

APPROACHING DEADLINES FOR SHAREHOLDER INITIATIVES

To Our Hedge Fund Clients:

Although the spring proxy season has not yet arrived, it's not too early to start thinking about your portfolio companies' 2009 annual meetings. Most public companies have stringent advance notification requirements for director nominations and shareholder proposals, and many have deadlines that are fast approaching.

Few hedge funds consider themselves "activist shareholders," and most have never considered the possibility of shareholder activism. But many investors at some point find themselves holding large positions in companies that face unforeseen problems. If the boards and managements of those companies are unwilling to listen to shareholders, or if they themselves are the problem, some form of shareholder activism may be in order. Steps that shareholders can take range from private approaches to boards and managements to active public campaigns and proxy contests. Often, a combination of steps is advisable.

The approach of a company's annual meeting can provide a useful context for dialog with boards and managements, and greater leverage in case those discussions aren't productive. In order to preserve your options, it is important to look closely at the company's charter and bylaws and the relevant governing law. For a meeting in early May, for example, the deadline for submitting a nomination notice might fall sometime in December. Necessary preparations, including identifying prospective directors and preparing the detailed notice typically required, commonly takes a month or more, depending on the circumstances.

Each situation is different, so whether you're an activist fund or just interested in understanding more about the process, getting an early start is important.

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If you have any questions or would like more information about the broad range of public and private techniques for influencing the companies in which you invest, please contact Michael A. Schwartz (212-728-8267, mschwartz@willkie.com) or the Willkie attorney with whom you regularly work.

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