

July 15, 2008

Advance Notice Hedging Provisions Continue to Gain Acceptance

As discussed in our client memos in March and April of this year, we have been recommending that our clients consider amending their advance notice bylaw provisions to require a stockholder proponent of a nominee or other business to disclose the extent to which the stockholder (and certain related persons) has hedged its interest in the company. As reported in yesterday's *Wall Street Journal*, advance notice hedging provisions are moving toward mainstream acceptance, with more than 40 (by our count, 50) public companies formed in Maryland, Delaware and other states adopting these provisions to date.

For a company that holds its annual meeting in the spring, now is an excellent time to consider adopting hedging disclosure requirements for the 2009 annual meeting if, as is typically the case, the advance notice window in the company's bylaws will not open until this fall or winter. In developing and working with this type of provision for nearly two years, we have further refined its scope and other terms.

As stockholder activism is likely to continue to increase, now is also a good time to consider other bylaw amendments, including additional enhancements to advance notice bylaws as well as updates to provisions governing annual meeting dates, special stockholders meetings, duties of inspectors and conduct of stockholders meetings.

As always, we are glad to discuss any of the forgoing matters or any other matters of Maryland corporation law.

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