



## 2023: A Record Year for Charter and Bylaw Amendments

January 11, 2024

The number of companies changing their governing documents in 2023 (both their charter and bylaws) was the most in any single year since Deal Point Data (DPD) began tracking this activity on January 1, 2017. The increase in filing activity is largely driven by three issues.

### Charter Amendments

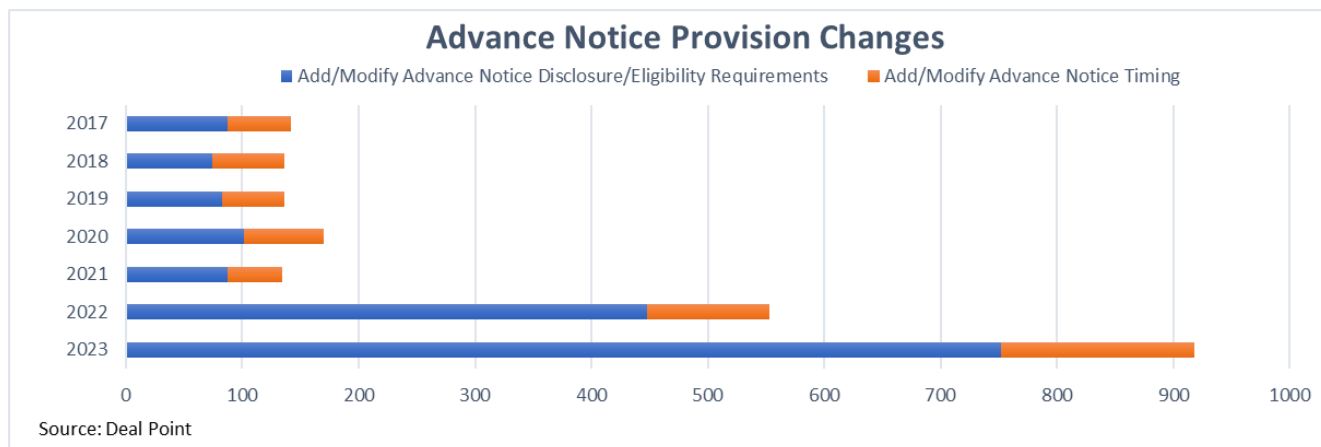
Two of the three driving factors of increased overall filing activity specifically impacted charter amendments. First, an increase in the number of companies implementing reverse stock splits during the year (many of which in an effort to regain compliance with the minimum share price listing requirements of the NYSE and NASDAQ) contributed to more charter amendments versus prior years. Second, Delaware companies incorporating new Delaware law provisions regarding officer exculpation added to the volume. Effective August 1, 2022, the Delaware General Corporation Law (“DGCL”) was amended to authorize corporations to adopt a provision in their charter to limit the liability of certain corporate officers for breach of the duty of care in certain actions. Prior to the change, the DGCL limited exculpation to directors alone. To date, 267 companies in DPD’s coverage universe have voted on a charter amendment to provide for the exculpation of officers.

### Bylaw Amendments

The third driving factor of increased overall filing activity specifically impacted bylaw amendments. Increased bylaw amendments can be overwhelmingly pointed to changes being made to advance notice provisions. In fact, 75% of companies included in major U.S. stock indexes that amended their bylaws during the year included revisions to their advance notice requirements among the changes. While most of the companies revising advance notice provisions did so to address matters relating to the new universal proxy card and to require nominating shareholders to comply with the rule, many of the companies also took the opportunity to enhance other procedural mechanics and disclosure requirements to submit proposals or to nominate directors. Just how much attention is being paid to advance notice requirements cannot be overstated. DPD tracks 38 key takeover defense change types for our covered companies (e.g., classified boards, special meeting rights, supermajority vote requirements). In 2023, changes to add/modify advance notice disclosure/eligibility requirements (i.e., proper notice) represented almost half (45.6%) of all defense changes tracked for companies in our coverage during the year. For comparison’s sake, similar proper notice changes represented less than 10% of defense changes tracked in 2018. Expressed a different way, the number of companies making proper notice changes increased by over 900% when comparing 2023 to five years ago.

Year	Charter Amendments		Bylaw Amendments	
	# Filings	# Companies	# Filings	# Companies
2017	402	345	802	693
2018	470	399	764	643
2019	432	360	730	627
2020	472	395	966	821
2021	499	426	761	663
2022	458	393	968	841
2023	580	506	1,135	1,038

Based on filing date. Excludes bylaw and charter refilings and restatements without changes. Companies in the S&P 1,500 or Russell 3000 during the year of the filing. Source: Deal Point Data



## About Deal Point Data

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