IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

OPPORTUNITY PARTNERS L.P.,	)	
	)	
Petitioner,	)	
	)	
v.	)	Civil Action No. 4340-VCP
	)	
TRANSTECH SERVICE PARTNERS INC.,	)	
	)	
Respondent.	)	

MEMORANDUM OPINION

Submitted: April 8, 2009
Decided: April 14, 2009

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PARSONS, Vice Chancellor.

Petitioner brought this action, pursuant to 8 *Del. C.* § 211, to compel an annual stockholder meeting of a so-called "blank check vehicle" that goes by the name TransTech Service Partners, Inc. ("TransTech" or the "Company").[1] Currently, Petitioner, Opportunity Partners L.P., is a record holder of 100 shares of Company stock and the beneficial owner of 85,400 shares held in street name. Petitioner seeks to compel the annual meeting to elect directors, according to the procedure contained in § 211 for aggrieved stockholders of a company that has not had an annual meeting or action by stockholder consent in lieu of such a meeting for more than thirteen months.

The Company contests Petitioner's standing and also urges the Court to deny the request for a stockholder meeting based on Petitioner's "questionable goals." In the event I do compel a meeting, however, the Company asks the Court to schedule the annual meeting for a date in late June or, at least, after the stockholders vote on the consummation of a pending business combination at a special meeting the directors intend to call soon. The directors preliminarily have scheduled the special meeting for May 23, 2009.

The parties submitted this matter on a paper record and presented their oral arguments on April 8, 2009. For the reasons stated in this memorandum opinion, I grant Petitioner's request and order the Company to hold an annual meeting to elect directors within sixty days of April 9, 2009, the date I orally delivered this ruling -- *i.e.*, by June 8, 2009.

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[1] Another name for a "blank check vehicle" is a "SPAC," or special purpose acquisition company. *See* http://www.transtechservicespartners.com/.

I. BACKGROUND

TransTech was formed as a corporation under the laws of the State of Delaware on August 16, 2006.[2] As a "blank check vehicle," TransTech did not own any operating assets when it completed its initial public offering of stock. Instead, TransTech issued shares to the public nearly two years ago on the basis that it would use the net proceeds of the offering to engage in a merger, asset acquisition, or other business combination with one or more operating companies (a "qualified business combination").[3] In keeping with the corporation's special purpose, the Company's certificate of incorporation contains specialized rules-of-the-game, including a conditionally short lifespan and a rather intricate system for voting on business combinations. No such business combination has yet taken place, but one currently is proposed.

The Company's Charter calls for the net proceeds from the IPO to be held in trust for benefit of the stockholders, pending a qualified business combination or dissolution.[4] Per the Charter, the nonoccurrence of a qualified business combination within a certain

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[2] *See* DX 13. Although TransTech filed its Preliminary Proxy Statement ("Preliminary Proxy") with the SEC on April 6, 2009, it waited until three hours before the trial on April 8, 2009 to provide a copy to the Court. The first mention of this lawsuit in the 117-page Preliminary Proxy appears on page 98.

[3] TransTech filed its Form S-1 for the IPO with the SEC on May 16, 2007. *See* DX 2.

[4] Third Amended and Restated Certificate of Incorporation of TransTech Services Partners, Inc. (the "Certificate" or the "Charter"), contained in DX 3, Art. FIFTH(A).

period of time leads to prompt dissolution and an orderly distribution of the trust's corpus back to the stockholders. Specifically, the Certificate of Incorporation provides:

> In the event the Corporation does not consummate a Business Combination by the later of (i) 18 months after the consummation of the IPO or (ii) 24 months after the consummation of the IPO, in the event that either a letter of intent, an agreement in principle or a definitive agreement to complete a Business Combination was executed but was not consummated within such 18-month period (such later date being referred to as the "Termination Date"), the directors and officers of the Corporation shall take all such action as necessary to dissolve the Corporation and liquidate the Trust Fund to holders of IPO Shares as soon as reasonably practicable, and after approval of the Corporation's stockholders and subject to the requirements of the [Delaware General Corporation Law ("DGCL")], including adoption of a resolution by the Board prior to such Termination Date . . . .[5]

By the Company's calculation, the Termination Date is May 23, 2009, because the time for completing a qualified business combination was extended from eighteen- to twenty-four months from the IPO. There is no dispute that within the first eighteen months after the IPO the Company signed a letter of intent with Active Response Group ("ARG"). According to the Company, the execution of the ARG letter of intent enabled TransTech to extend the period to consummate a business combination to twenty-four months.

On March 25, 2009, within the eighteen- to twenty-four-month window, the Company announced the ARG deal had fallen through. On the same day, though, TransTech also announced that it had entered into a binding letter of commitment with an

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[5] *See id.* Art. FIFTH. Amending the Certificate's THIRD and FIFTH articles requires a vote of 95% of the stockholders. *See id.* Arts. THIRD, FIFTH.

Indian steel company called Global Hi-Tech Industries Limited ("GHIL").[6] Nevertheless, the Company has not yet consummated the GHIL deal; rather, it has preliminarily scheduled a special meeting of stockholders to vote on the proposed business combination for May 23, 2009 or earlier. The Company does not propose to elect directors at this special meeting, but does intend to ask the stockholders to vote on several other matters not strictly related to a vote on the consummation of the GHIL deal.[7]

Most of the details of the GHIL deal are not pertinent to this § 211 action, but the mechanism for voting on the transaction is relevant. The Charter provides:

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6 Petitioner maintains that by entering into the GHIL deal TransTech violated the Charter, because the six-month extension is valid only if the business combination that was signed up in the first eighteen months is the same business combination that is sought to be consummated in the eighteen- to twenty-four-month window. The Company counters that the more reasonable reading of the Charter is that when *any* letter of intent is signed and effective at the end of the first eighteen months, the Termination Date is extended, regardless of whether the business combination the Company ultimately seeks to consummate during the eighteen- to twenty-four-month window stems from that same letter of intent. Based on a cursory review of the relevant provisions of the Charter, both sides' arguments appear to be colorable. As the parties acknowledged at trial, however, the issue of whether the proposed business combination violates the Charter is outside the scope of this § 211 action.

7 The Preliminary Proxy addresses six proposals up for stockholder vote: (i) a proposal to acquire a controlling stake in GHIL; (ii) a proposal to amend the certificate of incorporation to remove certain provisions applicable to TransTech's status as a "blank check vehicle"; (iii) a proposal to change the name of the Company upon consummation of the GHIL deal; (iv) a proposal to continue the Company's existence if the GHIL deal is not approved; (v) a proposal to liquidate in the event the GHIL deal or the proposal to continue TransTech's existence is not approved; and (vi) a proposal to adjourn the special meeting to a later date to permit further solicitation of proxies in the event any other proposal, besides the name change, is not approved. *See* DX 13 at 1.

> Prior to the consummation of any Business Combination, the Corporation shall submit such Business Combination to its stockholders for approval regardless of whether the Business Combination is of a type which normally would require such stockholder approval under the [DGCL]. In the event the holders of a majority of the IPO Shares (defined below) cast their respective votes at the meeting to approve the Business Combination, the Corporation shall be authorized to consummate the Business Transaction; provided that the Corporation shall not consummate such Business Combination if holders of 20% or more in interest of the IPO Shares exercise their conversion rights described in paragraph (C) . . . .[8]

Article FIFTH(C) of the Charter describes the conversion rights as follows:

> In the event that a Business Combination is approved in accordance with the above paragraph (B) and is consummated by the Corporation, any stockholder of the Corporation holding shares of Common Stock issued in the IPO ("*IPO Shares*") who voted against such Business Combination may, contemporaneously with such vote, demand that the Corporation convert such Stockholder's IPO Shares into cash. If so demanded, the Corporation shall, promptly after consummation of the Business Combination, convert such shares into cash at a per share conversion price equal to the quotient determined by dividing (1) the amount of the Trust Fund [inclusive of interest but exclusive of taxes and other fees specified in the Registration Statement] calculated as of two business days prior to the consummation of the Business Combination, by (ii) the total number of IPO Shares.

These two charter provisions create multiple contingencies. If either the holders of 20% or more of the IPO Shares vote against the business combination and exercise their conversion rights, or less than 50% of the IPO Shares vote for the business combination, the business combination will not be consummated. Further, the shareholders who elect

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[8] Certificate Art. FIFTH(B).

to exercise their conversion rights will not be cashed-out pursuant to the conversion right, unless holders of less than 20% of the IPO Shares demand their conversion rights and the deal is consummated.

Petitioner also claims that the directors of TransTech are conflicted in two relevant ways. First, certain directors' incentives in consummating a business combination diverge from the stockholders' interests, because these directors' interests in TransTech stock and warrants will be rendered worthless in the event a business combination is not consummated. None of these insiders will have a right to receive any distribution from the funds held in the trust account upon dissolution and liquidation. Thus, according to Petitioner, these directors have a powerful incentive to consummate a transaction before the Termination Date.[9] Second, if no business combination is consummated by the Termination Date, the directors' incentives in winding up the Company and liquidating are also misaligned with stockholder interests, because two directors and officers "have agreed to personally indemnify the company for certain expenses paid out of the trust account to the extent there are insufficient funds in the account to pay shareholders the $7.88."[10] Petitioner asserts, therefore, that the directors have an incentive to delay the

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[9] Pet'r's Reply Pre-Trial Br. in Supp. of Pet. to Compel Annual Meeting of S'holders at 7.

[10] Pet'r's Op. Pre-Trial Br. in Supp. of Pet. to Compel Annual Meeting of S'holders at 4.

dissolution and liquidation, because interest earned on the trust funds can be used to pay down their indemnity obligations or to pay for other expenses the Company incurs.[11]

II. ANALYSIS

This Court jealously protects the right of a stockholder to seek an order compelling an annual stockholder meeting, provided two conditions are met. Section 211(c) provides, in relevant part:

> If there be a failure to hold the annual meeting or to take action by written consent to elect directors in lieu of an annual meeting . . . for a period of 13 months after the latest to occur of the organization of the corporation, its last annual meeting or the last action by written consent to elect directors in lieu of an annual meeting, the Court of Chancery may summarily order a meeting to be held upon the application of any stockholder or director.

Thus, a prima facie case is made out pursuant to 8 *Del. C.* § 211 when (1) the petitioner is a stockholder, and (2) no meeting has been held for over thirteen months.

According to § 211, "the Court of Chancery *may* summarily order a meeting to be held."[12] Although that section does not mandate such an order, the Delaware Supreme Court has recognized that a stockholder's right to have a meeting to elect directors is "virtually absolute."[13] Moreover, the Supreme Court has held that "[g]iven the importance of an annual meeting of stockholders in the administration of corporate

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[11] *See id.* at 4, 10.

[12] 8 *Del. C.* § 211(c) (emphasis added).

[13] *Saxon Indus., Inc. v. NKFW Partners*, 488 A.2d 1298, 1301 (Del. 1985) (citations omitted).

affairs, 'prompt' relief is essential under § 211."[14] Nonetheless, a stockholder's prima facie case can be defeated by an adequate affirmative defense.[15]

TransTech's counsel admitted at trial that no meeting or action by stockholder consent had occurred in over thirteen months, so the second prong of the prima facie case has been satisfied. There is a dispute, however, about whether Petitioner is a "stockholder," and thus has standing to demand an annual meeting under § 211. In addition, assuming that Petitioner is a stockholder, TransTech argues that Petitioner's "questionable goals" are such that this case qualifies as one of the "rare instance[s] in which relief should be denied to a plaintiff establishing a prima facie case under Section 211(c)."[16] Moreover, the Company argues that if a meeting for the election of directors is compelled, it should be held no earlier than June 30, 2009, rather than on May 23, 2009, to avoid logistical problems and interference with stockholders' ability to vote on the proposed business combination at the anticipated special meeting. I address these arguments in turn.

A. Standing

On February 6, 2009, Petitioner filed its petition to compel an annual meeting. The Company argues that "Section 211(c) required Petitioner to be a 'stockholder' of the

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14 *Coaxial Commc'ns, Inc. v. CAN Fin. Corp.*, 367 A.2d 994, 998 (Del. 1976) (citations omitted).

15 *Saxon*, 488 A.2d at 1301.

16 *See Speiser v. Baker*, 525 A.2d 1001, 1006 (Del. Ch. 1987).

Company at the time it filed its petition."[17] The Company claims that Petitioner admits that it did not become a "stockholder" until March 10, 2009, and so lacked standing to pursue this action.[18]

In response, Petitioner submitted a trading statement which indicates it held 85,500 shares as of January 30, 2009.[19] Like most shares issued by the Company, these shares were held in street name. Additionally, shortly before it filed its petition on February 6, 2009, Petitioner directed its broker to request that TransTech's transfer agent issue a certificate for 100 shares registered on the books of the corporation. According to Petitioner, the registration of such shares typically takes about three days. For reasons apparently unknown to either side, however, it took four separate instructions by the broker and more than a month, until March 10, for the transfer agent to issue a share certificate in this case.[20]

The Company and Petitioner dispute the proper interpretation of the word "stockholder" in § 211. The Company maintains that "stockholder" means stockholder of record; Petitioner contends that it also should be read to include a beneficial owner. Neither side cited any case under § 211 in support of its interpretation of "stockholder." The Company points to 8 *Del. C.* § 220(a)(2), which was revised in 2003 to define

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[17] Resp't's Answering Br. at 10.

[18] *Id.*

[19] PX 1.

[20] *See* DX 1.

"stockholder" as both "a holder of record of stock in a stock corporation, or a person who is the beneficial owner of shares of such stock . . . by a nominee."[21] According to TransTech, the absence of any similar revision to § 211 reflects a legislative intent that the word "stockholder" in § 211 refer only to stockholders of record.[22] Petitioner disputes this reasoning on several grounds.

Although this issue may raise intriguing questions of statutory interpretation, I need not resolve them here. Regardless of who was to blame for the failure to obtain the certificate before Petitioner filed its petition or whether standing under § 211 is limited to record holders, there is no dispute that Petitioner is now a stockholder of record of TransTech. At trial, I granted Petitioner leave to file a supplemental pleading averring that it is a stockholder of record.[23] Petitioner filed such a pleading on April 9, 2009, thereby mooting the Company's standing defense.[24]

B. Questionable Goals

The only other technical precondition for obtaining an Order compelling a meeting of stockholders is that no meeting have occurred for more than thirteen months after the

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21 The amendment to § 220(a)(2) appears in Section 21 of 74 Del. Laws, c. 84, which provides: "This act shall become effective on August 1, 2003."

22 Prior to the 2003 revision, 8 *Del. C.* § 220(a) stated: "As used in this section, 'stockholder' means a stockholder of record of stock in a stock corporation and also a member of a nonstock corporation as reflected on the records of the nonstock corporation."

23 TransTech did not articulate any way in which it would be materially prejudiced by the Court's granting Petitioner leave to supplement its petition as indicated.

24 Supplement to Pet. to Compel Annual Meeting of S'holders, filed Apr. 9, 2009.

later of the organization of the corporation, the last shareholder meeting, or action by shareholder consent in lieu of such a meeting. The Company conceded at trial that there has been no such meeting or action by consent for over thirteen months. Nevertheless, the Company maintains that no annual meeting should take place before the vote on the GHIL deal, which is slated for a vote on or before May 23, 2009. Moreover, according to the Company, no annual meeting should be scheduled before late June of this year.

Having considered TransTech's arguments for delaying the annual meeting until the end of June, I find its reasons insufficient to overcome the strong presumption articulated by the Supreme Court for a prompt annual meeting. In reaching this conclusion, I note that the Company and its directors bear the responsibility for the significant time constraints under which they are working. In addition, I find that Petitioner acted reasonably promptly in requesting an annual meeting, having first done so in January 2009.

As to the Company's questioning of Petitioner's goals or objectives, the only case TransTech cited that denied a stockholder the right to an annual meeting, *Clabault v. Carribean Select, Inc.*,[25] is plainly distinguishable. There, the petitioner sought under § 211 to revive a bankrupt company with a voided charter that never properly had been dissolved under Delaware law, so that it could engage in a reverse merger with an operating company and thereby "circumvent important registration and disclosure

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[25] 805 A.2d 913 (Del. Ch. 2002), *aff'd*, 846 A.2d 237 (Del. 2003).

elements of the federal securities laws."[26] TransTech has not shown that Petitioner here is pursuing a goal that offends public policy. To the contrary, it appears Petitioner disagrees with the actions of the current directors of the Company and seeks their ouster. That purpose falls comfortably within the scope of § 211.

Absent persuasive equitable considerations to the contrary, Petitioner appears to be entitled to a prompt shareholder meeting, because it has been more than thirteen months since the Company held any kind of stockholder vote. The only question is when to have the meeting relative to the vote on the proposed GHIL transaction: before, contemporaneous with, or after the GHIL vote? Petitioner seeks an annual meeting before or, at least, contemporaneous with the May 23 special meeting at which the stockholders will vote on the GHIL transaction. Measured from the date of my April 9 ruling, that would mean within a period of 44 days or less. The Company wants the annual meeting to be delayed to the end of June or for a period of 82 days. The primary reason is to allow the vote on the proposed business combination to proceed entirely independently of, and separated in time from, the annual meeting to elect directors.

The Company cites a number of cases where this Court has compelled a meeting for somewhere between sixty and ninety days from the date of its order. In response, Petitioner relies on a case that provided for a shorter time frame of 42 days. Specifically, in *Meredith v. Security America Corp.*,[27] this court ordered an annual meeting to occur

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[26] *Id.* at 918.

[27] 1981 WL 7634 (Del. Ch. Nov. 18, 1981).

within forty-two days of the decision, rejecting the company's request to hold the annual meeting after sixty-three days. The circumstances in *Meredith*, however, were materially different from this case in that all parties agreed the company was already "dead for all practical purposes."[28] Here on the other hand, there is a possibility that the shareholders will decide that the GHIL transaction is in their best interests, thus avoiding the demise of TransTech through dissolution and liquidation. Further, the *Meredith* court found that "rapidly developing events [placed the stockholder investments] in grave jeopardy."[29] In this case, Petitioner failed to present any evidence at trial that "grave jeopardy" will result to its or the other stockholders' funds, which are held in trust, if the election of directors occurs shortly after the Termination Date.

Next, the Company maintains that from a practical standpoint, it would be too difficult to prepare the proxy materials necessary to have an annual meeting before May 23, 2009. Based on the complexity of the issues expected to be presented to the stockholders at the special meeting regarding the GHIL transaction, TransTech's argument has some force. No evidence produced by either side, however, convinces me that the necessary proxy materials could not be prepared for an annual meeting within sixty days. Although in some circumstances compliance with SEC rules might be relevant in setting the date of an annual meeting, I find TransTech's argument unpersuasive for a number of reasons. First, the Company signed the GHIL letter of

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[28] *Id.* at *1.

[29] *Id.* at *2.

intent on March 25, 2009 and yet the Company was able to file its Preliminary Proxy on April 6, 2009, less than two weeks later. Similarly, the Company has been on notice since at least early February that Petitioner seeks an annual meeting under § 211. Accordingly, the fact that a court might compel such a meeting on a relatively expedited basis hardly can come as a surprise.

Further, the Company itself is responsible for the time constraints it currently faces regarding the special meeting. TransTech did not sign the letter of intent with GHIL until March 25, 2009. Additionally, the Company elected for its own tactical reasons to include in its proxy materials for the special meeting five additional proposals beyond a bare vote on the acquisition of a controlling interest in GHIL.[30] Consequently,

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[30] Indeed, as explained in the Preliminary Proxy, the voting scheme for the six proposals at the special meeting entails fairly complex contingent and conditional outcomes:

> It is important for you to note that in the event the Acquisition Proposal (Proposal 1) does not receive the necessary vote to approve such proposal, our board of directors will abandon the Name Change Proposal (Proposal 3) notwithstanding authorization thereof by TransTech's stockholders. In addition our Board of Directors will abandon the Amendment Proposal (Proposal 2) only if the Acquisition Proposal (Proposal 1) and the Proposal to Continue Existence (Proposal 4) are both not approved. You should further note that if either [sic] the Acquisition Proposal (Proposal 1) is approved, our board of directors will abandon the Proposal to Liquidate (Proposal 5) notwithstanding authorization thereof by the stockholders of the Company in accordance with Delaware Law.

DX 13 at 19. Similarly, the proposal to continue corporate existence (Proposal 4) seems to be dependent upon the acquisition proposal (Proposal 1) not being

the Court is not overly sympathetic with the Company's argument in its letter dated April 9, 2009 that:

> The addition of alternative director slates, an unusual practice likely to receive considerable SEC scrutiny, to the proxy statement for the Special Meeting quite simply threatens to derail the Special Meeting and therefore the consummation of a business combination for which respondent was created.[31]

There appears to be a real risk, however, that Petitioner could cause delays in the proxy approval process that might derail the GHIL transaction without a stockholder vote. Such activity might impede the maximization of shareholder value and would put the interests of Petitioner ahead of those of the Company and its stakeholders. Conversely, unduly delaying the annual meeting until the end of June to suit TransTech's preference would create comparable risks in the other direction. Balancing these risks in the context of the purpose of § 211 leads me to conclude a separate annual meeting on an intermediate date is appropriate in these circumstances.

Thus, I will order the annual meeting to occur within sixty days from my oral ruling on April 9, 2009, *i.e.*, by June 8, 2009. This sixty-day time period for the annual

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approved, because then "in case the Acquisition Proposal is not approved, TransTech can continue to operate as a shell company." *Id.* at 1.

31 As previously indicated, the Court need not decide for purposes of this § 211 action whether the GHIL combination represents the type of business combination for which this business was created. Petitioner, for one, disputes that proposition. Indeed, the Preliminary Proxy acknowledges that stockholders might be able to seek rescission because the steel company involved in the GHIL transaction is not one of the types of companies contemplated by the IPO Prospectus as a qualified business combination. *See* DX 13 at 3-4. Nevertheless, I express no opinion on that issue.

meeting is consistent with timeframes this Court previously has imposed in terms of ordering an annual meeting.[32]

In my oral ruling, I also ordered the record date for the annual meeting to be set for a date earlier than the special meeting. I imposed this additional requirement to keep the playing field level. As described in note 29, *supra*, the voting at the special meeting will be complex and fairly contingent. Likewise, Petitioner expects the proxy statement for its slate of directors to address many of the same contingencies and conditions. Having a record date for the annual meeting on or after the date of the special meeting would compound those complexities unnecessarily and might unfairly favor the Company and the incumbent directors.

III. CONCLUSION

For the reasons stated, I grant Petitioner's request for an order compelling TransTech to hold an annual meeting and direct that the meeting be held on or before June 8, 2009. In addition, I order TransTech to set the record date for the annual meeting for a date prior to the date of the anticipated special meeting or May 23, 2009, whichever is earlier.

IT IS SO ORDERED.

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[32] *See, e.g., Frank v. Sunstates Corp.*, 1998 WL 326645, at *1 (Del. Ch. June 9, 1998) (ordering a meeting for the election of directors to be held "within 60 days" of the date of the Court's opinion); *Shay v. Morlan Int'l, Inc.*, 1983 WL 21108, at *4 (Del. Ch. July 29, 1983) (ordering a meeting for the election of directors "no later than seventy days from the date of th[e] opinion"); *J.P. Griffin Holding Corp. v. Mediatrics, Inc.*, 1973 WL 651, at *3 (Del. Ch. Feb. 14, 1973) (ordering a meeting for the election of directors "within the next sixty days of the Court's order").