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Client Alert: Delaware Enacts Major Amendments to its General Corporation Law: New Safe Harbors and Limits on Stockholder Inspection Rights

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On March 25, 2025, Delaware Governor Matt Meyer signed into law significant amendments to the **Delaware General Corporation Law (DGCL)**. The changes—specifically to **Sections 144 and 220**—introduce new **safe harbor protections** for conflict-of-interest transactions and impose new **limits on stockholder inspection rights**. These amendments are designed to reduce litigation, reinforce deference to disinterested corporate decision making, and codify key aspects of Delaware common law.

Key Changes

- New safe harbor provisions for transactions involving **interested directors, officers, and controlling stockholders**
- Clarified definitions for **controlling stockholder, disinterested director**, and other key terms
- Narrowed scope of stockholder access to **corporate books and records**
- Safe harbor protections now **bar equitable relief and monetary damages** if conditions are met
- Amendments apply **retroactively**, with certain **carve-outs**

Safe Harbors for Conflict Transactions: Section 144

1. Transactions Involving Directors and Officers

Under revised **Section 144(a)**, transactions involving interested directors or officers are shielded from challenge if:

- As part of the approval process, full disclosure of all material facts as to the director's or officer's relationship or interest and as to the act or transaction are disclosed or known to all members of the board or board committee; **AND**
- This transaction is approved or recommended in good faith without gross negligence by a **majority of disinterested directors**, either on the board or a committee, even if the disinterested directors are less than a quorum (if the majority of directors are not disinterested with respect to the act or transaction, the act or transaction must be approved by a board committee that consists of two or more disinterested directors); **OR**
- This transaction is approved or ratified in an informed and uncoerced manner by a **majority of votes cast by disinterested stockholders**

If none of these are satisfied, the transaction would need to be "fair as to the corporation and the corporation's stockholders" for the safe harbor to apply, which means it would need to satisfy the entire fairness doctrine

If a majority of the board is not disinterested, approval must come from a **disinterested committee**. The committee of the board need not be comprised entirely of disinterested members.

The amendment significantly strengthens the protection of such transactions by **precluding monetary damages and equitable relief** if safe harbor conditions are met, except in narrow circumstances. Previously, even qualifying transactions could be subject to fiduciary duty claims. Now, compliance with the statutory process offers much stronger protection.

2. Controlling Stockholder Transactions: Section 144(b)

The amendments also provide a statutory safe harbor for transactions involving **controlling stockholders** other than "going private" transactions—a frequent issue in Delaware litigation.

Under revised **Section 144(b)**, transactions involving controlling stockholders in transactions other than "going private" transactions are shielded from challenge if:

- As part of the approval process, full disclosure of all material facts—including those giving rise to the conflict or potential conflict—are disclosed to a special committee that consists of two or more directors, each of whom are disinterested, and approved by a majority of those disinterested directors and does not include the controlling stockholder(s); **AND**
- The act or transaction is approved or ratified by an informed, uncoerced, and affirmative vote of a **majority of the votes cast by the disinterested stockholders**; **OR**
- All material facts regarding the controlling stockholder transaction are disclosed or known to stockholders entitled to vote on the transaction, and the transaction is approved or ratified by a **majority of votes from informed, disinterested, uncoerced stockholders**; **AND**
- The act or transaction is conditioned on the approval or ratification by the disinterested stockholders.

If neither of these is satisfied, the transaction would need to be "fair as to the corporation and the corporation's stockholders" for the safe harbor to apply, which means it would need to satisfy the entire fairness doctrine.

If these safe harbors are met, the transaction **may not be the subject of equitable relief or an award of**

damages against any director, officer, or controlling stockholder by reason of a claim based on a breach of fiduciary duty by a director, officer, or controlling stockholder.

Defining “Controlling Stockholder”

A “controlling stockholder” is now defined as one who:

1. Owns or controls a **majority** of the corporation’s voting power in director elections; **OR**
2. Has the contractual or other authority to elect nominees selected at their discretion that constitute a **majority of the board**; **OR**
3. Holds power functionally equivalent to that of a stockholder who owns or controls a majority of power in director elections through owning at least **one-third** of voting power **and** exercises **managerial control** over the corporation.

This bright-line threshold provides clarity previously absent in case law, where control was often determined by facts and circumstances.

Books and Records Inspections: Section 220

The amendments to **Section 220** significantly narrow the scope of materials stockholders can demand when seeking to inspect corporate books and records.

Presumptive Limitations

Stockholder inspection rights are presumptively limited to:

- **Board and committee meeting minutes**
- **Written board actions**
- **Board presentations**
- **Minutes of stockholder meetings**
- **Communications with stockholders**
- **Director/officer independence questionnaires**
- **Financial statements**

These documents are considered “board-level materials.” Access to any additional records now requires a **compelling need** and **clear and convincing evidence** that the materials are **necessary and essential**.

Additionally, corporations may impose **reasonable conditions** on confidentiality, use, or distribution of books and records, condition the inspection of books and records on a confidentiality agreement between stockholder and corporation, and permit corporations to redact portions of the books and records that are not specifically related to the stockholder’s purpose.

Retroactivity and Transitional Rules

The amendments to Sections 144 and 220 are **retroactive**, applying to all corporate acts and transactions **before, on, or after** March 25, 2025.

However, the new rules **do not apply** to:

- Any court **proceeding pending** as of **February 17, 2025**; **OR**
- Any Section 220 **demand made** on or before February 17, 2025.

Policy Implications

These reforms underscore Delaware's commitment to maintaining a predictable and management-friendly corporate governance framework. By codifying protections for disinterested corporate decision making and narrowing discovery tools available to stockholders, Delaware has made it significantly more difficult to bring fiduciary duty claims absent clear misconduct.

Conclusion

The 2025 amendments to the DGCL represent one of the most significant corporate governance overhauls in recent years. By reinforcing safe harbors and tightening inspection rights, Delaware continues to offer the corporate bar and business community a favorable legal environment that balances accountability with managerial discretion.

For more information or questions, please contact Christa Sullivan or another member of Shumaker's Corporate, Tax & Transactions Service Line.