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Proxy Materials and Annual Meetings under Maryland Law – 2026

As we enter the 2026 proxy season, we are providing our annual memorandum to call your attention to certain matters of Maryland law, some new and some continuing, relating to proxy materials and annual meetings about which we often receive questions. Because the same principles generally apply both to corporations formed under the Maryland General Corporation Law (the "MGCL") and to real estate investment trusts formed under the Maryland REIT Law (the "MRL"), we refer hereafter, unless otherwise noted, only to corporations (or sometimes companies). As in prior years, we are available to review draft proxy statements and other annual meeting materials (*e.g.*, sign-in and remote communication procedures and scripts) for Maryland law compliance.

Key Issues for the 2026 Proxy Season.

Rule 14a-8 Proposals. Recently, the Division of Corporation Finance of the Securities and Exchange Commission (the "SEC") issued a statement that it would stop responding to Rule 14a-8 no-action requests for the 2025–2026 proxy season and would "express no views" on most bases for exclusion of stockholder proposals under Proxy Rule 14a-8, except requests under Rule 14a-8(i)(1) (the "improper under state law / jurisdictional" ground). Companies that intend to exclude stockholder proposals from their proxy materials must still notify the SEC and proponents no later than 80 calendar days before filing a definitive proxy statement. In addition, if a company wishes to receive a response for any proposal that it intends to exclude pursuant to Rule 14a-8, other than requests to exclude proposals that are improper under applicable state law, the company or its counsel must include, as part of its notification to the SEC, an "unqualified representation that the company has a reasonable basis to exclude the proposal based on the provisions of Rule 14a-8, prior published guidance, and/or judicial decisions." Excluding a precatory proposal on the basis that it is improper under state law still requires a supporting opinion of counsel that the proposal is not proper under state law. To date, we are not aware of any precatory proposals that have been excluded during the 2025–2026 proxy season on this basis.

Retail Voting Program. In 2025, the Division of Corporation Finance confirmed that it would not recommend enforcement action with respect to Exxon Mobil Corporation's implementation of its "Retail Voting Program." Exxon's Retail Voting Program allows all retail investors to grant standing instructions to vote their shares in line with the recommendation of the board of directors on either (1) all matters or (2) all matters except contested director elections or any acquisition, merger or divestiture transaction that, under applicable state law or stock exchange rules, requires approval of stockholders. Retail investors are permitted to opt in to the Retail Voting Program at no cost and may freely opt out at any time. Retail investors may override their standing voting instructions by voting as specified in the proxy materials for a stockholders meeting. Exxon, in its No-Action Request Letter, drew attention to the fact that New Jersey (Exxon's state of incorporation) and Delaware state corporate law each permit

stockholders to give standing voting instructions that do not expire so long as the instructions specifically state as much. The MGCL provides the same flexibility with respect to the duration of a proxy. Under Section 2-507(b)(2) of the MGCL, a proxy may remain valid for longer than 11 months if the proxy specifies such extended duration in its terms. While the Retail Voting Program has not yet been widely adopted and is currently subject to litigation, Maryland public companies, particularly those struggling with voter turnout, achieving a quorum or low engagement from retail stockholders generally, should continue to monitor developments and consider the implementation of a Retail Voting Program. To date, the Division of Investment Management has not issued comparable relief for investment company proxy solicitations, where it would be particularly useful, given the generally low shareholder participation in such solicitations.

Advance Notice Bylaws/Contested Meeting. In a recent ruling, the United States District Court for the District of Maryland upheld Braemar Hotels & Resorts Inc.'s decision to reject a stockholder's nomination notice that was received months past the publicly announced deadline, even after the annual meeting was delayed, consistent with the clear language of the bylaws that provided that postponement of an annual meeting does not reopen the nomination window. Ruling from the bench, Judge Gallagher also rejected the plaintiff-stockholder's argument that Braemar's rejection of the stockholder's nominees violated Proxy Rules (as defined below) 14a-19, 14a-3, and 14a-9. In this regard, the court recognized that there was no "contested election," since the plaintiff-stockholder had not filed a proxy statement or solicited proxies and cited SEC guidance that a company was not required to include a dissident stockholder's nominees on its proxy card when the company determines that the nominations did not comply with advance notice bylaw requirements. Finally, the court rejected the plaintiff-stockholder's argument that Braemar's directors breached their duties in failing to consider the stockholder's nominees, finding that there is no evidence that the Board engaged in fraud or bad faith, which is required in order to overcome the business judgment rule.

The Annual Meeting Requirement. The MGCL requires each corporation to "hold an annual meeting of its stockholders to elect directors . . ." at "the time or in the manner" provided in the corporation's bylaws.[1] The MGCL provides an exception to this annual meeting requirement for a corporation that is an investment company as defined in the Investment Company Act of 1940, as amended (the "1940 Act").[2] While there is no annual meeting counterpart in the MRL, in our experience, most declarations of trust and/or bylaws for real estate investment trusts mandate the holding of an annual meeting of shareholders. In addition, both the New York Stock Exchange ("NYSE") and the Nasdaq Stock Market require listed companies to hold an annual meeting each fiscal year.

[1] Under the MGCL, the failure to hold an annual meeting does not invalidate the corporation's existence or affect any otherwise valid corporate act.

[2] The MGCL was amended in 2023 to make the investment company exception applicable to closed-end funds that elect to be regulated as business development companies ("BDCs") under the 1940 Act. Unlisted BDCs have the same flexibility with respect to annual meetings of stockholders as registered investment companies.

Notice of the Meeting. The MGCL requires the secretary of the corporation to give notice of the meeting in writing or by electronic transmission not less than ten nor more than 90 days before the meeting to each stockholder entitled to vote at the meeting and to each other stockholder entitled to notice of the meeting. Typically, only stockholders entitled to vote at a meeting are entitled to notice and to attend the meeting.[3] The notice for an annual meeting must state the time of the meeting, the place of the meeting, if any, and the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present and entitled to vote at the meeting.

Quorum and Presence at the Meeting. Under the MGCL, unless the charter provides otherwise, the presence, in person or by proxy, of the holders of shares entitled to cast a majority of all the votes entitled to be cast constitutes a quorum for a meeting of stockholders. In the absence of a contrary charter provision, the MGCL permits the bylaws of a registered open-end investment company and a corporation having a class of equity securities registered under the Exchange Act and at least three independent directors to lower the quorum requirement to not less than one-third of the votes entitled to be cast at the meeting.

A stockholder that is physically present at the convening of a meeting (including a stockholder that has signed in and leaves after the determination of the presence of a quorum) is "present" for purposes of determining the existence of a quorum, whether or not the stockholder votes. The same rule applies to a stockholder that is present "by proxy." Thus, if a stockholder returns a properly executed proxy or otherwise authorizes a proxy (and the proxy holder attends the meeting or properly submits the proxy), the holder of the shares should be counted as present "by proxy," whether the holder votes on all matters, only on some matters or on no matters at all or affirmatively checks the box marked "withhold authority" as to directors or "abstain" as to one or more other matters.

Vote Requirements, Abstentions and Broker Non-Votes. The MGCL addresses vote requirements at meetings of stockholders but, like most corporation statutes, does not specifically address abstentions and broker non-votes.

Vote Requirements. With limited exceptions,[4] there are four vote requirements in the MGCL, depending on the matter for which the vote is taken:

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[3] There may be certain situations (*e.g.*, certain types of charter amendments or other extraordinary actions) for which (a) the MGCL requires notice to non-voting stockholders or (b) the charter of the corporation provides voting rights (or rights to notice) to otherwise non-voting stockholders. Best practice is always to check the charter (including articles supplementary) for voting rights of holders of various classes or series of stock.

[4] The four exceptions are (a) the special voting requirements under the Maryland Business Combination Act for certain business combinations with interested stockholders, (b) approval of voting rights under the Maryland Control Share Acquisition Act for holders of control shares acquired in a control share acquisition, (c) the vote to remove a director for companies that have made an election to be subject to MGCL §3-804 and (d) separate class voting.

(a) Election of directors – Plurality of all the votes cast at a meeting at which a quorum is present. No counterpart in the MRL.

(b) Removal of a director – Majority of all the votes entitled to be cast for the election of directors. The MRL contains a counterpart for the removal of a trustee.

(c) Charter amendment; merger; transfer of all or substantially all of the assets; consolidation; statutory share exchange; conversion; and dissolution – Two-thirds of all the votes entitled to be cast on the matter. The MRL contains a counterpart for an amendment of the declaration of trust, merger and conversion, but not for a transfer of assets, consolidation, statutory share exchange or dissolution.[5]

(d) All other matters – Majority of all the votes cast at a meeting at which a quorum is present. No counterpart in the MRL.

In each of the foregoing situations, the vote required may be altered by provision in the charter or, in the case of the plurality vote requirement for the election of directors, in the bylaws. In the absence of a counterpart provision in the MRL, the provisions of the declaration of trust or the bylaws will determine the vote required. Furthermore, the board may choose to submit a proposal to the shareholders conditioned on approval (a) by a percentage greater than that required by the MGCL or the MRL or (b) by some group of shareholders, such as a "majority-of-the-minority provision" in connection with a merger with a controlling shareholder.

In addition, other laws or rules may impose different vote requirements. Item 21(a) of Schedule 14A under Regulation 14A (the "Proxy Rules") of the Securities Exchange Act of 1934, as amended, requires the proxy statement to disclose the votes required for the election of directors and for the approval of any other matter (except, inexplicably, approval of auditors).

Abstentions. An "abstention" is a shareholder's affirmative choice to decline to vote on a proposal. An abstention requires more than simply not voting; the shareholder must undertake some affirmative act, such as marking "abstain" on a ballot, proxy card or voting instruction form ("VIF"), to indicate the holder's decision to refrain from voting. An abstention is always counted as present and entitled to vote because presence (either in person or by proxy) and entitlement to vote are necessary to the act of abstaining. With respect to the counting of votes, as noted above an abstention is not a vote cast. *See Larkin v. Baltimore Bancorp,* 769 F. Supp. 919 (D. Md. 1991), *aff'd*, 948 F.2d 1281 (4th Cir. 1991).

If the vote required is either a plurality, majority or other percentage of the votes cast, an abstention will have no effect because it will not be a vote cast. If the vote required is a majority, two-thirds or other percentage of all the votes entitled to be cast, the effect of an abstention will

[5] Note that the MGCL treats registered open-end investment companies as a special case and generally requires approval of charter amendments and extraordinary actions in the manner and by the vote required under the 1940 Act. Accordingly, these actions may be taken with Board approval and without stockholder approval, except where the vote of security holders is required by the 1940 Act.

be the same as a vote against the proposal because a fixed percentage of affirmative votes is required.

Broker Non-Votes. Many shares of public companies are held in "street" or nominee name in accounts with banks and broker-dealers. These banks and broker-dealers typically hold "their" shares, *i.e.*, the shares in their customers' accounts, through The Depository Trust Company (registered in the name of its nominee, Cede & Co.), and their customers are therefore generally referred to as "beneficial owners." The banks and brokers are generally required under the Proxy Rules to forward proxy materials to the beneficial owners and to seek instructions with respect to the voting of those securities. Under Rule 452 of the NYSE, brokers are not permitted to vote on the election of directors without instructions.[6] Section 402.08(B) of the NYSE Listed Company Manual also lists many matters as to which a broker member may not vote or give a proxy without instructions from the beneficial owner. As a result, there are very few proposals as to which a broker may exercise its own discretionary authority in voting customer shares.

While neither the SEC nor Rule 452 defines "broker non-vote," it is generally accepted that a broker non-vote is a vote that is not cast on a non-routine matter by a broker that is present (in person or by proxy) at a meeting at which there is at least one routine matter on the proxy card (otherwise the broker does not have authority to vote on anything and does not ordinarily send in a proxy) because (a) the shares entitled to be voted are held in street name, (b) the broker lacks discretionary authority to vote the shares and (c) the broker has not received voting instructions from the beneficial owner.[7] If the broker votes on a routine matter[8] but does not vote on a non-routine item on the proxy, then the shares held in street name are present for quorum purposes and the effect of not voting on the non-routine matter depends upon whether the vote requirement for that proposal is based upon a proportion of the votes cast (no effect) or a proportion of the votes entitled to be cast (effect of a vote against).[9] If the only matter at a

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[6] This rule does not apply to director elections for investment companies registered under the 1940 Act. However, closed-end investment companies that elect to be regulated as BDCs under the 1940 Act are not included in this exception.

[7] Generally, the distribution and collection of VIFs are handled by Broadridge Financial Solutions, Inc., acting on the brokers' behalf pursuant to contract.

[8] Brokers generally vote their entire record date position on routine matters, reflecting (a) a combination of client voting instructions received and (b) discretionary votes according to Rule 452 of the NYSE where voting instructions were not received.

[9] An SEC no-action letter issued to the American Bar Association in 1993 takes the position that for Rule 16b-3(d) purposes "broker non-votes should not be considered shares entitled to vote because the broker and proxy holder do not have the authority to vote the shares with regard to the plan." American Bar Ass'n, SEC No-Action Letter, 1993 SEC No-Act. LEXIS 782 (June 24, 1993). A different result might be reached under state corporation law. For example, similar language in the MGCL (*e.g.*, "votes entitled to be cast on the matter," *see* MGCL §2-604(f) (regarding charter amendments)) means the total votes to which the total outstanding shares are entitled. *Compare Berlin v. Emerald Partners*, 552 A.2d 482, 493 (Del. 1988) (holding that "[a] stockholder who is present in person or represented at a meeting by a general proxy, is present for quorum purposes and is also voting power present on all matters. However, if the stockholder is represented by a limited proxy and does not empower its holder to vote on a particular proposal, then the shares represented by that proxy cannot be considered as part of the

meeting is non-routine (as may often occur in connection with a special meeting), there should be no broker non-votes because a broker will not submit a vote without client instructions, as there is nothing on which the broker is permitted to vote (and the shares are not present for quorum purposes).[10] In such a circumstance, the shares held in street name for which voting instructions have not been received and are not represented by a proxy at the meeting should be treated identically to shares held by a record holder that chooses not to appear at the meeting in person or by proxy, *i.e.*, as unvoted shares not present at the meeting.[11]

Item 21(b) of the Proxy Rules requires disclosure only of "the method by which votes will be counted, including the treatment and effect under applicable state law and registrant charter and bylaw provisions of abstentions, broker non-votes, and, to the extent applicable, a security holder's withholding of authority to vote for a nominee in an election of directors."

Considering the requirements of the federal securities laws, Maryland law and the NYSE, we recommend for Maryland corporations and real estate investment trusts the forms of disclosure set forth on Appendix A hereto, which may be varied appropriately in accordance with the proposal and the applicable vote requirement. The bracketed language on quorums in Appendix A is not required by Item 21(b), but is often disclosed anyway.[12]

Proxy Cards. The proxy card is the critical document under state law by which most votes by stockholders of record are generally authorized to be cast. In this regard, it is important to note that "stockholder" is defined by the MGCL as "a person who is a record holder of shares of stock in a corporation . . . ."[13] Under the MGCL, the proxy must be written and signed by the

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voting power present with respect to that proposal."). We disagree with the SEC's position because broker non-votes are not, to use the SEC's word, "shares" and do not implicate the underlying voting rights to which all shares of that class are entitled under applicable state law and the charter; rather, broker non-votes are the absence of the right of a particular person, the broker, to vote the shares on a particular matter without instruction from the beneficial owner. In other words, the shares remain entitled to vote, but the particular holder of the shares at that time, the broker, is not entitled to vote them. *See generally* CORP. LAWS COMM. & CORP. GOVERNANCE COMM., BUS. LAW SECTION, HANDBOOK FOR THE CONDUCT OF SHAREHOLDERS' MEETINGS, Chapter 11 (A.B.A. 3d ed. 2021).

[10] JAMES J. HANKS, JR., MARYLAND CORPORATION LAW §8.03B n.37 (2d ed. 2020, Supp. 2025).

[11] On the other hand, there is nothing under Maryland law preventing a broker from submitting a proxy representing shares for which voting instructions have not been received for a meeting with no routine matter on the agenda. Such uninstructed shares would be present for purposes of establishing a quorum (the only reason to submit the proxy) but would not be "broker non-votes" as that term is customarily applied.

[12] The foregoing discussion of shareholder voting and the treatment of abstentions and broker non-votes applies equally to statutory trusts formed under the Maryland Statutory Trust Act, absent an express provision to the contrary in the governing instrument of the trust. The governing instrument of a statutory trust typically defines shareholder voting rights and the thresholds for shareholder approvals but does not expressly address the treatment of abstentions and broker non-votes at meetings of shareholders.

[13] MRL §8-101(e) includes a correlative definition for a "shareholder" under the MRL. In this memorandum, we have generally used "shareholder" to refer both to a stockholder of a Maryland corporation and to

stockholder of record or by the record stockholder's authorized agent. Under the MGCL, signing may be by (a) actual signature by the stockholder or the stockholder's authorized agent or (b) the stockholder or the stockholder's authorized agent causing the stockholder's signature to be affixed to the writing by any reasonable means, including facsimile signatures. Note that the MGCL does not expressly apply to the VIFs sent by or on behalf of brokers or other intermediaries to obtain voting instructions from beneficial owners holding shares in street name.

Among the requirements of Proxy Rule 14a-4(a) and (b), the proxy card must state in boldface type who is soliciting the proxies, list the names of nominees for election as directors and enable the shareholder to withhold authority to vote for individual nominees. Proxy Rule 14a-4(b)(3) also requires that if the proxy card provides a means for the shareholder to vote for all nominees as a group, then it must also provide a means to withhold authority to vote for the group (or against such group of nominees and a means to abstain from voting for such group of nominees).

Rule 14a-19 under the Proxy Rules requires "universal" proxy cards in contested director elections for many public companies. The SEC has provided guidance on the treatment of proxy cards marked with more or fewer nominees than there are director seats up for election, as well as signed but unmarked proxy cards:

(a) *Overvoting*: If a stockholder returns a card that marks more nominees than there are director seats up for election, the company must disregard all votes on that card with respect to the director election (and cannot use discretionary voting by the proxy holder for director elections). The company must accept the votes for all other proposals (and thus the card would count toward a quorum).[14]

(b) *Undervoting*: If a stockholder returns a card that marks fewer nominees than there are director seats up for election, the company must count the votes as marked (and the proxy holder cannot use discretionary authority to "fill out" the remainder of the votes).[15]

(c) *No Votes*: If a stockholder returns a card that marks no nominees, the proxy holder may vote that item in his or her discretion, provided that the proxy card states in bold how the proxy holder will vote where no choice is specified.[16]

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a shareholder of a Maryland real estate investment trust, except when referring to a stockholder under a specific provision of the MGCL.

[14] Compliance and Disclosure Interpretation ("C&DI") Question 139.07.

[15] C&DI Question 139.08.

[16] C&DI Question 139.09.

Electronic Voting. In recognition of the fact that companies often hire proxy solicitors and other intermediaries to assist in soliciting proxies, the MGCL permits a stockholder not only to authorize another person to act as a proxy but also to authorize an intermediary, *e.g.*, a proxy solicitor, to authorize another person to act as a proxy. Either of these authorizations may be done "by a telegram, cablegram, datagram, electronic mail, or any other electronic or telephonic means." In other words, a stockholder may effectively cast votes by authorizing via telephone or internet, even though the MGCL does not expressly permit direct voting by telephone or other electronic means. As is well known, many proxy solicitors solicit votes by these means.[17]

Virtual Meetings. During the COVID-19 pandemic, many Maryland corporations transitioned to holding virtual-only stockholders' meetings, and we expect that virtual stockholder meetings will continue to be far more common than before the pandemic. Under MGCL §2-503(b), which also applies to real estate investment trusts under the MRL, the board of directors of a Maryland corporation, if it is authorized to determine the place of a meeting of stockholders (as is the case with most boards), "may determine that the meeting not be held at any place, but instead may be held partially or solely by means of remote communication . . . ."

Under the MGCL, subject to any guidelines or procedures adopted by the board of directors, stockholders and proxy holders virtually attending a meeting of stockholders may (a) participate in the meeting and (b) be considered present in person and vote at the meeting. For a stockholder or proxy holder to be considered present and vote at a virtual meeting (a) the corporation must implement reasonable measures to (i) verify that each person considered present and authorized to vote at the meeting by means of remote communication is a stockholder or proxy holder and (ii) provide the stockholders and proxy holders 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 the proceedings, and (b) in the event any stockholder or proxy holder votes or takes other action at the meeting, a record of the vote or other action must be maintained by the corporation. Some service providers offering platforms for holding virtual meetings provide an option to record the proceedings of annual meetings of stockholders. Before recording or publishing any recording of an annual meeting of stockholders, a company should consider applicable laws governing the recording of communications generally.

Internet Availability of Proxy Materials. Under the Proxy Rules, all filers are required to post their proxy materials on a publicly accessible internet website (other than EDGAR) and may choose to (a) utilize the "notice and access" model for furnishing proxy materials to shareholders by sending a Notice of Internet Availability of Proxy Materials complying with Proxy Rule 14a-16 (the "Proxy Rule Notice") or (b) deliver a full set of paper copies of the proxy materials, including the Proxy Rule Notice. A Maryland corporation may combine the notice of a meeting of stockholders required by the MGCL with the Proxy Rule Notice.

[17] Note that, irrespective of the method of proxy authorization, no votes are formally cast until the proxy holder submits a completed ballot at the meeting of stockholders.

Householding. Proxy Rule 14a-3(e) provides that an annual report, proxy statement or Proxy Rule Notice will be considered to have been delivered to all shareholders of record that share an address so long as one annual report, proxy statement or Proxy Rule Notice, as applicable, is delivered to the shared address and is addressed to (a) the shareholders as a group, (b) each of the shareholders individually or (c) the shareholders in a form to which each of them has consented in writing. The Proxy Rules also require compliance with certain other conditions regarding express or implied consents by shareholders.

Although the MGCL does not address delivery of annual reports or proxy statements, it does address the manner in which a corporation may give notice of a meeting of stockholders by providing for four types of notice: personal delivery, delivery to the stockholder's residence or place of business, mailing to the stockholder at the stockholder's address as shown on the records of the corporation and electronic transmission.

Under the MGCL, a single notice is effective as to all stockholders sharing an address unless the corporation receives a written or electronic request from a stockholder at such address that a single notice not be given. In lieu of householding, we believe that the only means of delivery permissible under the MGCL is addressing the material to each stockholder "individually" at the shared physical or electronic address. The corporation may deliver these materials in one package if it lists the name of each stockholder-recipient on the label containing the shared address. Additionally, the corporation must include a separate proxy card for each individual stockholder at the shared address. The MRL does not state the permissible methods of delivery of notice to the shareholders, and this is customarily addressed by provision in the declaration of trust or bylaws.

Ratification of Auditors. Although quite common, ratification of the board's appointment of auditors is not generally required under federal or Maryland law. As ratification of auditors is a routine matter under the NYSE rules, brokers are entitled to vote on it without instructions from beneficial owners. Thus, if there is no other routine matter on the proxy card, inclusion of ratification of auditors on the card may assist in obtaining a quorum for the meeting.

Board Structure and Director Nominations. Item 7 of the Proxy Rules sets forth various requirements with respect to disclosure of the composition of the board and the director nomination process. The proxy statement must include (a) a discussion of the "specific experience, qualifications, attributes or skills that led to the conclusion that the [nominee or incumbent director] should serve as a director"; (b) a discussion of the leadership structure of the board, including, among other things, disclosure of why the board has determined that its leadership structure is appropriate and the role of the board in risk oversight; (c) the role of compensation consultants and any potential conflicts of interest; and (d) whether the board or nominating committee considers diversity in identifying board nominees, whether the board or nominating committee has a diversity policy and, if so, how it is implemented and its effectiveness assessed. In this regard, there are three important issues under Maryland law:

First, any policy and/or procedures relating to the consideration of shareholder-recommended candidates for director, and any specific minimum qualifications for

recommendation by the nominating committee for election as a director, should be drafted, adopted, disclosed and applied in careful coordination with any existing provisions in the charter or bylaws relating to qualifications for election (*e.g.*, minimum or maximum age or ownership of company stock) and procedures for nomination (*e.g.*, advance notice to the company) and with any corporate governance guidelines. With the proliferation of policies, processes, committee charters, guidelines and principles – in addition to corporate charters and bylaws – it is important that the provisions of all these documents not conflict with each other in either letter or spirit. This also applies to other requirements and duties, such as those involving composition of the audit and compensation committees.

Second, the MGCL permits a director "to rely on any information, opinion, report, or statement . . . prepared or presented by" an officer, employee, lawyer, accountant, other expert or board committee on which the director does not serve if the director reasonably believes that, as the case may be, (a) the officer or employee is reliable and competent, (b) the expert is acting within her or his professional or expert competence or (c) the committee merits confidence. Thus, the availability and presentation of information and advice can be an important element in a director's substantive performance and in protecting him or her from liability. However, directors should guard against over-reliance, especially in the current corporate governance environment. Appropriate reliance can be an important aid to – but is not a substitute for – the proper exercise of business judgment. The MGCL states that the board's delegation of authority to a committee does not relieve the directors who are not members of the committee of their duties under the MGCL.

Finally, the additional disclosure requirements, including the need to continuously evaluate the qualifications of all directors for service as directors, highlight the importance of an annual board and board committee self-evaluation (required by the NYSE) in which each director actively participates. Although Nasdaq does not have a similar requirement, many Nasdaq-listed companies have adopted board evaluation processes as a matter of good corporate governance. We regularly assist clients in the design and conduct of board evaluations. For additional information on the board evaluations, please see our Venable Maryland Law memorandum, Annual Board Self-Evaluations: A Valuable Aid to Board Effectiveness.

Committees. Item 7(b) of the Proxy Rules and the rules enacted under the Sarbanes-Oxley Act of 2002 and by the stock exchanges require various disclosures in the proxy statement concerning the audit, compensation and nominating/corporate governance committees, their charters and their members. Item 7(b) currently requires a public company to include these committees' charters as appendices to its annual meeting proxy statement at least every three fiscal years, if the charters are not available to shareholders on the company's website. As a result, most public companies in our experience place these charters on their websites. Section 303A of the NYSE Listed Company Manual requires the charters of the audit, nominating and compensation committees, the corporate governance guidelines and the code of business conduct

and ethics to be posted on the company's website. The company must disclose in the proxy statement that such materials are available on the website and provide its address.

All committee reports included in the proxy statement should be reviewed and signed by each member of the committee, submitted to the board and made a part of the board and committee records. Although not required, a committee may want to consider dating these reports. Most importantly, each committee report should be carefully reviewed to confirm that the committee actually did what the report says was done and that the committee took all actions required by its charter.

Indemnification/Advance of Expenses in Derivative Suits. The MGCL requires a Maryland corporation to report in writing to its stockholders prior to, or with the notice of, the next meeting of stockholders, any indemnification of or advance of expenses to a director or officer in a suit by or on behalf of the corporation.

Shareholder Proposals for Next Annual Meeting.

Disclosure Deadlines under Proxy Rules. Proxy Rule 14a-5(e) requires the proxy statement to disclose, "under an appropriate caption," (a) the deadline for submitting shareholder proposals for inclusion in the proxy statement and the proxy card for the next annual meeting, calculated as provided in Rule 14a-8(e) (Question 5), (b) the deadline for submitting notice of a shareholder proposal for consideration at the meeting, calculated as provided in Proxy Rule 14a-4(c)(1), or under an "advance notice provision, if any, authorized by applicable state law," (c) the deadline for submitting nominees for inclusion in the proxy statement and the proxy card for the next annual meeting pursuant to an applicable state or foreign law provision or a company's governing documents (*e.g.*, a proxy access bylaw) and (d) the deadline for providing notice of a solicitation of proxies in support of director nominees (other than the company's nominees) pursuant to Proxy Rule 14a-19 for the company's next annual meeting of shareholders.

Inclusion in Proxy Statement and on Proxy Card. If the shareholder's proposal is submitted for inclusion in the proxy statement and proxy card for a regularly scheduled annual meeting (often referred to as a "Rule 14a-8" or "precatory" proposal), then under Proxy Rule 14a-8(e)(2), it must be received by the company at its principal executive office not less than 120 calendar days before the first anniversary of the date of the proxy statement released to shareholders for the prior year's annual meeting (which is interpreted by the SEC as the date that the proxy statement is first sent or given to security holders).

Proxy Access. For companies that have adopted a proxy access bylaw, a shareholder, upon satisfying certain requirements, may require the company to include in its proxy materials one or more shareholder nominees for director. Most proxy access provisions require a shareholder to comply with the timing and informational requirements included in advance notice provisions in the charter or bylaws, among other requirements. In our experience, proxy access bylaws have not been widely utilized, and their use now seems even less likely, given the availability of universal proxies under Proxy Rule 14a-19.

Universal Proxies. For contested elections, dissident shareholders must provide the company with notice of their intent to solicit proxies and provide names of their nominees no later than 60 calendar days[18] before the anniversary of the previous year's annual shareholders' meeting unless an earlier time is required by the company's organizational documents.

Presentation at the Annual Meeting. A shareholder may opt not to submit a proposal for inclusion in the company's proxy statement and proxy card but still want to present it at the meeting; or a shareholder may want to nominate an individual for election to the board. If so, the shareholder must comply with any advance notice provision in the charter or bylaws. The MGCL (which expressly applies in this regard to real estate investment trusts under the MRL) authorizes requiring advance notice for stockholder nominations or proposals. We have a fully developed form of advance notice bylaw and, if you have advance notice bylaws that have not recently been reviewed, particularly in light of Proxy Rule 14a-19, you may want to do so now so that any amendments may be incorporated into the bylaws (and possibly the 2026 proxy statement) for application to the 2027 annual meeting of shareholders.

Postponement and Adjournment. The MGCL expressly permits postponement of a meeting of stockholders before it is convened and adjournment of a convened meeting to a later date. Typically, a postponement is publicly disclosed not later than the day before the date of the meeting. The notice requirements for postponements and adjournments vary and also depend on the duration of the postponement or adjournment. We believe (and our form of bylaws provides) that the chair of the meeting has broad power to conduct the meeting, including recessing and adjourning it, especially if this authority is specifically conferred by the bylaws.[19]

* * * *

As discussed above, it is important that the various elements relating to the governance of the corporation – the charter, the bylaws, board committee charters and corporate governance guidelines and policies – be consistent with one another. A comprehensive review of these documents should be a part of the preparation for each annual meeting. Additionally, in light of the current environment, the board should periodically review the status of the company's defenses against an unsolicited takeover bid.

Our colleagues and we are available to discuss any questions you may have concerning Maryland law as it applies to your meeting notice, proxy statement, proxy card and the conduct of your annual meeting.

Jim Hanks Hirsh Ament
Michael Leber Lauren Fields

[18] Under Proxy Rule 14a-19, where this deadline falls on a Saturday, Sunday or holiday, the deadline will be treated as the first business day following the Saturday, Sunday or holiday.

[19] "A meeting that is 'adjourned' is one that is brought to a close, at least until (if ever) it is reconvened; a meeting that is 'recessed' is one that is halted temporarily, usually within the same day." JAMES J. HANKS, JR., MARYLAND CORPORATION LAW §7.18 (2d ed. 2020, Supp. 2025).

This memorandum is provided for information purposes only and is not intended to provide legal advice. Such advice may be provided only after engagement for advice and analysis of specific facts and circumstances and consideration of issues that may not be addressed in this document.

APPENDIX A

PROXY MATERIALS UNDER MARYLAND LAW – 2026

N.B.: Be sure to check that the statutory vote requirements have not been altered by a provision in the charter, declaration of trust or bylaws.

Election of Directors by Plurality Vote

The vote of a plurality of all of the votes cast at a meeting at which a quorum is present is necessary for the election of a director. For purposes of the election of directors, abstentions and broker non-votes, if any, will not be counted as votes cast and will have no effect on the result of the vote[, although they will be considered present for the purpose of determining the presence of a quorum].

Election of Directors by "Majority Voting"

The vote of a majority of the total of votes cast for and against a nominee at a meeting at which a quorum is present is necessary for the election of a director. For purposes of the election of directors, abstentions and broker non-votes, if any, will not be counted as votes cast and will have no effect on the result of the vote[, although they will be considered present for the purpose of determining the presence of a quorum]. [*N.B.: The foregoing disclosure is suggested for the common "majority voting" requirement in uncontested elections only. For voting in contested elections, where the prevailing threshold is plurality voting, see the prior paragraph.*]

Approval of Extraordinary Action

The affirmative vote of two-thirds of all of the votes entitled to be cast on the matter is required for approval of the proposed [charter amendment, merger, etc.]. For purposes of the vote on the proposed [charter amendment, merger, etc.], abstentions and broker non-votes will have the same effect as votes against the proposal[, although they will be considered present for the purpose of determining the presence of a quorum].

Approval of Non-Extraordinary Action

The affirmative vote of a majority of all of the votes cast at a meeting at which a quorum is present is required for approval of [specify proposal]. For purposes of the vote on the [specify proposal], abstentions [and broker non-votes – *N.B.: Include these words only if the vote is on a non-routine matter*] will not be counted as votes cast and will have no effect on the result of the vote[, although they will be considered present for the purpose of determining the presence of a quorum].

Approval of Advisory Vote on the Frequency
of an Advisory Vote on Executive Compensation

The option of one year, two years or three years that receives a majority of all the votes cast at a meeting at which a quorum is present will be the frequency for the advisory vote on executive compensation that has been recommended by shareholders. For purposes of this advisory vote, abstentions and broker non-votes will not be counted as votes cast and will have no effect on the result of the vote[, although they will be considered present for the purpose of determining the presence of a quorum]. In the event that no option receives a majority of the votes cast, we will consider the option that receives the most votes to be the option selected by shareholders. In either case, this vote is advisory and not binding on the Board or the Company in any way, and the Board or the Corporate Governance Committee may determine that it is in the best interests of the Company to hold an advisory vote on executive compensation more or less frequently than the option recommended by our shareholders.

Approval of Transaction under
Section 312.03 of the Listed Company Manual

The affirmative vote of a majority of the votes cast on the proposal at a meeting at which a quorum is present is required for approval of [specify proposal]. For purposes of the vote on [specify proposal], abstentions and broker non-votes will not have any effect on the result of the vote. [Both abstentions and broker non-votes will be considered present for the purpose of determining the presence of a quorum.]

Approval of SEC Rule 16b-3 Plan
(Other Than a Discretionary Transaction)

The affirmative vote of the holders of a majority of the shares [or other securities] present (or represented) and entitled to vote at the meeting is required for approval of the proposed [specify name of employee benefit plan or describe specific transaction being submitted pursuant to Rule 16b-3(d)(2)]. For purposes of the vote on the proposed plan, abstentions will have the same effect as votes against the proposed [plan] [transaction], and broker non-votes will not be counted as shares entitled to vote[A] on the matter and will have no effect on the result of the vote. [Both abstentions and broker non-votes will be considered present for the purpose of determining the presence of a quorum.]

[A] See footnote 9, above.

Approval by a 1940 Act Majority

The approval of the proposal requires the affirmative vote of the holders of a "majority of the outstanding voting securities" of the Fund as defined in [Section 2(a)(42) of] the Investment Company Act of 1940, which means the lesser of (i) 67% or more of the voting securities of the Fund present or represented at the meeting, if the holders of more than 50% of the Fund's outstanding voting securities are present or represented by proxy, or (ii) more than 50% of the outstanding voting securities of the Fund. For purposes of the vote on the proposal, abstentions and broker non-votes will have the effect of votes against the proposal[, although they will be considered present for purposes of determining the presence of a quorum].