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STATE CORNER

2008 Amendments to the General Corporation Law of the State of Delaware

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Legislation amending the General Corporation Law of the State of Delaware (the DGCL) has been adopted by the Delaware General Assembly and was signed by the Governor of the State of Delaware on June 26, 2008. The DGCL amendments became effective upon signing by the Governor. The DGCL amendments are designed to keep Delaware law current and address issues raised by practitioners, the judiciary and legislators with respect to the current language or interpretation of the DGCL. The 2008 amendments to the DGCL are discussed below. Also discussed below is a new policy, effective January 1, 2008, adopted by the Secretary of State of the State of Delaware in connection with the effectiveness of the 2006 amendments to Chapter 5 of Title 8 of the Delaware Code relating to franchise taxes and annual franchise tax reports.

Amendments to the DGCL

List of Stockholders

Section 219(a) of the DGCL provides that the officer of a Delaware corporation that has charge of the

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stock ledger of the corporation shall prepare, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting. The list of stockholders is required to set forth the address of each stockholder and the number of shares registered in the name of each stockholder. Section 219(a) also specifies where the list of stockholders must be kept and who may “inspect” or “examine” the list. Prior to the effectiveness of the DGCL amendments, in the event of a willful neglect or refusal of the directors to produce the list of stockholders at any meeting for the election of directors held at a place, or open such list to examination on a reasonably accessible network during a meeting for the election of directors solely held by means of electronic communication, Section 219(b) provided that those directors were ineligible for election to any office at such meeting.

Section 219(a) has been amended to replace the word “inspected” with the word “examined” in order to remove any suggestion that such words were intentionally distinct. Section 219(b) also has been amended to remove the concept of “willful neglect” and to provide that the corporation shall have the burden of proof to establish that the examination sought by the stockholder is not germane to the meeting. Finally, Section 219(b) has been amended to remove the single sanction of ineligibility to stand for election and to grant the Court of Chancery broad authority to fashion appropriate relief.

Contested Election of Directors

Section 225(b) of the DGCL provides a method whereby the stockholders or members, as applicable,

of a Delaware corporation may apply to the Court of Chancery of the State of Delaware to determine the results of a vote of stockholders or members, as applicable, on matters other than the election of directors, officers, or members of the governing body. Section 225(b) has been amended to include the corporation itself as a permissible applicant in an action brought under that subsection.

Annual Franchise Tax Reports

On January 1, 2008, the 2006 amendments to Sections 502 and 510 of Chapter 5 of Title 8 of the Delaware Code relating to corporate franchise taxes became effective. As amended, Sections 502 and 510 require all Delaware corporations to file

“completed” annual franchise tax reports on or before the 1st day of March of each year. As a result of the amendments to Sections 502 and 510, starting January 1, 2008, the Secretary of State requires all Delaware corporations to file a completed annual franchise tax report in connection with filings made with the Secretary of State that would end such corporation’s corporate existence. These filings include certificates of merger, certificates of dissolution, and certificates of conversion. A Delaware corporation that is renewing its existence also must file all applicable annual franchise tax reports. Practitioners should be aware of this new policy and make sure their clients are prepared to file a completed annual franchise tax report with such filings.

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