



## Client Alert

July 2008

### **Delaware Court Clarifies Stockholders' Power to Amend Bylaws**

The Delaware General Corporation Law, or DGCL, grants stockholders of a Delaware corporation the power to adopt, amend or repeal the corporation's bylaws. This power of stockholders, however, may conflict with the power of the board of directors under the DGCL to manage the corporation's business and affairs.

In its July 17, 2008 decision rendered in *CA, Inc. v. AFSCME Employees Pension Plan*, the Delaware Supreme Court ruled that the statutory power of stockholders to adopt, amend or repeal bylaws "is not coextensive with the board's concurrent power" to manage the corporation. The DGCL, therefore, does not permit stockholders to adopt, amend or repeal bylaws in a manner that infringes on the board's authority to manage the corporation. The Delaware Supreme Court declined to enunciate any "bright line" for distinguishing permissible from impermissible bylaw provisions. In this case, however, the Supreme Court found that the bylaw in question, which would have required CA, Inc. to reimburse stockholders for expenses incurred in a proxy proposal to elect a slate of directors of CA, Inc. put forward by the stockholders, could require the CA, Inc. board to improperly reimburse stockholders in some circumstances and so was not permissible under the DGCL.

