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Delaware

For generations now, Delaware has been the incorporating jurisdiction of choice for publicly-traded business enterprises. This is no accident. Delaware offers structural advantages no other jurisdiction can match: an enabling corporate statute; a rich body of corporate law; expert judges on the Court of Chancery, always ready to resolve complex business disputes, on an expedited basis when necessary; a Supreme Court available to issue equally prompt definitive rulings on contested matters of business-entity law; a sophisticated corporate bar coupled with a welcoming attitude toward out-of-state practitioners; and a Legislature prepared to consider modifications to the statute in the face of evolving conditions and caselaw. These distinctive advantages of Delaware corporate law remain intact.

In the wake of certain judicial rulings that surprised many practitioners, voices from various quarters have called into question the wisdom of Delaware incorporation. We do not join them. While there is no one-size-fits-all answer to important business judgments, and every company's incorporating decision must be made on its individual merits, we believe Delaware incorporation remains a wise choice for most widely-held business organizations. Delaware remains the gold standard for corporate law in the United States and beyond.

Yesterday, legislation was introduced in the Delaware General Assembly proposing amendments to the Delaware General Corporation Law. These salutary amendments will ensure that Delaware law gives full respect to the good-faith decisions of independent directors and recognizes the primacy of disinterested stockholders when they vote for a transaction. The amendments will also place sensible limits on requests for corporate books and records. Both of these amendments restore conventional rules that have long served Delaware well.

We support these proposed amendments as a step toward restoring confidence in Delaware's corporate law, and as confirmation that Delaware remains able and willing to address the concerns of its corporate constituents as they arise.

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