

MARINEMAX INC
Form DEFR14A
February 13, 2015

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of the
Securities Exchange Act of 1934
(Amendment No. 1)

Filed by the Registrant

Filed by a party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Pursuant to §240.14a-12

MarineMax, Inc.

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- x No fee required.
- .. Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.
 - (1) Title of each class of securities to which transaction applies:

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 - (3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

 - (4) Proposed maximum aggregate value of transaction:

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- .. Fee paid previously with preliminary materials.

- .. Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.
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Explanatory Note: This revised Definitive Schedule 14A amends only points 1 and 2 of the comparison of certain provisions in the Florida law, the Florida Articles, the Florida Bylaws, the Delaware law, the Delaware Certificate and the Delaware Bylaws, contained on page 40 of the Reincorporation of Our Company from Delaware to Florida section of the Definitive Schedule 14A filed on January 12, 2015 (the Original Proxy Statement). All other portions of the Original Proxy Statement (including the Appendices) remain unchanged.

Provisions Applicable to MarineMax Delaware Before the

Reincorporation Under the DGCL, the Delaware Certificate and

Delaware Bylaws

1. *Bylaw Amendments.* The DGCL provides that the stockholders and, if provided by the certificate of incorporation, the board of directors, are entitled to amend or repeal the bylaws.

The Delaware Certificate permits the amendment of the Delaware Bylaws by either: (i) the board of directors or (ii) the stockholders by the affirmative vote of the holders of at least sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the combined voting power of the issued and outstanding shares of voting stock, voting together as a single class.

2. *Amendment of Certificate of Incorporation.* The DGCL, in general, provides that an amendment to the certificate of incorporation may be made if first proposed by the directors and then approved by the holders of a majority of the shares entitled to vote. To the extent the approval of any class of stock is required, such approval must also be obtained.

The Delaware Certificate provides that any amendment or repeal of any provision of the Delaware Certificate must be approved by at least a majority of the then serving directors and by the affirmative vote of the holders of at least a majority of the combined voting power of the issued and outstanding shares of voting stock, voting together as a single class; provided, however, that if any such change relates to certain articles as stated in the Delaware Certificate, such change must also be approved by the affirmative vote of the holders of at least sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the combined voting power of the issued and outstanding shares of voting stock, voting together as a single class.

Provisions Applicable to MarineMax Florida After the

Reincorporation Under the FBCA, the Florida Articles and

Florida Bylaws

1. *Bylaw Amendments.* The FBCA provides that the board of directors may amend or repeal the bylaws unless such power is reserved to the shareholders by the articles of incorporation or by a particular bylaw provision, or by specific action of the shareholders.

The Florida Articles permit the amendment of the Florida Bylaws by either: (i) the board of directors or (ii) the shareholders by the affirmative vote of the holders of at least sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the combined voting power of the issued and outstanding shares of voting stock, voting together as a single class.

2. *Amendment of Articles of Incorporation.* The FBCA, in general, provides that an amendment to the articles of incorporation may be made if first proposed by the directors and then approved by holders of a majority of the shares entitled to vote. To the extent the approval of any class of stock is required, such approval must also be obtained.

The Florida Articles provide that any amendment or repeal of any provision of the Florida Articles must be approved by at least a majority of the then serving directors and by the affirmative vote of the holders of at least a majority of the combined voting power of the issued and outstanding shares of voting stock, voting together as a single class; provided, however, that if any such change relates to certain articles as stated in the Florida Articles, such change must also be approved by the affirmative vote of at least sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the combined voting power of the issued and outstanding

shares of voting stock, voting together as a single class.