

---

# Stockholder Action by Written Consent

---

Allstate Corporation

Amgen Inc.

Bristol-Myers Squibb Company

International Paper

JPMorgan Chase & Co.

Raytheon Company

# Agenda

---

- Overview
- Vote results
- Stockholder right to act by written consent
  - Mechanics
  - Risks
  - Alternatives
- Management proposals to implement a structured stockholder right to act by written consent
- Key considerations

# Overview

---

- Other corporate governance practices, such as special meeting rights, provide stockholder access while protecting minority stockholder interests.
- While initial stockholder proposals received majority support in 2010, support dropped significantly in 2011, reflecting an evolved investor understanding of the right and the accompanying risks.
- Decreased support reflects understanding that written consent presents significant risks by enabling stealth action, disenfranchising stockholders, and undermining board duties to maximize value for stockholders.
- The very few companies that received majority support for written consent stockholder proposals are framing solutions to balance risks while maintaining responsiveness to stockholder sentiments.

# Vote Results

---

*Recent vote results reflect overall decline in stockholder support*

- In 2010, in issuer discussions with investors, investors acknowledged that they had not had time to fully consider the merits of written consent proposals but nonetheless supported such stockholder proposals because they *appeared* shareholder-friendly.
  - 13 of 18 stockholder proposals (72.2%) voted on received a majority vote with the average level being 54.4%
- In 2011, many investors revised voting policies on this topic and considered proposals in light of a company's overall corporate governance context, as well as a thorough consideration of the risks posed by written consent.
  - 12 of 34 stockholder proposals (35.2%) voted on received a majority vote with the average level of support being 47.8%

# Written consent – mechanics

---

- State corporate laws generally provide for very limited procedural restrictions, if not otherwise provided for in a company's articles of incorporation.
- State corporate law provisions typically allow stockholders to launch a consent solicitation to effect action upon the receipt of the requisite number of consents *without* requiring –
  - An equal opportunity for all stockholders to review and vote on the proposed action
  - a defined time table
  - prior notice to the corporation or its stockholders
- The most common timing for launching a consent solicitation is 20 days.

# Written consent – risks

---

## *Value destruction*

- Stockholders can use a consent solicitation to effect a change of control (through sale or removal of directors) without paying a control premium to stockholders.
- Boards may not have an opportunity to assess proposed actions or seek alternatives that may provide more value to all stockholders.
  - The condensed time frame of an action by written consent may prevent boards from developing the best value proposition and obtaining a higher price for stockholders.
  - Other potential bidders will be deterred from investigating and presenting a competing offer. The lack of comparison offers may result in the undervalued sale of the company.

# Written consent – risks

---

## *Disenfranchisement of stockholders*

- Stockholders may not have an opportunity to review a proposed action or vote
  - Quick-moving process may not provide sufficient time for all stockholders to review and evaluate proposed actions.
  - Stockholders may be deprived the benefit of a board's assessment or proxy advisory firm recommendations before voting.
  - All stockholders may not have the opportunity to vote.

# Written consent – risks

---

## *Enables abuse and misuse*

- Consent solicitations can be threatened to force boards to take certain actions that may not be in the best interests of the company or its stockholders.
- Frequent or inappropriate use of the written consent mechanism can distract or prevent the board and management from effectively managing the company.
  - Delaware courts have recognized the negative consequences and the potential for abuse associated with action by written consent.\*
  - Consent solicitations require significant expenditures of financial resources.
  - Example: Six Flags, Inc. estimated costs of \$3 million to defend against a single consent solicitation. Costs may be even greater for larger companies.

\*In *Empire of Carolina v. Deltona Corp.*, the Delaware Chancery Court noted that “the taking of action by written consent instead of at a stockholders meeting has great potential for mischief” and the “summary removal of directors by the execution of written consents. . . can interfere with orderly corporate governance and cause great injury to an operating corporation and its stockholders.”

# Advancements in corporate governance landscape provide alternatives

---

*Companies have adopted governance mechanisms that provide increased stockholder access and director accountability, making written consent unnecessary.*

- Stockholder requested special meetings provide access outside of the annual meeting cycle. Special meetings provide all stockholders with the ability to participate and vote. Boards have an opportunity to consider and communicate their views and recommendations.
- Mandatory say-on-pay votes give stockholders a voice on executive compensation.
- Best practices now include a majority vote standard for uncontested director elections, the elimination of staggered boards and supermajority vote requirements.

# Management proposals to implement a structured stockholder right to act by written consent

---

*Boards seeking to implement written consent in light of expressed stockholder sentiment may structure the right through procedural parameters that could protect stockholders and mitigate risk, such as:*

- Solicitation of all stockholders – assures transparency and opportunity for full notice and stockholder participation.
- Timing parameters for delivery effectiveness - may be consistent with notice and timing provisions allowed by special meetings; reasonable time period will foster greater opportunity for stockholders to participate meaningfully and would provide an opportunity for the issuer to present its position.
- Ownership threshold for consent solicitation initiation – may be similar to ownership thresholds set for special meeting right in order to mitigate risk of nuisance campaigns.
- Disclosure of certain information – may be consistent with advance notice provisions for stockholder proposed business at special or annual meetings; will enable issuer and stockholder knowledge of soliciting parties and their interests and details of the action sought.
- Agenda restrictions to avoid multiple considerations of an issue within a short period of time – no matters that were within certain time period of last annual or special meeting or that will be considered in upcoming meeting.

# Key considerations

---

- Given the significant risks involved with a stockholder right to act by written consent, we believe investors should examine whether there is an underlying company-specific need to adopt a stockholder right to act by written consent.
- Factors to be considered:
  - Existing corporate governance practices - such as the ability of stockholders to call special meetings, the presence or absence of staggered boards, majority vote standards, and poison pills.
  - Management and business performance, sector-specific considerations and the impact of industry-specific regulations.
- Where stockholder proposals receive majority support, management proposals that incorporate structural parameters into an ability to act by written consent should be deemed responsive and should not result in negative votes against directors.

---

**Thank you.**

---