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Fair Notice: Providing for Electronic Document Transmissions to Shareholders in Washington State

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FAIR NOTICE: PROVIDING FOR ELECTRONIC
DOCUMENT TRANSMISSIONS TO SHAREHOLDERS
IN WASHINGTON STATE

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ABSTRACT

In 2008, Washington State amended Wash. Rev. Code § 23B.01.410 to allow electronic transmission of materials accompanying corporate notices to shareholders. This amendment, combined with an earlier change allowing corporations operating within the state to notify shareholders through certain types of electronic transmissions, incorporated several Securities and Exchange Commission (SEC) suggestions to expand the authorized uses of Internet-based technology to communicate with shareholders. However, corporations operating across state lines are subject to a complex variety of state notice requirements. These differences create an uneven national standard for which types of electronic communication constitute sufficient notice. This statutory variance compels corporations to fulfill certain consent, availability, and confirmation requirements that are not uniform among the various states. This Article examines the SEC rules related to electronic shareholder notification, surveys the applicable laws in all 50 states, and analyzes the coverage provided by the recent amendments to the Washington statute.

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INTRODUCTION

Washington State has enacted two major amendments to the notice provisions of the Washington Business Corporation Act in order to allow corporations to take advantage of emerging Internet technology. In 2002, the legislature amended the Washington Business Corporation Act, Wash. Rev. Code § 23B.01.410, to allow electronic notice to shareholders under certain conditions.¹ Six years later, the provision was further amended to allow electronic transmission of documents accompanying notice, such as annual reports and financial statements.² Many other states have adopted similar laws over the past decade.³ However, these state statutes are not uniform, which creates a challenging legal landscape for those looking to make investments in firms conducting interstate

¹ WASH. REV. CODE ANN. § 23B.01.410 (West 2002) (current version at WASH. REV. CODE ANN. § 23B.01.410 (West 2009)).

² WASH. REV. CODE ANN. § 23B.01.410 (West 2008) (current version at WASH. REV. CODE ANN. § 23B.01.410 (West 2009)).

³ See “State Electronic Notice Statutes” table, *infra* page 67.

transactions. This Article examines Securities and Exchange Commission (“SEC”) and state efforts to establish electronic corporate transmission standards, compares the amended Washington statute with those of other states that have addressed the issue of electronic notice, and provides guidance for practitioners advising corporations or shareholders of their rights and responsibilities related to notice to shareholders.

I. ELECTRONIC NOTICE GUIDANCE

Companies have long had an obligation to deliver annual reports to their shareholders in order to prepare them for annual stockholder meetings.⁴ Congress codified this obligation in the 1933 Securities Act by establishing an “access-equals-delivery” framework.⁵ Subsequent SEC guidelines and state law amendments endeavored to modernize delivery of this information by recognizing permissible use of emerging technologies such as telephones, reprographic equipment, facsimile machines, and the Internet.⁶ States, however, have not reacted in a uniform manner to these developments, resulting in an uneven patchwork of notice guidelines and standards.

A. SEC Guidance

In 1995, the SEC acknowledged the emergence of the Internet by promulgating an Interpretive Release addressing issuance of electronic documents.⁷ Although not law, Interpretive Releases provide guidance regarding the SEC's views on topics of general interest to the business and investment communities.⁸ In addition,

⁴ Broc Romanek & David Lee, *E-Communication to Shareholders Outside the Offering Process*, 37 U. TOL. L. REV. 387, 388 (2006).

⁵ 15 U.S.C. § 77(a) et seq. (1933).

⁶ Romanek, *supra* note 5, at 388.

⁷ *See id.*; Use of Electronic Media for Delivery Purposes, Securities Act Release No. 7233, Exchange Act Release No. 36345, Investment Company Act Release No. 21399, 60 Fed. Reg. 53458 at 53459 n.9 (Oct. 13, 1995).

⁸ Researching the Federal Securities Laws Through the SEC website, U.S. Securities and Exchange Commission, <http://edgar.sec.gov/investor/pubs/securitieslaws.htm> (last viewed May 12, 2011).

courts give deference to these documents.⁹ The SEC's stated purpose for issuing this particular Interpretive Release was to enable companies to disseminate information to more people at a faster and more cost-effective rate than traditional paper-based distribution methods allow.¹⁰ The SEC appreciated "the promise of electronic distribution of information in enhancing investors' ability to access, research, and analyze information, and in facilitating the provision of information by issuers and others."¹¹

The SEC assesses the validity of a corporation's electronic communications with its shareholders based on the corporation's compliance with certain procedural requirements. In its 1995 Interpretive Release, the SEC established criteria for such compliance in three categories: notice, access, and evidence.¹² Notice requires the disclosure documents be delivered directly to each investor. Certain types of documents, such as computer disks, CD-ROM disks, audiotapes, videotapes, and e-mails, inherently provide notice when delivered.¹³ Documents posted to an Internet website, however, do not provide notice; rather, a corporation must provide extrinsic notification of their availability to the shareholder.¹⁴

In its Interpretive Release, the SEC does not promulgate an exhaustive list of specific electronic transmission types providing adequate notice. Instead, it requires delivery of information and establishment of a permanent record "substantially equivalent" to that provided via paper form.¹⁵ For example, although the SEC has periodically re-evaluated its position on Web posting, its requirement to provide direct notice to shareholders of electronic document availability remains in effect.¹⁶ In doing so, however, it indicated it

⁹ Sung Ho (Danny) Choi, Note, *It's Getting Hot in Here: The SEC's Regulation of Climate Change Shareholder Proposals under the Ordinary Business Exception*, 17 DUKE ENVTL. L. & POL'Y F. 165, 168 (2006) (citing *Amalgamated Clothing & Textile Workers Union v. Wal-Mart*, 821 F. Supp. 877, 883 (S.D.N.Y. 1993)).

¹⁰ 60 Fed. Reg. 53458.

¹¹ *See id.*

¹² *Id.*

¹³ *Id.* at 53460.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Use of Electronic Media, Securities Act Release No. 7856, Exchange Act

would relax its stance once technology reaches the point where Web posting provides “paper-like” delivery and recording capability.¹⁷

Through its access standard, the SEC advises against making electronic documents so burdensome to obtain that shareholders are discouraged from reading their contents.¹⁸ Notifying corporations also should provide the user with a means of retaining the information for ongoing reference in the future.¹⁹ Finally, the evidence standard, if adopted by the state, would require corporations to retain paper copies of the electronic transmission for potential future verification, and for the benefit of shareholders who have revoked the electronic notice option or desire a hard copy of the information for other reasons.²⁰ Shareholders would be able to access this hard-copy information upon request.²¹

B. Survey of State Laws

An analysis of shareholder notice laws in the 50 states reflects a pattern. These laws roughly fall into one of the following five categories: (1) full authorization of electronic notice; (2) partial authorization of electronic notice; (3) state laws for which authorization to provide electronic notice is vague; (4) state laws that expressly track SEC electronic notice rules; and (5) no electronic notice authorized. The five categories of shareholder notice laws are summarized in the following paragraphs.

1. Full Authorization

A total of 12 states currently authorize corporations to provide notice to their shareholders via any form of electronic notice authorized by the shareholder. In 2000, Delaware enacted the first comprehensive state law expressly allowing corporations to utilize

Release No. 42728, Investment Company Act Release No. 24426, 65 Fed. Reg. 25853 (May 4, 2000).

¹⁷ See 65 Fed. Reg. 25854.

¹⁸ *Id.* at 25846.

¹⁹ 60 Fed. Reg. 53460.

²⁰ *Id.* at 53461.

²¹ 65 Fed. Reg. 25854

any of the three commonly recognized types of electronic notice: e-mail, Web posting, and any other form of electronic notice authorized by the shareholder.²² This initial foray into state notice guidance was largely based on the 1995 SEC guidelines and featured a requirement that the shareholder provide revocable consent to receive notice electronically, specifications for determining the date by which a shareholder must own stock in order to be eligible to vote at annual meetings (“record date”), and methods for proving that the information was actually transmitted.²³ In the decade since, 11 other states have implemented very similar laws with some minor variation in access, notice, and evidence standards.

2. Partial Authorization

Three other states allow electronic notice to be provided through some, but not all, forms. For example, Michigan and Pennsylvania allow electronic notification of shareholders through e-mail only.²⁴ Washington, as explained in the next section, allows electronic notice by either e-mail or Web posting, but not through any other electronic media.²⁵

3. Vague authorization standards

A majority of states, 29 in all, have adopted notice statutes for which the actual standard for authorizing electronic notice is unclear. Three subcategories comprise this “vague authorization” category: definitional, electronic transmission, and open-ended. Each of these subcategories has been adopted by a roughly equivalent number of states. The definitional category includes statutes in which electronic notice is defined as “written notice,” thereby equating electronic notice with written notice.²⁶ Statutes in the electronic transmission

²² See DEL. CODE ANN. tit. 8, § 232 (West 2000).

²³ 60 Fed. Reg. 53458 n.9.

²⁴ See MICH. COMP. LAWS ANN. § 450.1143 (West 2006); 15 PA. CONS. STAT. ANN. § 1702 (West 2001).

²⁵ See WASH. REV. CODE ANN. § 23B.01.410 (West 2009).

²⁶ See, e.g., CONN. GEN. STAT. ANN. § 33-603 (West 2001) (Connecticut states that “Notice by electronic transmission is written notice.”); IND. CODE ANN. § 23-1-20-29 (West 2009) (Indiana states that “Notice under this article shall be in writing

category merely list “electronic transmission,” without elaboration, as a type of authorized notice.²⁷ Open-ended statutes merely list “other forms” of transmission or communication as a type of authorized notice, apparently as a catchall classification.²⁸

4. State Statutes Expressly Adopting SEC Rules

Nebraska and North Dakota have adopted laws explicitly tying their electronic notice standards to those cited in SEC rules.²⁹ This approach is appealing from a legislative-efficiency standpoint but reduces flexibility to accommodate technology advances or public policy changes without departing from the SEC standards. Overall, those states that expressly adopt the 1995 SEC guidance would appear to have the most comprehensive standards for electronic notice. In general, this is the only category in which consent, revocation, notice, and evidence are clearly defined. Corporations operating in these states are much less likely to inadvertently violate notice laws or become entangled in litigation to determine whether the notice they provide is valid.

5. State Statutes Allowing No Electronic Notice

Illinois, Louisiana, Minnesota, and New Mexico require corporations to provide tangible written notice to their shareholders.³⁰ Based on the applicable enactment dates, which range from 1967 to 1983, the respective state legislatures almost certainly did not consider how these statutes would operate in the context of the Internet.

(including electronic transmission”); ME. REV. STAT. ANN. tit 3, § 103 (2002) (Maine states that “Notice by electronic transmission constitutes written notice.”).

²⁷ See, e.g., MD. CODE ANN., CORPS. & ASS'NS § 2-504 (West 2003) (Maryland states that “the corporation shall give notice in writing or by electronic transmission”).

²⁸ See, e.g., ARIZ. REV. STAT. ANN. § 10-141 (1994) (Arizona allows “other form of wire or wireless communication.”).

²⁹ NEB. REV. ST. § 21-2015 (2009); N.D. CENT. CODE, 10-19.1-01 (2003).

³⁰ 805 ILL. COMP. STAT. ANN. § 5 / 7.15 (West 1983); LA. REV. STAT. ANN. § 12:73 (1968); MICH. COMP. LAWS ANN. § 302A.435 (West 1981); N.M. STAT. ANN. § 53-11-29 (West 1966).

An analysis of shareholder notice laws in the 50 states³¹ is summarized in the following chart.

³¹ ALA. CODE § 10-2B-1.41 (1994); ALASKA STAT. § 10.06.410 (2002); ARIZ. REV. STAT. ANN. § 10-141 (1994); ARK. CODE. ANN. § 4-27-141 (West 1986); CAL. CORP. CODE § 20 (West 2004); CAL. CORP. CODE § 601 (West 2004); COLO. REV. STAT. ANN. § 7-101-402 (West 2006); CONN. GEN. STAT. ANN. § 33-603 (West 2001); DEL. CODE. ANN. tit. 8, § 232 (2000); FLA. STAT. ANN. § 607.0141 (West 1999); GA. CODE ANN. § 14-2-141 (West 2004); HAW. REV. STAT. § 414-4 (West 2002); IDAHO CODE ANN. § 30-1-141 (West 2006); 805 ILL. COMP. STAT. ANN. 5 / 7.15 (West 1983); IND. CODE ANN. § 23-1-20-29 (West 2009); IOWA CODE ANN. § 490.141 (West 2003); KAN. STAT. ANN. § 17-6522 (2004); KY. REV. STAT. ANN. § 271B.1-410 (West 2006); LA. REV. STAT. ANN. 12:73 (1968); ME. REV. STAT. ANN. tit. 13-C, § 103 (2002); MD. CODE ANN., CORPS. & ASS'NS § 2-504 (West 2003); MASS. GEN. LAWS ANN. ch. 156D, § 1.41 (West 2004); MASS. GEN. LAWS ANN. ch. 156D, § 16.06 (West 2004); MICH. COMP. LAWS ANN. § 450.1143 (West 2006); MINN. STAT. ANN. § 302A.435 (West 1981); MISS. CODE ANN. § 79-4-1.41 (West 1996); MO. ANN. STAT. § 351.230 (West 1998); MONT. CODE ANN. § 35-1-116 (1991); NEB. REV. STAT. § 21-2015 (2009); NEV. REV. STAT. ANN. 78.370 (West 2003); N.H. REV. STAT. ANN. § 293-A:1.41 (1993); N.J. STAT. ANN. § 14A:1-8.1 (West 2010); N.M. STAT. ANN. § 53-11-29 (West 1966); N.Y. BUS. CORP. LAW § 605 (McKinney 1998); N.C. GEN. STAT. ANN. § 55-1-41 (West 2002); N.C. GEN. STAT. ANN. § 66-325 (West 2002); N.D. CENT. CODE § 10-19.1-01 (2003); OHIO REV. CODE ANN. § 1701.41 (West 2002); OKLA. STAT. ANN. tit. 18, § 1075.2 (West 2001); OR. REV. STAT. ANN. § 60.034 (West 2003); 15 PA. CONS. STAT. ANN. § 1702 (West 2001); S.C. CODE ANN. § 7-1.2-702 (2005); S.C. CODE ANN. § 33-1-410 (1966); S.D. CODIFIED LAWS § 47-1A-141 (2005); TENN. CODE ANN. § 48-11-202 (West 1994); TENN. CODE ANN. § 48-17-105 (West 1986); TEX. BUS. ORGS. CODE ANN. § 21.3531 (West 2006); UTAH CODE ANN. § 16-10a-103 (West 2005); VT. STAT. ANN. tit. 11A, § 1.41 (2008); VA. CODE ANN. § 13.1-610 (West 2002); WASH. REV. CODE ANN. § 23B.01.410 (West 2009); W. VA. CODE ANN. § 31D-1-151 (West 2002); WIS. STAT. ANN. § 180.0141 (West 2002); WYO. STAT. ANN. § 17-16-141 (2009).

State Electronic Notice Statutes

Electronic Notice Allowed	States	Consent Requirement Specified	Notice Date Specified	Proof Standard Specified	Year Enacted (Outliers)
Full	AK, CA, DE, GA, HI, KS, MA, NV, NJ, OK, TX, VA	Yes (Revocation specified in all except AK)	All except OK/TX	All except MA	2000-2010
Partial	MI/PA (e-mail), WA (e-mail and Web post)	WA only (Revocable)	Yes	No	2001-2006
Vague (Definitional)	CT, IA, IN, ID, KY, ME, MS, SD, UT, WV, WI, WY	No	ID/MS/WV/WI/WY	No	2001-2009 (MS 1997)
Vague (Electronic Transmission)	MD, MO, MT, NY, NC, OR, RI, VT	RI only (Waivable)	NC/VT	MD/NY/NC	1998-2008 (MT 1991)
Vague (Other Forms)	AL, AZ, AR, CO, FL, NH, OH, SC, TN	NH only (Revocable)	NH	TN	1987-1994 (FL 1999, OH 2002, CO 2006)
Adopts SEC	NE, ND	NE only (Revocation not specified)	ND	No	2003-2009
None	IL, LA, MN, NM	No	No	No	1967-1983

C. Internal Affairs Doctrine

The variety in electronic notice laws among the states creates a choice of law dilemma for corporations operating in more than one state. Some states have addressed this issue by recognizing what is known as the “internal affairs” doctrine.³² The “internal affairs” doctrine is a common-law canon limiting jurisdiction over “activities

³² Deborah A. DeMott, *Perspectives on Choice of Law for Corporate Internal Affairs*, 48 LAW & CONTEMP. PROBS. 161, 163 (Summer 1985).

concerning the relationships *inter se* of the corporation, its directors, officers and shareholders” to the state of incorporation.³³ Enforcement of this doctrine provides the interstate corporation certainty that its method of providing electronic notice to shareholders will be upheld in court.

However, not all states recognize the “internal affairs” doctrine, primarily due to a desire to protect the interests of citizens who are shareholders.³⁴ For example, New York³⁵ and California³⁶ explicitly reject the doctrine for foreign firms not traded on the New York Stock Exchange. In addition, Louisiana³⁷ and New Jersey³⁸ omit any reference to the doctrine in their corporation statutes, thus allowing corporations the latitude to reject it. Although the federal government has been reluctant to impose a standard choice-of-law rule,³⁹ the Delaware Supreme Court held that foreign states do not have jurisdiction over the internal affairs of a corporation incorporated in Delaware.⁴⁰ California recognized the validity of Delaware’s “internal affairs” doctrine by allowing this holding to stand in lieu of disposition of the plaintiff’s prior case in the California Superior Court.⁴¹ Therefore, despite uneven implementation of the “internal affairs” doctrine among the states, foreign states will likely uphold the doctrine if it is statutory law in the state of incorporation.

A corporation operating in multiple states has three options for mitigating the risk of violating state electronic notice statutes. The first option is implementation of electronic notice methods commonly accepted in every state having jurisdiction over the corporation. Depending on the reach of the corporation’s operations, however, this strategy may restrict the use of electronic notice to email or eliminate

³³ *McDermott Inc. v. Lewis*, 531 A.2d 206, 215 (Del. 1987); RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 302 (1971).

³⁴ *The Internal Affairs Doctrine: Theoretical Justifications and Tentative Explanations for its Continued Primacy*, 115 HARV. L. REV. 1480 (2002).

³⁵ CAL. CORP. CODE § 2115 (West 2010).

³⁶ N.Y. BUS. CORP. LAW § 1320 (McKinney 1986).

³⁷ LA. REV. STAT. ANN. § 12:301 (West 1994).

³⁸ N.J. STAT. ANN. § 14A:13-2(2) (West 1969).

³⁹ 115 HARV. L. REV., *supra* note 35, at 1498.

⁴⁰ *VantagePoint Venture Partners 1996 v. Examen, Inc.*, 871 A.2d 1108, 1117-18 (Del. 2005).

⁴¹ *Id.* at 1110.

it altogether. Second, companies may limit their operations to states that recognize the internal affairs doctrine. A potential pitfall of both options is that states may sue on behalf of their citizen shareholders. This expansion of jurisdiction beyond the corporation's states of incorporation and operations would be entirely beyond its control. Therefore, interstate companies seeking to eliminate the risk of violating electronic notice statutes would need to provide hard copy notice.

The third option would be for the corporation to adopt the electronic notice standards of its state of incorporation and merely ignore other states' standards. Corporations considering this option should weigh the probability and cost of litigation against the cost of complying with one of the other options. However, given the federal courts' reluctance to standardize choice of law in this area and the apparent preeminence of the "internal affairs" doctrine among the states, this is probably the safest and least-restrictive option.

II. ELECTRONIC NOTICE LAW IN WASHINGTON

The evolution of Wash. Rev. Code § 23B.01.410 reflects the Washington Legislature's effort to keep pace with technological developments. As originally enacted in 1990, the statute distinguished between oral notice and notice provided in a tangible medium, requiring a written record be provided of both types of notices.⁴² The 2002 amendment added e-mail and Web postings to the authorized modes of notice,⁴³ which put Washington in the "partial authorization" category relative to other states. In 2008, the state modified Wash. Rev. Code § 23B.01.410 (the "2008 amendment") to allow materials accompanying notice to be transmitted electronically.⁴⁴

⁴² WASH. REV. CODE ANN. § 23B.01.410 (West 1990) (current version at WASH. REV. CODE § 23B.01.410 (West 2009)).

⁴³ WASH. REV. CODE ANN. § 23B.01.410 (West 2002) (current version at WASH. REV. CODE § 23B.01.410 (West 2009)).

⁴⁴ 2008 Wash. Sess. Laws 323-25.

A. *Electronic Transmission of Materials*

The 2008 amendment of Wash. Rev. Code § 23B.01.410 allowing corporations to transmit materials accompanying notice to shareholders electronically made Washington the first state to explicitly permit such transmissions.⁴⁵ This amendment mirrors the 2002 amendment in that notice by the electronic materials must be provided via e-mail or Web posting in order to be valid.⁴⁶ Similarly, the consent and notice provisions of the 2002 amendment were adopted for materials transmission as well.⁴⁷ Although the 2008 amendment allows corporations to transmit materials electronically, it also adopts the SEC standard requiring corporations to provide hard copies of the materials to any eligible shareholder who requests them.⁴⁸

The 2008 amendment also requires the following five additional materials be included with the notice for a shareholder meeting in the state of Washington:⁴⁹ a copy of any proposed amendment to the corporation's articles of incorporation;⁵⁰ a copy or summary of any plan of merger or share exchange;⁵¹ any materials related to a proposed sale of all or substantially all of the corporation's assets outside the regular course of business;⁵² a description of a transaction or any matter giving rise to dissenters' rights under Chapter 13;⁵³ and a copy of any Chapter 13 documentation.⁵⁴

The change in Washington's notice statute to allow corporations to provide materials electronically benefits both shareholders and corporations. Broadening the types of information allowed to be distributed electronically is in keeping with the 1995 SEC guidance objective of “enhanc[ing] the efficiency of the securities markets by allowing for the rapid dissemination of information to investors and

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ 2008 Wash. Sess. Laws 323-25.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

financial markets in a more cost-efficient, widespread, and equitable manner than traditional paper-based methods.”⁵⁵ The success of electronic materials transmission in Washington may in turn serve as a catalyst for similar amendments in other states.

B. Methods of Electronic Transmission Allowed

Unlike “full notice” states that allow electronic notice by any form authorized by the shareholder, Washington permits electronic notice in the form of e-mail or posting to an electronic network only.⁵⁶ This notice requires consent of the shareholder, as discussed in detail in the following subsection.⁵⁷ A corporation providing electronic notice through Web posting must also provide a separate record, directed to the shareholder, alerting the shareholder that the information has been posted, along with “comprehensible instructions regarding how to obtain access to the posting on the electronic network.”⁵⁸

The effective date of notice sent through e-mail is when it is transmitted to the address, location, or system designated by the recipient, and notice through Web posting is effective as of the date it has been posted on an electronic network and a separate record of the posting and access instructions has been delivered to the recipient.⁵⁹

Washington's revised statute, by allowing electronic notice via e-mail and Web posting only, will likely minimize litigation regarding notice validity. Disputes regarding the breadth of authorized notice may be limited to whether a transmission meets e-mail or Web posting criteria. Although Washington's prohibition of “other electronic transmissions” narrows the scope of permissible communications, it provides clear guidance regarding what is allowed.

⁵⁵ Use of Electronic Media for Delivery Purposes, Securities Act Release No. 7233, Exchange Act Release No. 36345, Investment Company Act Release No. 21399, 60 Fed. Reg. 53458 n.9 (Oct. 13, 1995).

⁵⁶ WASH. REV. CODE ANN. § 23B.01.410 (West 2009).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

C. Consent Laws

Electronic notice from corporations operating in Washington requires written consent from the shareholder.⁶⁰ Consent to electronic notice in Washington is defined as “information inscribed on a tangible medium or contained in an electronic transmission.”⁶¹ As part of the consent, the shareholder must specify the address, location, or system to which these notices may be electronically transmitted.⁶² The shareholder may revoke consent, once provided, at any time in the form of a record.⁶³ Consent previously given by the shareholder will be considered revoked if the corporation is unable to electronically transmit two consecutive notices and this inability becomes known to the secretary of the corporation, the transfer agent, or any other person responsible for giving the notice.⁶⁴ The inadvertent failure by the corporation to treat this inability as a revocation does not invalidate any meeting or other corporate action.⁶⁵

CONCLUSION

In recent years, advances in information technology have prompted legislatures to reconsider what constitutes a “written record” for purposes of providing notice to shareholders. To date, these advances have led to a varied landscape of corporate notice laws among the states. Many states have remained on the cutting edge of technology by enacting laws allowing all types of electronic notice. Some states continue to permit only hard-copy notice. Most states, however, including Washington, fall somewhere between these two extremes. Although Washington still restricts electronic notice to e-mail and Web posting, its recent legislation allowing for paperless supporting materials makes it a leader in the area of electronic notice transmission. The continued development of communication

⁶⁰ *Id.*

⁶¹ WASH. REV. CODE ANN. § 23B.01.400(26) (West 2009).

⁶² WASH. REV. CODE ANN. § 23B.01.410 (West 2009).

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

technologies, combined with a diversity of legislative responses among the states, will most likely make notice regulation in the United States a complex area of the law in the future. Therefore, practitioners advising corporations with interstate operations or shareholders must remain current in their knowledge of notice requirements in the jurisdictions involved.