

Certain Recent Amendments to Delaware Law Affecting Mergers and Acquisitions

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A practical issue often confronted in preparing to close an acquisition is the need to gather, in advance of closing, signatures of persons who will become directors or shareholders at the time of, or after, closing. Recent focus on a 1999 Delaware case had raised concerns among practitioners about the validity of such signatures obtained in advance. As of August 1, 2014, changes to Delaware General Corporation Law (“DGCL”) Sections 141(f) and 228(c) clarify that signatures obtained in advance of a person becoming a director or stockholder, may become effective at a future time (not to exceed 60 days), including upon the occurrence of a future event. These changes codify the common practice used to facilitate the closing of many acquisitions.

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