Davis Polk

Delaware Court Upholds 150-Day Advance Notice Requirement in Proxy Statement

June 9, 2011 | Client Update

The Delaware Chancery Court recently rejected a challenge to an advance notice requirement for shareholder proposals that appeared in the Company's proxy statement, not in its bylaws, and that imposed a deadline of more than 150 days before the meeting. Most Delaware advance notice bylaws require notice 90-120 days prior to the anniversary of the previous year's annual meeting.

In Vermillion, the Court rejected the claim that the advance notice requirement was unreasonable and unduly restrictive, noting that advance notice requirements are "useful in permitting orderly shareholder meetings" and that the board (which was disinterested) had established the deadline on a proverbial 'clear day', well before the plaintiff shareholder appeared to have expressed his dissatisfaction to the Company.

Here is a copy of Vice Chancellor Noble's opinion in Goggin III v. Vermillion, Inc. (C.A. No. 6465-VCN) (Del. Ch. June 3, 2011)

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Phillip R. Mills
+1 212 450 4618
phillip.mills@davispolk.com