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## Overview: Potential Change in Membership Structure

\_\_\_\_\_, 20\_\_

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# Overview

## **What you asked us to do**

- Research and report on steps for changing from a “membership” structure where members vote for directors to a “non-membership” structure
- Develop bylaws for the non-membership organization
- Suggest approaches to post-change Board composition and nomination processes that reflect Client’s history and values, including the important roles of [\_\_\_\_\_] and chapters

## **What we did**

- Met with [\_\_\_\_\_] and [\_\_\_\_\_] on October 8
- Reviewed Client’s articles of incorporation, bylaws, Board committee charters, sample ballot form, conflict of interest policy, and website
- Reviewed membership data supplied by Ms. [\_\_\_\_\_]
- Reviewed memoranda prepared by Ms. [\_\_\_\_\_] for the Client Governance Committee
- Exchanged e-mails on various matters with Ms. [\_\_\_\_\_] and Ms. [\_\_\_\_\_]
- Reviewed applicable provisions of the California Public Benefit Nonprofit Corporation Law (“Nonprofit Corporation Law”)

## **What we cover here**

- Current Client membership, chapter, and Board election arrangements
- Client’s experience with membership voting and rationale for change
- Actions required under Client’s bylaws and the Nonprofit Corporation Law to make such a change
- Key aspects of proposed new bylaws and nomination policy
- Related actions if change approved

## **What we attach as exhibits to this document**

- Draft resolutions for adoption by the Board should it decide to make the change (Ex. A)
- Draft Member Information Statement for distribution to the members prior to the vote (Ex. B)
- Draft Amended and Restated Bylaws reflecting the new structure (Ex. C)
- Draft ballot for use by members when voting on the change (Ex. D)
- Draft Board Composition and Nomination Policy relating to composition goals and nomination process (Ex. E)

Current structure

Current chapter and membership arrangements  
Board composition and election  
Recent experience and thinking

# Current chapter and membership arrangements

## **Chapters**

Client's bylaws provide for the formation of chapters, which are composed of at least 10 members within a specific geographical area. Chapters are not separate legal entities but must apply for recognition by the Board.

## **Members**

Client's current bylaws provide for two classes of voting members, called "Chapter Members" and "At-Large Members." Client members belonging to a chapter are Chapter Members. Client members that are not part of a chapter are At-Large Members. The bylaws also provide for one class of non-voting members called "Supporting Members."

## **Member voting**

Both classes of voting members are entitled to:

- Elect directors to the Board
- Remove directors from the Board, with or without cause
- Approve any amendment to Client's articles of incorporation, subject to some limited exceptions
- Approve any amendment to Client's bylaws which materially and adversely affects member voting rights
- Approve any merger, disposition of substantially all of Client's assets, or dissolution of the corporation
- Inspect Client's articles of incorporation, bylaws, accounting books and records, or minutes of Board, Board committee or member meetings

Each active chapter has the right to elect one director. At-Large Members are entitled to elect directors who represent geographical areas not represented by chapters.

## **Other member benefits**

Members pay annual dues to receive certain benefits, such as newsletter subscriptions, recognition in certain Client publications, and rights to use Client's [\_\_\_\_\_] trademark. These benefits vary based on the type and level of membership.

# Board composition and election

## **Composition requirements**

The current bylaws require that the Board be composed as follows:

- A majority elected by members
- At least 50% of directors actively engaged in [\_\_\_\_\_]
- One director elected by each chapter
- Client's immediate past President must serve as a director
- All directors must also be members in good standing
- Up to four additional non-voting *ex officio* directors

## **Appointment processes**

To achieve these composition objectives, the current bylaws contain detailed procedures for the appointment of Chapter Directors and At-Large Directors. For example, the Board must designate which chapters elect their Chapter Directors in odd years and which chapters elect their Chapter Directors in even years. The procedures for the election of At-Large Directors are even more complex:

*Election of At-Large Directors. Each year, at the summer board meeting, the Board of Directors shall determine the number of At-Large Directors for the next fiscal year. As to these At-Large Directors the Board may designate geographic regions consisting of areas not already represented by chapters from which a Director shall be elected. Further, the Board may designate At-Large Directors relative to areas of educational or program function within the corporation. The Board shall cause notice to be sent to all members soliciting written nominations for At-Large Directors. The notice shall indicate the geographic regions, if any, from which nominations are solicited. In addition, the notice may include additional areas of educational or program functions for which nominations are sought. Such notice shall also advise the members of the deadline for submission of the name of the nominee. The Board shall then cause the nominee to be contacted relative to his/her willingness to serve as a Director, further the nominee shall be determined to be a member in good standing within the corporation. The nominee shall be advised of the right to submit a written statement, not to exceed 150 words, relative to that nominee's interest in serving as a Director. The Board shall provide the names of all nominees, designated area of service and statement of interest, in the form of a written ballot, to all members in good standing no later than November 1 with the deadline for return clearly marked. Each member shall be entitled to cast one vote for each Director's seat, however cumulative voting shall not be allowed. The nominated At-Large member(s), in each designated area of service, receiving the most votes shall be seated on the Board of Directors at the Annual Meeting of the Board.*

# Recent experience and thinking

## **Experience with voting**

You advised us that, while membership levels remain healthy, members' participation in chapters, meetings, and voting has dwindled over the years. Only one chapter remains active; the others became dormant owing to a decline in active paying members. Client has had difficulty in achieving the required 10% quorum for membership voting. For example, at our meeting on October 8, you noted that during your last director election, only about [\_\_\_\_\_] of the over [\_\_\_\_\_] members voted. As noted on the previous page, Client's current bylaws contain detailed provisions relating to Board composition. Compliance with the nine pages of membership, voting, and Board composition requirements in the bylaws appears increasingly burdensome and inefficient when compared with the corresponding degree of membership engagement in these matters.

As a result, you are considering revamping your bylaws to eliminate the membership voting arrangements in favor of a more conventional and efficient structure in which the Board elects new directors and has final say over mergers, amendment of the articles of incorporation, and other material events.

This structure is the most common model for California nonprofit corporations, including those active in [\_\_\_\_\_] and [\_\_\_\_\_]. For example, [\_\_\_\_\_] , [\_\_\_\_\_] , and [\_\_\_\_\_] are all non-member organizations.

This choice of structure by other nonprofits is not surprising. The non-membership structure enables an organization to elect directors and approve material actions with considerably greater speed at lower cost in management time. A leading practice guide on California nonprofit law notes that "memberships also add administrative burdens in having to organize periodic meetings, and sometimes delaying important corporate decisions while meetings are pending or written consents are being solicited..." *Continuing Education of the Bar – California, Advising California Nonprofit Corporations*, Third Edition, §10.4.

# Recent experience and thinking

## **Maintaining a membership program**

At the same time, we understand that you seek to (i) keep close ties to your members on program and policy matters, and (ii) continue the membership culture of the organization. Even if you decide to remove the membership voting arrangement, you want to continue your membership program.

Client will be able to achieve that objective. As discussed at the October meeting, California law permits non-membership organizations to have “members” in the associative, non-statutory sense; public radio stations and museums are examples of such organizations. They have well-developed membership programs that involve different fee and benefit levels. As a result, removal of membership voting is simply a change in, not a termination of, your membership program.

## **Chapters**

We understand that the Client Governance Committee is discussing the role of chapters and how chapter arrangements are best documented. As noted in Ms. [\_\_\_\_\_]’s memo to the committee, “[\_\_\_\_\_]”

Again, Client will be able to meet its objective. The removal of voting by Chapter Members does not mean the removal of chapters. Moreover, as developed below in the discussion of the proposed board composition policy, it does not mean that the chapters can no longer play an important role in identifying candidates for Board membership.

## **Going forward**

In view of these considerations, you asked us to set out the steps for changing from a voting membership structure to a non-voting membership structure, to develop bylaws for the non-membership organization, and to suggest approaches to Board composition and nomination processes in the new model. The balance of this document discusses those matters.

Changing the structure

Process: Board action  
Process: member action  
Timeline

# Process: board action

## **Board approval**

To change to a non-membership organization, Client needs to amend its bylaws. Client's bylaws require that any bylaw amendment be approved by a majority of the directors then in office. Both Chapter Directors and At-Large Directors vote on the amendment. They vote as a single class.

## **Steps**

We recommend that Client take these actions in obtaining Board approval:

## **Governance Committee recommendation**

1. Governance Committee considers proposal including new bylaws and new Board nomination policy (discussed below on pages 13 - 15)
2. Governance Committee makes recommendation to full Board

## **Full Board approval**

1. Proposed draft bylaws are submitted, in writing, to directors at least one week in advance of the Board meeting as required by Client's bylaws
1. Governance Committee makes presentation
2. Full Board considers and votes on:
  - a. Adopting amended bylaws (discussed on pages 13 - 14)
  - b. Submitting bylaw amendment proposal to members for a vote
  - c. Setting record date to determine members entitled to vote (which may not be more than 60 days prior to the date for mailing ballots)
  - d. Adopting new Board nomination policy
3. Board adopts formal resolutions reflecting these approvals

## **Proposed resolutions**

We attach as Exhibit A draft Board resolutions reflecting the approval items noted above.

# Process: member action

## **Member vote**

Both Client's bylaws and the Nonprofit Corporation Law require member approval of any bylaw amendment that "materially and adversely" affects member voting rights. Removal of voting rights is such an amendment.

## **Voting process**

Both At Large and Chapter Members vote. They vote as a single class. Approval requires the affirmative vote of a majority of the ballots cast at a meeting or through a process in which the total number of ballots cast represents at least 10% of the memberships in effect. Based on the data supplied to us, approval requires the affirmative vote of a majority of no less than [\_\_\_\_\_] members -- that is, [\_\_\_\_\_] members.

## **Steps**

We recommend that Client take these actions in obtaining member approval:

1. Client distributes a Member Information Statement to all voting members within 45-90 days prior to the vote, as required by the Nonprofit Corporation Law
2. Client distributes ballots to all voting members and provides a "reasonable time" for their return. We recommend providing a longer voting period compared to your prior member votes on director elections
3. Members cast votes

## **Member Information Statement**

We attach as Exhibit B a draft " Member Information Statement." This is a four-page document that describes the proposal, the effect of the amendment, the Board's recommendation, and voting procedures. Client would distribute this document to all voting members within 45-90 days prior to distributing the ballot. The Member Information Statement reflects notice and information provision requirements under the Nonprofit Corporation Law.

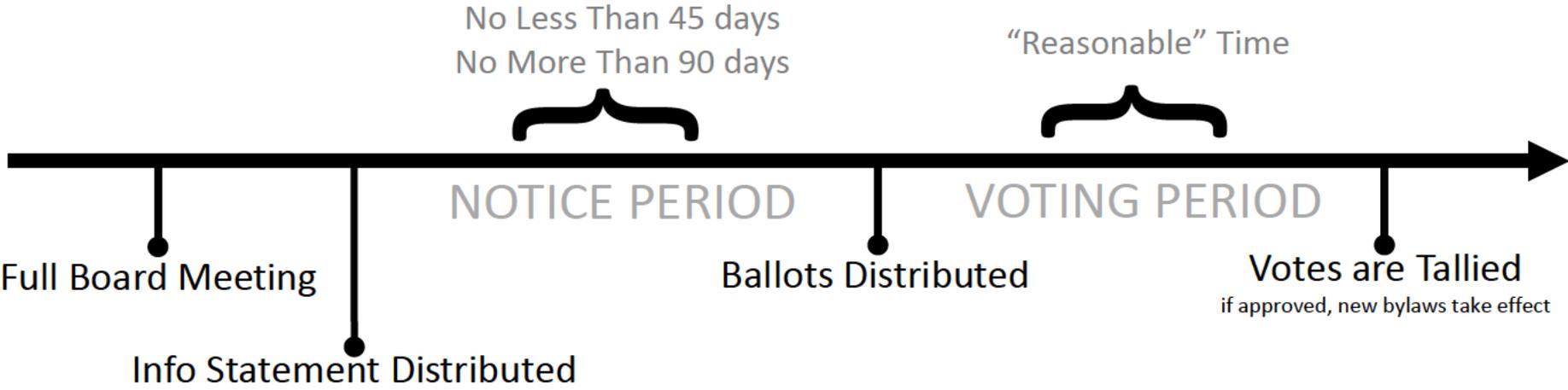
## **Ballot**

We attach as Exhibit D a template ballot. We maintained the format used by Client for prior member votes, and included information required by Client's bylaws and the Nonprofit Corporation Law. In line with prior member votes, we assume that Client will solicit approval using electronic ballots. However, Client may instead choose to hold a member meeting. In that case, the process and documents differ slightly, but the core documents and approval requirements would remain the same.

## **Timeline**

A high-level timeline reflecting member notice and voting periods appears on the next page.

# Timeline



New structure

Bylaws

Nomination policy

Near-term focus areas for Client

Related matters

# Bylaws

## **Document**

We attach as Exhibit C a draft “amended and restated” bylaws document. It would replace your current bylaws upon member approval of the proposal.

## **General approach**

We revised both the content and format of the bylaws in their entirety. To reduce length, the risk of inadvertent noncompliance, and the need for frequent amendment, we think it makes sense to set the bylaws up as more of a framework, “constitutional” document, rather than a set of detailed rules. Consequently, we made a number of streamlining changes, and the draft is eight pages in length. Key changes are summarized below:

- **Members.** The draft provides that Client does not have statutory members but may have members in the associative sense.
- **Chapters.** The draft does not include any provisions relating to chapters. We think that, with the elimination of chapter member voting, you are better off addressing chapters outside the bylaws, in a separate MOU or other document.
- **Board composition.** The draft provides for a single class of directors who are all in effect “at large” directors appointed by the Board. The draft does not contain the “50% [\_\_\_\_],” chapter representative, or other rules or aspirations regarding Board composition. As discussed at our October 8 meeting and explained on page 15, we think it better to address those matters outside the bylaws, in a separate “Board Composition and Nomination Policy.” In addition, to provide further flexibility, we did not carry forward the requirements that directors be members and that the immediate past President serve as a director.
- **Board nomination policy.** The draft includes a brief provision to the effect that the Board will maintain a policy setting out “Board composition objectives and process, which policy shall take into account Client’s mission, constituencies, and communities.” We thought it a useful way to call out the importance of those concerns while not loading the bylaws with rigid requirements or aspirational statements of uncertain legal effect.

# Bylaws

## **Key changes, cont.**

Other key changes include:

- [\_\_\_\_\_]
- [\_\_\_\_\_]
- [\_\_\_\_\_]

The draft reflects a number of other differences from your current document. We would be happy to walk through them with you at your convenience.

# Nomination policy

## **Board Composition and Nomination Policy**

The draft bylaws provide for a single class of directors. New directors are appointed by the existing Board, and there are no mandated chapter, at-large, or [\_\_\_\_\_] directors. The bylaws do not contain any substantive provisions relating to Board composition goals or nomination procedures.

That approach reflects our view that a better way for you to capture Board composition goals and processes--including your commitment to meaningful [\_\_\_\_\_] presence, chapter participation, and geographical diversity on the Board--is to adopt a separate "Board Composition and Nomination Policy." To that end, we attach as Exhibit E a draft of such a policy. The policy touches upon:

- General composition goals, including [\_\_\_\_\_] and chapter representation
- Desired qualities and skill sets in directors (from [\_\_\_\_\_] to finance to fundraising)
- Candidate outreach, vetting, and recruitment
- Board voting

Our goal here was to create a simpler, less rigid approach that still honors and respects Client's history and values regarding Board composition. We think it may also provide a vehicle for assuaging potential concerns about Board composition arising from removal of membership voting and of mandatory composition requirements in the bylaws.

# Near-term focus areas for Client

## **Member information statement**

We encourage you to review the attached documents closely and with a critical eye. Please pay particular attention to the Member Information Statement. That document is the “marketing” piece for the proposal. We tried to capture the rationale for the proposal in a straightforward, business-oriented way. At the same time, we thought it appropriate to set out the specific impacts of the elimination of the membership structure, a list of items that potentially could be concerning to certain members. You know your members much better than we do; we encourage you to think about the argument in favor and the optimal way to communicate it to your membership.

## **Timing and sequencing**

We see two near-term key planning questions:

- First, you advised us that you have a regularly scheduled Board election in early 20\_\_\_. The first key question -- especially in view of the advance notice requirements noted on page 10 -- is whether you want to execute the amendment process before, concurrently, or after that director vote.
- The second planning question is whether you want to advance your work on chapter role and documentation and then go to the membership with a comprehensive modernization program. This approach may be particularly attractive if you are also considering any refinements in your membership program.

We would be happy to walk through sequencing considerations with you at your convenience.

# Related matters

## **Other governance documents**

If the Board and members vote to approve the proposal, we recommend that you review and update your other corporate governance documents to reflect the change to a non-membership organization. For example, each of your Board committee charters prohibits the committees from approving “any action that also requires approval of the voting members,” which would no longer be applicable. You will also need to disclose changes in your next Form 990 filing, as appropriate, and you may desire to include some explanation in future member communications (such as newsletters).

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## **Limitations**

As contemplated by our engagement letter, the scope of our review was limited. We did not undertake a full investigation of Client governance or operating practices, including chapter and membership program details. We examined only the Client documents and information you provided to us, and information on the Client website. Our conclusions and recommendations are based entirely on this review.

## **Thank you**

Thank you very much for the opportunity to work with [\_\_\_\_\_].