

Eliminating Shareholder Ability to Call a Special Meeting

July 23, 2014 | Client Update | 2-minute read

Approximately 60% of S&P 500 companies provide shareholders with the right to call special meetings. Coupled with the move away from classified boards and toward annual director elections, which generally permit shareholders to remove directors for cause, there has been increasing concern that companies are dismantling their defensive mechanism and leaving themselves vulnerable to activist attacks.

Time Warner announced on Monday in a Form 8-K that its board has amended the company's bylaws, effective immediately, to delete provisions regarding shareholders' ability to call a special meeting. No reason was given in the company's filing, although reports in the press indicate that the company recently rejected an unsolicited takeover bid. The press also reports that the move buys the company several additional months, before shareholders would be asked to consider any offers. Time Warner's 8-K stated that its board intends to reinstate the provisions at the company's 2015 annual meeting.

The trajectory for Time Warner adopting the special meeting allowance follows what has become an oft-repeated pattern. In 2009, a shareholder proposal asking that 10% or more of shareholders be able to call a special meeting passed. The next year, the company successfully excluded the proposal by arguing that it intends to ask shareholders to vote for a conflicting management proposal to amend the company's bylaws, which would permit shareholders owning 15% or more shares to be able to call a special meeting. The company adopted that provision after it was approved at the 2010 meeting.

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.

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