the best interests of the issuers to establish a continuing dialogue with the generality of the shareholders, and in particular, with institutional investors, in compliance with rules and
procedures governing the disclosure of price-sensitive information.

In such context, the shareholders’ meeting remains an important opportunity of confrontation between shareholders and directors.

Accordingly, the Committee wishes that the Board of Directors uses its best efforts in order to reduce the formalities and fulfilments that make the attendance at the shareholders’ meeting and the exercise of the voting rights by the shareholders burdensome and hard. When choosing the place, date and time for shareholders’ meetings, as well as when drafting the relevant agenda, directors shall bear in mind the objective of making it as easy as possible for shareholders to attend and vote.

The Committee is aware that the good working of shareholders’ meeting can be sometimes threatened by the behaviour of certain “rufflers” who substantially limit the effective attendance of the other shareholders. The Committee wishes that the issuers adopt measures aimed at protecting the effective attendance of the shareholders, respectfully of each single party’s needs.

The company shareholders’ meeting regulation can specify, among other things, the maximum duration of individual interventions, their order, the procedures for answering to the questions eventually submitted before the meeting, as well as the terms within such questions have to be submitted, the voting procedures, the interventions by directors and members of the Board of statutory auditors, as well as the powers of the chairman, inter alia with regard to settling or preventing conflicts in meetings.

Since the shareholders’ meeting allows shareholders and directors to have a dialogue, the latter shall attend, especially those who, in consideration of the duties with which they are entrusted in the Board of Directors and/or the committees of the Board, may provide a useful contribution to the shareholders’ meeting discussion.

With reference to the legal provisions protecting the rights of minorities that require minimum percentages to be fixed for the exercise of voting rights and the prerogatives of minorities, the Committee recommends that directors should continuously assess the desirability of adapting such percentages in line with the evolution of the company’s size and shareholder structure.

The previous timely disclosure to the market by shareholders controlling the issuer (or, if there are not, shareholders who have a significant influence on it) of any proposal to be submitted to the shareholders’ meeting in relation to topics on which directors did not formulate proposal, is a good practice. By way of example, shareholders’ position in matter of the number of Board of Directors members, as well as duration and remuneration of such a body, could be disclosed to the market at the filing of candidates slate.

The Committee believes that it is not in its responsibility to take into consideration the behaviours of institutional investors. The Committee, moreover, is of the opinion that the acknowledgement by them of the importance of the corporate governance rules contained in this Code may represent a significant element for the purpose of a more convinced widespread application of the principles of the Code by the issuers.