

June 2, 2000

**PROPOSED AMENDMENTS TO THE  
DELAWARE GENERAL CORPORATION LAW**

On May 18, 2000, S.B. 363 was introduced in the Delaware General Assembly. The Bill proposes a number of significant changes to the Delaware General Corporation Law. If passed, the amendments will become effective on July 1st.

The majority of the proposed amendments will enable Delaware corporations to take advantage of recent advances in communications technology. The Bill contains several other provisions, including an amendment that would permit corporations to renounce, in advance, their interest or expectancy in corporate opportunities.

**Technology Amendments**

Although the technology related amendments do not require changes to a corporation's organizational documents, corporate counsel may wish to review the corporation's charter and by-laws to ensure that they do not restrict the corporation's ability to take advantage of the technology amendments. In particular, provisions addressing meetings, written consent and notice should be reviewed carefully.

*Stockholder Meetings.* The new amendments give directors the power to authorize stockholders who are not physically present at a meeting to participate therein and to be deemed to be present and to vote at the meeting "by means of remote communication." The amendments further provide that directors may determine that a meeting is to be held solely by such means, without any physical location. The statute establishes certain standards for verification, participation and recordkeeping. The amendments also provide that any requirement that directors be elected by written ballot may be satisfied by an electronic transmission.

In addition, the longstanding requirement that the corporation make available a stock list during the ten days prior to a stockholder meeting will be amended to require that the list be made available either at the principal place of business of the corporation or by posting on an electronic network.

*Director Action.* The Bill proposes amending Section 141 of the DGCL to provide that director action by unanimous consent, which currently must be in writing, may be taken by electronic transmission. The term "electronic transmission" is defined to include forms of communication that (i) do not involve the physical transmission of paper, (ii) create a record and (iii) may be automatically reproduced in paper form. A good example is e-mail.

*Stockholder Action by Written Consent.* The Bill proposes an important change for corporations that have not eliminated the stockholders' right to act by written consent. Currently the written consent requirement can only be satisfied by the delivery of written consents to a corporation's registered agent in Delaware, its principal place of business or the corporate officer who has charge of the corporation's minute books. The Bill permits consents by electronic transmission; however, unless the board otherwise provides, an electronic consent must be reproduced in paper form and then delivered. Thus, for example, a stockholder may consent to corporate action by sending an e-mail to a proxy solicitor, but generally that e-mail must be printed out before it is actually delivered.

*Notice.* The amendments would also expressly permit the electronic delivery of notice to a stockholder if the stockholder has consented to delivery of notice in such form. The amendments set forth a number of rules as to when notice by electronic transmission will be deemed given and when consent to such delivery will be deemed revoked. The amendments also permit electronic waivers of notice.

### **Corporate Opportunity**

The Bill includes a proposed amendment that expressly empowers a corporation to renounce, either in its certificate of incorporation or by action of its directors, an interest or expectancy that the corporation might have in, or in being offered an opportunity to participate in, a specified business opportunity, including specified classes or categories of business opportunities that may be presented to the corporation or to one or more of its officers, directors or stockholders. This provision is intended to clarify that a corporation may, by prior arrangement, permit fiduciaries, such as directors, officers or controlling stockholders, to pursue business opportunities in which the corporation itself might have an interest, without first offering those opportunities to the corporation.

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