FOREWORD

Advising Minnesota Corporations is an important new treatise that will be an essential reference work for all who are concerned with corporate practice in Minnesota.

It is organized in a format which includes substantially the entire range of major questions that a corporation practitioner must deal with in the regular course of practice. The treatise deals not only with the internalities of corporate practice, especially corporate governance, that are covered in most other corporation law treatises; it also addresses the externalities that bear upon corporate law and practice. These include, but are not limited to, litigation, debtor/creditor law, employment law, environmental law, labor law, federal and state taxation, and estate planning. This integration of materials enables practitioners to have a source of reference for all of these subjects, rather than having to make piecemeal searches for legal materials to address a variety of problems.

The treatise enables practitioners to have an overview or sense of the relative importance of the materials. The organization of the work itself, beginning with a discussion of selecting the format of business organization, and continuing all the way through bankruptcy and dissolution, takes the reader through the full range of corporate practice encompassing four volumes and approximately 2000 pages. It is written in clear language, intended to be readable and usable to corporate practitioners, lawyers in other areas of practice, academicians, jurists and nonlawyers.

The treatise presents the doctrines, rules, and developments that corporate practitioners need to know. But the work is important also for those not regularly working with corporation law. The estate planning lawyer and matrimonial lawyer will be able to find answers to questions with a clarity and conciseness not present in many other materials.

There is a strong need for such a work in contemporary corporate legal practice. The Model Business Corporation Act, upon which our Minnesota corporation statute is based, has been subject to intensive

criticism in recent years from all sectors of corporate practice. In response to this, the American Law Institute and the American Bar Association have undertaken numerous studies. This activity recently resulted in the adoption of the Principles of Corporate Governance by the American Law Institute.

The present state of uncertainty in corporation law underscores the importance of this comprehensive statement of corporate law and practice. *Advising Minnesota Corporations* is the first treatise to so broadly and thoroughly codify state corporation law. We are fortunate to have it available for use by all who advise Minnesota corporations.

Robert A. Stein Dean, University of Minnesota Law School

PREFACE

Since childhood, the concept of corporations has been fascinating to me. The corporation as an institution has an impact on our existence comparable to that perhaps of any other institution in society such as family or religion. For the most part, society's behavior is largely organized in a corporate manner or form. Human beings spend the better part of their time on planet Earth either indirectly working for entities or working within institutions or settings that are highly impacted by corporations. In a real sense, the power of corporations and their impact are as pervasive as lightness and darkness, and for that reason alone worthy of inquiry and study.

Corporations also are of great interest for a different yet related reason. The case can be made that human beings organizing together in a corporate format if subject to basic or threshold norms is a manifestation of, or a phenomenon very much associated with and akin to, the exercising of natural rights. Alexis de Tocqueville, in his Democracy in America, is quite explicit in commenting that the freedom, and ultimate elevation of the dignity of human beings which made our nineteenth century American experiment in democracy so remarkable, was very much based, if not mostly based, on freedom of association by its citizens. He made specific and emphatic reference to joint economic endeavors through the format of corporations. Finally, assuming that human beings (or at least their leaders), only a generation after the Holocaust, have not fully abandoned heinous proclivities, it very well may be that corporations are necessary institutions. Corporations, perhaps more effectively than most other institutions or alternatives, at least in Western civilization, accommodate and sublimate these human proclivities. This is a vital minimal role that corporations perform. Certainly, this sublimating process is in itself the source of much injustice and harm in many instances. However, again, from a broader perspective recognizing the fabled "Adam and Eve" selfish side of human nature, the institutions of corporations might be that great big "jungle gym" that minimizes harm done. They might be, for many present cultural settings of human beings, the only alternative to absolute control.

More optimistically, capitalism and corporations also potentially serve as the decentralizers and balancers of power within human political power and authority organizations. They are a major source for creativity and potentially provide mechanisms of risk taking. Even nonprofit activities often are organized in a corporate format.

Unfortunately, as suggested later in this treatise, application of present historical and social science data and techniques has not advanced to the degree to enable us to confirm these observations with absolute confidence. Importantly, the rule making and much of the structure of the institution called corporations may presently be based on less than fully confirmed and analyzed assumptions. Hopefully, the mere format of this treatise, approaching corporation law and corporation governance as substantially more than narrow, particularized issues of internal corporation governance will help. There is presently much serious commentary indicating that the more narrow approach or format has increasingly created dysfunction, ultimately threatening the institution itself.

Richard A. Saliterman January 15, 1995

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their clients, such as: reference for business matters that involve and Certified Public Accountants corporate executives and board members in Minnesota and elsewhere, as well as for for business lawyers and general counsel other areas of practice an invaluable Moreover, the book gives attorneys in Organizations answers these questions Corporations and Other Business face legal questions pertaining to Other Business Organizations Advising Minnesota Corporations and domestic relations. Advising Minnesota intellectual property, bankruptcy, even environment, international trade, advertising, labor and employment, the the new corporate law. Now, firms must affected business activity as to be deemed bundle of "externalities" that have so Corporation Act. But it also confronts the those covered by the Model Business issues facing corporations, including thoroughly considers the internal legal

- and much more The environment

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perspective, including: and breaks new ground in a 172-page of articles, bylaws, shareholder agree other topics considered from a fresh underlying corporate law. Find many appendix on the public policy dynamics corporate governance and accountability corporate documentation. He analyzes ments, minutes, and other forms of shows in persuasive detail the significance powerful than the law itself. Saliterman what you put on paper is often more of the Model Business Corporation Act, weakening and inconsistent application Under the new corporate law, given the

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of the war, Saliterman served as a military the Compliance and Enforcement Operahe is Trustee of the W. Harry Davis Foundamany articles in law reviews and legal in the Ford White House. He has published tions for Federal Region II. Upon conclusion assigned detached duty as Acting Director of During his Navy service, Saliterman was the U.S. Navy during the Vietnam War, before serving 3 1/2 years as a Lieutenant in Antitrust and Monopoly Subcommittee, worked on the legal staff of the U.S. Senate, York University School of Law in 1974. He A graduate of Columbia Law School, Member of the Minneapolis Urban League. Club. For several years he was a Board and the Minneapolis Downtown Kiwanis Directors of Pavek Museum of Broadcasting Foundation, and serves on the Boards of tion, Trustee of the Hopkins Education Hennepin County Bar Association. Presently member of a Governing Council of the Committee (Hennepin Bar Journal) and as a served as Chair of the Hennepin Lawyer Hamline University School of Law. He taxation of business organizations at planning, and a course on federal income principal course offered in business resolution. For several years he instructed a and estates, and complex business problem corporations, corporate litigation, business Minnesota., where he concentrates on in Saliterman & Siefferman in Minneapolis, ialiterman received an L.L.M. from the New planning, franchises, real estate law, trusts Richard Arlen Saliterman is a partner

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