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HELPING THE LITTLE GUY: A COMPARATIVE ANALYSIS OF SHAREHOLDER PROTECTION MECHANISMS IN THE UNITED STATES AND SINGAPORE

Jack Schlafly[*]

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ABSTRACT

As American corporate law has developed since the Progressive and New Deal eras, shareholders have increasingly employed the shareholder proposal mechanism, provided by SEC Rule 14a-8, as a means to achieve any number of desired results. Generally, Rule 14a-8 requires companies to include shareholder proposals on their proxy statements. The desires of shareholders, outside of their often primary desire to make money, now frequently include Environmental, Social, and Governance ("ESG") reform, increasing board diversity, merger and acquisition-related decisions, and monitoring executive pay. In particular, shareholders' focus on ESG reform is no surprise given the broad worldwide focus on responding to rising environmental concerns. Indeed, according to the National Oceanic and Atmospheric Administration, an American scientific and regulatory agency, 2021 "culminated as the sixth warmest year on record for the globe." Further, "the years 2013-2021 all rank among the ten warmest years on record." Investors in both the United States and Europe have begun responding to these environmental issues. However, the capabilities American shareholders (particularly minority shareholders) have to effect positive environmental change at the corporate level is hindered by the fact that the United States ranks 36th in the world when it comes to protecting minority investors. A minority investor, or shareholder, is one who owns less than half of a given company's total shares—thus making them in the minority of overall shareholders. While the United States ranks high (6th) on a general ease of doing business scale, its protection of minority investors, according to the World Bank, lags. The U.S. has a 71.6 (out of 100) score for the protection of minority investors. Particularly troublesome among the World Bank's analyses of American protection of minority investors is the nation's "[e]xtent of shareholder rights index." This means, generally, that a minority investor interested in changing a company's practices in an effort to improve said company's environmental impact has less of an ability to do so in the United States than in 35 other nations.

Why does the United States lag behind other nations with regard to minority shareholder protection, and how can it change for the better?

I. INTRODUCTION:

As American corporate law has developed since the Progressive and New Deal eras, shareholders have increasingly employed the shareholder proposal mechanism, provided by SEC Rule 14a-8, as a means to achieve any number of desired results.[1] Generally, Rule 14a-8 requires companies to include shareholder proposals on their proxy statements.[2] The desires of shareholders, outside of their often primary desire to make money, now frequently include Environmental, Social, and Governance ("ESG") reform, increasing board diversity, merger and acquisition-related decisions, and monitoring executive pay.[3] In particular, shareholders' focus on ESG reform is no surprise given the broad worldwide focus on responding to rising environmental concerns.[4] Indeed, according to the National Oceanic and Atmospheric Administration, an American scientific and regulatory agency, 2021 "culminated as the sixth warmest year on record for the globe."[5] Further, "the years 2013-2021 all rank among the ten warmest years on record."[6] Investors in both the United States and Europe have begun responding to these environmental issues.[7] However, the capabilities American shareholders (particularly minority shareholders) have to effect positive environmental change at the corporate level is hindered by the fact that the United States ranks 36th in the world when it comes to

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[1] *See generally* NAOMI R. LAMOREAUX & WILLIAM J. NOVAK, CORPORATIONS AND AMERICAN DEMOCRACY (Harv. Univ. Press 2017); *see also* Melissa Sawyer et al., *2022 U.S. Shareholder Activism and Activist Settlement Agreements*, HARV. L. SCH. F. CORP. GOV. (Jan. 5, 2023), https://corpgov.law.harvard.edu/2023/01/05/2022-u-s-shareholder-activism-and-activist-settlement-agreements/; *see also* Sullivan & Cromwell LLP, *2022 Proxy Season Review* (Aug. 2, 2022), https://www.sullcrom.com/2022-proxy-season-review.

[2] Press Release, Security and Exchange Commission, SEC Proposes Amendments to Shareholder Proposal Rule (July 13, 2021) https://www.sec.gov/news/press-release/2022-121.

[3] Sullivan & Cromwell LLP, *supra* note 2.

[4] United States Department of Labor, *US Department of Labor Announces Final Rule to Remove Barriers to Considering Environmental, Social, Governance Factors in Plan Investments* (Nov. 22, 2022), https://www.dol.gov/newsroom/releases/ebsa/ebsa20221122#:~:text=WASHINGTON%20%E2%80%93%20The%20U.S.%20Department%20of,rights%2C%20such%20as%20proxy%20voting.; Gary Gensler, Prepared Remarks Before the Principles for Responsible Investment "Climate and Global Financial Markets" Webinar (July 28, 2021), https://www.sec.gov/news/speech/gensler-pri-2021-07-28.

[5] NOAA, *2021 Was World's 6th-Warmest Year on Record* (Jan. 13, 2022), https://www.noaa.gov/news/2021-was-worlds-6th-warmest-year-on-record#:~:text=According%20to%20an%20analysis%20by,record%2C%20dating%20back%20to%201880.&text=Earth's%20average%20land%20and%20ocean,above%20the%2020th%2Dcentury%20average.

[6] *Id.*

[7] *See generally* Melissa Sawyer, *supra* note 2.

protecting minority investors.[8] A minority investor, or shareholder, is one who owns less than half of a given company's total shares—thus making them in the minority of overall shareholders. While the United States ranks high (6^{th}) on a general ease of doing business scale, its protection of minority investors, according to the World Bank, lags. The U.S. has a 71.6 (out of 100) score for the protection of minority investors.[9] Particularly troublesome among the World Bank's analyses of American protection of minority investors is the nation's "[e]xtent of shareholder rights index."[10] This means, generally, that a minority investor interested in changing a company's practices in an effort to improve said company's environmental impact has less of an ability to do so in the United States than in 35 other nations.[11]

Why does the United States lag behind other nations with regard to minority shareholder protection, and how can it change for the better? The answer is surely quite complicated. However, as will be shown later in this note, it is difficult to deny that SEC Rule 14a-8, the primary American rule governing under what conditions a shareholder can make a proposal and similarly under what conditions a corporation can exclude a proposal, has a larger than marginal impact.[12] The combination of Rule 14a-8, other relevant provisions, and case law governing the protection of minority shareholders in both the Model Business Corporation Act and the Delaware General Corporation Law accounts for a great deal of how corporate legal battles in the United States are viewed and ruled upon.

Some 10,000 miles away, in a country with just 1% of the United States population, lies a scheme of minority shareholder protection that may provide some solutions to the problem of insufficient minority shareholder protection. Singapore ranks second in the World Bank's Ease of Doing Business metric.[13] Additionally, the country ranks third, behind only Kenya and Malaysia, in the protection of minority investors.[14] The 281 square-mile nation, which is only 23% of Rhode Island's size, has a better overall protection of minority investors score (86) and a much higher "extent of shareholder rights index"

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[8] World Bank, *Ease of Doing Business in United States*, https://archive.doingbusiness.org/en/data/exploreeconomies/united-states.
[9] *Id.*
[10] *Id.* For a further discussion of score calculation, *see* World Bank, *Ease of Doing Business Score and Ease of Doing Business Ranking,* Figure 6.1, https://openknowledge.worldbank.org/bitstream/handle/10986/32436/9781464814402_Ch06.pdf.
[11] The author acknowledges that this is an immensely general statement. It will be expanded further at a later juncture in this note.
[12] 17 C.F.R. § 240.14a-8 (2023).
[13] World Bank, *Doing Business 2020* at 4, https://www.doingbusiness.org/content/dam/doingBusiness/country/s/singapore/SGP.pdf.
[14] *Id.*

score (5 out of 6).[15] The country similarly does much better with regard to ease of business and minority shareholder protections than its regional counterparts in the East Asia & Pacific region.[16]

This note seeks to answer questions such as how Singapore has remained an immensely attractive location for foreign capital while simultaneously maintaining a corporate legal regime favorable to minority shareholders,[17] and how the American system governing minority shareholder proposals and protection can learn from Singapore's system.

Part II of this Note will undertake a rule-by-rule comparison of the relevant laws of both the United States and Singapore. Part III of this Note will provide the relevant historical and legal background of both American and Singaporean corporate law frameworks as they pertain to shareholder protections and proposals as well as an argument that particular provisions of Singapore's Companies Act of 1967, along with its 2001 Securities and Futures Act, can be implemented in the United States in order to achieve greater minority shareholder protection and perhaps, as a result, achieve more ESG-related goals.[18]

II. COMPARISON OF AMERICAN AND SINGAPOREAN LAWS SURROUNDING MINORITY SHAREHOLDER PROTECTIONS, PROPOSALS, AND RIGHTS

This section will review various provisions of law and cases first in the United States and subsequently in Singapore. The section will describe an area of American corporate governance and proceed to provide the Singaporean equivalent.

A. UNITED STATES

1. *Calling Meetings*

Several different sources, such as the Model Business Corporation Act ("MBCA") and the Delaware General Corporation Law ("DGCL"), guide

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[15] *Id.*
[16] *Id.*
[17] Jannick Damgaard, Carlos Sánchez-Muńoz, *United States is World's Top Destination for Foreign Direct Investment*, IMF BLOG (Dec. 7, 2022), https://www.imf.org/en/Blogs/Articles/2022/12/07/united-states-is-worlds-top-destination-for-foreign-direct-investment. This note presumes an idea that seems intuitive—that large investors do not favor strong minority shareholder protection mechanisms. Those with large amounts of capital—that is, amounts of capital large enough to buy majority stakes in companies, would seemingly have an inherent interest against their competing shareholders having anything but a *de minimis* say in the company's affairs.
[18] *See generally* Companies Act, (1967) (Sing.).

American corporate governance schemes.[19] For calling meetings, Chapter 7, Subchapter A of the MBCA and Subchapter VII of the DGCL are of primary importance. Developed case law can also aid in understanding rights as it pertains to calling meetings.

Pursuant to the MBCA, corporations are required to hold an annual meeting at which directors are to be elected unless written consent is provided for instead.[20] Shareholders holding at least 10% of all votes entitled to be cast on an issue may likewise call a special meeting subject to certain exceptions.[21] Notably, unlike Singapore's scheme where members may appoint a chairman to run a given meeting, the MBCA provides for appointment of a chairman via the bylaws or the board of directors.[22]

Rules governing stockholder meetings in the DGCL are treated in section 211. This section provides in relevant part that meetings are to be held either at a specific place designated by the bylaws or certificate of incorporation, "or if not so designated, as determined by the board of directors."[23] The board of directors may also, in its sole discretion, decide to hold the stockholder meeting online.[24] Subsection (d) of section 211 of the DGCL is of note for comparative purposes: "[s]pecial meetings of the stockholders may be called by the board of directors or by such person or persons as may be authorized by the certificate of incorporation or by the bylaws."[25]

As a general matter, meetings and their procedures are set forth in a corporation's bylaws, which generally can be defined as the governing rules by and under which a corporation operates.[26] For shareholders, they may call a meeting or resort to legal recourse in order to compel such a meeting. In

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[19] Delaware Division of Corporations, *Annual Report Statistics: A Message from the Secretary of State Jeffrey W. Bullock*, https://corp.delaware.gov/stats/ (there are "[o]ver 1.9 million legal entities incorporated in Delaware.").

[20] MODEL BUS. CORP. ACT § 7.01 (1950) (AM. BAR ASS'N amended 2020).

[21] *Id.* at § 7.02 (see articles of incorporation fixing amount needed higher by 25% max of entitled votes). *Id.* at § 7.02 ("A corporation shall hold a special meeting of shareholders… if the holders of at least 10 percent of all the votes entitled to be cast on an issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation one or more written demands for the meeting describing the purpose or purposes for which it is to be held, provided that the articles of incorporation may fix a lower percentage or a higher percentage not exceeding 25 percent of all the votes entitled to be cast on any issue proposed to be considered. Unless otherwise provided in the articles of incorporation, a written demand for a special meeting may be revoked by a writing to that effect received by the corporation prior to the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.").

[22] *Id.* at § 7.08.

[23] DEL. C. ANN. tit. 8, § 211 (2024).

[24] *Id.*

[25] *Id.* at § 211(d).

[26] Potter v. Patee, 493 S.W.2d 58 (Mo. Ct. App. 1973); *see also, e.g.,* Freeman v. King Pontiac Co., 236 S.C. 335 (1960).

Ocilla Industries, Inc. v. Katz, a shareholder brought a derivative suit, in relevant part, alleging corporate waste and breach of fiduciary duties.[27] There, the court found that an annual meeting that had been delayed for 13 months since the last annual meeting was against New York's Business Corporation Law, and thus, a meeting was required.[28] Likewise, a shareholder has statutory rights in many states, such as New York, to call special meetings.[29]

Jurisdictions also allow a workaround for calling meetings, following the structure of MBCA 7.04(a). Under this provision, the shareholders may act without a meeting by unanimous written consent.[30] Bylaws can also provide for a less-than-unanimous level of consent.[31] Additionally, shareholders may call a "special meeting," which may be defined as "any meeting that is not the annual meeting to elect directors and consider other corporation matters."[32] The MBCA minimum for shareholder calling is 10% and many jurisdictions follow this lead as well.[33]

The meetings called must be pursuant to provisions in any statute, article of incorporation, or bylaw.[34] This is not to be confused with the calling power of a conferral of meeting under a stockholder agreement.[35] Corporations under American law must also be wary of calling meetings lacking the requisite board member attendance. Per cases like *P.P. Mast Buggy Co.*, if the bylaws provide that meetings are to be specially called and less than all members of the board are present for a meeting that is not called as prescribed specifically by the bylaws, then it is not a lawful meeting.[36] A refusal to call a meeting of shareholders can sometimes arise. In this case, mandamus may be authorized to compel the duly appointed officer who is required to call the meeting to do so.[37] A shareholder can likewise sue to compel the holding of a meeting if the only person able by law to call the meeting continues to refuse.

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[27] Ocilla Industries, Inc. v. Katz, 677 F. Supp. 1291 (E.D. N.Y. 1987).
[28] *Id.* at 1301-02.
[29] *See*, e.g., N.Y. Bus. Corp. Law § 602-03.
[30] *See* MODEL BUS. CORP. ACT, *supra* note 21, § 7.04(a); *see,* e.g., OHIO REV. CODE ANN. § 1701.54 (LexisNexis 2022).
[31] Keogh Corp. v. Howard, Weil, Labouisse, Friedrichs Inc., 827 F. Supp. 269 (S.D.N.Y. 1993).
[32] WILLIAM MEADE FLETCHER ET AL., FLETCHER CYCLOPEDIA OF THE LAW OF CORPORATIONS § 1996.30; *see also* MODEL BUS. CORP. ACT, *supra* note 21, § 7.02(a); Kemmer v. Newman, 387 P.3d 131 (Idaho 2016).
[33] *See* MODEL BUS. CORP. ACT, *supra* note 21, § 7.02(a)(2).
[34] FLETCHER, *supra* note 33, § 404.
[35] In re Allied Fruit & Extract Co., 243 A.D. 52 (N.Y. App. Div. 1st Dep't 1934).
[36] FLETCHER, *supra* note 33, § 404.
[37] *Id.* at § 5843.

2. Voting

The right to vote stock that contains ownership of a corporation is generally understood as a property right.[38] The right to vote is thus highly important when considering overall rights conferred via stock ownership.[39] A shareholder has the right to vote as they please notwithstanding even clear self-interest.[40]

Notably for our purposes, the majority have the same right in this respect as the minority shareholders[41] qualified by the principle that the majority may not vote for the purposes of oppression of the minority or on fraudulent grounds.[42] Simply questioning the wisdom of a majority voting decision does not suffice for purposes of stating oppression.[43]

Proxy voting is continuing to grow in popularity. Proxy voting can generally be described as the authority a shareholder gives to an "agent" for the purposes of voting for that share at the relevant shareholder meeting. One source has equated proxy voting to "a species of absentee voting by mail by a one-way ballot."[44] For example, from only July 1, 2021 through May 16, 2022, Georgeson, an investor intelligence firm, has tracked a total of 924 shareholder proposal submissions.[45] In 2020, there were 754.[46] In 2021, there were 837.[47] The increase in shareholder proposal submissions is clear. Further, many of these proposals come from groups such as "As You Sow" and "Mercy Investment Services."[48]

It is thus relevant to examine the proxy and other representative voting legal schemes in America. The basic premise underlying the allowance of proxy voting is that an actual, genuine agency relationship exists.[49] Of particular note can be what is known as a "proxy contest." This simply refers

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[38] *See, e.g.*, Steinberg v. Am. Bantam Car Co., 76 F. Supp. 426 (W.D. Pa. 1948).
[39] American Crystal Sugar Co. v. Cuban-American Sugar Co., 276 F. Supp. 45 (S.D. N.Y. 1967).
[40] Murray v. Conseco, Inc., 795 N.E.2d 454 (Ind. 2003); *see also* Pa. R. Co. v. Pa. Co. for Ins. On Lives & Granting Annuities, 205 Pa. 219 (Pa. 1903) (discussing limitations to the general rule of shareholders voting as they please, particularly when so (properly) restrained by public policy or legislation).
[41] South & N.A.R Co. v. Gray, 160 Ala. 497 (Ala. 1909).
[42] Hall v. John S. Isaacs & Sons Farms, Inc., 146 A.2d 602 (Del. Ch. 1958).
[43] Boss v. Boss, 200 A.2d 231 (R.I. 1964).
[44] FLETCHER, *supra* note 33, § 2049.10.
[45] Georgeson, *An Early Look at the 2022 Proxy Season* at 4, https://images.info.computershare.com/Web/CMPTSHR1/%7B77363409-2097-454f-9dab-2b8246bf4665%7D_Georgeson-Early-Proxy-Season-2022.pdf (last visited DD MM, YYYY).
[46] *Id.*
[47] *Id.*
[48] *Id.*
[49] *See, e.g.*, Union of Needletrades, Indus. and Textile Emp. ("Unite") v. May Dept. Stores Co., 26 F. Supp. 2d 577 (S.D. N.Y. 1997).

to "a dispute between groups attempting to retain or gain control of the board of directors of a company by using the proxy device to gather sufficient voting support."[50] SEC Rule 14a, as the court noted in *Rosenblatt v. Northwest Airlines, Inc.*, exists to ensure that a solicitation for proxies is conducted under the rules of full and complete disclosure and that the solicitation is not materially false or misleading in any way.[51] Fulfillment of various requirements is necessary under SEC Rule 14a.[52]

American corporate law focuses primarily on minority shareholder oppression in closely held corporations. A closely held corporation, put simply, is one that has more than 50% of its outstanding stock owned by five or fewer individuals.[53] This is due to the structure of closely held corporations and the lack of a willing market of buyers for a minority ownership in a closely held corporation. While case law exists protecting the rights of minority shareholders in closely held companies, the statutory schemes of both the MBCA and the DGCL say very little on the matter.[54]

In the MBCA, a minority shareholder's best option to garner some sort of protection is by forming a collective to act in a unified manner. Otherwise, there is an overall recognition that as a minority shareholder, one must live with the consequences of potentially being outvoted. Likewise, the DGCL offers very little to minority shareholders in the way of protection. The DGCL does include provisions on shareholder derivative actions as well as the voting rights of stockholders, but from an overall standpoint the DGCL pales in comparison to what the Singapore Companies Act provides for.

This means that a great deal of minority oppression decisions in the United States are determined on the basis of case law. A primary example of minority oppression case law comes not from Delaware but from Massachusetts. In *Leslie v. Boston Software Collaborative*, one of three partners in the defendant company sued the other two partners and the company itself on the basis, among other things, that he had been wrongfully terminated and that the partnership had breached the fiduciary duty it had previously owed him.[55] In its ruling, the Superior Court of Massachusetts stated that

> Although the corporate form provides…advantages for the stockholders (limited liability, perpetuity, and so forth), it also supplies an opportunity for the majority stockholders to oppress or disadvantage minority stockholders. The minority

[50] FLETCHER, *supra* note 33, at *Proxy Contests* § 2052.80.
[51] Rosenblatt v. Northwest Airlines, Inc., 435 F.2d 1121, 1123-24 (2d Cir. 1970).
[52] *See* 17 C.F.R. § 240. 14a-101.
[53] *Frequently Asked Questions*, IRS, https://www.irs.gov/faqs/small-business-self-employed-other-business/entities/entities-5 (last updated Nov. 8, 2023).
[54] *See, e.g.*, Leslie v. Boston Software Collaborative, 2002 Mass. Super. LEXIS 57 (Super. Ct. 2002).
[55] *Id.* at 17

> is vulnerable to a variety of oppressive devices, termed "freeze-outs," which the majority may employ… they [majority shareholders] may deprive minority shareholders of corporate offices and of employment with the company; they may cause the corporation to sell its assets at an inadequate price to the majority shareholders.[56]

The court in *Leslie* went on to say that "[t]he standard of duty owed by partners to one another [is that of] the 'utmost good faith and loyalty,'"[57] While shareholders of closely held corporations resembling partnerships are often given the protections set forth in *Leslie*, shareholders of major public corporations are not so similarly positioned.

Shareholders can enter various types of voting and control agreements with each other. One example of this comes in the form of "pooling" agreements. Generally speaking, a pooling agreement allows shareholders to form cooperation with respect to the voting of their shares.[58] MBCA 7.31, as well as cases like *Salamone v. Gorman,* are instructive on this point. In recognizing the validity of these sorts of voting agreements, 7.31 states that two or more shareholders can provide in their agreement the manner in which they will vote their shares.[59] In addition to enjoying approval under the MBCA, voting agreements like those that pool have also been codified in many states.[60]

Another type of shareholder agreement is the control agreement. These agreements govern various aspects of how a corporation will be run.[61] MBCA 7.32 provides for these agreements, cutting against an older line of cases that invalidated various shareholder agreements more stylized as control agreements.[62] There are various procedural requirements surrounding control agreements. They must be set forth in the articles of incorporation or bylaws and approved by all shareholders[63]; they must be conspicuously noted on each share certificate or on the required information statement[64]; and if the agreement ceases to be effective, the board may adopt an amendment to the articles of incorporation or bylaws to delete the agreement.[65]

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[56] *Id.* at 18-19.
[57] *Id.* at 20.
[58] FLETCHER, *supra* note 33, § 2063.80.
[59] MODEL BUS. CORP. ACT, *supra* note 21, § 7.31(a).
[60] *See, e.g.*, N.C. Gen. Stat. § 55-7-31 (2022).
[61] FLETCHER, *supra* note 33, § 2063.90.
[62] *Id.* at § 2063.90.
[63] MODEL BUS. CORP. ACT, *supra* note 21, § 7.32(b).
[64] *Id.* § 7.32 (c).
[65] *Id.* § 7.32(d).

Remedies for violating a voting agreement typically take the form of an injunction or decree of specific performance.[66] Damages are unlikely.[67] Under MBCA section 7.32(c), a purchaser who is unaware of an existing agreement can receive rescission.[68]

Voting trusts are also common in the United States. A voting trust is an agreement between shareholders and a trustee whereby the trustee is given control over the stock owned by the shareholders.[69] As the official comment to MBCA 7.30 notes, a voting trust can also be accurately conceived of as a splitting of a stock's ownership rights from its voting rights. Important to note is that "[a] voting trust is not a form of proxy . . . ."[70] Instead, it is a transfer of the stock itself, which cannot be an accurate characterization of a proxy.[71] After dispute in the historical case law of voting trusts, the view now is that a voting trust should be upheld where the voting power is separated from the beneficial ownership of the stock.[72]

3. Filing a Lawsuit: Derivative Proceedings

The general provisions governing derivative actions in the MBCA range from sections 7.40 to 7.47.[73] The relevant portions of those provisions will be listed here. Pursuant to section 7.41, a shareholder must have been a shareholder at the time the act in question occurred.[74] Said shareholder must also "fairly and adequately represent[] the interests of the corporation in enforcing the right of the corporation."[75] Like Singapore's "internal management rule," the MBCA also seeks to avoid litigation when possible, at least in part. For the MBCA, this comes in the form of section 7.42. Pursuant to that section, shareholders must give a corporation ninety days to respond to a written demand that the corporation take suitable action to resolve the issue.[76] The DGCL says little on the issue of derivative actions.[77]

For derivative purposes, contrary to the common law regime existing prior,[78] shareholders are able to "step into the corporation's shoes and to seek in its right the restitution he could not demand in his own."[79] However,

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[66] *See, e.g.*, Cooper v. Parsky, 140 F.3d 433 (2d Cir. 1998).
[67] FLETCHER, *supra* note 33, § 2067.
[68] MODEL BUS. CORP. ACT, *supra* note 21, § 7.32(c).
[69] FLETCHER, *supra* note 33, § 2075.
[70] FLETCHER, *supra* note 33, § 2075.
[71] *See, e.g.*, Smith v. Biggs Boiler Works Co., 91 A.2d 193, 197 (Del. Ch. 1952).
[72] *See, e.g.*, Tracey v. Franklin, 61 A.2d 780, 782 (Del. Ch. 1948).
[73] MODEL BUS. CORP. ACT, *supra* note 21, at ch. 7, subchapter D.
[74] *Id.* § 7.41.
[75] *Id.*
[76] *Id.* §7.42.
[77] DEL. CODE ANN. tit. 8, § 327 (1998).
[78] Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541, [PAGE?] (1949).
[79] *Id.* at 548.

consistent with an interest of protecting against particularly litigious shareholders, significant protections exist. The Supreme Court of Delaware stated it quite nicely:

> The equitable standing of a stockholder to bring a derivative action was judicially created but later restricted by a statutory requirement that a stockholder plaintiff must either have been a stockholder at the time of the transaction of which she complains or her stock must have developed upon her thereafter by operation of law. The judicial creation of equitable standing for a stockholder to bring a derivative action demonstrates that equitable doctrine can be judicially extended to address new circumstances.[80]

Put simply, the derivative action, for lack of a better word, derives from principles in equity.[81]

Notwithstanding fears surrounding the lack of procedural guidelines disrupting normal business, as the Supreme Court instructed in *Cohen v. Beneficial Indus. Loan Corp.*, "[i]t is argued, and not without reason, that without it [the remedy of shareholder derivative actions] there would be little practical check on such abuses [of shareholder interest]."[82]

Procedurally speaking, Federal Rule of Civil Procedure 23.1 guides derivative actions in federal courts.[83] The complaint must allege that the plaintiff was a shareholder at the time of the action complained of (or that the shares were placed upon him by law) and that the plaintiff made efforts to obtain the action requested directly from the director, among other requirements. State-level derivative actions are procedurally guided by state rules, although these regulations are quite often closely tailored to the federal rules.[84]

Singapore's corporate law places great emphasis on the "proper plaintiff" rule, as understood in *Foss v. Hartbottle*. As discussed above, certain requirements exist in American corporate law governing who can bring a derivative suit. Although FRCP 23.1 does not contain an explicit "shareholder status" (meaning that one was a shareholder at the time of the complained-of action) requirement in its language, the requirement has been implied in cases such as *Werfel v. Kramarsky*.[85] When a claim is based on federal law, federal

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[80] Schoon v. Smith, 953 A.2d 196, 204 (Del. 2008).

[81] For discussions regarding fears stemming from a lack of procedural guidelines, see Surowitz v. Hilton Hotels Corp., 383 U.S. 363; *see also* Forbes v. Wells Beach Casino Inc., 307 A.2d 210 (Me. 1973).

[82] *See Cohen*, 337 U.S. at 548.

[83] WRIGHT & MILLER, 7C FED. PRAC. AND PROC. CIV. § 1821 (3d ed. 2022).

[84] *See, e.g.*, Del. Ch. R. 23.1.

[85] Wefel v. Kramarsky, 61 F.R.D. 674, 679 (S.D. N.Y. 1974).

substantive law will determine whether the plaintiff has standing as a shareholder to file a derivative action.[86]

There also exists under the derivative action framework in the United States a requirement for a "demand." This, generally, requires a plaintiff to have made a demand to the directors to take the action that the plaintiff now requests via the derivative suit.[87] From a policy standpoint, the demand requirement was enacted for the purpose of preventing shareholders from taking a work-around approach to dealing with the board of directors. From a practical standpoint, the requirement also makes sense: boards of directors are able to consider a proposed action and potentially implement the proposal if found profitable for the corporation. Such a process works to provide quicker solutions than allowing shareholders to simply file suit immediately when they want anything done. The board can also, as it did in *Barr v. Wackman*, take on alternative remedies to avoid litigation.[88]

As a notable complication to this general requirement of demand, the Delaware Supreme Court has actually ruled that a defendant *other* than a corporation may raise a failure to comply with the demand requirement. In *Kaplan v. Peat, Marwick, Mitchell & Co.*, the Delaware Supreme Court held that third parties could raise this failure but that simultaneously, a corporation's failure to object to a suit brought on its behalf must be viewed as an approval for the shareholder's capacity to sue derivatively.[89] The board must also be given ample time to respond to the request, in conjunction with the demand requirement, prior to initiating suit.[90]

A valuable point to make with regard to derivative actions is the similarities and differences between it and a traditional class action. Both were an invention of equity as a form of representative action.[91] However, significant differences exist. With derivative actions, the shareholder has no claim themselves.[92] However, the class action regards an individual who could have presumably brought the claim at issue themselves.[93] Notably, the general rule in the state of Georgia regarding what sort of "special injury" is to be alleged by a shareholder is that only through a derivative action may allegations of misappropriation of corporate assets or breach of fiduciary duty be imposed.[94]

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[86] *See, e.g.*, West v. West, 825 F. Supp. 1033, 1054 (N.D. Ga. 1992).
[87] In re Merck & Co., Inc., 2006 WL 1228595, *4 (D.N.J. 2006).
[88] Barr v. Wackman, 36 N.Y.2d 371 (N.Y. 1975).
[89] Kaplan v. Peat, Marwick, Mitchell & Co., 540 A.2d 726 (Del. 1988).
[90] Mills v. Esmark, Inc., 91 F.R.D. 70 (N.D. Ill. 1981); *see also* Charal Inv. Co., Inc. v. Rockefeller, Fed. Sec. L. Rep. (CCH) P 98979, 1995 WL 684869 (Del. Ch. 1995).
[91] Nowling v. Aero Services Intern., Inc., 752 F. Supp 1304 (E.D. La. 1990).
[92] First Hartford Corp. Pension Plan & Trust v. U.S., 194 F.3d 1279 (Fed Cir. 1999).
[93] *See, e.g.*, Gaffin v. Teledyne, Inc., 611 A.2d 467 (Del. 1992).
[94] Callicott v. Scott, 357 Ga. App. 780 (Ga. Ct. App. 2020).

Direct shareholder actions have taken form at times. For example, a claim that a proposed merger or similar transaction has unfairly affected minority shareholders has given rise to a claim.[95] Likewise, a state law requiring a female quota on boards of directors substantiated a direct shareholder claim.[96] In Delaware, the courts have narrowed the grounds for direct shareholder actions. A direct action is allowed in Delaware when (1) a corporation initiated an active bidding process to sell itself, (2) where, in response to a bid, an entirely alternative transaction involving a break-up of the company is at issue, or (3) when approval of a transaction resulted in a sale or change of control.[97]

4. *Director and Officer Liability*

The MBCA covers standards of conduct for directors in section 8.30.[98] The relevant provision of that section is as follows: "[e]ach member of the board of directors, when discharging the duties of a director, shall act: (i) in good faith, and (ii) in a manner the director reasonable believes to be in the best interests of the corporation."[99] The official comments state that the phrase "reasonably believes" is "both subjective and objective in character."[100] The provision goes on to state that the first level of analysis involves an evaluation of good faith before focusing on the reasonableness or lack thereof.[101] Interestingly, unlike the MBCA provision cited here, the Singapore Companies Act makes no mention of the best interests of the company. This provision, as the official comments to the MBCA state, gives "wide discretion in deciding how to weigh near-term opportunities versus long-term benefits."[102]

In a seminal example of a finding of liability on the part of the directors, the court in *Smith v. Van Gorkom* assessed a class action brought by shareholders seeking the rescission of a cash-out merger.[103] In finding that the board was not informed, the court stated that "[c]ertainly in the merger context, a director may not abdicate that duty [be informed and deliberate] by leaving to the shareholders alone the decision to approve or disapprove the agreement."[104]

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[95] *See, e.g.*, de Borja v. Razon, 336 F.R.D. 620, 639 (D. Or. 2020).
[96] Meland v. Weber, 2 F.4th 838 (9th Cir. 2021) (applying Delaware law).
[97] Sutton v. FedFirst Fin. Corp., 226 Md. App. 46, 79 (Md. Ct. Spec. App. 2015) (citing Delaware law).
[98] MODEL BUS. CORP. ACT, *supra* note 21, § 8.30.
[99] *Id.*
[100] *Id.* at Comment to 8.30(a).
[101] *Id.*
[102] *Id.*
[103] Smith v. Van Gorkom, 488 A.2d 858 (Del. 1985).
[104] *Id.* at 873.

In general, a director's power in American law is to manage the corporate business and affairs of the shareholders.[105] The board is also given a wide range of room to work as a response to fears of curbing active management.[106] So-called "fundamental character" changes are not left to the director's discretion.[107] Other acts that are considered outside the purview of regular business are not permitted. Shareholders hold the ultimate power. If shareholders undertake an act within their legal power to undertake, directors cannot repudiate that act.[108]

Directors typically must obtain the shareholders' consent when undertaking acts not in the ordinary course of business. These acts are often named by statute or in a charter. Further, these sorts of acts are understood to be outside the scope of a director's powers.[109] Charters can likewise require unanimous assent or a high percentage of assent among shareholders to validate particular acts of directors or trustees, even though these acts would normally fall within the powers of corporate directors.[110] The dynamic between shareholders and directors can be understood as follows: if there were no charter or statute provision vesting control in directors or trustees, shareholders would still have the rights to manage the corporation.[111] While this is true as a conceptual point, shareholders are not permitted to actually act on behalf of the corporation.[112] They are limited to an advisory capacity, and a majority shareholder is also not presumed to have operating ("actionable") ownership.[113] The way that shareholders bind the corporation is through voting at the shareholder meeting.

SEC 14a-8 plays an interesting role in this area. As Fletcher's Cyclopedia notes, rule 14a-8 does not relate to the enforcement of a personal claim or recommendation unrelated to the business of the corporation.[114] The proposal has various requirements. First, it must be proper under the corporate law of the corporation's domicile. Further, it cannot be a personal claim. Proposals that deal with a matter beyond the issuer's power may also warrant omission from the issuer's proxy statement.[115]

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[105] *See, e.g.*, Gen. Fin. Corp. v. Fidelity & Cas. Co. of N.Y., 439 F.2d 981 (8th Cir. 1971).
[106] Tomlin v. Ceres Corp., 507 F.2d 642 (5th Cir. 1975).
[107] FLETCHER, *supra* note 33, § 2100.
[108] *See, e.g.*, Smith v. Wells Mfg. Co., 148 Ind. 333 (Ind. 1897).
[109] *See* FLETCHER, *supra* note 33, § 2106 & § 2655.
[110] *See, e.g.*, The Allianca, 73 F. 452 (C.C.A. 2d Cir. 1896).
[111] Union Pac. Ry. Co. v. Chicago, R.I. & P. Ry. Co., 163 U.S. 564, 596 (1896).
[112] McDonald v. Dalheim, 683 N.E.2d 447 (11th Dist. Lake Cnty. 1996).
[113] *Id.*
[114] FLETCHER, *supra* note 33, § 2097.
[115] 17 C.F.R. § 240.14a-8(i)(6) (2023).

B. SINGAPORE

1. Calling Meetings

In many ways, an American legal comparison for Singapore's Companies Act is both the Model Business Corporation Act and the Delaware General Corporation Law. Singapore's Companies Act is not organized by rights accorded to each group involved[116] in the corporate governance model. Shareholder rights in Singapore's scheme are scattered throughout various sections of the Act. This surely is due in part to the general applicability of corporate law to shareholders in all realms of a company's maintenance. However, some provisions, such as those relating directly to how a shareholder can exercise their vote or how they may question leaders of a company, bear more directly on those very rights. One particular section of the Act as a whole is of particular relevance for the purposes of this note—Division 3, titled "Meetings and Proceedings," of part 5 of the Act. For starters, all "members" (Singapore's equivalent of shareholders) are entitled to a statutory meeting at the company's inception as well as an annual general meeting.[117] There is even a financial incentive for the corporation to hold the annual meeting in a timely manner.[118] Section 176 of the Companies Act also provides the conditions under which a member may order an "extraordinary general meeting on requisition."[119]

> The directors of a company, despite anything in its constitution, must, on the requisition of members holding at the date of the deposit of the requisition not less than 10% of the total number of paid-up shares as at the date of the deposit carries the right of voting at general meetings or, in the case of a company not having a share capital, of members representing not less than 10% of the total voting rights of all members having at that date the right to vote at general meetings…[120]

Interestingly, case law has developed surrounding subsection 2 of section 176 of the Act, which requires that the requisition state the "objects" of the meeting and be signed by one or more of those calling for it.[121] A requisition by joint holders should be signed by all of them, pursuant to *Patentwood Keg Syndicate Ltd. v. Pearse*. Likewise, each requisition document does not need to be identical to others as long as it calls for generally the same thing.[122] This

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[116] Cf. *with* Table of Contents of MODEL BUS. CORP. ACT.
[117] Companies Act, 1967 § 174 & § 175 (Sing.).
[118] *Id.* at § 175(4).
[119] *Id.* at § 176.
[120] *Id.* at § 176(1).
[121] *Id.* at § 176(2).
[122] *See* Fruit and Vegetable Growers Association Ltd. v. Kekewich, [1912] 2 Ch 52; *see also* ANDREW HICKS & WALTER C.M. WOON, THE COMPANIES ACT OF SINGAPORE: AN ANNOTATION comment [176/4] (1989).

lack of need raises interesting questions regarding the requisition process; for example, is it possible for multiple persons making requests to raise substantively different points for discussion at a meeting notwithstanding the fact that they are "generally" calling for the same discussion or action?

Singapore law appears somewhat underdeveloped in this area of potential problem for the law. It makes sense as it seems unlikely that a group of requisitionists would outline substantively different points of concern, but one can imagine a situation where this problem may arise. To add more context to this potential problem, it has also been established that only business that was specified in the requisition can be transacted at a requisitioned meeting.[123]

Another point of interest relating to section 176 is subsection 3 that establishes the time period in which directors must convene a meeting. As mentioned prior, directors have a financial incentive as provided for in subsection 3 to convene a meeting within 21 days of the deposit of requisition.[124] While the text of the Companies Act is a bit murky on this point, it appears there are stark differences between what it means to "convene" a meeting versus what it means to actually hold a meeting: "[t]his does not mean that the meeting has to be held within 21 days of the deposit of the requisition; as long as it is convened within 21 days, it may be held any time during the two-month period stipulated."[125]

Thus, it is clear that convening and holding a meeting operate under two different meanings.[126] In addition, the members requisitioning the meeting may convene a meeting themselves if the directors fail to do so.[127]

In addition, members can actually call meetings on their own behalf, without regard for directors, pursuant to section 177 of the Act.[128] The section provides that "[t]wo or more members holding not less than 10% of the issued share capital…may call a meeting of the company."[129] Hicks and Woon's annotation provides that any general meeting other than the annual general meeting is regarded as "an extraordinary general meeting."[130] Section 177 also governs notice of meetings called, providing in relevant part that notice must be given in writing not less than 14 days or any longer period provided in the company's articles.[131] Further, it provides that an annual meeting can be called on short notice with unanimous consent of members entitled to vote or, in the

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123 *See* Ball v. Metal Industries Ltd., [1957] SC 315. Note that this view was contrasted in *Holmes v. Life Funds of Australia Ltd*.
124 Companies Act, *supra* note 19, § 176(3).
125 HICKS & WOON, *supra* note 123, at [176/6].
126 *See* Re Windward Islands (Enterprises) UK Ltd [1982] BCLC 296.
127 HICKS & WOON, *supra* note 123, at [176/7].
128 Companies Act, *supra note* 19, § 177.
129 *Id.*
130 HICKS & WOON, *supra* note 123, at [177/3]
131 Companies Act, *supra* note 19, § 177 (2).

case of an extraordinary meeting, with agreement of members holding at least 95% of the company's voting shares.[132]

Notice must be given to all members, and such notices may include statements setting out the proposed business of the meeting.[133] If notice is not given, the meeting is "prima facie invalidated."[134] However, Hicks and Woon note importantly that this general rule of invalidation is modified by section 392(3) of the Companies Act, which states that "a meeting is not invalidated by reason only of the accidental omission to give notice of the meeting…unless the Court, on the application of the person concerned, a person entitled to attend the meeting or the Registrar, declares proceedings at the meeting to be void."[135] Lastly, as it relates to notice of a meeting, said notices must contain "sufficient information to enable a prudent member to decide whether or not he will attend the meeting."[136] If a "material fact" is not included in the meeting's notice, any resolutions passed at the meeting can be invalidated as against any member that does not attend.[137] The court in *Tiessen v. Henderson* set out that, in order to determine whether a resolution is valid as it regards proper notice to members, the test is whether the member had fair warning as to what would be discussed at the meeting.[138] Additionally, any failure to include the text of the resolutions that the member-callers intend to pass may invalidate any and all proceedings at the meeting.[139] Explanatory circulars, or notices, are not always required. But where most of the voting is done by proxy, an explanatory circular is necessary.[140]

Section 178 of the Act allows for the calling of "polls" on any matter other than the election of the chairman or adjournment of the meeting notwithstanding any provision in the company's articles to the contrary.[141]

2. *Voting*

As noted in the introduction, Singapore is ranked third in the world in minority shareholder protection. Let us analyze why, at least in part, this is. Of particular relevance to this analysis with regard to minority oppression is section 216 of the Companies Act governing "[r]emedies in cases of

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[132] HICKS & WOON, *supra* note 123, at [177/5].
[133] Young v. Ladies' Imperial Club Ltd [1920] 2 K.B. 523.
[134] HICKS & WOON, *supra* note 123, at [177/8].
[135] *Id.; see also* Companies Act, *supra* note 19, § 392(3).
[136] HICKS & WOON, *supra* note 123, at [177/9].
[137] *Id.*
[138] Tiessen v. Henderson [1899] 1 Ch 861.
[139] HICKS & WOON, *supra* note 123, at [177/9] (citing Hup Seng Co Ltd v Chin Yin [1962] MLJ 371).
[140] *Id*. at [177/9].
[141] Companies Act, *supra* note 19, § 178.

oppression or injustice."[142] A member has a recognized right under the Companies Act to be treated fairly.

> It should be borne firmly in mind that a person who joins a company does so on the understanding that he may be outvoted. Unless one controls the majority of the votes in a company there is not guarantee of getting one's way. A member who dislikes being in the minority should sell out; he cannot normally look to the court to change the decisions of the majority. The courts do not sit to hear appeals from management decisions honestly arrived at. Having said that, it is necessary that there should be some mechanism for preventing a majority from abusing their power to bind the minority.[143]

Section 216 of the Companies Act and its accompanying comments by Hicks & Woon[144] make clear that, ultimately, majority rule is accepted as the nature of the contractual relationship entered into between the majority and the minority members of a corporation. However, individual rights not submergible by the corporate form are still recognized.[145] Members may invoke section 216 when they are oppressed, disregarded, or have received otherwise unfairly discriminatory or prejudicial treatment. What counts as "oppression" has been defined variously, but *Re Jermyn Street Turkish Baths Ltd* defined it well:

> In our judgment, oppression occurs when shareholders, having dominant power in a Company, either (1) exercise that power to procure that something is done or not done in the conduct of the company's affairs or (2) procure by an express or implicit threat of an exercise of that power that something is not done in the conduct of the company's affairs; and when such conduct is unfair…to the other members of the company or some of them, and lacks that degree of probity which they are entitled to expect in the conduct of the company's affairs.[146]

The presence of a logical, moral backing in a decision made by a majority is key to its being found unoppressive.[147] On the other hand, disregard of a member's interests, as stated in *Re Kong Thai Sawmill (miri) Sdn Bhd,* "involve[s] something more than a failure to take account of the minority's

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[142] Companies Act, *supra* note 19, § 216.
[143] HICKS & WOON, *supra* note 123, at 437.
[144] Andrew Hicks and Walter C.M. Woon are both Singapore Corporate Law Scholars. Woon is a Professor Emeritus at the National University of Singapore.
[145] Ebrahimi v Westbourne Galleries Ltd [1973] AC 360.
[146] Re Jermyn Street Turkish Baths Ltd [1971] 3 All ER 184.
[147] *See also* Re Kong Thai Sawmill (Miri) Sdn Bhd [1978] 2 MLJ 227.

interest: there must be awareness of that interest and an evident decision to override it or brush it aside or to set at naught the proper company procedure."[148] Hicks and Woon posit that due to the fact that both "oppression" and "disregard" are used in section 216, the words must at least in part have different meanings. Hicks and Woon also set out quite a useful list of instances determining whether relief under section 216 is permissible:

1. A remedy can be obtained against persons holding "dominant power" in a company;[149]
2. The acts complained of must be more than simply an exercise of a dominant member's majority voting rights;[150]
3. The act complained of must affect the member in his capacity as a member;[151]
4. Where a petition is presented on the ground of oppression or disregard of a member's interests, the acts complained of must be continuing at the time the action is brought;[152]
5. Relief may be obtained under section 216 when dominant members pursue . . . their own interests or the interests of others . . . to the detriment of the company or other shareholders;[153]
6. Relief may [] be obtained where the dominant members run the company as . . . their own, disregarding the rights and interests of the other members;[154]
7. Where the majority shareholders . . . abuse their voting powers by voting in bad faith and for a collateral purpose;[155]
8. Expropriation of a member's property;[156]
9. Exclusion of a member from management of a company in breach of an express or implied understanding to allow [said member] to participate.[157]

Hicks and Woon state further that the instances listed above are not exhaustive with regard to the ground for relief under section 216.

In addition to this right of the minority members to receive fairness in the actions taken by the majority, the Companies Act also expresses and supports the idea of member's rights.[158] Indeed, the Act makes rather clear its view that

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[148] *Id.*
[149] HICKS & WOON, *supra* note 123, at [216/8].
[150] *Id.*
[151] *Id.*
[152] *Id.*
[153] *Id.*
[154] *Id.*
[155] *Id.*
[156] *Id.*
[157] *Id.*
[158] Companies Act, *supra* note 19, § 180

the right of a member to vote their share or shares at a meeting is fundamental.[159] This strong belief in a fundamental right to vote for or against the decisions of a company was further expressed both by Hicks & Woon and by the court in *Pender v. Lushington.*[160]

> It is through his vote that he manages to get his voice heard in the company's affairs. Section 180(1) provides that every member shall have the right to vote on any resolution, notwithstanding anything to the contrary in the company's memorandum and articles. Ignoring a member's votes is not a mere irregularity which can be cured by the majority; it is an infringement of the member's personal rights in respect of which he can maintain a personal action.[161]

While property rights may exist in an American shareholder's ability to vote their shares, it is difficult to assert that American shareholders, and thus minority shareholders, are given such strong rights as Hicks and Woon feel that the Singapore Companies Act and surrounding case law gives to shareholders governed by its provisions.

Section 64 of the Companies Act likewise bears important weight on an analysis of member voting rights. The section, titled "As to voting rights of equity shares in certain companies," regards what Americans may refer to as "common stock." Any share that is not a preference share or one that "does not entitle the holder thereof to the right to vote at a general meeting" is an equity share.[162] Interestingly, what Hicks and Woon name "weighted voting," which is the practice of "giving more votes to certain shares than to others in specified situations," is not possible for companies to which section 64 applies.[163]

Section 74 regards the "Rights of holders of classes of shares."[164] Per *Peakes v Mosley*, a "class" may be defined as "persons who come within a certain category or description defined by a general or collective formula."[165] Section 74 states that, in conjunction with *Greenhalgh v Ardene Cinemas Ltd,* the test regarding whether there has been a variation of class rights comes down to whether the members holding the shares in question have the same rights they previously had before the amendment changing said rights.[166]

Section 215 of the Companies Act focuses on a remaining minority of shareholders' rights to decline a merger. At bottom, the section sets out that

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[159] HICKS & WOON, *supra* note 123, at [180/3].
[160] *Id.*; *see* Pender v. Lushington [1877] 46 LJ Ch 317.
[161] HICKS & WOON, *supra* note 123, at [180/3].
[162] Companies Act, *supra* note 19, § 4; *Id*., at [64/5].
[163] HICKS & WOON, *supra* note 123, at [64/5].
[164] Companies Act, *supra* note 19, § 74.
[165] Peakes v Mosley [1880] 5 App Cas 714; *see also* HICKS, *supra* note 120, at [74/3].
[166] HICKS & WOON, *supra* note 123, at [74/6]; *see also* Greenhalgh v Ardene Cinemas Ltd. [1950] AC 286.

once a company has become "so nearly" a full owner of another company, the acquiring company should not be prevented from making the acquisition by shareholders of the company being acquired should those dissenting shareholders amount to 10% or less of overall shares.[167] The court set out this distinction of level of required holding for effective dissent among a shareholder group in *Blue Metal Industries Ltd v Dilley.*[168] The court is additionally given quite a wide berth to determine whether an acquisition is "fair" or not.[169]

3. Filing a Lawsuit: Derivative Proceedings

Section 216 of the Companies Act governs not only the fair treatment of members but also the ability of shareholders to commence derivative actions. A derivative proceeding, per the MBCA, means "a civil suit in the right of a domestic corporation or, to the extent provided in section 7.47, in the right of a foreign corporation."[170] Hicks and Woon, in their annotation of the Companies Act, list several bases upon which a member can request relief under section 216.

First is what the authors term "[d]omination and control."[171] This simply means that shareholders can seek a remedy against "persons holding 'dominant power'" in the company at issue.[172] However, per *Re Kong Thai Sawmills Sdn Bhd,* simply asserting disagreement with the chosen strategy of the majority does not suffice to state a cause of action.[173] It is notable that, perhaps cutting against the idea of there being relatively strong minority-protective rules in place in Singapore, what the Act complained of must actually be continuing at the time of the complaint.[174] Mismanagement or, as stated in *Re Kong Thai Sawmills Sdn Bhd*, complaining about a dominant member's voting strategy is not enough to state a claim under this section. Further, per *Re Five Minute Car Wash Service Ltd*, mismanagement will not necessarily suffice as oppression or disregard of a member's interest.[175] Members can, however, bring suit for dominant members pursuing a course of conduct "designed by them [the dominant members] to advance their own interests or the interests of others of their choice to the detriment of the

[167] Companies Act, *supra* note 19, § 215.
[168] Blue Metal Industries Ltd v Dilley [1970] AC 827.
[169] HICKS & WOON, *supra* note 123, at 215/8; *see* Re Bugle Press Ltd [1961] Ch 270; *see also* Re Grierson, Oldham & Adams Ltd [1968] Ch 17.
[170] MODEL BUS. CORP. ACT, *supra* note 21, § 7.40.
[171] HICKS & WOON, *supra* note 123, at [216/8]
[172] *Id.*
[173] Re Kong Thai Sawmill (Miri) Sdn Bhd [1978] 2 MLJ 227.
[174] *Id.*
[175] HICKS & WOON, *supra* note 123, at [216/8] (2).

company or to the detriment of the other shareholders."[176] This was affirmed by the court in *Scottish Co-operative Wholesale Society Ltd v Meyer.*

The Companies Act likewise has provided, through case law using its language, for a traditional derivative action as understood in the United States. For example, section 216(2)(c) sets forth that courts may "authorize civil proceedings to be brought in the name of or on behalf of the company by such person or persons and on such terms as the Court may direct."[177] However, in contrast to this seemingly general grant of the ability of members to sue derivatively, there also exists the rule set out in Mozley v. Alston that if a particular issue complained of "was something that the members could cure, it would be fruitless to have litigation about it."[178] This is known as the "internal management" rule.[179] In light of this "internal management" rule, one can imagine how minority shareholders are potentially disadvantaged by such a construction. For example, members may be deemed to be able to solve a problem without there existing a majority of members to accomplish what may need to be solved. What results is a minority shareholding group desirous to challenge particular conduct that is made incapable of doing so by way of their majority but also incapable of doing so judicially.

A particularly sharp thorn in the side of an otherwise rosy derivative proceeding framework is the *Foss v. Harbottle* rule. On a general level, this case stood for the underlying concept that the proper plaintiff in a suit for the enforcement of a given corporation's right is the company itself. This was even further explained by *Prudential Assurance Co Ltd v. Newman Industries Ltd,* which held that since a company is an entity separate from its members, a member may not enforce a company's rights.[180] Hicks and Woon note that the articles of incorporation may answer the question of who or what body of persons can initiate a claim on behalf of the corporation.[181] If nothing is stated on the issue in the articles of incorporation, *United Investment & Finance Ltd v. Tee Chin Yong* sets forth that the right to commence an action belongs to "the person or body in whom the function of management is vested."[182] This practically means that the board is vested with the power to commence litigation. *Marshall's Valve Gear Co v. Manning, Wardle & Co* allows for general meetings to commence litigation should boards of directors refuse to do so.[183]

Note, however, that distinctions must be made in the commencement of litigation regarding whether the harm alleged is an injury to a member

[176] *Id*. at [216/8] (5).
[177] *Id*. at [216(2)] (c).
[178] Mozley v. Alston (1847) 1 Ph 790; *see also* HICKS, *supra* note 123, at [216/16].
[179] *See* HICKS & WOON, *supra* note 123, at [216/16].
[180] HICKS & WOON, *supra* note 123, at [216/16].
[181] *Id*. at [216/17].
[182] *Id*. (citing United Investment & Finance Ltd v Tee Chin Yong [1967] 1 MLJ 31).
[183] *Id.*

personally or whether the harm alleged is an injury to the corporation. If an injury complained of is aptly described as one to a member personally, the rule from *Foss v. Harbottle* will not apply. In that case, the member would not be barred from suing. This principle is made clear in *Pender v. Lushington.*[184] Hicks and Woon note that in this area of the law, a breach of contract between the company and a member is just one example of a suit not precluded by *Foss v. Harbottle.*[185] Additionally, the authors note that if a corporation threatens to enter into a transaction that is *ultra vires*, or outside its powers, a member can sue to stop that transaction.[186] Interestingly, no procedure is prescribed for a derivative action.[187]

There are, however, exceptions to the *Foss* rule. If there is fraud on the minority and those committing the fraud are in control of the corporation, a member in the minority may bring an action enforcing the company's rights, per *Peck v. Russell.*[188] Fraud is not only understood as "fraud" at common law but also includes fraud in "the equitable sense."[189] Hicks and Woon list three notable examples of fraud on the minority being recognized:

(1) Appropriation of the company's money, property or opportunities[190],
(2) Majority obtaining a benefit at the expense of the company[191], and

Preventing an action being brought by the company against the majority shareholder.[192]

4. *Director and Officer Liability*

Director liability is often the basis for derivative suits in the United States.[193] So, while it is essential to understand the provisions governing who can bring a derivative suit, it is also important to understand on what basis a member in Singapore can actually bring such a claim. Section 157 of the Companies Act uses the following language in subsection 1: "[a] director shall at all times act honestly and use reasonable diligence in the discharge of the

[184] Pender v. Lushington [1877] 6 Ch D 70.
[185] HICKS & WOON, *supra* note 123, at [216/18]
[186] *Id.*
[187] *Id*. at [216/19].
[188] *Id*. at [216/20]; *see also Peck v Russell* (1923) 4 FMSLR 32.
[189] *Id.*
[190] HICKS & WOON, *supra* note 123, at [216/20]; *see e.g.*, *Burland v Earle* [1902] AC 83, 93; *Menier v Hooper's Telegraph Works* (1874) 9 Ch App 350.
[191] HICKS & WOON, *supra* note 123, at [216/20]; *see e.g.*, *Alexander v Automatic Telephone Co* [1900] 2 Ch 56; *Daniels v Daniels* [1978] 2 All ER 89.
[192] HICKS & WOON, *supra* note 123, at [216/20]; *see e.g.*, *Prudential Assurance Co Ltd v Newman Industries Ltd (No 2)* [1980] 2 All ER 841, 862; *Estmanco (Kilner House) Ltd v Greater London Council* [1982] 1 All ER 437.
[193] *See, e.g.,* Smith v. Van Gorkom, 488 A.2d 858 (1985).

duties of his office."[194] As Hicks and Woon note, this section is in large part declaratory in its restatement of already existing law on the matter.[195]

In addition to the requirement that there must be particularized alleged lapses in judgment, the section clarifies that directors must act "honestly" and "use reasonable diligence."[196] Hicks and Woon state the honesty standard as such:

> [T]he section is concerned with honesty to the company and not to creditors or others. It requires a director to perform his fiduciary duties, and to act bona fide in the interests of the company in performing his functions as a director. An act done deliberately disregarding knowledge that it is not in the company's interests is not done bona fide.[197]

In addition, Hicks and Woon explain the "reasonable diligence" section in that it "appears that reasonable diligence at all times does not necessarily require a director to give continuous attention to the company's affairs."[198] Subsection 2 of section 157 states that:

> An officer or agent of a company shall not make improper use of any information acquired by virtue of his position as an officer or agent of the company to gain, directly or indirectly, an advantage for himself or for any other person or to cause detriment to the company.[199]

This section refers to information that is not necessarily secret but acquired by the officer's position.[200] Further, as Hicks and Woon note, the section is closely adapted from an Australian prototype.[201]

III. A COMPARISON OF VARIOUS SINGAPOREAN LEGAL SCHEMAS WITH AMERICAN COUNTERPARTS – AND A SUGGESTION OF APPLYING OR CONSIDERING VARIOUS SINGAPOREAN PROVISIONS AS A MORE VIABLE AND PROTECTIVE ALTERNATIVE

A. LEGAL BACKGROUND

American corporate law arrived at its current state—regulation of corporations through statutes and corporate charters—after many years of development. Beginning in the 1600s, the British expanded into North

[194] Companies Act, *supra* note 19, § 157.
[195] HICKS & WOON, *supra* note 123, at [157/3].
[196] *See* Byrne v Baker [1964] VR 443; *see also* Companies Act, *supra* note 19, § 157.
[197] HICKS & WOON, *supra* note 123, at [157/6]; *see also* Marchesi v Barnes [1970] VR 434.
[198] HICKS & WOON, *supra* note 123, at [157/8]; *see also* Byrne v Baker [1964] VR 443.
[199] Companies Act, *supra* note 19, § 157 (2).
[200] HICKS & WOON, *supra* note 123, at [157/11].
[201] HICKS & WOON, *supra* note 123, at [157/10].

America. Its expansion was led primarily by corporations. For some time thereafter, corporations were often guided by the government.[202]

It was not until a true privatization of corporations and subsequent abuse of this newfound power that the federal government responded by passing the Sherman Antitrust Act of 1890.[203] Nearly 30 years after the enactment of the Sherman Antitrust Act, the seminal *Dodge v. Ford Motor* case was decided.[204] This first step of shareholder protection clarified that "the profits of a corporation cannot be withheld from stockholders for the benefit of the general public."[205] Then, another 20 years after *Ford Motor,* the SEC released what is now rule 14a-8.[206] Under this initial formulation, any shareholder could submit a proposal regardless of percentage stake in the company, amount of shares they owned, or when they wanted to make their proposals.[207] A shareholder proposal, as defined under subsection (a) of rule 14a-8, is a "recommendation or requirement that the company and its board of directors take action, which you intend to present at a meeting of the company's shareholders."[208] Aside from benefitting management instead of shareholders, the motivation at the time was to shift the burden of proposals to shareholders.[209] The rule was used sparingly in its early years.[210] But as those within corporations began to view the new proposal rule as an "earth-shattering" power shift into the hands of shareholders, the SEC again moved to action.[211] In 1948, the SEC amended the rule to exclude proposals submitted "for the purpose of achieving personal ends rather than for the common good of the issuer and its security holders."[212] In the following years, corporations flooded the SEC with concerns about the rule. The agency

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[202] *Hamilton's Economic Plan*, ENCYCLOPEDIA.COM, https://www.encyclopedia.com/history/encyclopedias-almanacs-transcripts-and-maps/hamiltons-economic-plan, (last visited Oct. 11, 2022).
[203] Tyler Halloran, *A Brief History of the Corporate Form and Why it Matters*, FORDHAM J. CORP. FIN. L. BLOG (Nov. 18, 2018), https://news.law.fordham.edu/jcfl/2018/11/18/a-brief-history-of-the-corporate-form-and-why-it-matters/.
[204] *See* Dodge v. Ford Motor Co., 204 Mich. 459, 507 (1919).
[205] Halloran, *supra* note 204.
[206] Solicitation of Proxies Under the Act, Release No. 3347 (Dec. 18, 1942) [7 FR 10655 (Dec. 22, 1942)]; *see also* J. Robert Brown, Jr., *The Evolving Role of Rule 14a-8 in the Corporate Governance Process*, 93 DENV. L. REV. F. ONLINE 151 (2016).
[207] *Id.*
[208] 17 C.F.R. § 240.14a-8 (2023).
[209] J. Robert Brown, Jr., The SEC, Corporate Governance, and Shareholder Access to the Board Room, 2008 UTAH L. REV. 1339, 1344–45 (2008).
[210] 13 S.E.C. ANN. REP. 42 (1947).
[211] Edward T. McCormick, Comm'r, S.E.C, Address at the Corporate Secretary and the Proxy Rules (May 13, 1950) ("When our proxy rules were amended to permit stockholders to make and justify proposals within the sphere of proper stockholder action a bomb exploded.").
[212] Notice of Proposal to Amend Proxy Rules, Release No. 34-4114 (July 6, 1948) [13 FR 3973, 3974 (July 14, 1948)].

responded by amending the rule over eight times.[213] Today, unlike the 215 words in the original, the rule contains nearly 3,000.[214]

In the first year the rule was in place, nineteen shareholders submitted 66 proposals.[215] This number has increased immensely. In just the first half of 2021, shareholders submitted 733 meeting proposals.[216] Further, those tracking shareholder proposals "expect activism activity to remain strong during the 2022 proxy season and beyond."[217]

While the United States had just produced its first version of rule 14a-8 in 1942, Singapore was under Japanese military occupation.[218] The Japanese reinstated former British laws.[219] Over 20 years later, Singapore ceased to be a British Empire colony and joined the Federation of Malaysia.[220] Thus, many of Singapore's laws then became extensions of Malaysian law.[221] However, Singapore's union with Malaysia did not last. The countries separated, with Singapore cutting off the legislative powers of Malaysia's supreme ruler.[222] That said, all laws in effect at that time in Singapore, many a product of Malaysia's own system, remained in force.[223] The historical differences between Singapore and the United States show why the differences noted in the prior section exist.

B. CALLING MEETINGS

The first topic discussed in section II of this note is the calling of shareholder meetings. The Singapore Companies Act begins quite similarly to the American scheme. For example, MBCA 7.01 relates directly to sections 174 and 175 of the Companies Act. Both create a right for shareholders (or members) to have a meeting at the "inception" of the company.[224] However, a notable difference between Singaporean and American laws regarding meeting calling is the financial incentive provided in Companies Act

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[213] Brown*, supra* note 209, at 153-60.
[214] *Id.* at 151-152.
[215] *Id*. at 153; *see also* 13 S.E.C. ANN. REP, *supra* note 213, at 42.
[216] Sawyer et al., *supra* note 2. *2021 Proxy Season Review: Part 1 – Rule 14a-8 Shareholder Proposals*, SULLIVAN & CROMWELL LLP (July 27, 2021).
[217] *Id.* Review and Analysis of 2021 U.S. Shareholder Activism and Activist Settlement Agreements, SULLIVAN & CROMWELL LLP (Dec. 20, 2021)
[218] KEVIN TAN, A SHORT LEGAL AND CONSTITUTIONAL HISTORY OF SINGAPORE (1989).
[219] *Id.*
[220] SINGAPORE, CIVIL LAW ORDINANCE 1878 (no. 4 of 1878). *A History of The Singapore Legal Service*, SING. ACAD. L., https://www.sal.org.sg/Resources-Tools/Legal-Heritage/A-History-of-the-Singapore-Legal-Service (last visited Jan. 31, 2024).
[221] GEOFFREY WILSON BARTHOLOMEW ET AL., SESQUICENTENNIAL CHRONOLOGICAL TABLES OF THE WRITTEN LAWS OF THE REPUBLIC OF SINGAPORE 1834-1984 (1987).
[222] *Id.*
[223] *Id.*
[224] *Compare* Companies Act, *supra* note 19, § 174-176 *with* MODEL BUS. CORP. ACT, *supra* note 21, § 7.01.

provision 175(4) and the lack of a similar financial incentive in American law.[225] While it was noted earlier that the court in *Ocilla Industries* indeed required a meeting once that meeting had been found to have been late in its occurrence, there is no evidence that there was a financial incentive for the companies created for the benefit of shareholders.[226]

In American terms, the baseline for calling an "extraordinary" general meeting or a "special meeting" is the same in both legal schemas.[227] Section 176 of the Companies Act provides that "not less than 10%" of members holding at the date of requisition the paid-up capital of the right to vote at general meetings may call (by compelling the directors) an extraordinary meeting.[228] Similarly, MBCA 7.02 provides a 10% threshold for members attempting to call a special meeting.[229]

The two legal frameworks differentiate their respective procedural guidelines regarding meeting calling. For example, as discussed above in section II, a requisition for an extraordinary meeting in Singapore should be signed by all members calling the meeting.[230] It also does not require uniformity on the document calling for the requisition. In America, notice must be made under any statute, charter, or bylaw provisions regarding the manner of notice.[231] Statutes, charters, or bylaws indeed supersede any common law construction of meeting-calling requirements, but where these sources fail to speak, case law takes their place of authority. One example can be found in *Shell v. Conrad*, where the Missouri Court of Appeals determined that a notice was defective by failing to show who was calling the meeting.[232]

Generally, the form, mode, and sufficiency of notice requirements in American frameworks appear to place far greater specificity requirements upon shareholders calling meetings than those in Singapore. For example, notice must "sufficiently apprise" shareholders "of matters to be considered at the meeting."[233] Both American and Singapore laws contain the "material fact" requirement,[234] that is, the requirement that any "material fact" be included in the meeting notice. While the term "material fact" can often be

[225] Companies Act, *supra* note 19, § 175(4).
[226] *See* Section II(a)(i), "Calling Meetings."
[227] *Compare* Companies Act, *supra* note 19, § 176(1) *with* MODEL BUS. CORP. ACT, *supra* note 21, § 7.02(a)(2).
[228] Companies Act, *supra* note 19, § 176 (1).
[229] MODEL BUS. CORP. ACT, *supra* note 21, § 7.02(a)(2). Note, however, that the MBCA is *not* binding on state laws governing corporate governance, although many MBCA provisions have been adopted in states around the country.
[230] Patentwood Keg Syndicate Ltd v Pearse [1906] WN 164.
[231] In re Mississippi Valley Utilities Corporation, 2 F. Supp. 995 (D. Del. 1933).
[232] Shell v. Conrad, 153 S.W.2d 384 (Mo. Ct. App. 1941).
[233] FLETCHER, *supra* note 33, § 2008, "Form, mode and sufficiency of notice—In General."
[234] *Compare* Zirn v. VLI Corp., 621 A.2d 773, 778-79 (Del. 1993) *with* HICKS, *supra* note 123, at [177/9].

determined under a fact-specific analysis, the requirement generally is understood in Singaporean law as asking whether a member had a "fair warning" of what was to be discussed at the meeting.[235] Notwithstanding the similarity just noted, several additional requirements exist for calling meetings under American legal frameworks:

(1) The notice of a corporate meeting must be personal, unless otherwise provided for under the charter or bylaws;[236]
(2) Authorized notice by mail must be mailed to a correct and sufficient mailing address;[237]
(3) The time and place of the meeting called for must be specified in the notice.[238]

In Singaporean law, for example, not giving notice can be "prima facie" evidence of the meeting's invalidation.[239] Under American law, a decision made during a shareholder meeting is invalid if absent shareholders have not received notice of the meeting.[240]

It seems that one potential contribution that the "calling meetings" mechanisms play in providing greater protections to minority shareholders comes in the form of a *lack* of extensive procedural requirements. Whereas it is arguable that, in the United States, a shareholder lacking sufficient funds to send sufficient mailing materials or coordinate sufficient details in the calling of a meeting has simply convened an invalid meeting, those in Singapore are not similarly required to provide such detail likely arrived at via said coordination. Due to the less stringent procedural requirements provided under the Singapore Companies Act, minority shareholders are arguably much more capable of procuring the necessary content for a meeting to be called. Being able to call a meeting is, in nearly all instances, a vital part of a minority shareholder protecting their rights. Without a shareholder meeting, there is no forum for a minority shareholder to present views contrary to the majority, thus protecting the minority's right to be heard and perhaps even affecting change in the company's decision-making process.

The United States should adopt some of Singapore's less stringent procedural requirements to provide greater minority shareholder protection. While a high level of procedural detail can give more structure to and improve the shareholder proposal process, these improvements are outweighed by the

[235] Tiessen v Henderson [1899] 1 Ch 861.
[236] *See generally supra* note 123; *see also, e.g.*, Stow v. Wyse, 7 Conn. 214, 219 (1828).
[237] *See generally supra* note 123; *see also, e.g.*, Merrion v. Scorup-Somerville Cattle Co., 134 F.2d 473, 476 (10th Cir. 1943).
[238] *See generally supra* note 123; *see also, e.g.*, Hill International, Inc. v. Opportunity Partners, L.P., 119 A.3d 30, 39-41 (Del. 2015).
[239] Young v Ladies' Imperial Club Ltd [1920] 2 KB 523.
[240] *See generally supra* note 123; *see also* Ray Townsend Farms, Inc. v. Smith, 207 S.W.3d 557, 565 (Ark. Ct. App. 2005).

financial and other related hurdles created by the American procedural framework.

C. VOTING

The underlying belief in Singaporean and American systems that the contractual relationship created between shareholders and the company generally does not allow minority shareholders (or members) unlimited rights of protection from "oppression" is essentially unarguable.[241] However, these general operating principles are subject to their own sets of caveats. As Hicks and Woon note in their comments to section 216 of the Singapore Companies Act, protection of minority shareholders is employed in cases of "oppression" of the minority or the "disregard" of the minority's interests.[242] This, generally speaking, means a "visible departure from the standards of fair dealing and a violation of the conditions of fair play on which every member is entitled to rely."[243] It is difficult to say that American case law views minority shareholders in the same light. For example, the court in *Hall v. John S. Isaacs & Sons Farms*[244] makes no mention of the right of minority shareholders against the disregarding of their interests by the minority. On the contrary, the *Re Kong Thai Sawmill* court recognizes that very right.[245]

D. FILING A LAWSUIT: DERIVATIVE PROCEEDINGS

As discussed above in section II, members in Singapore may assert derivative-like proceedings against those holding "dominant power"[246] in a corporation for acts designed by controlling members to advance their own interests.[247] Mismanagement will not suffice as oppression or disregard of member interests to meet the bar necessary to satisfy the requirements for filing suit.[248] What is interesting in comparing Singaporean and American law surrounding the filing of a derivative suit is the presence of the *Foss v Harbottle* rule in Singapore. As a brief reminder, this rule states that the company itself is the proper plaintiff in a suit to enforce the company's right.[249] In *Prudential Assurance Co Ltd v Newman Industries Ltd*, members were found not to have the ability to sue on behalf of the company since the company was considered separate from its members.[250] This would be strange

[241] *See* HICKS & WOON, *supra* note 123, at [216/4]; McDonald v. Dalheim, 683 N.E.2d 447; *supra* note 33.
[242] *See* HICKS & WOON, *supra* note 123, at [216/6].
[243] *Id.*
[244] Hall v. John S. Isaacs & Sons Farms, Inc., 146 A.2d 602 (Del. Ch. 1958).
[245] Re Kong Thai Sawmill (Miri) Sdn. Bhd. [1978] 2 MLJ 227, 229.
[246] *Supra* note 123.
[247] HICKS & WOON, *supra* note 123, at [216/8(5)].
[248] *Supra* note 123.
[249] *Supra* note 140.
[250] *Id.*

considering the already-set-forth ranking of Singapore as it pertains to minority shareholder protections were it not for the following exceptions to the general proper plaintiff rule:

(1) If the harm alleged is an injury to a member personally, there may be room for the shareholder to bring suit.[251]
(2) If there is fraud on the minority by those controlling the corporation, a member in the minority may bring an action on the company's behalf.[252]

Fraud is understood not only via a common law definition but also in the equitable sense.[253] This equitable right to enforce fraud actions is immensely important for creating a shareholder's right to sue in Singapore.

Like Singapore's Companies Act, the MBCA requires shareholders to have been shareholders at the time of the alleged act in dispute.[254] This is known in American Corporate law as the "contemporaneous ownership" rule.[255] Both frameworks also include the "continuing ownership" rule, which requires one to still own shares throughout the action's pendency.[256]

The *Scottish Co-operative Wholesale Society Ltd v. Meyer* ruling and its implications are notable in the Singapore system. There, the court held that members could bring suit for dominant members pursuing a course of conduct "designed by them [the dominant members] to advance their own interests or the interests of others of their choice to the detriment of the company or the detriment of the other shareholders."[257] This ruling creates a valuable cause of action for a plaintiff operating under Singapore's governance scheme. American corporate governance does not create such a cause of action.

E. DIRECTOR/OFFICER LIABILITY

In Singapore, in addition to the requirement that there must be particularized alleged lapses in judgment, the section clarifies that directors must act "honestly" and "use reasonable diligence."[258] Hicks & Woon state the honesty standard as such:

> [T]he section is concerned with honesty to the company and not to creditors or others. It requires a director to perform his fiduciary duties, and to act bona fide in the interests of the company in performing his functions as a director. An act

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[251] *See, e.g.,* Pender v Lushington, *supra* note 161.
[252] *Supra* note 148.
[253] Re Kong Thai Sawmill (Miri) Sdn Bhd [1978] 2 MLJ 227.
[254] *Compare* DAMGAARD & SÁNCHEZ-MUŃOZ, *supra* note 18, at § 7.41, *with* Re Kong Thai Sawmills, *supra* note 144.
[255] *See, e.g.,* In re Facebook, Inc., Initial Public Offering Derivative Litigation, 797 F.3d 148, 160 (2d Cir. 2015) (applying California law).
[256] *See, e.g.*, Quinn v. Anvil Corp., 620 F.3d 1005 (9th Cir. 2010).
[257] HICKS & WOON, *supra* note 123, at [216/8](5).
[258] *See* Byrne v Baker [1964] VR 443; *see also* Companies Act, *supra* note 19, § 157.

> done deliberately disregarding knowledge that it is not in the company's interests is not done bona fide.[259]

In addition, Hicks and Woon explain the "reasonable diligence" section in that it "appears that reasonable diligence at all times does not necessarily require a director to give continuous attention to the company's affairs."[260]

In the United States, the MBCA covers standards of conduct for directors in section 8.30.[261] The relevant provision of that section is as follows: "[e]ach member of the board of directors, when discharging the duties of a director, shall act: (i) in good faith, and (ii) in a manner the director reasonably believes to be in the best interests of the corporation."[262] The official comments state that the phrase "reasonably believes" is "both subjective and objective in character."[263]

The "subjective and objective" standard that attaches to the reasonable belief requirement in MBCA § 8.30 affords directors operating under the United States system of governance arguably more protection under the law than their counterparts operating under Singapore's system. While continuous attention to the company's affairs is not required of a director under Singapore's system, directors must adhere to the standard of honesty, as mentioned in cases like *Marchesi*. "Honesty" is arguably a higher standard of conduct to hold a director to than the "subjective and objective" requirement imposed by the MBCA. Suppose the United States were even to slightly alter its director behavior requirements to a standard closer to Singapore's version. In that case, minority shareholder protection may be boosted without disincentivizing directors to act.

IV. CONCLUSION

As noted in the introduction, increased minority shareholder protections can further that minority's interests at the corporate governance level. Corporate governance tools such as calling meetings, utilizing shareholder votes, filing a derivative suit, or stating a viable cause of action against a director are all ways shareholders assert their rights. In Singapore, in comparison to the United States, the rights available to minority shareholders are arguably more substantive. That is, the rules in Singapore allow a minority shareholder to assert their rights more effectively than in the United States. With this increased ability of rights enforcement comes greater

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[259] HICKS & WOON, *supra* note 123, at [157/6]; *see also* Marchesi v Barnes [1970] VR 434.
[260] HICKS & WOON, *supra* note 123, at [157/7]; *see also* Byrne v Baker [1964] VR 443.
[261] MODEL BUS. CORP. ACT, *supra* note 21, § 8.30.
[262] *Id.*
[263] *Id.* at Comment to 8.30(a).

empowerment. Furthermore, greater minority shareholder empowerment means a leveling of the playing field.

Such a leveling of the playing field is positive for society. As noted in the introduction, ESG-related goals have become increasingly important in corporate governance. Corporations have increasingly been noted for their negative impacts on the environment. This negative environmental impact, coupled with majority shareholder interests in profits, results in a governance scheme unable to respond most effectively to environmental and other social concerns.

Studying Singapore's system of minority shareholder protection provides lessons or, at the very least, food for thought when rethinking our American system. For example, scrutinizing whether our more rigorous procedural guidelines governing calling meetings is a good or bad rule for our system is an important exercise. The United States strives for the absolute best in all areas of economic development. In many areas, the United States is one of the strongest economies in the world. This makes scrutiny of the American minority shareholder protection scheme all the more vital.