

Recent Developments in Delaware Corporate Law: The “Technology Amendments” to the Delaware General Corporate Law

Edward P. Welch and Patricia Moran Chuff

The Delaware Legislature has adopted certain amendments (the “Technology Amendments”) to the Delaware General Corporation Law (the “DGCL”) which are effective July 1, 2000. The Technology Amendments are designed to enable Delaware corporations to take advantage of technological advances in the conduct of corporate affairs by facilitating the use of modern technologies in numerous areas of corporate governance, including stockholder communications, the conduct of stockholder meetings and Board proceedings. The Technology Amendments are enabling in nature; they do not mandate the use of any particular technology. Rather, they provide flexibility to Delaware corporations to take advantage of technological advances if their Boards of Directors determine that it is appropriate to do so.

The most significant changes implemented by the Technology Amendments relate to:

- the conduct of stockholder meetings solely by means of electronic communications (i.e. without a physical meeting site);
- the ability of stockholders to be deemed physically present, and to vote by ballot, at stockholder meetings when participating electronically;
- the delivery of notices to stockholders by electronic means;
- the delivery of director and stockholder consents by electronic means; and
- the maintenance of a stockholder list on an electronic network.

Specifically, the principal changes resulting from the Technology Amendments are as follows:

Terminology. The Technology Amendments include two new terms that are used throughout the amended statute. A new section, Section 232, defines “electronic transmission” and addresses various issues relating to notice by electronic transmission. The term “electronic transmission” means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved

and reviewed by a recipient and may automatically be reproduced in paper form. Thus, for example, electronic transmission would include fax and e-mail communications, but, presumably, not voicemail messages since they cannot automatically be reproduced in paper form. A second new term, "remote communication," was not defined, as its meaning was considered self-evident. The concept of remote communication is intended to be broader electronic transmission, presumably encompassing all forms of communication between parties in different locations.

Stockholder Meetings. Section 211 was amended to allow stockholder meetings to be held entirely by remote communication, without a venue for physical attendance, if so determined by the board of directors. In addition, Section 211 was amended to authorize stockholder participation and presence by remote communication, and voting by remote communication, if so determined by the board of directors and if the corporation implements certain procedures and complies with certain requirements set forth in the statute. Section 211 further permits the submission of ballots by electronic transmission.

Notices. New Section 232 provides that any notice by the corporation to a stockholder by a form of electronic transmission is effective if the stockholder has consented to the corporation giving notice by that particular form of electronic transmission. Section 232 also provides that a stockholder may revoke such consent by written notice to the corporation.

Stockholder Action by Consent. Section 228 was amended to permit the use of electronically transmitted consents and to align the section with Section 212(c), governing electronic proxies. Section 228 also was amended to address the circumstances in which an electronically transmitted consent is deemed to be in writing, dated, and signed by the stockholder, and delivered to the corporation.

Actions by Directors. Section 141 was amended to permit director resignations and actions by consent to be submitted or taken by electronic transmission.

Stockholder Lists. Section 219 was amended to eliminate the requirement that a list of stockholders be available either at a place within the city where the meeting is to be held or at the place of the meeting for 10 days prior to the meeting, and to substitute a requirement that the list either be made available on an electronic network or at the corporation's principal place of business. Section 219 was further amended to provide that, in the case of a meeting of stockholders held without a physical location, the list must be made available during the meeting on an electronic network.

Conforming Changes. A number of conforming changes also were made to the DGCL, including changes to: (i) Section 222, relating to notice of stockholder meetings,

(ii) Section 224, relating to corporate records, (iii) Section 229, relating to waivers of notice, (iv) Section 230, relating to exceptions to notice requirements and (v) Section 231, relating to materials on which inspectors of election may rely in tabulating stockholder votes.

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The above is intended to provide a general overview of the Technology Amendments. Copies of the amendments and accompanying Legislative Synopsis are available on-line at <http://www.corporate-law.widener.edu/>. For additional information, please call your usual Skadden, Arps contact person or Edward P. Welch in the Wilmington office at (302) 651-3060 or Patricia Moran Chuff in the Wilmington office at (302) 651-3130.

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