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July 28, 2004

**Re: Recent Changes to the Minnesota Business Corporation Act**

Dear Clients and Other Friends:

In May, Governor Pawlenty signed legislation making significant changes to the Minnesota Business Corporation Act ("MBCA"). This legislation became effective on July 1. The following is a summary of some of these changes:

Non-Unanimous Shareholder Consent. Revised Section 302A.441 of the MBCA now permits Minnesota Corporations that are not publicly held, to provide for non-unanimous shareholder consent. Corporations that wish to use this option must either include this provision in the original Articles of Incorporation or add it to the existing Articles by amendment. To protect existing shareholder expectations, an amendment of existing Articles adopting non-unanimous consent must be approved by all shareholders entitled to vote.

Safe Harbor for Asset Sales. Most state corporation statutes have historically required shareholder approval of sales of assets not in the normal course of business comprising "all or substantially all" of the assets of the corporation. The definition of "all or substantially all" was left up to the courts. This resulted in some uncertainty. Section 302A.661 of the MBCA is changed to provide that shareholder approval of an asset sale is not required if the corporation retains "a significant continuing business activity". This is defined as a business activity that represents at least 25% of total assets at the end of the most recently completed fiscal year, and 25% of either income from continuing operations before taxes or revenues from continuing operations for that fiscal year. Now corporations can determine with certainty when shareholder approval is required in connection with the sale of significant assets.

Dissenters' Rights Reforms. Section 302A.471 of the MBCA is changed to permit corporations to opt out of dissenters' rights which arise in connection with certain amendments of Articles of Incorporation. The "opt out" is accomplished by so stating in the Articles of Incorporation (either as originally filed with the Secretary of State, or by amendment). Amendment of the Articles to opt out of these dissenters' rights is, however, itself an event give rise to dissenters' rights under Section 302A.471. Revised Section 302A.471 also includes a "market out" applicable to dissenters who own shares in corporations traded on national markets (NYSE, NASDAQ, and AMEX). This change

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is perhaps long overdue, since shareholders of publicly traded companies always have the option of selling for market value.

Election of Directors. Section 302A.437 of the MBCA is changed to clarify that directors are elected by a plurality vote and not a majority of quorum vote otherwise generally required for shareholder action. This change will ensure continuity of the Board even where a majority vote is not obtained.

Class or Series Voting Requirements. Section 302A.137 of the MBCA is changed to reduce the number of circumstances when class or series voting is required. The MBCA requires that holders of an outstanding class or series of shares is entitled to vote separately on amendments to the Articles of Incorporation that have certain consequences for that class or series. The new changes eliminate class or series voting when an amendment of the Articles is proposed to increase or decrease the aggregate number of shares of the class or series. In addition, no class or series vote will be required for a reverse split of the class or series if all other classes and series are similarly subject to the same reverse split.

Miscellaneous. Other changes to the MBCA now permit, or make clear, that directors may receive notice of meetings and other matters by electronic communication; that service as an officer of a limited liability company qualifies for indemnification; and that Minnesota corporations and foreign corporations may merge under the short form merger provisions of Section 302A.621 of the MBCA.

These changes to the MBCA move Minnesota closer to the Delaware General Corporation Law, which is generally viewed as the “gold standard” of corporation law. This is a positive development. These changes should be discussed with corporate counsel.

Changes to your corporate structure may be warranted. If you have any questions, please give us a call.

Very truly yours,

Jule M. Hannaford

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