

July 7, 2006

Delaware Adopts Majority Voting Amendments

The Delaware legislature has adopted amendments to the Delaware General Corporation Law relating to the majority voting standard for the election of directors. Available at [Delaware Amendments](#). The DGCL amendments, which become effective as of August 1, 2006, allow stockholders to adopt amendments to a company's director election by-laws that cannot be amended by the directors and facilitate the adoption of resignation policies relating to director reelection.

The DGCL amendments address concerns that, even if stockholders adopted a by-law requiring a majority vote standard, the board of directors could later amend that by-law and restore plurality voting. While plurality remains the default standard for the election of directors under the DGCL, the amendments provide that any stockholder-adopted by-law specifying the required vote for director election may not be further amended or repealed by the board of directors.

The DGCL amendments also address the trend to adopt director resignation policies, such as the policy first adopted by Pfizer in October 2005 and now in place at over 145 companies and the similar by-law first adopted by Intel in January 2006 and now in place at over 30 companies, under which a director who does not receive a majority of votes is required to tender his or her resignation to the board of directors, which may accept it or reject it. Prior to the DGCL amendments, it was not clear whether this resignation requirement would be enforceable against a director who asserts that fiduciary duties require the director to refuse to resign. The DGCL amendments permit a resignation to be effective only upon the happening of a future event and provide that a resignation conditioned upon a director failing to receive a specified vote for reelection may provide that it is irrevocable.

The DGCL amendments demonstrate the continued momentum of the majority voting movement, and will encourage the adoption of majority voting by-laws. Companies should expect continued significant pressure from institutional investors and shareholder activists on this issue in the next proxy season. We continue to believe that companies should, at a minimum, proactively adopt a corporate governance policy and should also seriously consider adopting a majority voting and director qualification by-law along the lines of the models we attached to our memorandum of June 12, 2006.

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