

Company Prevails in Court Case Disputing Advance Notice Bylaws

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HomeStreet received a notice, numbering 133 pages, the day before the advance notice deadline in its bylaws alerting the company that Blue Lion intends to nominate two directors and submit two proposals, seeking annual elections and a binding resolution for an independent chairman. Both the company and the shareholder acknowledged years of engagement that culminated in a decision by the board not to nominate a representative from Blue Lion as a director.

Less than a week later, [the company announced](#) that the notice was deficient, attaching a five-page letter to a Form 8-K that it sent to the shareholder. The letter stated that the notice provided by the shareholder failed to meet several of the bylaw's disclosure requirements, including providing information related to the holder of shares that would be disclosed in a proxy statement governing a solicitation as well as deficiencies in the D&O questionnaires returned by the shareholders' nominees. Since the deadline had passed, declared the company, the company intended to disregard the nominations and the proposals for the meeting.

The shareholder responded on March 8 in [a 34-page letter](#) to the company disputing each allegation. The shareholder argued that the notice materially complied with the bylaws. In addition, Blue Lion also contended that the bylaws do not incorporate all of the requirements of Schedule 14A of the proxy rules and the fact that it did not explicitly acknowledge or affirmatively make a statement in each response did not render the notice invalid, as frequently the question was not applicable.

On March 13, the shareholder filed suit in the Superior Court of Washington in and for King County asking for injunctive relief for the upcoming annual meeting in May. The shareholder complained that the chairman of the board was conflicted due to the proposal to split the CEO and chair positions and that two of the three directors up for election are audit committee members who had been directors during an SEC investigation on accounting practices and so would be concerned about their seats.

Washington courts would likely look to Delaware Law, stated the shareholder complaint, which requires that the restrictions on the right to nominate must be reasonable. The complaint stated that the notice was “[w]holly compliant...[and] included every material piece of required information,” and they provided more than sufficient detail for company to have advance notice if intended actions.

Without wading into the details of the dispute, including addressing any of the allegations about the deficiencies, the Court on April 3 found that the company's advance notice bylaw is valid and that the Plaintiff failed to comply with the requirements. The Court determined that the board's decision to reject the Plaintiff's submission is an exercise of its business judgment and that the Plaintiff had failed to establish irreparable harm in the absence of injunctive relief, noting that the Plaintiff could seek a special meeting to achieve the same ends.

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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