

March 7, 2008

**Enhancing Disclosure in Advance Notice Bylaw Provisions**

Over the past 15 or more years, advance notice provisions have become widespread in American public company bylaws. Advance notice provisions require a stockholder intending to propose a nominee for election as a director or new business at a meeting of stockholders to notify the company in advance. We believe that Maryland is the only state with a statute specifically validating advance notice provisions. The Maryland General Corporation Law authorizes the charter or bylaws of a Maryland corporation to require any stockholder proposing a nominee for director or any other matter for consideration at a meeting of the stockholders to provide advance notice to the corporation of the nomination or proposal not later than a time specified in the charter or bylaws. The Maryland REIT Law also authorizes the declaration of trust or bylaws of a Maryland real estate investment trust to contain the same requirements. Maryland courts and the courts of other jurisdictions, including Delaware, have upheld advance notice provisions in public company bylaws. In the course of advising clients on the drafting of advance notice bylaw provisions to take full advantage of the Maryland statute, we have gradually expanded the information that we recommend that bylaw provisions require a proponent to disclose.

In the past few years, our clients have experienced increased activity by stockholder proponents of nominees for director or other proposals, including hedge funds and other investors with substantial stock ownership but minimal economic risk. In response, we have recommended amendments to advance notice bylaws to assist boards of directors in determining and evaluating a stockholder proponent's economic interest in the company. These provisions require a stockholder proponent to disclose, among other items, (a) the extent to which it has entered into any hedging transaction or other arrangement with the effect or intent of mitigating or otherwise managing benefit, loss or risk of share price changes or increasing or decreasing the proponent's voting power in the stock of the company and (b) the proponent's investment strategy or objective and any related disclosure document the proponent has provided to its investors. For several years, we have also recommended requiring disclosure of certain information, now including hedging activities, relating to certain affiliates of the proponent.

We believe that these provisions promote good corporate governance and benefit companies by providing boards with information about whether a stockholder proponent's economic interest in the company is aligned with other stockholders' interests. This is valuable information both for a board to consider in weighing a new business proposal or a proposed nominee for election as a director and for stockholders to consider in deciding whether to vote for or against a proposal or nominee.

We have also advised clients on other enhancements to advance notice bylaws to maximize the availability and benefit of information about a proponent and its proposal or nominee to the board and stockholders. We are glad to discuss any of these enhancements with you.

Jim Hanks  
Carmen Fonda

*This memorandum is provided for information purposes only and is not intended to provide legal advice. Such advice can be provided only after analysis of specific facts and circumstances and consideration of issues that may not be addressed in this document.*