

# Anti-Takeover Measures



Anti-takeover measures			
Provision	Description	Key board decisions	ISS/Glass Lewis view
<b>Classified board</b> Divide board into classes of directors serving staggered terms	Limits the number of directors that can be targeted by hostile acquirers/activist investors in any given year	<ul style="list-style-type: none"><li>• Director classifications</li><li>• Springing structure</li></ul>	Disfavored – highest risk for negative vote recommendations (GL: may apply to whole board, ISS: generally applies only to nominating/governance chair or committee members); will support shareholder proposals to remove
<b>Only board can fill vacancies</b> Provide that the board has the sole right to set the size of the board and to fill vacancies on the board	Prevents hostile acquirers/activist investors from being able to fill vacancies on the board	N/A	N/A
<b>Supermajority stockholder vote to remove directors</b> Require that any director removal from the board be approved by a two-thirds vote of the outstanding voting power	Heightened threshold for removal makes it more difficult for hostile acquirers/activist investors to remove a director without board approval	<ul style="list-style-type: none"><li>• Lower thresholds if approved by board</li><li>• Springing structure</li></ul>	Disfavored – no stand-alone negative director vote policies (i.e., may contribute to negative recommendations when taken together with other defensive provisions); will support shareholder proposals to remove
<b>Eliminate cumulative voting</b> Eliminate cumulative voting, which strengthens the ability of minority stockholders to elect a director by allowing them to cumulate votes	Makes it more difficult for minority hostile acquirers/activist investors to significantly impact the election of directors	N/A	Disfavored – will support shareholder proposals to adopt cumulative voting and against proposals to eliminate
<b>Eliminate stockholder ability to call special meetings</b> Provide that only the board, CEO or chair, and not stockholders, can call special stockholder meetings	Prevents hostile acquirers/activist investors from calling a special meeting to propose replacing the board, approving a takeover proposal or taking other actions that the existing board disfavors	<ul style="list-style-type: none"><li>• Springing structure</li></ul>	Disfavored – no stand-alone negative director vote policies; will generally support shareholder proposals to adopt special meeting right
<b>Eliminate stockholder ability to act by written consent</b> Requires stockholders to only take action at meetings, as opposed to via written consent	Prevents hostile acquirers/activist investors from launching a consent solicitation to replace the director slate, approve a takeover proposal or take other actions that the existing board disfavors, without holding a stockholder meeting	<ul style="list-style-type: none"><li>• Springing structure</li></ul>	Disfavored – no stand-alone negative director vote policies; will generally support shareholder proposals to adopt written consent

# Anti Takeover Measures (cont.)

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<b>Advance notice provisions</b> Requires that notice, with specific form and content, be provided prior to proposing action at a stockholder meeting	Requires hostile acquirers/activist investors to provide important background information for the board or a nominating and governance committee to consider in evaluating a potential candidate for the board or other stockholder action	N/A	N/A
<b>Board ability to amend bylaws</b> Permit the board to adopt, amend or repeal the bylaws without stockholder approval	Gives the board the ability to design specific, proportionate responses to takeover threats and/or hostile acquirers/activist investors and to update bylaws for corporate governance trends and/or new Securities and Exchange Commission requirements	N/A	No policy against the existence of such ability, but negative director voting policies when board unilaterally amends bylaws in manner that negatively affects shareholder rights
<b>Supermajority stockholder vote to amend charter and bylaws</b> Require that certain amendments to the charter or bylaws be approved by a supermajority of the outstanding voting power	Heightened threshold for approval makes it more difficult to amend or repeal any of the defensive measures without board approval	<ul style="list-style-type: none"> <li>Lower thresholds if approved by board</li> <li>Springing structure</li> </ul>	Disfavored – high risk of negative vote recommendations (GL: nominating/governance members, ISS: generally applies only to nominating/governance chair or committee members); will support shareholder proposals to remove
<b>Do not opt out of Delaware General Corporation Law Section 203</b> Prevents a potential unsolicited acquirer from purchasing a majority of a company's stock through a tender offer and then using a merger to "squeeze out" the remaining stockholders at a lower price or for different consideration	Reduces the ability of an unsolicited acquirer to conduct a tender offer and squeeze-out merger	N/A	N/A
<b>'Blank check' preferred stock</b> Enables the board to issue shares of preferred stock in one or more series, without specific stockholder approval	Gives company flexibility to, among other things, implement a "poison pill," which would dilute potential hostile acquirers/activist investors/unsolicited acquirers	<ul style="list-style-type: none"> <li>Authorization amount: \$20 million – \$100 million</li> </ul>	N/A – but case-by-case approach on rights plans themselves
<b>Exclusive forum clause</b> Designates Delaware and/or the federal district courts as the exclusive forum for certain claims	Allows company to avoid duplicative litigation and forum shopping and to locate cases in the most experienced courts with the most clearly defined body of corporate or securities law, as applicable	N/A	No negative voting policies, though GL expresses a slightly negative view