

Shareholder Suit to Compel Annual Meeting to Elect Directors

June 18, 2013 | Client Update

Last week, Starboard Value, which with nearly 15% of the shares of Office Depot is the company's largest shareholder, filed a complaint in the Delaware Court of Chancery to order the company to promptly hold an annual meeting to elect directors. On Monday, the company announced that it will hold an annual meeting on August 21.

Section 211 of the Delaware General Corporation Law allows shareholders to compel a meeting for the purpose of electing directors if such a meeting has not been held for 13 months. The company's last annual meeting was on April 29, 2012.

Office Depot has called a special meeting of shareholders for July 10 to vote on a proposed merger with OfficeMax. In its complaint, Starboard argued that the transaction is not a sufficient basis for Office Depot to avoid having an annual meeting.

Starboard has nominated a slate of six directors to Office Depot's board. The investor expressed support for the merger, but urged the company to change the board composition now in the event the merger is not consummated.

Since March, Starboard has pressed Office Depot, and filed notices, to schedule an annual meeting to take place prior to the merger with OfficeMax. The investor has undertaken a consent solicitation, still ongoing, to remove several existing directors in favor of Starboard's nominees.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Ning Chiu

+1 212 450 4908

ning.chiu@davispolk.com

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