



FOR IMMEDIATE RELEASE

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Drinker Biddle Partner Shepherds Groundbreaking North Dakota Corporate Law

Law Provides New Model of Corporate Governance

Philadelphia – Following a months-long effort, Drinker Biddle & Reath LLP partner William H. Clark, Jr. and his client, the North Dakota Corporate Governance Council, have succeeded in obtaining the passage of legislation that provides a new model of corporate governance at the state level. The legislation, known as “Chapter 10-35,” was signed today by Governor John Hoeven of North Dakota. It is the country’s first “shareholder friendly” state corporation law, and provides an alternative to the wide-ranging changes being proposed at the federal level which will impact all publicly traded corporations. Clark, who focuses his practice on corporate governance and mergers and acquisitions, is based in Drinker Biddle’s Philadelphia office.

“North Dakota has taken the lead in providing a new model of corporate governance in the United States,” said Drinker Biddle’s Clark. “The Governor, legislature and business community of North Dakota recognized the changing business landscape and the important role that responsible institutional shareholders are playing in businesses across industries. Being a North Dakota corporation will immediately brand a company as having state-of-the-art corporate governance and being committed to the interests of its owners.”

The new law is optional and will be available for companies incorporating in North Dakota after July 1, 2007, that elect to include a provision in their articles of incorporation.

Clark is co-chair of the firm’s Corporate Governance practice group. In 1990, he was appointed by the Secretary of the Commonwealth of Pennsylvania to the Corporation Bureau Advisory Committee, and was elected its first chairman. For a number of years, he has served as the draftsman for the Title 15 Task Force of the Pennsylvania Bar Association, and in that capacity was the author of the 1988 Pennsylvania Business Corporation Law and the Pennsylvania Revised Uniform Limited Partnership Act. He has been a member of the American Bar Association (ABA) Corporate Laws Committee, which drafts the Model Business Corporation Act, and he is the Reporter for the project preparing a revision of the Model Nonprofit Corporation Act. He was the Reporter for the Model Entity Transactions Act and the Model Registered Agents Act prepared by the National Conference of Commissioners on Uniform State Laws (NCCUSL), and he is the ABA Chair of the current joint project between the ABA and NCCUSL to prepare the Omnibus Business Organizations Code.

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With an active corporate practice, clients rely on Clark for his guidance on corporate governance and control issues, contested transactions, the establishment of closely-held businesses, and venture capital investments, and mergers and acquisitions.

Provisions of the new law include:

- **Majority voting in election of directors.** In an uncontested election of directors, shareholders have the right to vote “yes” or “no” on each candidate, and only those candidates receiving a majority of “yes” votes are elected.
- **Separation of roles of Chair and CEO.** The board of directors must have a chair who is not an executive officer of the corporation.
- **Advisory shareholder votes on compensation reports.** The compensation committee of the board of directors must report to the shareholders at each annual meeting of shareholders and the shareholders have an advisory vote on whether they accept the report of the committee.
- **Proxy access.** The corporation must include in its proxy statement nominees proposed by 5% shareholders who have held their shares for at least two years.
- **Reimbursement for successful proxy contests.** The corporation must reimburse shareholders who conduct a proxy contest to the extent the shareholders are successful. Thus, if a shareholder conducts a proxy contest to place three directors on a corporation’s board and two of the candidates are elected, the shareholder will be entitled to reimbursement of two-thirds of the cost of the proxy contest.

The new law can be found as Chapter 10-35 of the North Dakota Century Code, and has two basic parts. Sections 10-35-01 through 10-35-27 establish the new system of corporate governance for publicly traded corporations, that incorporate in North Dakota and elect to be subject the Chapter 10-35. Sections 10-35-28 through 10-35-33 impose a franchise fee on the corporations subject to Chapter 10-35, similar to the Delaware franchise tax, but at 50 percent of the rate imposed by Delaware. The text of the law is available online at <http://www.legis.nd.gov/assembly/60-2007/bill-index/bil340.html>.

Clark currently serves on the Board of the North Dakota Corporate Governance Council, www.ndcgc.org. Other members of the Board include Bill Sorensen, former mayor of Bismarck, ND and the Vice Chairman of the Board of Extend America, a cellular phone company serving the Midwest; and Steve Herman, CEO of AAction Moving, which has offices throughout the Midwest, and treasurer of Unigroup, Inc., the parent company of United Van Lines.

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DAKOTA CORPORATE LAW**

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Drinker Biddle & Reath LLP, a full-service national law firm established in 1849, recently announced its combination with the 200 lawyers at Chicago-based Gardner Carton & Douglas. The merger, effective in January 2007, created a firm with more than 630 lawyers and other professionals in 12 offices nationwide. For more information, please visit www.drinkerbiddle.com.

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