CORPORATION LAW COUNCIL: WHITE PAPER AND DISCUSSION DRAFT FOR REVISIONS TO THE DELAWARE LAW ON STOCKHOLDER PROPOSALS

Date of Release: November 9, 2026

The Council of the Corporation Law Section (Section) of the Delaware State Bar Association (DSBA) has prepared this White Paper and Discussion Draft concerning the Delaware law on stockholder proposals.[1] In the Discussion Draft, we propose for comment amendments to the Delaware General Corporation Law (DGCL) that would become effective if Rule 14a-8 under the Securities Exchange Act of 1934 (Exchange Act) is rescinded. The amendments would address when and how stockholders of a Delaware corporation may submit precatory (non-binding) proposals at annual stockholder meetings and have these proposals included in the corporation's proxy materials.[2] The release of this White Paper starts a 60-day comment period.

Overview

Stockholders of publicly traded corporations currently submit precatory proposals in connection with stockholder meetings. The modern practice for submitting these proposals has developed under Rule 14a-8, which the United States Securities and Exchange Commission (SEC) has proposed to rescind. The rescission would leave a gap in corporate governance that State law must address.[3] The potential Rule 14a-8 rescission is particularly important for Delaware, where many public corporations are incorporated.

We have prepared a Discussion Draft shown in Annex A. It includes a statute that would create a basket for a limited number of precatory proposals (between one and three proposals) that may be submitted at the annual meetings of larger corporations, measured by market capitalization (market cap). The basket for each corporation would be filled with the proposals supported by the proponents and co-filers who own the most stock. To be eligible, each proponent would need to

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[1] This White Paper and the accompanying Discussion Draft of amendments have not been approved by either the DSBA or by the Section. Any draft legislation ultimately recommended by the Council must be approved by the Section and the Executive Committee of the DSBA before it may be recommended to the Delaware General Assembly.

[2] First person pronouns refer to the Council. Except where otherwise noted: (i) references to corporations mean Delaware corporations; (ii) proxy materials of a corporation include the proxy statement and related proxy cards; (iii) "proxy placement" means a stockholder's ability to require a corporation to include proposals in a corporation's proxy materials (including on its proxy cards); (iv) charter means a corporation's certificate of incorporation; and (v) statutory section references are to the DGCL. We assume that the charters of the corporations we address in this White Paper allow boards of directors to adopt and amend bylaws.

[3] Proposed Rule: Rescission of Rule 14a-8's Federal Regulation of Shareholder Proposals and Amendments to Rule 14a-4, File No. S7-2026-32 (Issued Sep. 16, 2026) at 53 ("Rescinding Rule 14a-8 would eliminate any implication of preemption … and thus remove that potential disincentive for States to develop their own laws governing shareholder proposals. To the extent some believe that Rule 14a-8 currently preempts State law, we expect that if the rule were rescinded, States and/or companies, in compliance with State law, would be more inclined to adopt their own standards for when shareholder proposals must be included in, or may be excluded from, the company's proxy materials.")

satisfy a list of clear, primarily procedural requirements, and any disputes would be resolved through a defined process. The key provisions include:

- Stockholders of corporations may present in the aggregate a capped number of precatory proposals as follows: (i) up to three proposals at each annual meeting of corporations with a market cap of $100 billion or more; (ii) up to two proposals at each annual meeting of corporations with a market cap of less than $100 billion but at least $50 billion; and (iii) one proposal at each annual meeting of corporations with a market cap of less than $50 billion but at least $30 billion. Stockholders of corporations with market caps of less than $30 billion would not be able to submit precatory proposals.

- Proponents may be joined by up to nine co-filers. The proposals that satisfy the statutory requirements and that are presented by the respective proponent and co-filers that beneficially own the most voting stock, up to the number of proposals just mentioned, would be voted on by stockholders and included in the corporation's proxy materials.

- To be eligible to make a precatory proposal, a proponent must either (i) beneficially own, individually, at least $250,000 in market value, or (ii) beneficially own, together with up to nine co-filers, $1 million in market value, of voting capital stock.

- Newly public corporations would have a five-year grace period before precatory proposals may be submitted by stockholders, unless the charter provides an earlier start date.

- Corporations could opt out of this system at a stockholder meeting held after the corporation has been public for five years, if the opt out is approved by each class and series of voting capital stock voting separately. An opt out would result in no precatory proposals being presented by stockholders of the corporation.

- Charters and bylaws may not provide additional means for stockholders to submit precatory proposals. Similarly, charters and bylaws may not impose greater or additional conditions or procedures that stockholders must satisfy to present precatory proposals.

- Only the proponent of a precatory proposal could challenge the corporation's application of the statute to such proposal, and only in an action brought within 30 days after the corporation gives notice of which proposals will be submitted for a stockholder vote.

Our work on this topic is part of our annual review of the DGCL. The Council and our Section have recommended legislation to the General Assembly over the last six decades. Many of our recommendations are for incremental changes to the DGCL that reflect the evolution of finance and business and that accommodate changes in laws and regulations that overlap with corporate law. The legislation included in the Discussion Draft is different, because we are trying to address a significant gap in corporate governance that could occur on or before the start of the proxy season relating to 2028 annual stockholder meetings. Many corporations start preparing for their annual meetings as much as a year in advance, so the preparation for the 2028 proxy season will begin shortly after the Delaware General Assembly concludes its next session in June of 2027.

We propose a set of prescriptive rules for precatory proposals (rather than provisions that would merely enable corporations to set their own rules) to avoid the costs and uncertainty that both corporations and stockholders would incur if the market had to develop its own alternatives to Rule 14a-8. Our goal is to have clear rules that can immediately replace Rule 14a-8, to stabilize the practice between corporations and stockholders, and to allow stockholders to continue engagement through non-binding proposals rather than resort to more drastic alternatives (like mounting "withhold" or "against vote" campaigns against incumbent directors, launching proxy contests to elect directors, soliciting proxies for binding stockholder proposals or engaging in social media campaigns).

Corporations and stockholders have different perspectives on and experiences with stockholder proposals, and the issues raised by the Discussion Draft are potentially contentious. We have written this White Paper to explain our thought process and how we have tried to account for the competing concerns of stakeholders.

Because the proposed amendments would replace a longstanding practice that has been regulated by federal law for several decades, they may have effects wider in scope than most of our other recommended legislation. Accordingly, we are undertaking a different process on this topic. Any interested parties may post comments within 60 days of the release of this White Paper on the following website: https://sos.delaware.gov/give-feedback-on-stockholder-proposals-rules. Questions may be directed by email to: DECouncil@mnat.com.

Following the comment period, the Council will prepare a revised draft of statutory provisions to propose for a vote of the Section. If the draft is approved by the Section and then the Executive Committee of the DSBA, it will be submitted for consideration by the General Assembly. The General Assembly will be in session during the first half of 2027.

In the remainder of this White Paper, we provide some background information on (i) precatory proposals under Rule 14a-8, (ii) the intersection of Rule 14a-8 with Delaware law, (iii) policy arguments for and against precatory proposals and (iv) some of the priorities we consider when we decide to recommend legislation. We then explain our reasoning behind the key terms of the Discussion Draft and set out a question-and-answer summary of the provisions in greater detail. We conclude with some final observations and a note on the comments that we believe would be most helpful to us.

Stockholder Proposals under Rule 14a-8

Rule 14a-8 currently requires that stockholder proposals be included in a corporation's proxy materials if certain procedural and substantive conditions and requirements are satisfied. A proponent stockholder may use Rule 14a-8 only if it owns at least $2,000 to $25,000 in market value of stock (depending on how long the proponent has owned the stock). In addition to the ownership threshold, Rule 14a-8 imposes several other procedural and substantive conditions and requirements. For example, a proposal is ineligible for inclusion in a corporation's proxy materials under the Rule if the proposal "deals with a matter relating to the company's ordinary business operations."

Historically, a corporation would not exclude a proposal from its proxy materials unless the SEC staff issued a no-action letter stating that it would not take enforcement action against the corporation for excluding the proposal under Rule 14a-8. The SEC staff addressed hundreds of no-action letters each year until November 2025, when it announced that, for the proxy season relating to 2026 annual meetings, it would not respond to most requests. In August 2026, the SEC staff announced that it would discontinue responding to Rule 14a-8 no-action requests entirely, unless and until it announces otherwise.

Stockholders have typically used Rule 14a-8 to present precatory proposals: that is, proposals asking a corporation to take specific action or requesting that a corporation prepare a report or make disclosure on a specific topic.

Intersection with Delaware Law

Corporations and stockholders have treated Rule 14a-8 as a source of authority for stockholder proposals, largely independent of State corporation law. State law would often be considered only if the proposal purported to bind the corporation or if a precatory proposal asked the corporation to take an action that would violate law. Neither the DGCL nor Delaware court decisions directly address the question of whether stockholders have the right under State law to present precatory proposals and, if there is a right, what it entails.[4] If Rule 14a-8 is rescinded, corporations, stockholders and the courts will be left without a clear set of baseline rules on precatory proposals.

In addition to the lack of clarity around baseline rules, there is uncertainty about the ability to privately order the stockholder proposal process. Neither the DGCL nor case law has established the extent to which a corporation's governing documents may regulate and restrict the submission of precatory proposals for a stockholder vote.[5] The Delaware courts have upheld bylaws that require a proponent to provide advance notice and background information to a corporation in connection with stockholders presenting business at a meeting, so long as the bylaws include reasonable provisions and are applied reasonably in specific instances. These bylaws establish mainly procedural requirements and have been applied primarily when a proponent is seeking a stockholder vote on a binding action permitted by the DGCL. By their express terms, these advance notice bylaws typically do not apply to Rule 14a-8 proposals. Delaware common law has not been called on to address whether a charter or bylaw may impose greater, more limited or different restrictions on the submission of precatory proposals by stockholders.

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[4] Section 211(b) provides that, in addition to electing directors, "[a]ny other proper business may be transacted at the annual meeting." One Delaware Court of Chancery decision addressed a precatory proposal, and the Court stated that "[j]ust because the resolution only requests the board to take certain action, however, does not make it improper nor change its purpose." However, this decision was made in the context of a books and record demand, where the legality of the proposal was not directly in issue. *Conservative Caucus Rsch., Analysis & Educ. Found., Inc. v. Chevron Corp.*, 525 A.2d 569, 572 (Del. Ch. 1987).

[5] Because a charter may limit the voting rights of classes and series of stock and holders of stock under Section 212(a), a charter provision limiting the submission of precatory proposals would presumably be valid. Section 212(a) does not address the extent to which a bylaw may regulate stockholder proposals, however.

As to proxy placement, there is more clarity under the current law. The DGCL does not provide any default ability for stockholders to require a corporation to include a stockholder proposal in the corporation's proxy materials. Moreover, there is no express authorization for governance provisions that would require a corporation to include proposals in the corporation's proxy materials, and such a mandate would arguably interfere with board authority to manage corporate decisions.[6]

Policy Arguments For and Against Precatory Proposals

Certain stakeholders have competing and strongly held views about precatory proposals.

Critics of Rule 14a-8 have observed the following about precatory proposals. The Rule is outdated because social and other electronic media allow stockholders to express views among themselves and to management without the need for a formal vote on proposals. The corporations that receive the most proposals use investor conferences and other organized initiatives to engage with stockholders about their views and concerns. Significant management time is devoted to engaging with stockholder proponents and these costs are not internalized by proponents. Most proposals are presented by a relatively small group of investors who own de minimis amounts of stock. Some proponents present a proposal about one topic but use it as leverage to obtain corporate action on another topic. An increasing number of proposals relate to social issues that have a tenuous relationship to the corporation and stockholder value. Proposals that do not relate to governance are rarely supported by a majority of the total votes cast.

Supporters of Rule 14a-8 have expressed the following views about precatory proposals. Many governance reforms started as precatory proposals, including auditor ratification, amendments to governing documents relating to majority voting for directors, default simple majority voting requirements and the appointment of independent board chairs or lead independent directors. Some proposals that may be characterized as social proposals focus attention on topics that could become the subject of future regulation (child and workplace safety and human rights issues) or that identify enterprise-wide risks (such as cybersecurity or artificial intelligence). Proposals might also call attention to egregious conduct by management in certain instances. These examples potentially illustrate that a topic may be worth voting on, regardless of the amount of stock owned by the proponent. Because many investors own stock of a given corporation as part of a larger portfolio, it is appropriate for proposals to address topics that are not tailored to a specific corporation. The success of precatory proposals cannot be fully measured based on the

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[6] One Delaware Supreme Court decision addressed a stockholder-proposed bylaw that would have required directors to expend corporate funds to reimburse the proxy expenses of stockholders who successfully nominated a "short slate" of director candidates. The Court held that the proposal to adopt the bylaw was a proper subject for stockholder action but that the bylaw at issue would impermissibly interfere with the board of directors' substantive authority to oversee the affairs of the corporation under Section 141(a), as it would require the corporation to expend funds even where the directors' fiduciary duties counseled against making the expenditure. *CA, Inc. v. AFSCME Employees Pension Plan*, 953 A.2d 227 (Del. 2008). This decision casts doubt on the substantive validity of a stockholder-adopted bylaw requiring proxy placement for business proposals because a corporation cannot deviate from Section 141(a) except in the charter. We are not aware of any established practice for using charter provisions or other non-bylaw governance arrangements to require a corporation to include precatory proposals on the corporation's proxy materials.

outcome of a stockholder vote, because many proposals are withdrawn after the corporation has agreed to other reforms.

The Council's Principles and Priorities

Irrespective of the relative merits of these various and divergent viewpoints, we are focused on the particular principles and priorities described below.

Drafting goals. We draft recommended legislation with goals of clarity and efficiency in mind. Directors, officers and stockholders should be able to focus on their business enterprise, without needless distractions and transaction costs. Sometimes it is most efficient to allow corporations the flexibility to "privately order" their affairs on a given topic. Other times, mandatory rules are necessary to promote efficiency or other important policy objectives. This is especially true if private ordering promotes free writing on a topic that is likely to result in litigation about how unique rules should be interpreted and enforced.

Governance structure. Amendments to the DGCL must also fit within Delaware's overall system for how corporations are governed. In general, the board of directors is charged with overseeing the business and affairs of a corporation. This authority extends to governance topics, like overseeing the process for holding stockholder meetings and electing directors. Board authority is monitored through the fiduciary duties that directors owe the corporation and the stockholders. This means the ultimate check on board authority on a given issue may be a judicial proceeding, where the courts can hold directors accountable for misconduct or intervene to prevent inequitable outcomes. At the same time, Delaware law must promote the protection of directors and officers from liability when they act in good faith.

Certainty. We believe the DGCL and Delaware's extensive common law provide certainty to corporations, directors, officers and stockholders regarding how they may order their affairs. This includes providing baseline rules for key governance events, like the conduct of annual stockholder meetings.

Resources. We believe the resources of the State must be conserved and prioritized to promote Delaware's core functions for serving corporations and stockholders. This includes our desire to avoid overburdening the Delaware courts. The courts are the primary forum for stockholders and other sophisticated parties to resolve disputes promptly. The resources of the State must be allocated carefully to advance these goals.

Reasonable rules. In applying these priorities, we aim to be reasonable. We realize that many public policy decisions involve weighing competing interests, and we try to understand the different points of view. We look for solutions that account for the concerns of corporations, directors, officers and stockholders.

Initial Determinations by the Council

The Council will revisit its determinations based on the comments it receives in response to this White Paper, but it has made some initial determinations that informed the Discussion Draft.

Legislatively closing the gap left by the potential rescission of Rule 14a-8 is preferable to private ordering in this area. We are proposing a statutory system in order for stockholders to present precatory proposals.[7] We recognize that the capital markets could establish private ordering solutions to fill the gap in the absence of Rule 14a-8, but there are benefits to addressing these issues by statute. Stockholders and corporations would benefit from a comprehensive set of rules that could immediately replace Rule 14a-8 post-rescission. Such rules would avoid a prolonged negotiation, starting on a blank slate, between stockholders and corporations, and instead would promote certainty in the marketplace.

Delaware should not try to replicate the substantive exclusions in Rule 14a-8. We propose that stockholders satisfy primarily objective requirements, as a condition to present precatory proposals. Some stockholders might prefer a system that replicates Rule 14a-8 as much as possible, where a virtually unlimited number of proposals may be presented so long as the objective and subjective conditions and requirements of the Rule are satisfied. But Delaware's system of governance is not the same as a regulatory regime under the Exchange Act. Historically, the SEC's staff has played a role in administering the Rule. Under Delaware law, judgment calls about corporate governance are made in the first instance by the board of directors, and then any conflict between the board and the stockholders is resolved through litigation. It might be unfair to stockholders to provide boards with too much discretion to apply subjective requirements for submitting proposals, and it might also be unfair to subject directors to litigation when there are disagreements about how the subjective requirements are applied. Furthermore, litigation on a new set of claims, entirely foreign to current Delaware law, risks taxing the resources of the Delaware courts, which must be conserved so the courts can continue their current work.

Delaware should permit a limited number of precatory proposals. We propose a rule in which stockholders of large corporations may submit a limited number of precatory proposals for a stockholder vote at annual meetings. Critics of Rule 14a-8 may question why Delaware should facilitate precatory proposals at all. We cannot quantify the value or cost of stockholder proposals, but the practice of voting on these proposals is a facet of the current U.S. capital markets. An abrupt cessation of all precatory proposal activity could have unforeseen consequences. For example, eliminating precatory proposals may channel active stockholders to more drastic means of engagement ("against director" or "withhold" vote campaigns, proxy contests or solicitations for binding bylaw amendments), or lead to broad concerns over accountability.

Basket approach: stockholders determine which proposals go forward. The primary objective requirement we propose to rely on is the basket, where a limited number of stockholder precatory proposals are permitted at annual stockholder meetings and the proposals supported by the greatest number of shares are submitted for a stockholder vote and included in the corporation's proxy materials. This is intended to create a self-selecting process that allows stockholders

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[7] Most proposals presented using Rule 14a-8 are precatory. In our Discussion Draft, we define a precatory proposal as "any business proposed by any one or more stockholders that is solely advisory in nature or in the nature of a request for action by the corporation or its board of directors, officers, employees or agents, including a request to prepare a report or other disclosure to be disseminated to stockholders, which in each case shall not include a nomination of one or more persons for director election and shall not include a proposal, statement or recommendation that stockholders vote against, or stockholders withhold authority from a proxy holder to vote for, the election of one or more persons for director election."

themselves to make a collective determination as to what proposals should be presented at annual meetings. We believe that establishing a cap on the number of proposals that may be submitted for a stockholder vote, and that may be included in the corporation's proxy materials, will limit the impact of eliminating the ordinary business and other substantive conditions of Rule 14a-8. In other words, the cap will replace these substantive conditions as the filter for limiting the aggregate number of proposals that are ultimately voted on by stockholders. At the same time, stockholder interest under this system is more likely to be an indicator of which proposals are important to stockholders, rather than sorting proposals based on SEC statements and a complex body of no-action letter precedent that the SEC staff has developed around ordinary business.

Tiered structure for large corporations. We propose that this system for precatory proposals apply only to large corporations, with a tiered structure based on market cap. Stockholders of Tier 1 corporations with the largest market cap would be able to submit up to three proposals in the aggregate. Stockholders of the next largest corporations, Tier 2 and Tier 3 corporations, would be able to submit two precatory proposals in the aggregate and one precatory proposal, respectively, per annual meeting. Thus, for any annual meeting, a maximum of three precatory proposals would be submitted for a stockholder vote and included in the corporation's proxy materials.

Exemption for smaller corporations. Stockholders of corporations below Tier 3 and privately held corporations may not submit precatory proposals. We base this rule in part on our observation that most companies below the third tier seldom, if ever, receive precatory proposals. We do not want an unintended effect of the amendments to be a new focus on the segment of the market where stockholders have not generally filed proposals. It is also the case that many of these corporations have limited resources.

Grace period for IPOs. We also propose that corporations listing voting capital stock for the first time should be permitted a five-year grace period before the precatory proposal system applies to them, giving them time to establish the infrastructure for being a publicly listed corporation.[8]

Ownership threshold. We believe a capped number of proposals should be coupled with an ownership requirement to ensure that there is sufficient stockholder support to warrant the cost of submitting a precatory proposal for a stockholder vote. In the Discussion Draft, we have proposed that a proponent must either (i) beneficially own, individually, $250,000 in market value, or (ii) beneficially own, in the aggregate with up to nine co-filers, $1 million in market value, of voting capital stock. Voting capital stock must be beneficially owned for a continuous 365-day period. We encourage interested parties to provide views specifically on the threshold, including comments on whether different values are more appropriate. We observe that in other instances Delaware statutes require minimum ownership in the single millions of dollars as a condition to

[8] The corporation's charter could provide that the precatory proposal system starts earlier. The grace period would be measured from the date of the initial listing or, for a special purpose acquisition corporation, from the date of its business combination.

access Delaware's business courts,[9] but it is difficult to determine whether a threshold in line with those statutes is appropriate in this context, particularly since Rule 14a-8 has always imposed far lower thresholds. As an additional datapoint, the threshold for a single individual's ownership ($250,000) in the Discussion Draft is 10 times higher than the current highest Rule 14a-8 threshold. That threshold still represents a small amount of the total stock issued by large corporations, but we believe that, even though the stock ownership is small, the cap on the aggregate number of proposals is a significant check on costs to corporations.

Proxy Placement. We have proposed that the precatory proposals included in the basket must be included in the corporation's proxy materials, but a stockholder would not have a right of proxy placement to require the corporation to include other business proposals in its materials. We believe the same considerations of cost that support the basket system for access to the corporation's proxy materials apply to the right to bring precatory proposals in general. In addition, the Discussion Draft provides that proponents would be unable to have stockholders vote on proposals that are outside the basket and that do not satisfy the other statutory requirements. This would be the case even if the proponent wished to solicit proxies at its own expense on the additional precatory proposals outside of the basket and the statute. However, proponents would continue to have the right to solicit proxies on the binding stockholder actions expressly permitted by the DGCL: the election and removal of directors and the adoption and amendment of bylaws.

The legislation should be prescriptive, with limited exceptions for opting out. Under our proposed statute, private ordering is limited to a binary choice: either the statute applies or a corporation can opt out so that no precatory proposals may be submitted by stockholders for a vote.[10] In other instances, such as for majority voting in director elections, access to the corporation's proxy materials for stockholder nominees for director and reimbursement of stockholder expenses in a contested director election, the Council recommended, and the Delaware General Assembly adopted, provisions that allow bylaws to regulate these issues, with few mandatory features in the statutes.[11] However, on these topics the underlying right—the election of directors—was clearly established, and the market had already begun to develop a consensus best practice.[12] In contrast, the ability to use proxy placement for precatory proposals is unclear

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[9] *See*, *e.g.*, DGCL § 262(g) (limits on petitioners' ability to proceed with a claim for a statutory appraisal of their shares); DGCL § 367 (limits on the rights of stockholders of public benefit corporations to enforce the statute's "balancing" requirements).

[10] The Discussion Draft regulates when stockholders may submit precatory proposals. The proposed statute provides, for the avoidance of doubt, that the board of directors may decide to submit a precatory proposal for a stockholder vote and include it in the corporation's proxy materials on a case-by-case basis, even if the proposal originated from a stockholder and even if the board recommends voting against the proposal. Corporations may also enter into agreements about voting on, and proxy placement for, precatory proposals with one or more current or prospective stockholders in exchange for minimum consideration determined by the board, in the manner and under the circumstances permitted by Section 122(18).

[11] *See* DGCL, §§ 216 (majority voting); 112 (proxy access for stockholder nominees for director); 113 (proxy expense reimbursement).

[12] With proxy access bylaws, for example, boards of corporations ultimately adopted provisions that were based on a now-rescinded SEC rule. Similarly, before the DGCL amendments related to majority voting were adopted, the ABA Corporate Laws Committee had published a Discussion Paper with alternative governance provisions on

and there is no accepted benchmark for these matters, except Rule 14a-8 itself, which (as noted above) the Council believes should not be replicated. The Council is concerned about the costs and time corporations and stockholders might expend to develop, and potentially litigate the validity of, bylaws where there is no consensus on what a bylaw should look like.

Additional conditions. We also propose that a proponent satisfy other requirements as a condition to make a precatory proposal. Most of these conditions are borrowed from current Rule 14a-8. We describe them in the next part of this White Paper. We have not included in our proposed statute those conditions that are more subjective in nature (like the ordinary business exclusion). Omitting these conditions should hold down the costs of complying with and enforcing the statute and should provide stockholders with greater certainty on whether a proposal will be voted on and included in the corporation's proxy materials.

Overview of the Discussion Draft

We have prepared this overview of the Discussion Draft in question-and-answer format. Capitalized terms have the meaning given them in Draft Section 214(n). Interested parties should read Annex A carefully in connection with providing any comments.

A. <u>If the corporation is not a Tier 1, Tier 2 or Tier 3 Corporation, can stockholders present a Precatory Proposal?</u>

No. Stockholders of non-listed corporations and stockholders of listed corporations with a Market Capitalization below $30 billion may not submit Precatory Proposals.

B. <u>How do corporations and stockholders determine whether a corporation is in one of the tiers?</u>

A corporation's place in a tier for the next Annual Meeting would be determined by its Market Capitalization as of the tenth day before the record date for notice of the immediately preceding Annual Meeting.[13] This backward-looking test ensures that a corporation will know, when it gives notice of its Annual Meeting in "year 1", whether Precatory Proposals may be submitted for the next Annual Meeting in "year 2."[14]

C. <u>If Precatory Proposals are permitted for an Annual Meeting, which stockholders may present Precatory Proposals?</u>

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the topic, and corporations had already begun adopting director resignation policies to enact majority voting. Section 113 was adopted in response to a bylaw proposed by a stockholder on expense reimbursement.

[13] For this purpose, Market Capitalization would include the outstanding shares of each class and series of stock that is not designated in the charter as preferred stock, including common stock (whether or not listed) and any "class X" stock. These classes and series of stock would be valued based on the trading price of the publicly listed voting capital stock.

[14] Draft Section 222(a) would require a corporation to include, in its notice for the "year 1" annual meeting, the anticipated deadline for the receipt of the Precatory Proposals in connection with the "year 2" annual meeting.

Only holders of Voting Capital Stock may make Precatory Proposals and only shares of this type of stock count to satisfy the ownership requirements and to determine which Precatory Proposals fill the basket. Voting Capital Stock is any class or series of capital stock that is not designated as preferred stock under the charter and that is entitled to vote generally on stockholder actions.

D. What must Co-Filers do?

The requirements for Co-Filers differ from the provisions under Rule 14a-8. Co-Filers must sign a written document showing they support taking a stockholder vote on the Precatory Proposal. Section 214 would require Co-Filers to disclaim authority to direct the Proponent on, or to require the Co-Filer's consent for, actions concerning the Precatory Proposal. The Proponent may deliver to the corporation, withdraw or amend the Precatory Proposal without Co-Filer consent.[15]

E. How does a stockholder determine if it satisfies the minimum ownership and continuous holding requirements?

The Proponent must either beneficially own, individually, at least $250,000 in Market Value, or beneficially own together with up to nine Co-Filers at least $1 million in Market Value, of Voting Capital Stock as of a measurement date that is the 30th day before the deadline for the corporation's receipt of Precatory Proposals. Like Rule 14a-8, the per share Market Value is determined by using the highest selling price of a share of the corporation's listed Voting Capital Stock during the 60 days immediately before the measurement date. Voting Common Stock only counts toward the threshold if the Proponent and Co-Filers (as applicable) have beneficially owned their respective stock continuously for at least the 365-day period ending on the measurement date.

F. What does a Proponent need to show the corporation to demonstrate stock ownership?

With respect to demonstrating the number of shares owned by a Proponent and its Co-Filers, if they are stockholders who appear on the stock list, the amount of stock is based on the stock list as of the measurement date described above.

Many investors beneficially own stock through a bank, broker or other nominee. Section 214(d) is intended to permit the same types of statements from DTC Participants and other nominees that are used to demonstrate ownership under current Rule 14a-8 and which are explained in Bulletin No. 14F (CF) and No. 14M (CF) from the Staff of the Division of Corporation Finance of the SEC.

G. Other than stock ownership, what other information does a Proponent need to provide the corporation to make a Precatory Proposal?

The Proponent must deliver, on or before the deadline for the corporation's receipt of Precatory Proposals, the following information: (i) the name and address of the Proponent and each Co-Filer;

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[15] The Co-Filer would also be required to acknowledge and agree that it has not appointed or authorized the Proponent to act as the Co-Filer's proxy, power of attorney or other representative with respect to stock owned by the Co-Filer.

(ii) the text of the Precatory Proposal and, if submitted, any supporting statement (provided that the Precatory Proposal and statement together do not exceed 500 words); (iii) the documents by which a person has acknowledged it is a Co-Filer; (iv) if stock is held by a broker or nominee, the bank or broker statements mentioned in the answer to Question F above; and (v) a statement that each Proponent and Co-Filer intends to beneficially own the required minimum amount of Voting Capital Stock through the date of the next Annual Meeting.

H. What is the deadline for delivering Precatory Proposals?

Precatory Proposals must be received at the corporation's principal executive office no later than the 180th day before the anniversary of the preceding year's Annual Meeting (with adjustments if the meeting date is advanced by more than 30 days or no Annual Meeting was held in the preceding year).[16]

I. What are the bases for excluding a Precatory Proposal?

The bases for exclusion are:

1. The Proponent fails to provide the materials about the Proponent and the Co-Filers described in the answer to Question G above.
2. The Precatory Proposal and supporting statement, together, exceed 500 words.
3. The Precatory Proposal is not received by the deadline.
4. The Proponent and Co-Filers do not satisfy either of the minimum ownership or continuous holding requirements.
5. Any part of the Precatory Proposal, or the supporting statement, expressly questions the character of one or more nominees for director.
6. The Proponent submitted a Precatory Proposal for stockholder action at either of the two preceding Annual Meetings at which Precatory Proposals could be presented and it received "for" votes representing less than 15% of the votes cast.
7. The Precatory Proposal primarily seeks to redress a personal claim or grievance.
8. The Precatory Proposal seeks the adoption of a board of directors policy, or other governance contract, agreement or arrangement, that, if implemented, would result in a statement or commitment by the board to present Precatory Proposals for stockholder action in a manner different from, or as a supplement to, Section 214.
9. The Proponent or a Co-Filer is a director or officer of the corporation, is controlled by a director or officer, or is acting for a director, an officer or the corporation.
10. No rational person would determine that the Proposal is relevant to the corporation or its business.
11. The Proponent of the Precatory Proposal is serving as the Proponent or a Co-Filer for any other Precatory Proposal in connection with the next Annual Meeting.

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[16] The Rule 14a-8 deadline is 120 days before the one-year anniversary of the date of the corporation's proxy statement for the preceding Annual Meeting. Assuming there is on average 45 days between the date of a proxy statement and a meeting, Rule 14a-8 requires advance notice of approximately 165 days, compared to the 180 days required in the Discussion Draft.

12. The Proponent or any Co-Filer has failed to satisfy any other requirement in Section 214.

Exclusions numbered as 1-7 above are based on provisions in Rule 14a-8 and should be familiar to corporations and Proponents. When applying these provisions, the Delaware judiciary might also be informed by no-action precedents and bulletins from the Staff of the Division of Corporation Finance of the SEC. Exclusions No. 5 and 7 have been drafted to impose a higher bar, compared to the parallel bases under current Rule 14a-8, to use these topics to exclude a Precatory Proposal; these changes are intended to lower the potential incidents of litigation. Exclusion No. 8 prevents a Proponent from using Section 214 to propose some alternative governance measure that effectively end-runs the system for proposals established in the statute.[17] Exclusion No. 9 prevents an insider from "filling the basket" of Precatory Proposals. Exclusion No. 10 is intended to exclude precatory proposals that are irrelevant to the corporation. The measurement against a "rational person" is intended to signal that this exclusion imposes a high bar on the corporation to exclude a proposal on this basis, to reduce the likelihood of litigation. Exclusion No. 11 prevents a stockholder from serving as the Proponent of more than one Proposal or as the Co-Filer of another Proposal.

J. Is there a cure period for a Proponent to fix problems with its submission materials?

If the Precatory Proposal is deficient because the Proponent failed to deliver the information described in the answer to Question G above, or because the Precatory Proposal and supporting statement together exceed 500 words, the corporation must provide the Proponent an opportunity to cure the deficiency. The corporation must give notice of the deficiency within 14 days of its receipt of the Precatory Proposal.[18] In turn, the Proponent has 14 days, from the date the corporation's deficiency notice is given, to deliver corrected materials to the corporation.

K. Is there a cure period for other problems?

No. The corporation may not provide the Proponent an opportunity to cure any deficiency other than what is mentioned in the answer to Question J above. Our approach is similar to the current practice under Rule 14a-8, where only procedural deficiencies can be corrected.

L. Which Precatory Proposals are presented for stockholder approval?

After accounting for the statutory exclusions mentioned above, the corporation will fill the basket as described in the other parts of this White Paper, based on beneficial ownership. For example, for a Tier 2 Corporation, the two non-excludable proposals with the greatest number of shares of Voting Capital Stock in support will be submitted for a stockholder vote. For transparency, the corporation is required to notify all Proponents of its determination, and the corporation must give this notice within 60 days after the deadline for the receipt of Precatory Proposals.

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[17] We believe this provision is necessary to guide corporations and stockholders into the stable, certain system provided by the statute.

[18] All notices given by the corporation under Section 214 may be given as permitted by Section 232(a). For purposes of counting days after the corporation has given notice, the date that notice is given is also determined under Section 232(a).

M. If there is a dispute about compliance with the statute, how is it resolved?

If a Proponent wishes to challenge the corporation's determination, the Proponent must commence a legal action within 30 days after the date the corporation gives the notice described in the answer to Question L above. No other person may bring a proceeding against the corporation or its directors or officers relating to the application of the statute, and a failure to comply with the statute would not invalidate other action taken at an Annual Meeting.

N. Will Precatory Proposals be included in the corporation's proxy materials?

The Precatory Proposals that are not excluded and that are selected to fill the basket under Section 214 would be included in the corporation's proxy materials for the Annual Meeting, unless the Proponent withdraws the Precatory Proposal before the corporation mails its proxy materials.

Section 214 expressly provides that the corporation and its directors and officers will not be responsible, under Delaware law, for any statements or assertions made by any Proponent in its Precatory Proposal or supporting statement.[19] Consistent with current practice under Rule 14a-8, Section 214 would permit a corporation to include a statement in response or opposition (or both) to the Precatory Proposal.

O. Is the corporation required to include any other stockholder proposals in its proxy materials?

No. We would not require access to the corporation's proxy materials for any business other than Precatory Proposals and other than stockholder nominees for director that are given proxy placement under a charter or bylaw. This means that proponents of binding stockholder proposals to amend bylaws will not have a right, under Delaware law, to require the corporation to include these proposals in a corporation's proxy materials. Stockholders may continue to present, and solicit proxies for, binding proposals, subject to reasonable advance notice bylaws and Section 141(a). Of course, federal laws and rules (like the universal proxy rules for nominees) may provide stockholders an additional right to require business to be included in the corporation's proxy materials. If, after the rescission of Rule 14a-8, federal law is changed to again require proxy placement for stockholder proposals, Delaware may have to revisit Section 214.

P. Does the Proponent need to attend the Annual Meeting to present a Precatory Proposal?

As under Rule 14a-8, and consistent with the procedures set forth in the bylaws of many public corporations, no vote would be taken on a Precatory Proposal unless the Proponent (or its proxy holder) attends the Annual Meeting and requests a vote, or the person presiding over the Annual Meeting submits the Precatory Proposal for a vote.

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[19] The corporation's proxy materials would include a statement that the Precatory Proposal and the supporting statement are solely the responsibility of the Proponent.

Q. Can a Precatory Proposal be withdrawn?

Yes. A Proponent may withdraw, or agree with the corporation to amend, a Precatory Proposal that qualifies for a stockholder vote and proxy placement. A withdrawal or amendment will not entitle any other Precatory Proposal to be submitted for a stockholder vote or included in the corporation's proxy materials.

R. Does the Discussion Draft make any changes to the Delaware law on how binding stockholder proposals are presented for a stockholder vote?

No. We do not propose adding any requirements for stockholders to take the binding actions permitted by the DGCL: the election and removal of directors and the adoption and amendment of bylaws. We are reluctant to recommend changing the right to present binding stockholder proposals unless there is evidence that it is being misused. There is already an existing safeguard against misuse: Delaware case law holds that a bylaw may not interfere with the power of the board of directors to manage the corporation's business and affairs under Section 141(a).

Based on the foregoing, binding stockholder proposals are not subject to the exclusions and other requirements set forth in the Discussion Draft, and stockholders are not limited with respect to the number of binding proposals that may be submitted for a stockholder vote. However, as noted in the answer to Question O above, corporations would not be required to include binding stockholder proposals in their proxy materials, unless so required by federal law.

S. Can stockholders require a stockholder vote on Precatory Proposals that are not in the basket?

No. The exclusive means for a stockholder to present a Precatory Proposal for stockholder action would be Section 214. That means Precatory Proposals that are not included in the basket and do not satisfy Section 214 may not be submitted for a stockholder vote.

Conclusion and Request for Comments

The provisions in the Discussion Draft operate much differently than Rule 14a-8, and they are unlikely to match the existing expectations of corporations, stockholders and other constituencies. Section 214 proposes a new construct for deciding when a stockholder may present a precatory proposal to fellow stockholders and when a stockholder may use the corporation's proxy materials to do so. We believe Section 214 offers immediate certainty and stability for public corporations. We have tried to present a reasonable approach that acknowledges and addresses the competing concerns of corporations and stockholders.

The new provisions would permit some proposals that could be excluded under Rule 14a-8 but will likely permit many fewer proposals in total. Section 214 is designed to recognize the view that precatory proposals can be a source of value but also acknowledge that such value can be eroded if there is no limit to the number of proposals and if the proposal process consumes significant resources of stockholders and corporations. Section 214 also reflects a determination

that the current practice will not be significantly affected if smaller market cap corporations are exempt from the obligation to allow stockholders to make proposals.

Section 214 would address these competing priorities by limiting the total number of proposals a corporation must present for stockholder action in any one year and using stock ownership, as a measurement of the strength of stockholder endorsement for a proposal, to decide which proposals should be presented.

In addition to letting stockholders decide on a limited basket of precatory proposals, Section 214 is intended to be self-effecting—it omits the more subjective bases for exclusion, such as the "ordinary business exclusion" found in existing Rule 14a-8, with the intent that stockholders and corporations will have a very limited number of disputes over which proposals are to be included. While disputes are inevitable, the new statute is being drafted with a goal of minimizing them—and providing an orderly process for resolving them where they arise.

With the foregoing goals in mind, we would like to solicit comments from interested parties on the Discussion Draft, including the following:

1. Do some, most, or all precatory proposals create value for corporations? Are they valuable to stockholders?

2. Are there substantive conditions in current Rule 14a-8 that should be added to Section 214(g)?

3. Will corporations and proponents be able to comply with Section 214 without the need to resort to frequent litigation? If the answer is no, what should be changed to minimize the chances of litigation?

4. Does our proposed tiered structure, based on market capitalization, permit the submission of stockholder precatory proposals where they are most needed?

5. Is the five-year "breathing period," during which Section 214 would not apply to newly public corporations, the appropriate length of time to allow corporations to become accustomed to being a public corporation before addressing precatory proposals?

6. Does the proposed ownership threshold strike the appropriate balance in permitting stockholder proposals but limiting costs to corporations? If a commenter believes the threshold is too low, we ask that the commenter address the ownership threshold in light of the cap on the aggregate number of proposals. If a commenter believes the threshold is too high, please identify what type of proponent the commenter is addressing (e.g., institutional investor, social activist proponent or other type) and explain the challenges that type of proponent faces (including what types of investors are likely to serve as Co-Filers, and how much stock they typically own).

7. Does the nine-person limit on Co-Filers adequately enable proponents to make precatory proposals?

8. Should the DGCL specifically require a corporation to include binding stockholder proposals on the corporation's proxy materials, such as proposed bylaw amendments? Why or why not?

9. Should the DGCL adopt a system where there are no limits on taking a stockholder vote on a precatory proposal in instances where the proponent is willing to solicit its own proxies in favor of the proposal? Or if there are different types of limits for these stockholder-solicited proposals, what should they be?

10. We propose having any amendments effective when (if ever) the rescission of Rule 14a-8 is effective. Is that the right approach? Are there other factors we should consider in connection with the timing or process for a rescission of Rule 14a-8?

11. Have we correctly captured the benefits of using prescriptive rules for precatory proposals? Are there requirements in the Discussion Draft that should be optional?

12. If we were to authorize a greater degree of private ordering, what type of requirements not in the statute should corporations be allowed to impose by charter or bylaw?

13. Are there requirements imposed by the statute that corporations should be allowed to eliminate or vary in a charter or bylaw? Are there some elements that the corporation should be able to decrease (but not increase), or increase (but not decrease)?

Additional comments would be especially helpful if they are directed toward whether Section 214 will establish satisfactory limits, clear requirements and a straightforward process for addressing precatory proposals. If there are ways to clarify the requirements or simplify the process, we want to incorporate them. If the Discussion Draft does not represent a reasonable compromise of the concerns we are trying to address, we want to understand those points of view.

ANNEX A

[Discussion Draft]

§ 214. Submission of precatory proposals by stockholders.[20]

(a) [When Precatory Proposals Are Permitted.] (1) A stockholder may submit a Precatory Proposal for stockholder action under the laws of this State only in accordance with this section and only if:

a. The Precatory Proposal is submitted for action at the next Annual Meeting (and not at a special meeting of stockholders or in connection with an action by consent under § 228 of this title);

b. The next Annual Meeting is initially noticed for a date that is after the five-year anniversary of the corporation's Initial Listing (unless the certificate of incorporation provides, by specific reference to this section of title 8, that this section shall apply to an earlier Annual Meeting held after an Initial Listing); and

c. The corporation had a class or series of Voting Capital Stock listed on a national securities exchange as of the Notice Record Date for the immediately preceding Annual Meeting.

(2) Except as permitted by subsection (a)(1) of this section, stockholders may not submit a Precatory Proposal for stockholder action.

(3) [Opt Out.] The corporation may elect not to be governed by subsection (a)(1) of this section (in which case stockholders may not submit Precatory Proposals for stockholder action) pursuant to a provision of the certificate of incorporation or the bylaws that: (i) specifically references this section of title 8; (ii) has been adopted by the stockholders at a meeting initially noticed for a date that is after the five-year anniversary of the corporation's Initial Listing (and not adopted by consent under § 228 of this title); and (iii) is approved by each class and series of Voting Capital Stock then outstanding, each voting as a separate class or series.

(b) [Number of Precatory Proposals.] If this section applies to the next Annual Meeting pursuant to subsection (a)(1) of this section:

(1) Up to three Precatory Proposals, in the aggregate, may be submitted for stockholder action at the next Annual Meeting in accordance with this section if the corporation qualified as a Tier 1 Corporation as of the tenth calendar day before the Notice Record Date of the immediately preceding Annual Meeting;

[20] Provisions of current § 214 (cumulative voting) would appear in a new subsection of § 212.

(2) Up to two Precatory Proposals, in the aggregate, may be submitted for stockholder action at the next Annual Meeting in accordance with this section if the corporation qualified as a Tier 2 Corporation as of the tenth calendar day before the Notice Record Date of the immediately preceding Annual Meeting;

(3) One Precatory Proposal may be submitted for stockholder action at the next Annual Meeting in accordance with this section if the corporation qualified as a Tier 3 Corporation as of the tenth calendar day before the Notice Record Date of the immediately preceding Annual Meeting; and

(4) No Precatory Proposals may be submitted for stockholder action at the next Annual Meeting if the corporation did not qualify as a Tier 1 Corporation, a Tier 2 Corporation or a Tier 3 Corporation as of the tenth calendar day before the Notice Record Date of the immediately preceding Annual Meeting.

(c) [Ownership Requirement.] A Proponent must either beneficially own, individually, at least $250,000 in Market Value, or beneficially own, in the aggregate with its Co-Filers, at least $1 million in Market Value, of Voting Capital Stock of the corporation as of the 30th day before the deadline for the corporation's receipt of Precatory Proposals as determined under subsection (e) of this section. To determine whether the foregoing ownership requirement has been satisfied:

(1) No more than nine persons may serve as Co-Filers for a Precatory Proposal;

(2) Only the shares of Voting Capital Stock beneficially owned by a Proponent or Co-Filer, in each case continuously for at least the 365-calendar-day period ending on the 30th calendar day before such deadline will be counted toward satisfying the foregoing ownership requirement;

(3) Shares of Voting Common Stock beneficially owned by a Proponent or Co-Filer shall be disregarded if (i) ownership of such shares is not reflected on the stock list of the corporation; (ii) the Proponent failed to provide the information required by subsection (d) with respect to the ownership of such shares; and (iii) the deficiency in information is not corrected after the corporation has provided the Proponent the opportunity for correction under subsection (h) of this section. Only the shares that have not been properly documented in accordance with the preceding sentence will be disregarded; and

(4) With respect to an Annual Meeting, a person is limited to serving as either a Proponent or a Co-Filer for a single Precatory Proposal in connection with such Annual Meeting. If a Proponent or Co-Filer of a Precatory Proposal acts as the Proponent or Co-Filer of any other Precatory Proposal in connection with the next Annual Meeting then the Voting Capital Stock of such person shall be disregarded with respect to each such Precatory Proposal and, if such person is a Proponent, its Precatory Proposal (or Precatory Proposals) shall be disregarded, in each case, in

connection with the next Annual Meeting and including for purposes of applying subsection (f) of this section.

(d) [Materials Delivered To Corporation By A Proponent.] When a Precatory Proposal is delivered to the corporation, the Proponent must also deliver to the corporation with the Precatory Proposal:

(1) The name and address of the Proponent and each Co-Filer, including any address of a Proponent or Co-Filer that appears on the stock list of the corporation;

(2) The text of the Precatory Proposal and any statement in support of the Precatory Proposal. The Precatory Proposal, together with any statement in support, shall not exceed 500 words;

(3) If there are Co-Filers of the Proposal, the document required by subsection (n)(3) of this section with respect to each Co-Filer;

(4) Information that enables the corporation to determine that the Proponent and the Co-Filers have satisfied the minimum ownership amount and minimum 365-day continuous ownership requirements set forth in subsection (c) of this section. With respect to Proponents and Co-Filers whose beneficial ownership is not reflected on the stock list: (i) the Proponent or Co-Filer may obtain a statement from the nominee holding the stock on behalf of such owner setting forth the number of shares held by the nominee on the owner's behalf, and confirming that the nominee has held such shares on behalf of the owner for at least the required 365-calendar-day period; and (ii) if the nominee is not a DTC Participant, the Proponent or Co-Filer shall also obtain a statement from a DTC Participant confirming that the DTC Participant has held, on the nominee's behalf, at least the number of shares reflected on the foregoing statement from the nominee for at least the required 365-calendar-day period. The information in the foregoing statements shall be deemed sufficient evidence of the amount of stock beneficially owned, and of the duration of beneficial ownership, of a beneficial owner or nominee, absent a reasonable basis to question the accuracy of such information; and

(5) A statement from each Proponent and Co-Filer that each such person beneficially owns, and intends to continue to beneficially own, the minimum amount of stock required by subsection (c) of this section through the date of the next Annual Meeting.

(e) [Deadline For Receiving Precatory Proposals.] Subject to the last sentence of this subsection (e), a Precatory Proposal must be received at the principal executive office of the corporation by hand delivery, by certified or registered mail, return receipt requested, or by transmission to an electronic mail address (if any) expressly designated by the corporation for receipt of Precatory Proposals (and not by any other method of delivery otherwise permitted under § 116 of this title):

(1) Subject to clauses (2) and (3), no later than the 180th calendar day before the one-year anniversary of the Annual Meeting held in the preceding year;

(2) If the date of the next Annual Meeting is advanced by more than 30 calendar days before the one-year anniversary of the Annual Meeting held in the preceding year, no later than the later of the 120th calendar day before the next Annual Meeting or the 30th calendar day after the first disclosure of the date of the next Annual Meeting in a document filed with the United States Securities and Exchange Commission; and

(3) If no Annual Meeting was held in the preceding year, no later than the 30th calendar day after the first disclosure of the date of the next Annual Meeting in a document filed with the United States Securities and Exchange Commission.

If the principal executive office of the corporation is not open for ordinary business on the date determined under the preceding sentence, the Precatory Proposal must be received on or before the next succeeding day on which such office is open for ordinary business.

(f) [Determination of Precatory Proposals Submitted For Stockholder Action Based On Stock Ownership.] The Precatory Proposals from the respective groups of Proponents and Co-Filers who beneficially own the greatest number of shares of Voting Capital Stock as of the 30th calendar day before the deadline for the corporation's receipt of Precatory Proposals, up to the number of Precatory Proposals (if any) permitted by subsection (b) of this section, may be submitted for stockholder action at an Annual Meeting. With respect to applying this subsection (f):

(1) Before making the determination under the preceding sentence, the corporation shall exclude the Precatory Proposals, if any, that are to be disregarded in accordance with the applicable provisions of subsections (g) and (h) of this section;

(2) The number of shares beneficially owned, and the duration of beneficial ownership, shall be based on the stock list of the corporation and on the documentation provided by the Proponent under subsection (d)(4) of this section and under subsection (h) of this section (in the case of information corrected following the corporation's notice of a deficiency);

(3) No share or economic interest in a share may be counted more than once, whether within one, or among more than one, Precatory Proposal;

(4) A tie in amounts of beneficial ownership in support of two or more Precatory Proposals shall be resolved by any method of random selection determined by the corporation; and

(5) After the corporation has determined that one or more Precatory Proposals (as applicable) may be submitted for stockholder action in accordance with this subsection (f), the later withdrawal of a Precatory Proposal (or the amendment of

any Precatory Proposal with the consent of the corporation) shall not cause a new determination under this subsection (f).

(g) [Bases To Exclude Proposals.] A Precatory Proposal shall be disregarded for purposes of applying subsection (f) of this section if the corporation complies with subsection (h) of this section with respect to such Precatory Proposal and one or more of the following applies:

(1) The Proponent fails to deliver, with its Precatory Proposal, the information, statements and documents required by subsection (d) of this section.

(2) The Precatory Proposal, together with the supporting statement, exceeds 500 words.

(3) The Precatory Proposal is not timely received by the corporation in accordance with subsection (e) of this section.

(4) A Proponent, together with its Co-Filers (as applicable), does not satisfy the ownership requirements set forth in subsection (c) of this section.

(5) Any part of the Precatory Proposal, or of the supporting statement, expressly questions the character of one or more nominees for director.

(6) The Proponent of the Precatory Proposal submitted a Precatory Proposal for stockholder action at either of the two immediately preceding Annual Meetings with respect to which Precatory Proposals could have been submitted under subsection (b) of this section, and such Precatory Proposal received affirmative votes from less than 15% of the votes cast thereon.

(7) The Precatory Proposal primarily seeks to redress a personal claim or grievance.

(8) The Precatory Proposal seeks the adoption of a board of directors policy, or other governance contract, agreement or arrangement (including any of the foregoing contemplated by subsection (m) of this section), that, if implemented, would result in a statement or commitment by the board to present Precatory Proposals for stockholder action in a manner different from, or as a supplement to, this section.

(9) At the time the Precatory Proposal is received by the corporation, the Proponent or a Co-Filer is a director or officer of the corporation, is controlled by a director or officer of the corporation or is acting on behalf of (or at the direction of) the corporation or any director or officer of the corporation. A person is an officer of the corporation if such person is deemed to have consented to service by the delivery of process to the registered agent of the corporation pursuant to § 3114(b) of Title 10 (for purposes of this sentence only, treating residents of this State as if they were nonresidents to apply § 3114(b) of Title 10 to this sentence).

(10) No rational person would determine that the Proposal is relevant to the corporation or its business.

(11) If a person is a Proponent of two or more Precatory Proposals in connection with the next Annual Meeting, each such Precatory Proposal shall be disregarded. For the avoidance of doubt, if in connection with the next Annual Meeting a person is (i) a Proponent of one Precatory Proposal and (ii) a Co-Filer of one or more other Precatory Proposals, the former Precatory Proposal (referenced in clause (i)) shall be disregarded, but only the Voting Common Stock of such person shall be disregarded under subsection (c)(4) of this section for purposes of the latter Precatory Proposals (referenced in clause (ii)).

(12) The Proponent or any Co-Filer fails to satisfy any other requirements of this section.

(h) [When And How Deficiencies May Be Corrected.] The corporation shall not provide any Proponent an opportunity to correct any deficiency in its Precatory Proposal except for a single opportunity to correct any failures to comply with subsections (g)(1) or (g)(2), or both, of this section, which shall be addressed as follows:

(1) Within 14 calendar days after the corporation's receipt of a Precatory Proposal, the corporation shall notify the Proponent, in any manner permitted by § 232(a) of this title, that the Precatory Proposal is deficient because the Proponent has not complied with the procedures under subsection (g)(1) or (g)(2) of this section, as applicable. The corporation's notice shall: (i) identify each such deficiency; (ii) advise the Proponent that it may correct its deficiencies under subsection (g)(1) or (g)(2); (iii) state that any correction from the Proponent must be received within 14 calendar days after the date the notice of deficiencies is given by the corporation; and (iv) include a copy of this section and § 232(a) of this title. The corporation's notice will be deemed to have been given by the corporation on the date determined under § 232(a) of this title.[21]

(2) The Proponent's correction of the foregoing deficiencies must be received by the corporation, in the same manner that Precatory Proposals are received under subsection (e) of this section, within 14 calendar days after the date the notice of deficiencies is given by the corporation.

(3) If the corporation receives corrections from the Proponent but the corporation determines there is a continued failure to comply with subsection (g)(1) or (g)(2), or both, of this section, the corporation shall notify the Proponent of this determination, in any manner permitted by § 232(a) of this title, no later than the date the corporation gives the notice required by subsection (i) of this section and such Precatory Proposal shall be disregarded.

[21] Note, § 232 may be amended to provide, for purposes of applying § 232 to § 214, that the correspondence from the corporation to a Proponent does not need to include the legend described in the last sentence of § 232(a) or the contact information of an officer or agent under the definition of "electronic mail" in § 232.

(i) [Notice to All Proponents.] After the corporation has determined which Precatory Proposals (if any) shall be submitted for stockholder action, the corporation shall notify each Proponent of this determination. Such notice shall:

(1) State the names of, and number of shares beneficially owned by, the Proponents and Co-Filers of all the Precatory Proposal delivered to the corporation in connection with the next Annual Meeting;

(2) Be given, in any manner permitted by § 232(a) of this title, no later than 60 calendar days after the deadline for receipt of Precatory Proposals as determined under subsection (e) of this section; and

(3) Be given, for the avoidance of doubt, to each Proponent that has delivered to the corporation a Precatory Proposal in connection with the next Annual Meeting, including any Proponent who has failed to comply with any subsection of this section.

(j) [Judicial Proceeding For Corporation's Violation Of This Section.] No proceeding shall be brought against the corporation or any of its directors or officers with respect to the application of this section to a Precatory Proposal, except by the Proponent of such Precatory Proposal in an action before the Court of Chancery that is commenced within 30 calendar days after the date the notice required by subsection (i) of this section is deemed given to the Proponent under § 232(a) of this title. The burden shall be on the corporation to establish that a Precatory Proposal was properly disregarded in accordance with subsections (g) and (h) of this section. The failure to comply with this section with respect to a Precatory Proposal shall not invalidate any other action taken at an Annual Meeting.

(k) [Presentation Of Precatory Proposal At An Annual Meeting Is Required.] Even if a Precatory Proposal may be submitted for stockholder action at an Annual Meeting, as determined under subsection (f) of this section, and even if the Precatory Proposal has been included in the corporation's proxy materials and on its proxy card, a vote of stockholders shall be taken on the Precatory Proposal only if one of the following applies:

(1) The Proponent (or the holder of a written proxy from the Proponent): (i) attends the Annual Meeting; (ii) complies with any registration or other attendance requirements adopted by the corporation that apply to all stockholders and holders of proxies; and (iii) requests a vote of stockholders on the Precatory Proposal; or

(2) The Precatory Proposal is submitted for a vote of stockholders by the person presiding over the Annual Meeting. For the avoidance of doubt, the person presiding over the Annual Meeting is only required to submit a Precatory Proposal for a vote of stockholders if the Proponent (or the holder of its proxy) complies with the foregoing subsection (1).

(l) [Mandatory Inclusion Of Precatory Proposals In The Corporation's Proxy Materials.] If the corporation solicits proxies in connection with an Annual Meeting:

(1) Any Precatory Proposal that is required to be submitted for stockholder action in accordance with subsections (b) and (f) of this section and that has not been withdrawn shall be included in the corporation's proxy statement, along with a statement in support of the Precatory Proposal, and the Precatory Proposal shall be included on the corporation's form of proxy, in each case with respect to such Annual Meeting;

(2) The corporation may include in its proxy materials a statement in response or opposition, or both, to a Precatory Proposal and supporting statement.

(3) The corporation shall include a statement in its proxy materials that the Precatory Proposal and the supporting statement from any Proponent are solely the responsibility of the Proponent; and

(4) The corporation and its directors and officers shall not be responsible under the laws of this State for any statement or assertions made by any Proponent in its Precatory Proposal or supporting statement.

(m) [No Certificate Of Incorporation Or Bylaw Modifications; Board Actions; Agreements.] With respect to the application of this section:

(1) No provision of the certificate of incorporation or bylaws may require any procedures or conditions greater than or in addition to the requirements of this section, and no provision of the certificate of incorporation or bylaws may eliminate or reduce any requirement of this section, in order for a stockholder to submit a Precatory Proposal at an Annual Meeting or to include a Precatory Proposal (and statement in support of the Precatory Proposal) in the corporation's proxy materials or on its form of proxy with respect to an Annual Meeting;

(2) For the avoidance of doubt, the board of directors may decide on a case-by-case basis to submit any Precatory Proposal for stockholder action at any meeting of stockholders, and may provide that a Precatory Proposal shall be included in the corporation's proxy materials and on its form of proxy with respect to such a meeting, even if the Precatory Proposal was initially delivered to the corporation by a stockholder and even if the board of directors does not recommend that stockholders vote in favor of the Precatory Proposal; and

(3) For the avoidance of doubt, the corporation shall have the power to make 1 or more contracts under § 122(18) of this title with respect to the submission of Precatory Proposals for a stockholder vote, and for the inclusion of such Precatory Proposals in the corporation's proxy materials and on its form of proxy, in each case with respect to one or more future Annual Meetings.[22]

[22] Note, § 122(18) would be amended to replace the parenthetical "(other than § 115 of this title)" with "(other than §§ 115 and 214 of this title)."

(n) [Definitions.] For purposes of applying this section only:

(1) "Annual Meeting" means an annual meeting of stockholders.

(2) "Applicable Stock" means each class and series of capital stock of the Corporation, other than a class or series designated as preferred stock.

(3) "Co-Filer" means a person who has delivered a written document to a Proponent by which such person: (i) supports the submission of the Proponent's Precatory Proposal for a vote of stockholders; (ii) disclaims any authority to direct or require the Proponent to seek such person's consent with respect to any actions that the Proponent may take regarding the Precatory Proposal (including a decision by the Proponent to deliver to the corporation, amend or withdraw the Precatory Proposal); and (iii) acknowledges and agrees that such document does not appoint or authorize the Proponent to act as such person's proxy, power of attorney or other representative with respect to any capital stock owned by such person.

(4) "DTC Participant" means each bank, broker and other nominee that is a participant of The Depository Trust Company.

(5) "Initial Listing" means the date the corporation first listed a class or series of Voting Capital Stock on a national securities exchange, except (i) if, as a result of de-listing, none of the classes and series of Voting Capital Stock is listed on a national securities exchange for a continuous two-year period, Initial Listing means the date that the corporation first re-listed a class or series of Voting Capital Stock on a national securities exchange after such two-year period, and (ii) for a special purpose acquisition corporation, Initial Listing means the date the corporation consummates a business combination following which it continues to have a class or series of Voting Capital Stock listed on a national securities exchange. If a corporation or entity converted under § 265 of this title, or otherwise was the subject of a domestication, merger or legal action or proceeding for the purpose of a redomicile in this State, and such entity had a class or series of capital stock listed on a national securities exchange immediately before and immediately after such event, the Initial Listing shall be deemed to have occurred on the date of such conversion or other redomicile event.[23]

(6) "Market Capitalization" means the aggregate value of the shares of Applicable Stock outstanding as of the close of business on the tenth calendar day before the applicable Notice Record Date. The value of shares of a class or series of Applicable Stock listed on a national securities exchange shall be determined using the last reported closing bid price of a share of such class or series on such day (or if shares were not traded on such day, the next preceding trading day). Such last

[23] Note, § 251(g) would be amended to provide that the new holding company resulting from a § 251(g) holding company merger would be deemed to have the same Initial Listing as the parent holding company preceding the merger.

reported closing bid price (or the highest of the last reported closing bid prices, if there is more than one class or series of Applicable Stock listed on a national securities exchange) shall be deemed to be the per share value of each class and series of Applicable Stock that is not listed on a national securities exchange as of such day.

(7) The "Market Value" of a share of Voting Capital Stock as of a date means the highest selling price of a share of the Voting Capital Stock listed on the principal market for trading such stock during the 60 calendar days immediately before such date. If a class or series of Voting Capital Stock is not listed on a national securities exchange, the Market Value of the shares of such class or series shall be determined using the trading prices of the class or series that is so listed and that has the highest last reported closing bid price during the 60 calendar-day period.

(8) The "Notice Record Date" of an Annual Meeting means the record date fixed to determine the stockholders entitled to notice of the Annual Meeting.

(9) "Precatory Proposal" means any business proposed by any one or more stockholders that is solely advisory in nature or in the nature of a request for action by the corporation or its board of directors, officers, employees or agents, including a request to prepare a report or other disclosure to be disseminated to stockholders, which in each case shall not include a nomination of one or more persons for director election and shall not include a proposal, statement or recommendation that stockholders vote against, or stockholders withhold authority from a proxy holder to vote for, the election of one or more persons for director election.

(10) "Proponent" means a stockholder who delivers a Precatory Proposal to the corporation for the purpose of having such Precatory Proposal submitted to a vote of stockholders.

(11) A "stockholder" means a person who is a holder of record of stock as shown on the stock list of the corporation, or a person who is the beneficial owner of shares of such stock held either in a voting trust or by a nominee.

(12) A "Tier 1 Corporation" for purposes of the next Annual Meeting means a corporation that had a Market Capitalization of at least $100 billion as of the tenth calendar day before the Notice Record Date for the immediately preceding Annual Meeting.

(13) A "Tier 2 Corporation" for purposes of the next Annual Meeting means a corporation that (i) is not a Tier 1 Corporation and (ii) had a Market Capitalization of at least $50 billion as of the tenth calendar day before the Notice Record Date for the immediately preceding Annual Meeting.

(14) A "Tier 3 Corporation" for purposes of the next Annual Meeting means a corporation that (i) is not a Tier 1 or Tier 2 Corporation and (ii) had a Market

Capitalization of at least $30 billion as of the tenth calendar day before the Notice Record Date for the immediately preceding Annual Meeting.

(15) "Voting Capital Stock" means each class and series of Applicable Stock of the Corporation that is entitled to vote generally on stockholder actions.

§ 211. Meetings of stockholders.

(f) The corporation shall not be required under the laws of this State to include any nominee for director, any Precatory Proposal (as defined in § 214 of this title) or any other business proposal of any nature, in each case, submitted for action by a stockholder, in the proxy materials or on the form of proxy of the corporation in connection with a meeting of stockholders except as required:

(1) With respect to Precatory Proposals, by § 214 of this title; or

(2) With respect to director nominees, pursuant to a provision of the certificate of incorporation or bylaws adopted under § 112 of this title.

§ 222. Notice of meetings and adjourned meetings.

(a) Whenever stockholders are required or permitted to take any action at a meeting, a notice of the meeting shall be given in accordance with § 232 of this title, and such notice shall state**:**

(1) The ~~the~~ place, if any, date and hour of the meeting,

(2) The ~~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,

(3) The ~~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,

(4) In the case of an annual meeting, the anticipated deadline for stockholders to deliver to the corporation Precatory Proposals (as defined in § 214 of this title) at the next succeeding annual meeting, if the submission of one or more such proposals is permitted for stockholder action at such meeting under § 214 of this title and,

(5) In ~~in~~ the case of a special meeting, the purpose or purposes for which the meeting is called.

Effective Date: The amendments shall take effect on the date, if ever, that the rescission of Rule 14a-8 under the Securities and Exchange Act of 1934 has become effective, pursuant to action taken by the United States Securities and Exchange Commission.