Proposed Amendments to the Delaware General Corporation Law Concerning Virtual Shareholder Meetings During Emergency Conditions

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As previously discussed in our March 26 advisory titled, “Virtual Shareholder Meetings in the Wake of COVID-19: Legal and Practical Considerations,” the Securities and Exchange Commission issued guidance to public companies on providing notice of a change to a virtual shareholder meeting in the wake of the coronavirus (COVID-19) pandemic. On April 7, Delaware Governor John Carney issued an order that permitted public companies that had already provided notice of in-person shareholder meetings prior to the April 7 order to switch to virtual meetings by complying with the SEC’s guidance. In an effort to provide certainty to Delaware companies complying with the SEC’s guidance that such notice will also comply with the applicable requirements under the Delaware General Corporation Law (DGCL), including Delaware companies that provided notice of their shareholder meetings but after Delaware’s April 7 order, legislation has been proposed that would amend
Section 110 of the DGCL to permit the board of directors of a Delaware public company, during an emergency, to notify shareholders of any postponement or change in the place of a shareholder meeting (including to hold the meeting solely by means of remote communication) solely by a document that is publicly filed by the company with the SEC. As proposed, the legislation would be effective retroactive to January 1 with respect to any emergency condition that occurred on or after such date, and related to any action taken on or after such date, concerning shareholder meetings held during the pendency of the emergency condition.

The full text of the proposed legislation is available here.

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