

the Corporate Governance

Advisor

September/October 2026 • Volume 34, Number 5

Annual Meetings of Stockholders: An Overview of Delaware Law Considerations

By Nathaniel J. Stuhlmiller, Robert B. Greco, and Wilson J.V. Guarnera

For 2026, this primer may assist in navigating key Delaware law considerations applicable to annual meetings.¹

Pre-Meeting Considerations

Delaware corporations should be mindful of these key technical and practical considerations in organizing an annual meeting and preparing the corporation's proxy statement and related materials in advance of the meeting:

- **Meeting Date.** Annual meetings should be held no later than 13 months following the corporation's preceding annual meeting. Otherwise, any stockholder may petition the Delaware Court of Chancery to order the holding of a meeting. Holding an off-cycle meeting may also have implications on the window for the submission of nominations and proposals under advance notice bylaws.
- **Meeting Location.** Delaware law permits both in-person and virtual meetings of stockholders. Due consideration should be given to any requirements or limitations imposed under a corporation's certificate of incorporation or bylaws and, in the case of a virtual meeting, to online security, identity verification and providing means for stockholder access and participation. Additional considerations for virtual meetings are further detailed below.
- **Record Date.** Once the meeting date has been established, a record date for notice and voting at the meeting must be established.² Under Delaware law, the record date cannot be more than 60 days or less than 10 days prior to the

date of the meeting. The record date can only be fixed by the board of directors or a duly authorized board committee. If the board does not fix a record date, the default record date is the close of business on the day preceding the date on which notice is given.

- **Notice.** As a matter of Delaware law, notice of the meeting must be given not less than 10 nor more than 60 days before the date of the meeting. Delaware law requires that the notice be given to each stockholder of record entitled to vote at the meeting as of the record date. Notice of an annual meeting must state the place (if any), date and time of the meeting and, in the case of a virtual meeting, the means of remote communications by which stockholders and proxy holders may be deemed to be present in person and vote at the meeting.³

the Corporate Governance Advisor

Copyright © 2026 CCH Incorporated. All Rights Reserved.

The **CORPORATE GOVERNANCE ADVISOR** (ISSN 1067-6171) is published bimonthly by Wolters Kluwer at 28 Liberty Street, New York, NY 10005. For Customer service, call 1-800-234-1660. This material may not be used, published, broadcast, rewritten, copied, redistributed or used to create any derivative works without prior written permission from the publisher.

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other professional assistance is required, the services of a competent professional person should be sought.

—From a Declaration of Principles jointly adopted by a committee of the American Bar Association and a Committee of Publishers and Associations.

Permission requests: For information on how to obtain permission to reproduce content, please go to the Wolters Kluwer website at www.WoltersKluwerLR.com/policies/permissions-reprints-and-licensing.

Purchasing reprints: For customized article reprints, please contact *Wright's Media* at 1-877-652-5295 or go to the *Wright's Media* website www.wrightsmedia.com.

www.WoltersKluwerLR.com

Nathaniel J. Stuhlmiller, Robert B. Greco, and Wilson J.V. Guarnera are attorneys of Richards, Layton & Finger, P.A.

-
- *Stockholder List.* In advance of the meeting, the corporation must prepare a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, containing the address and number of shares registered in the name of each stockholder of record. The list must be open to the examination of any stockholder, for any purpose germane to the meeting, for a period of 10 days ending on the day before the meeting either: (i) at the corporation's principal place of business during ordinary business hours or (ii) on a reasonably accessible electronic network (provided that the information required to access such list is provided with the notice of the meeting).⁴
 - *Other Pre-Meeting Considerations.* Select additional matters that should be addressed in advance of an annual meeting include:
 - o An agenda for the meeting
 - o A script for the meeting, including prepared remarks from the chairperson
 - o Rules of conduct for the meeting, to be made available to stockholders and proxy-holders at the meeting
 - o The corporation's proxy card, including the selection of available individuals to be named therein as proxies
 - o The appointment of an inspector of elections, which is required for public corporations
 - o In the case of a virtual meeting, the means of remote communications for conducting the meeting should be tested in advance of the meeting, and consideration should be given to establishing a procedure for adjourning or recessing the meeting in the event of a technical malfunction or other disruption

Quorum

A quorum must be present at the meeting for business to be validly conducted. The applicable

standard for determining the presence of a quorum is typically provided in the corporation's certificate of incorporation or bylaws. Otherwise, the default quorum standard applicable under Delaware's General Corporation Law (the "DGCL") requires the presence in person or by proxy of the holders of a majority in voting power of the shares entitled to vote. In no event may a quorum consist of less than 1/3 of the voting power of the shares entitled to vote at a meeting.

Adjournment

A meeting of stockholders may be adjourned, either due to the absence of a quorum or for some other reason (such as a disruption to the meeting or in order to solicit additional proxies in support of one or more proposals). An adjourned meeting constitutes a continuation of the original meeting, rather than a new meeting.

Typically, the bylaws address the authority of the chairperson and/or stockholders to adjourn stockholder meetings. If the time and place (if any) of the meeting and the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at the adjourned meeting are announced at the time of the adjournment, no additional notice to stockholders is required to be given by the corporation unless (i) the adjournment is for greater than 30 days or (ii) the board fixes a new record date for the adjourned meeting. If a quorum was initially present at an adjourned meeting, a quorum does not need to be reestablished once the meeting is reconvened.

Voting Requirements, Abstentions and Broker Non-Votes

Election of Directors.

A plurality is the default voting standard required to elect directors under the DGCL. Under plurality voting, the nominees receiving

the greatest number of votes at a meeting are elected as directors, up to the maximum number of directors to be elected at the meeting.

The certificate of incorporation or bylaws may provide for a different voting standard governing the election of directors. Nearly 66% of the S&P 1500 require some variation of a majority vote to elect directors in uncontested elections.⁵ The exact “majority voting” standard varies from corporation to corporation, but a typical formulation is based on the votes cast for or against the director’s election, where abstentions and broker non-votes are not counted as votes “for” or “against” a director’s election. Absent a resignation policy, incumbent directors who fail to obtain such vote in an uncontested election will continue to serve as holdover directors.

Common Voting Standards for Other Matters.

A variety of voting standards may be applicable to other matters. Certain extraordinary matters may be subject to heightened voting requirements under the DGCL or the corporation’s certificate of incorporation or bylaws, while the voting standard applicable to other general corporate action is typically set forth in the corporation’s bylaws. Common voting standards include:

1. Majority of Votes Cast
2. Majority in Voting Power of Outstanding Shares (*default statutory vote for specified extraordinary matters, which can only be increased, but not reduced, in the certificate of incorporation*)
3. Majority in Voting Power of Shares Present in Person or by Proxy at the Meeting and Entitled to Vote on the Subject Matter (*default under Section 216(2) of the DGCL for all matters other than the election of directors and specified extraordinary matters*)
4. Majority in Voting Power of Shares Present in Person or by Proxy at the Meeting and

Entitled to Vote at the Meeting (*a majority of the quorum*)

Abstentions and Broker Non-Votes.

As disclosures regarding voting standards have been subject to heightened scrutiny in recent years, careful attention should be given to ensure that the proxy statement correctly describes the effect of broker non-votes and abstentions, which can vary depending on the applicable voting standard, as further detailed below.

Broker non-votes. NYSE rules govern the ability of brokers to vote shares they hold on behalf of beneficial owners that fail to submit voting instructions for matters brought before a stockholders’ meeting. Under these rules, brokers who do not receive voting instructions from their clients have the discretion to vote uninstructed shares on certain matters (“discretionary matters”) but do not have discretion to vote uninstructed shares on others (“non-discretionary matters”). Rule 452 of the NYSE and the supplementary materials relating thereto govern the matters as to which brokers generally lack discretionary voting authority.

In circumstances where brokers are prohibited from voting uninstructed shares on at least one proposal to be brought before a meeting, but retain discretionary authority over one or more other proposals, the brokers may vote the uninstructed shares by proxy on the discretionary matters so long as they cross out the portions of the proxy card relating to matters for which they lack discretion. In this case, no vote is cast on any non-discretionary matter, causing a “broker non-vote” to occur for uninstructed shares with respect to such matter. Under Delaware law, so long as at least one discretionary item is on the meeting’s agenda, broker non-votes will count for quorum purposes. Otherwise, broker non-votes will generally not occur, and uninstructed shares will not be counted towards a quorum.

Abstentions. Under Delaware law, an abstention is generally viewed as the voluntary act of

not voting by a stockholder who is present in person or by proxy at a meeting and otherwise entitled to vote. Shares for which abstentions occur are deemed present and entitled to vote at the meeting and, therefore, will be counted for purposes of determining the presence of a quorum.

Virtual Meeting Considerations

In the years following the COVID-19 pandemic, many Delaware corporations have transitioned to virtual-only annual meetings. Virtual meetings offer several meaningful advantages, including lower costs, increased stockholder participation, more efficient information sharing with stockholders, and greater flexibility in scheduling and rescheduling meetings.

Under Section 222 of the DGCL, the notice of a virtual-only meeting must include, in addition to the information otherwise required, the means of remote communication by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting.

Section 211 of the DGCL, which governs the conduct of virtual stockholder meetings, establishes three key requirements:

1. *Stockholder and Proxyholder Verification.* Section 211(a)(2)(b)(i) requires the corporation to “implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder.”

Voting Standard	Formula for Proposal to Pass (must exceed 50%)	Effect of Abstention	Effect of Broker Non-Vote (if Non-Discretionary)
Majority of Votes Cast	$\frac{\text{Votes FOR}}{\text{Votes FOR} + \text{Votes Against}}$	An abstention has no effect on the proposal.	A broker non-vote has no effect on the proposal.
Majority in Voting Power of Outstanding Shares	$\frac{\text{Votes FOR}}{\text{All Outstanding Voting Power}}$	An abstention counts as a vote AGAINST.	A broker non-vote counts as a vote AGAINST.
Majority in Voting Power of Shares Present in Person or by Proxy at the Meeting and Entitled to Vote on the Subject Matter	$\frac{\text{Votes FOR}}{\text{Votes FOR} + \text{Votes AGAINST} + \text{Abstentions}}$	An abstention counts as a vote AGAINST.	A broker non-vote has no effect on the proposal.
Majority in Voting Power of Shares Present in Person or by Proxy at the Meeting and Entitled to Vote at the Meeting	$\frac{\text{Votes FOR}}{\text{Votes FOR} + \text{Votes AGAINST} + \text{Abstentions} + \text{Broker Non Votes (if any)}}$	An abstention counts as a vote AGAINST.	<u>At least one other proposal on agenda is discretionary: Vote AGAINST.</u> <u>No discretionary items on agenda:</u> Uninstructed shares will have no effect, but broker non-votes will generally not occur.

The statute does not require the corporation to prove that a participant is the specific stockholder or proxyholder the participant claims to be. Rather, it requires only that the corporation implement reasonable measures to verify the identity of the participant.⁶

2. *Reasonable Opportunity to Participate.* Section 211(a)(2)(b)(ii) provides that the corporation must “implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings.”

Although the statute does not define the exact scope of a “reasonable opportunity to participate,” best practices support affording stockholders the ability to ask questions relevant to the matters before the meeting, subject to reasonable and equitable limitations.

3. *Record Keeping.* Section 211(a)(2)(b)(iii) provides that “if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the corporation.”

Corporations should therefore ensure votes cast and other actions taken at the annual meeting are reflected as part of the corporate records.

Postponement and Adjournment of Virtual Meetings.

Section 222(c) of the DGCL offers flexibility in the adjournment of virtual meetings, including in the event of technical failures. Unless the bylaws otherwise require, Section 222(c) permits a corporation to adjourn a meeting for up to 30 days without giving further notice if the time, date and place of the meeting (and, in the

case of a virtual meeting, the means of remote communication for attending and participating at the meeting) are announced at the meeting, displayed during the time scheduled for the meeting on the electronic network used for the virtual meeting, or set forth in the notice of the meeting.

Thus, to address the possibility that technical failures may prevent the meeting from being convened, corporations may include in their notice of meeting an advance adjournment notice stating the time and means for reconvening the meeting in the event of a technical failure. To address the possibility of a technical failure after a virtual meeting is called to order, corporations may post on the meeting site the adjournment procedures that will apply in this scenario.

Notes

1. While this article focuses on key considerations arising under Delaware law, public Delaware corporations must also be mindful of any additional considerations that may be applicable under securities laws and the rules and regulations of any stock exchange on which the corporation's shares may be listed.
2. Although Delaware law allows corporations to fix a separate later record date for determining the stockholders entitled to vote at the meeting, corporations almost always fix the same record date for notice and voting.
3. In the unusual case of a meeting with different record dates for notice and voting, the notice of meeting must state the record date for determining the stockholders entitled to vote at the meeting. There may be additional or different notice requirements for meetings to vote on certain extraordinary matters, such as mergers.
4. Although Section 219 of the DGCL previously required that the stock list be made available for inspection during the course of stockholder meetings, the statute was amended in 2022 to eliminate that requirement.
5. See Deal Point Data, *S&P 1500 Benchmarks Year over Year Analysis*, https://www.dealpointdata.com/corp/pdf/takeover_defense_comparison_statistics_sp1500_yoy.pdf.
6. See American Bar Association, Section of Business Law, *HANDBOOK FOR THE CONDUCT OF SHAREHOLDERS' MEETINGS* 107 (3d ed. 2021).