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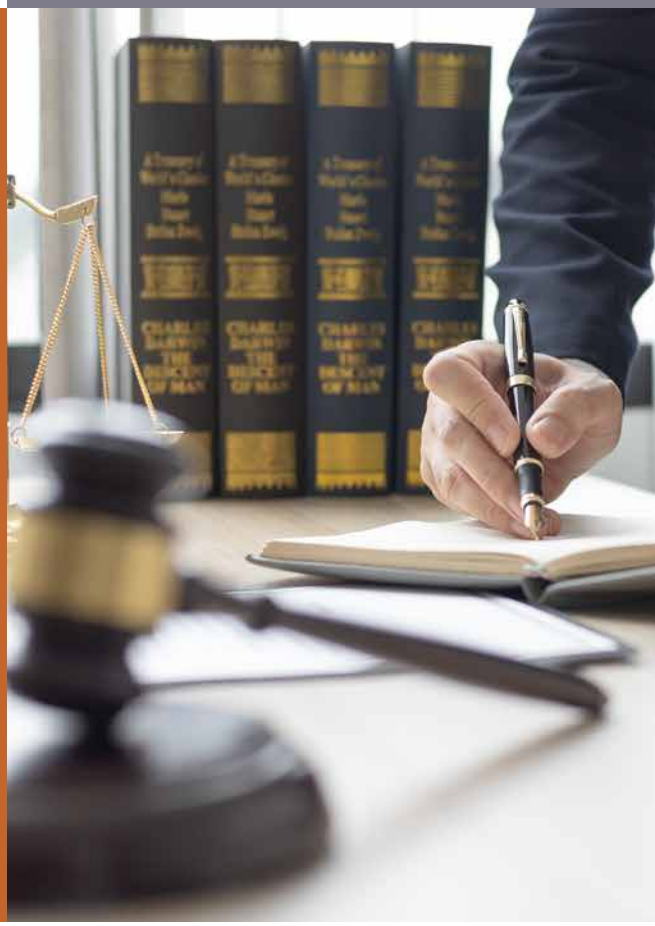
The Basics on "Books and Records" and SB 21



By Robert C. Finkel & Adam J. Blander

Section 220 of the Delaware General Corporation Law ("DCGL") allows stockholders to inspect a corporation's "stock ledger, a list of its stockholders, and its other books and records" upon a showing of any "proper purpose" for the inspection.[1] Initially codified in the 1967 DGCL amendments, Section 220 formalized the long-standing common law principle that stockholders are entitled to understand how companies in which they invest are managed.[2] As such, the statute is a critical tool for public investors seeking to investigate corporate mismanagement, assess litigation prospects, or monitor board activity.

Recently enacted legislation known as Senate Bill 21 ("SB 21") amends Section 220. While supporters of the amendments argue they primarily codify existing caselaw and clarify inspection procedures, critics, including advocates for pension and retirement fund interests, warn they could constrain much-needed stockholder oversight over directors, executives, and other corporate insiders.

I. The Books and Records Demand Process

The first step of the Section 220 process is the stockholder's submission of a formal demand letter to the corporation with proof of stock ownership, an identification of the requested materials, and a demonstration that the stockholder's purpose to investigate is "proper."[3] As the Court of Chancery has stated, "the form-and-manner requirements are not onerous, but they are strictly enforced."[4]

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1 8 Del. C. § 220(b)(1).
2 State v. Jessup & Moore Paper Co., 77 A. 16, 22 (Del. 1910).
3 8 Del. C. § 220(a)(2) ("Proper purpose shall mean a purpose reasonably related to such person's interest as a stockholder.").
4 Id. at *2; see also Central Laborers Pension Fund v. News Corp., 45 A.3d 139, 146 (Del. 2012); Barnes v. Telestone Techs. Corp., Civil Action No. 8513–VCG, 2013 WL 3480270, at *2 (Del. Ch. July 10, 2013); Smith v. Horizon Lines, Inc., Civil Action No. 4573-CC, 2009 WL 2913887, at *2 (Del. Ch. Aug. 31, 2009); Martinez v. GPB Cap. Hldgs, LLC, C.A. No. 2019-1005-SG, 2020 WL 3054001, at *7 (Del. Ch. June 9, 2020); Amalgamated Bank v. Yahoo! Inc., 132 A.3d 752, 775 (Del. Ch. 2016), rev'd in part on other grounds by Tiger v. Boast Apparel Inc., 214 A.3d 933, 939 (Del. 2019); Mattes v. Checkers Drive-In Restaurants, Inc., No. C.A. 17775, 2000 WL 1800126, at *1 (Del. Ch. Nov. 15, 2000).

The company then has five business days to respond and advise the stockholder whether any requested materials will be provided.[5] The response frequently disputes the propriety of the demand, even when the company is agreeable to providing responsive books and records, to avoid any implication that its production concedes the existence of a "proper purpose." To the extent a corporation refuses to provide documents, or the parties are deadlocked on the particulars of the stockholder's inspection request, the stockholder may sue in the Court of Chancery to "compel the production of corporate records."[6] This summary proceeding is often referred to as a "books and records action" or "220 action."

II. "Proper Purpose"

Aside from adhering to form-and-manner requirements, stockholders must demonstrate that they have a "proper purpose" for the inspection request. Delaware courts have built a substantial body of caselaw explaining what constitutes a "proper purpose." For example, a stockholder's desire to investigate potential mismanagement or wrongdoing in order to assess whether to sue is considered a classic "proper purpose."[7] Delaware courts have repeatedly warned stockholders against commencing litigation with underdeveloped allegations and instead admonish them to use the "tools at hand" from Section 220 to first investigate potential derivative actions or other lawsuits alleging fiduciary misconduct.[8]

Stockholders seeking to investigate potential wrongdoing under Section 220 have, historically, been required to present "some evidence "to suggest a "credible basis" from which to infer that mismanagement, waste or wrongdoing may have occurred.[9] The "credible basis" standard under Section 220 is Delaware's lowest burden of proof.[10] Stockholders need not prove actual misconduct (which would contravene the policy of encouraging stockholders to investigate whether misconduct occurred, before filing suit)[11] but instead can meet this standard through a credible showing using documents, logic, testimony or otherwise, that there are legitimate inferences of wrongdoing.[12] Reliable hearsay (such as reputable news articles) may also suffice.[13]

Although the desire to investigate securities fraud against corporate insiders has been deemed to be a proper purpose, the Court of Chancery has held that a stockholder may not use Section 220 to drum up helpful material in support of a federal securities pleading, which, in the Court's view, would sidestep the Private Securities Litigation Reform Act's automatic stay of discovery before the resolution of a motion to dismiss.[14]

III. What Are "Books and Records"?

To avoid intrusive demands, "books and records" have sometimes been construed narrowly, and certainly more narrowly than the broad discovery to which litigants are typically entitled in plenary litigation. Courts sometimes limit stockholders to formal documents made available to directors, such as board or committee meeting minutes and presentations from those meetings. As one court put it, "[t]he starting point (and often the ending point) for an adequate inspection will be board-level

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5 8 Del. C. § 220(c).
6 8 Del. C. § 220(7)(d).
7 State of Rhode Island Off. of Gen. Treasurer ex rel. Emps Ret. Sys. of R.I. v. Paramount Glob., C.A. No. 2024-0457-SEM, 2025 WL 324227, at *1 (Del. Ch. Jan. 29, 2025) ("Investigating the possibility of disloyal steering constitutes a proper purpose.").
8 Cal. State Teachers' Ret. Sys. v. Alvarez, 179 A.3d 824, 839 (Del. 2018).
9 Seinfeld v. Verizon Commc'ns, Inc., 909 A.2d 117, 118 (Del. 2006).
10 Id. at 123
11 Id. (stockholders need only show, by a preponderance of evidence, a credible basis from which to infer possible mismanagement warranting further investigation – a showing that "may ultimately fall well short of demonstrating that anything wrong occurred").
12 Sec. First Corp. v. U.S. Die Casting & Dev. Co., 687 A.2d 563, 568 (Del. 1997).
13 NVIDIA Corp. v. City of Westland Police & Fire Ret. Sys., 282 A.3d 1 (Del. 2022), as revised (July 25, 2022).
14 See Beiser v. PMC-Sierra, Inc., C.A. No. 3893-VCL, 2009 WL 483321, at *3-4 (Del. Ch. Feb. 26, 2009); Cohen v. El Paso Corp., No. Civ.A. 551-N, 2004 WL 2340046, at *3 (Del. Ch. Oct. 18, 2004).

documents that formally evidence the directors' deliberations and decisions and comprise the materials that the directors formally received and considered."[15]

If the stockholder seeks access to non-board materials (such as email correspondence), the stockholder traditionally bears the responsibility of proving that board materials are insufficient to investigate wrongdoing, for example, by showing that the corporation did not keep proper board-level records or otherwise comply with "traditional board formalities."[16]

IV. New Legislation

On February 17, 2025, the Delaware General Assembly's Majority Whip Brian Townsend proposed Senate Bill 21 (SB 21) to amend the DGCL.[17] The bill, which has now been enacted into law, principally displaces certain caselaw regarding the evaluation of interested transactions and interested parties (and which is beyond the scope of this article) but also modifies Section 220. The bill has generated a tremendous amount of controversy.[18] Some fear that the amendments to Section 220 disempower the rights of public stockholders and constrain the ability of the Delaware Court of Chancery, as a court of equity, to fashion fair and context-appropriate relief in books and records disputes.[19] Advocates, however, maintain the amendments largely reflect a codification of existing books and records standards established through caselaw that will help maintain predictability and Delaware's competitive edge in securing corporate registrations.[20]

To be sure, the amendments, in some instances, formalize practices already in use, such as imposing confidentiality restrictions on produced books and records or permitting redactions of materials not responsive to the stockholder's purpose (the latter of which contrasts with traditional discovery, where redactions other than for privilege are discouraged).[21] The amendments also formalize the common practice of "incorporating by reference" a corporation's entire books and records production to any subsequently filed complaint, to prevent cherry-picking by the stockholder-plaintiff and to ensure the resolution of any motions to dismiss on a complete record.

However, the bill also imposes what many investor advocates will consider an unduly narrow definition of "books and records," which was previously an undefined term in the statute. Specifically, "books and records" is now defined by various enumerated categories of core corporate documents, such as: a corporation's certificate of incorporation and bylaws (which are usually available to a stockholder even without a books and records demand), written consents, communications sent to stockholders, annual financial statements, minutes of board and board committee meetings, along with any materials provided in connection with those meetings, certain stockholder agreements, and director independence questionnaires.[22]

The bill also requires that stockholders demonstrate "good faith and a proper purpose," and that their demands describe with "reasonable particularity" their purposes and how the books and records sought are "specifically related" to those purposes.[23] Additionally, corporations are explicitly granted authority to impose confidentiality restrictions, redact unrelated material, and, as noted above, condition inspection on the stockholder's agreement that any information in the production is "incorporated by reference" in related litigation.[24] These provisions purport to balance corporate transparency with procedural safeguards against intrusive demands.

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15 Woods v. Sahara Enters., Inc., 2020 WL 4200131, at *11 (Del. Ch. July 22, 2020); see also Cook v. Hewlett-Packard, 2014 Del. Ch. LEXIS 11, 2014 WL 311111, at *4 (Del. Ch. Jan. 30, 2014) (limiting inspection to "board-level" documents relating to an acquisition and subsequent problems with the acquired company); Robotti & Co. v. Gulfport Energy Corp., 2007 Del. Ch. LEXIS 94, 2007 WL 2019796, at *4 (Del. Ch. July 3, 2007) (permitting inspection of board minutes).
16 KT4 Partners LLC v. Palantir Techs. Inc., 203 A.3d 738, 752 (Del. 2019).
17 Del. S.B. 21, 153rd Gen. Assemb. (2025), available at https://legis.delaware.gov/BillDetail?LegislationId=141857 (last accessed March 12, 2025).
18 "Seismic Change Proposed in Delaware: Summarizing S.B. 21's Proposals and Initial Reactions from Legal Community", Published by Villanova Law Review (Feb 27, 2025) https://www.villanovalawreview.com/post/2989-seismic-change-proposed-in-delaware-summarizing-s-b-21-s-proposals-and-initial-reactions-from-legal-community.
19 "Top Law Firms Defend Overhaul of America's Business Court", The New York Times (Mar. 11, 2025), https://www.nytimes.com/2025/03/11/business/dealbook/delaware-company-law.html.
20 Mike Phillips, "Corporate law bill moves out of House committee", WDEL News (Mar. 19, 2025), https://www.wdel.com/business/corporate-law-bill-moves-out-of-house-committee/article_22ab8ffe-f631-40d3-b6b9-68483cd0ea58.html.
21 8 Del. C. § 220(b)(3) (2025) (as amended by Del. S.B. 21, 153rd Gen. Assemb., (2025)), available at https://legis.delaware.gov/BillDetail/141930 (last accessed Mar. 27, 2025).
22 8 Del. C. § 220(a)(1).
23 8 Del. C. § 220(b)(2).
24 8 Del. C. § 220(b)(3).

Notably, the definition of "books and records" excludes less formal but potentially more illuminating and candid materials such as email correspondence and text messages. This exclusion may hinder investors' ability to uncover potential misconduct, particularly in light of the fact that formal board materials are often reviewed by company lawyers and drafted in a manner to minimize litigation risk. The modified Section 220 now states that the court "may not order the corporation to produce any records of the corporation other than the books and records set forth in paragraph (a)(1)," i.e., the formal categories outlined above.[25] Only if the corporation "does not have any" of the enumerated books and records (specifically: financial records, minutes of board and stockholder meetings, and director questionnaires), may the court order production of material "constituting the functional equivalent of any such books and records" and only "to the extent necessary and essential to fulfill the stockholder's proper purpose."[26]

SB 21 passed the Senate on March 13, 2025.[27] On March 19, 2025 the Delaware House Judiciary Committee released the bill for consideration.[28] On March 25, 2025, The Delaware House of Representatives passed SB 21, and Governor Matt Meyer thereafter signed the bill into law.[29] It remains to be seen the extent to which SB 21 will affect the Court of Chancery's routine and crucial work of adjudicating books and records disputes. Stakeholders within the investor, retirement fund, and business communities will undoubtedly be paying close attention.

Stephanie Bousley, a Wolf Popper LLP legal intern contributed to the drafting and research of this article.

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25 8 Del. C. § 220(7)(e).
26 8 Del. C. § 220(7)(f).
27 Ellen Bardash, "'This Doesn't Close the Courthouse Door': Corporate Law Revision Sails Through Delaware Senate," Delaware Business Court Insider, (Mar. 14, 2025).
28 Mike Phillips, "Corporate law bill moves out of House committee", WDEL News (Mar. 19, 2025), https://www.wdel.com/business/corporate-law-bill-moves-out-of-house-committee/article_22ab8ffe-f631-40d3-b6b9-68483cd0ea58.html (last accessed March 20, 2025). See also Senate Substitute 1 for Senate Bill 21, 153rd Delaware General Assembly, available at https://legis.delaware.gov/BillDetail/141930 (last accessed March 20, 2025).
29 Katie Tabeling, "Meyer signs corporate law bill after 'Dexit' debate in the House," (Mar. 26, 2025), https://delawarebusinesstimes.com/news/meyer-signs-corporate-law-bill-after-dexit-debate-in-the-house/ (last accessed March 27, 2025).

About the Authors

Robert C. Finkel is a graduate of the Columbia Law School, Class of 1981 (where he was a Harlan Fiske Stone Scholar), and the University of Pennsylvania, Class of 1978, where he obtained a B.S. in accounting from the Wharton School of Business and a B.A. in history from the College of Arts and Sciences. Robert began his employment in the 1980s with two large New York City defense firms. Robert has been repeatedly designated a Super Lawyer® in Securities Litigation.

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Adam Blander joined Wolf Popper LLP in April 2015 and was elevated to partner effective January 1, 2021. His practice focuses on commercial, corporate governance, securities, and consumer rights litigation. Adam has been recognized by Super Lawyers as a Rising Star in securities litigation in the New York metropolitan area from 2017 through 2022.

Before joining the firm, Adam clerked for New York State Supreme Court Justice Barbara Jaffe. A graduate of McGill University (with great distinction) and a Brooklyn Law School Health Law and Policy Fellow (cum laude), Adam's note "Codifying Common Law: The Self-Critical Analysis Privilege and the New Jersey Patient Safety Act," 21 J.L. & Pol'y 577, was published in the Journal of Law and Policy in 2013. Adam also served as a research assistant for Professor Aaron Twerski and the late Professor Richard T. Farrell and as an intern with the Health Care Bureau of the New York State Attorney General's Office. In 2011, Adam won the National Law Review's Student Legal Writing Contest for his essay on a tax issue.

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