Morgan Stanley Board Takes a Pass on Special-Mtg Issue

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NEW YORK -- In not giving shareholders the option to call special meetings, Morgan Stanley's (MWD) board has maintained the status quo in an area some corporate-governance experts feel is an important battleground for stockholder rights.

Over the weekend, Morgan Stanley's board irked dissidents pushing for the ouster of embattled chief executive Philip Purcell by saying it didn't plan to change management. However, it did put forward some governance changes, including speeding up the annual election of its directors.

Still, the board did not take any steps to give shareholders the right to call a special meeting outside of the annual meetings where shareholders vote on directors and other major proxy issues.

Institutional investors see the ability to call a special meeting - or to act by "written consent," a kind of governance doppelganger to the right to call a meeting - as potentially important arrows in their governance quiver, since they allow dissident shareholders in companies embroiled in a proxy contest to propose changes to the makeup of the board without waiting for an annual meeting to roll around.

But many companies deny that option, much to the chagrin of governance watchdogs, who believe shareholders should "have some meaningful right to make changes and do so on a timeline not completely dictated by the company," said Beth Young, a senior research associate at the Corporate Library, an independent governance-research firm and corporate watchdog.

Shareholders at companies with such provisions haven't deployed the special-meeting right very often. But, "it's one of those rights that the threat of its use is more significant than its actual use," said Pat McGurn, executive vice president at proxy-advisory firm Institutional Shareholder Services. "It's one of those tools that is rarely used, because the board will tend to act when they see the handwriting on the wall."

As it stands now, Morgan Stanley's board and Purcell have time to avoid a major shareholder battle as long as no special meeting is called. With Morgan Stanley's regular annual meeting not expected for 10 months or so from now, "it's a timing issue," McGurn said. "Having the right to call a meeting switches the tactical advantage of timing over to the dissidents from the incumbents."

Morgan Stanley, which declined to comment, is actually in the mainstream of Corporate America in not offering special-meeting rights. According to the Corporate Library, 670 companies, or fewer than half the 1,800 companies covered by its Board Analyst data, allow shareholders to call meetings, while fewer than a quarter, or about 400, allow shareholders to act

by written consent. Morgan Stanley peers Merrill Lynch & Co. (MER) and Goldman Sachs (GS), among others, don't allow for special meetings.

Though it held firm on the special-meeting issue, Morgan Stanley's board did agree to other reforms. Most significantly, the company said it will accelerate the planned de-staggering of the board, so that the whole board will stand for election at the next annual meeting in 2006. The move to de-stagger the board was one of several steps the board took in its last round of governance changes, announced in December. Shareholders paved the way for annual elections at the investment bank's March annual meeting.

That decision dismantles one of the most potent anti-takeover devices in the corporate toolbox, said Lucian Bebchuk, director of the Harvard Law School's Program on Corporate Governance.

"Essentially in the ranking of shareholder-unfriendly counterproductive provisions, the inability of shareholders to act between annual meetings falls significantly behind the ability to remove the whole board at the annual meeting," he said. "Having a staggered board is more pernicious and problematic then precluding action by either written consent or calling a special meeting."

But the move to de-stagger the board didn't come close to mollifying the activists who have been pushing for Purcell to be fired. The so-called Group of Eight retired executives leading the effort to oust Purcell immediately took issue with the lack of a special-meeting allowance. "Even when viewed from the perspective of good corporate governance, the changes announced by the Morgan Stanley board are deficient, as they fail to allow shareholders to call a special meeting," the group said in a statement Sunday night.

Morgan Stanley, like many companies, is incorporated under Delaware law, which is written in such a way that shareholders do not have automatic special-meeting rights. Companies would have to create the right by writing it into their legal corporate documents.

At the same time, shareholders can act by written consent, unless otherwise specified by the company. That's the case at Morgan Stanley: The company explicitly states in its certificate of incorporation that shareholder actions can only be taken "at a duly called annual or special meeting of stockholders," meaning one called by the board and "may not be effected by any consent in writing in lieu of a meeting of such stockholders."