

Digimarc CORP  
Form PRE 14A  
February 26, 2010

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**SCHEDULE 14A**

**Proxy Statement Pursuant to Section 14(a) of the**  
**Securities Exchange Act of 1934**

(Amendment No. )

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

Preliminary Proxy Statement

**Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material Pursuant to §240.14a-12

**DIGIMARC CORPORATION**

(Name of registrant as specified in its charter)

(Name of person(s) filing proxy statement, if other than the registrant)

Payment of Filing Fee (Check the appropriate box):

Edgar Filing: Digimarc CORP - Form PRE 14A

x No fee required.

.. Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

Edgar Filing: Digimarc CORP - Form PRE 14A

(5) Total fee paid:

.. Fee paid previously with preliminary materials.

.. Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

**DIGIMARC CORPORATION**

**9405 S.W. Gemini Drive**

**Beaverton, Oregon 97008**

**NOTICE OF ANNUAL MEETING OF STOCKHOLDERS**

**TO BE HELD ON APRIL 30, 2010**

To the Stockholders of Digimarc Corporation:

Notice is hereby given that the 2010 Annual Meeting of Stockholders (the Annual Meeting) of Digimarc Corporation, a Delaware corporation ( Digimarc or the Company ), will be held on Friday, April 30, 2010 at the headquarters of Digimarc Corporation, 9405 S.W. Gemini Drive, Beaverton, Oregon 97008, at 11:00 a.m., local time. The purposes of the Annual Meeting will be:

- 1. Election of Directors.** To elect five directors for a term of one year (Proposal No. 1);
- 2. Approval of a Change in the Company's State of Incorporation from Delaware to Oregon.** To approve a change in the state of incorporation from Delaware to Oregon by means of a merger of the Company into a newly formed, wholly owned Oregon subsidiary and the terms of the agreement related thereto (Proposal No. 2);
- 3. Ratification of Appointment of Independent Registered Public Accounting Firm.** To ratify the appointment of Grant Thornton LLP as Digimarc's independent registered public accounting firm for the year ending December 31, 2010 (Proposal No. 3); and
- 4. Other Business.** To transact such other business as may properly come before the Annual Meeting or any adjournment or postponement thereof.

The foregoing items of business are more fully described in the proxy statement accompanying this Notice. The Board of Directors has fixed the close of business on March 2, 2010 as the record date for determining the stockholders entitled to notice of and to vote at the Annual Meeting or any adjournment or postponement of the Annual Meeting.

We are making our proxy materials available to our stockholders over the Internet. You may read, print and download our annual report and proxy statement at the Investor Relations section of our website at [www.digimarc.com/investors](http://www.digimarc.com/investors). On or about March [ ], 2010, we will mail our stockholders a notice containing instructions on how to access our 2010 proxy statement and 2009 annual report to stockholders via the Internet and vote online. The notice also provides instruction on how you can request a paper copy of these documents if you desire, and how you can enroll in e-delivery to receive future annual materials electronically.

**Whether or not you expect to attend the Annual Meeting in person, we urge you to vote your shares as directed in the proxy card for the Annual Meeting as promptly as possible to ensure your representation and the presence of a quorum at the Annual Meeting. If you subsequently decide to attend the Annual Meeting to vote your shares in person, you may still do so. Your proxy is revocable in accordance with the procedures set forth in the proxy statement.**

By Order of the Board of Directors,

Robert P. Chamness

*Secretary*

Beaverton, Oregon

March , 2010

---

**DIGIMARC CORPORATION**

**PROXY STATEMENT FOR 2010 ANNUAL MEETING OF STOCKHOLDERS**

**General Information**

The Board of Directors of Digimarc Corporation, a Delaware corporation ( Digimarc, we or our ), is soliciting proxies to be used at the annual meeting of stockholders (the Annual Meeting ) to be held on Friday, April 30, 2010, at 11:00 a.m., local time, at our headquarters, located at 9405 S.W. Gemini Drive, Beaverton, Oregon 97008, and any adjournment or postponement of the Annual Meeting. We expect to provide notice of, and electronic access to, our 2009 annual report to stockholders, this proxy statement and the form of proxy, on or about March 16, 2010. The shares represented by the proxies received, properly marked, dated, executed and not revoked will be voted at the Annual Meeting by the proxy holders designated on the proxy.

The Board has fixed the close of business on March 2, 2010 as the record date (the Record Date ) for determining the stockholders entitled to notice of, and to vote at, the Annual Meeting. As of the close of business on the Record Date, 7,303,634 shares of our common stock, \$0.001 par value per share, were outstanding and entitled to vote at the Annual Meeting.

Each outstanding share of common stock on the Record Date is entitled to one vote on all matters. There must be a quorum for the Annual Meeting to be held. The required quorum for the Annual Meeting is a majority of the shares outstanding, present either in person or by proxy. Our Inspector of Elections will tabulate votes cast by proxy or in person at the Annual Meeting.

This is the second annual meeting of stockholders of Digimarc Corporation. We became an independent company upon the distribution of our common stock to a trust for the benefit of the stockholders of the former Digimarc Corporation ( Old Digimarc ), our former parent company, on August 1, 2008 (the Spin-Off ).

**Internet Availability of Proxy Materials**

Pursuant to rules adopted by the Securities and Exchange Commission (the SEC ), we are providing access to our proxy materials over the Internet. Accordingly, we are sending a Notice of Internet Availability of Proxy Materials (the Notice ) to our stockholders of record and beneficial owners. All stockholders will have the ability to access the proxy materials on the website referred to in the Notice or request to receive a printed set of the proxy materials. Instructions on how to access the proxy materials over the Internet or to request a printed copy may be found in the Notice. In addition, stockholders may request to receive proxy materials in printed form by mail or electronically by email on an ongoing basis. Choosing to receive your future proxy materials by email will save us the cost of printing and mailing documents to you. If you choose to receive future proxy materials by email, you will receive an email next year with instructions containing a link to those materials and a link to the proxy voting site. Your election to receive proxy materials by email will remain in effect until you terminate it.

Our proxy materials include this proxy statement and our annual report to stockholders for the year ended December 31, 2009, which includes our Form 10-K and audited financial statements. If you requested a printed version of our proxy materials, these materials also include the proxy card for the Annual Meeting.

**Revocability of Proxy**

You may revoke your proxy and change your vote at any time prior to voting at the Annual Meeting by:

delivering to Digimarc (to the attention of Robert P. Chamness, our Secretary) a written notice of revocation or a duly executed proxy bearing a later date; or

attending the Annual Meeting and voting in person.

## **Solicitation**

Digimarc will bear the cost of soliciting proxies. Besides this solicitation by mail, our directors, officers and other employees may solicit proxies. These persons will not receive any additional compensation for assisting in the solicitation. We will also request brokerage firms, nominees, custodians and fiduciaries to forward proxy materials to the beneficial owners. We will reimburse these persons and our transfer agent for their reasonable out-of-pocket expenses in forwarding these materials. We may also retain the services of a proxy solicitation or information agent and/or mailing service to perform the broker nominee search and to distribute proxy materials to banks, brokers, nominees and intermediaries, for which we would not pay more than \$10,000.

## **Vote Required: Treatment of Abstentions and Broker Non-Votes**

Directors are elected by a plurality of the votes cast, provided that a majority of the shares of common stock are present or represented and entitled to vote at the Annual Meeting. The five candidates who receive the greatest number of votes will be elected directors.

Approval of a change in the state of incorporation from Delaware to Oregon requires the affirmative vote of a majority of the shares of common stock outstanding and entitled to vote at the Annual Meeting.

The ratification of the appointment of our independent registered public accounting firm for the fiscal year ending December 31, 2010 requires the affirmative vote of a majority of the shares of common stock present or represented and entitled to vote at the Annual Meeting.

Abstentions are shares that abstain from voting on a particular matter. Under the Delaware General Corporation Law, abstentions effectively count as being present for purposes of determining whether a quorum of shares is present at a meeting. Abstentions have no effect on Proposal No. 1, the election of directors. Because approval of Proposal No. 2, a change in the state of incorporation from Delaware to Oregon, requires the affirmative vote of a majority of the shares of the common stock outstanding and entitled to vote at the Annual Meeting, abstentions have the same effect as negative votes on Proposal No. 2. Because abstentions will be included in tabulations of the shares entitled to vote for purposes of determining whether a proposal has been approved, abstentions have the same effect as negative votes on Proposal No. 3, the ratification of the selection of our independent registered public accounting firm.

Broker non-votes occur when shares are held in street name by brokers or nominees who indicate on their proxies that they did not receive voting instructions from the beneficial owner of the shares and do not have discretionary authority to vote those shares on a particular matter. Under the Delaware General Corporation Law, broker non-votes count as being present for purposes of determining whether a quorum of shares is present at a meeting but are not counted for purposes of determining the number of votes cast for or against a proposal. Broker non-votes have no effect on Proposal No. 1, the election of directors, because directors are elected by a plurality of the votes cast. Broker non-votes will have the same effect as a vote against Proposal No. 2, the approval of the proposal to change the state of incorporation from Delaware to Oregon. Broker non-votes have no effect on Proposal No. 3, ratification of the appointment of our independent registered public accounting firm, because brokers or nominees have discretionary authority to vote on this proposal.

Shares held through a broker or other nominee who is a New York Stock Exchange member organization will only be voted in favor of the director nominees and in favor of Proposal No. 2, the approval of the proposal to change the state of incorporation from Delaware to Oregon, if the stockholder provides specific voting instructions to the broker or other nominee to vote the shares in favor of that proposal.

## **Principal Executive Offices of Digimarc**

Our principal executive offices are located at 9405 S.W. Gemini Drive, Beaverton, Oregon 97008.

**ELECTION OF DIRECTORS**

**(Proposal No. 1)**

Our bylaws authorize the number of directors to be set by resolution of the Board of Directors. Our Board of Directors has fixed the number of directors at five. Five directors are to be elected by the holders of common stock at the Annual Meeting. These directors will each serve a one-year term that will expire at the 2011 annual meeting of stockholders, or until a successor has been elected and qualified. The proxy holders named in the accompanying proxy or their substitutes will vote the proxy at the Annual Meeting or any adjournment or postponement of the Annual Meeting for the election of the five nominees as directors unless the stockholder of record instructs that authority to vote is withheld. Shares held through a broker or other nominee who is a New York Stock Exchange member organization will only be voted in favor of the director nominees if the stockholder provides specific voting instructions to the broker or other nominee to vote the shares in favor of that proposal.

There are no arrangements or understandings between any director or executive officer and any other person pursuant to which the officer or director is or was to be selected as a director or officer. There is no family relationship between any director and any executive officer of Digimarc.

**Director Nominees**

<b>Nominees:</b>	<b>Age</b>	<b>Director Since</b>
Bruce Davis	57	2008
William J. Miller	64	2008
James T. Richardson	62	2008
Peter W. Smith	76	2008
Bernard Whitney	53	2008

The Board of Directors believes that our current directors, as a whole, provide the diversity of experience and skills necessary for a well-functioning board. All of our directors have substantial senior executive level experience. The Board of Directors values highly the ability of individual directors to contribute to a constructive board environment and the board believes that the current board members, collectively, perform in such a manner. Set forth below is a more complete description of each director's background, professional experiences, qualifications and skills.

**Bruce Davis** was elected Chairman of the Board of Directors on June 18, 2008, and was named our Chief Executive Officer on June 18, 2008, having served Old Digimarc as its Chief Executive Officer since 2001 and a director since December 1997, as the Old Digimarc's chairman of the Board of Directors since May 2002, and as its President from December 1997 through May 2001. Mr. Davis received a B.S. in accounting and psychology and an M.A. in criminal justice from the State University of New York at Albany, and a J.D. from Columbia University.

Mr. Davis brings strategic, operational and transactional expertise to the Board of Directors. He has broad technological and market knowledge, establishes the strategic direction for the company, has over 12 years of Digimarc executive leadership experience, has been an architect of the company's intellectual property portfolio, and had about 18 years of broad-based entrepreneurial, start-up, legal and CEO experience prior to joining Digimarc. For more information on Mr. Davis' background and experiences, please see the biographical information posted on our website at [www.digimarc.com](http://www.digimarc.com) on the About Digimarc, Executive Team page.

**William J. Miller** was elected to our Board of Directors in July 2008, and has served as Chair of the Compensation Committee since that time. Mr. Miller is a retired corporate executive with 37 years of experience in the high technology and legal sectors, and has, since 1999, served as an independent director and consultant. He serves as a member of the Board of Directors for each of the following companies: Nvidia Corp

(Nasdaq: NVDA), a provider of graphics processing units, media and communications processors, wireless media processors, and related software for personal computers, handheld devices, and consumer electronics platforms; Waters Corporation (NYSE: WAT), a manufacturer of analytical instruments; and Glu Mobile Inc. (Nasdaq: GLUU), a global publisher of mobile games. He previously served as a director of Overland Storage, Inc. (Nasdaq: OVRL), a supplier of data storage products from 2006-2009, and of Viewsonic Corporation from 2004-2008. Mr. Miller received a B.A. in speech communication from the University of Minnesota and a J.D. from the University of Minnesota.

Mr. Miller brings public company executive, management, financial, compensation and industry expertise to the Board of Directors, particularly in the high technology hardware, software and services areas and in the corporate and intellectual property legal areas. Prior to joining our Board, Mr. Miller served in a variety of senior executive capacities for Control Data Corp, a supplier of computer hardware, software and services, as chairman and CEO of Quantum Corp, a developer of storage technology, as chairman and CEO of Avid Technology, a leader in digital media creation tools for film, video, audio, animation, games, and broadcast professionals, and as Audit Chair of Nvidia Corp. These experiences are particularly germane to strategic formulation in the traditional and digital media markets, licensing activities, transactional and operational initiatives of the company.

**James T. Richardson** was elected to our Board of Directors in July 2008, and has served as Lead Director since that time. Mr. Richardson is a director of and consultant to companies in the high-technology sector. Mr. Richardson serves as a director (and former chairman of the board of directors) of FEI Company (Nasdaq: FEIC), a diversified scientific instruments company, a director of Epicor Software Corporation (Nasdaq: EPIC), a provider of business software solutions to the manufacturing, distribution, service, retail, and hospitality industries, and as a director and audit committee chair of Tripwire, Inc., a Portland, Oregon-based network security company. He previously served as a director of Plumtree Software, Inc. (Nasdaq: PLUM) from 2003 to 2005. Mr. Richardson received a B.A. in finance and accounting from Lewis and Clark College, an M.B.A. from the University of Portland, and a J.D. from Lewis and Clark Law School, and is a licensed C.P.A. and attorney in Oregon.

Mr. Richardson provides the local business community perspective, and brings public company operational, financial, legal and industry expertise to the Board of Directors, particularly in the high technology and financial areas. Prior to joining our Board, Mr. Richardson served as chief financial officer and chief administrative officer for five global technology companies ranging in size from \$20 million to \$300 million in annual revenue, including as senior vice president and chief financial officer at WebTrends Corporation, senior vice president corporate operations and chief financial officer at Network General Corporation, vice president finance and administration and chief financial officer at Logic Modeling Corp., and vice president finance and administration and chief financial officer at Advanced Logic Research, Inc. These experiences are particularly germane to the strategic and operational oversight, transactional and risk analysis, and legal and financial initiatives of the company.

**Peter W. Smith** was elected to our Board of Directors in July 2008, and has served as Chair of the Governance and Nominating Committee since that time. Mr. Smith began his career as an engineer with Philips Electrical Industries in Australia and since then he has worked in executive and technical positions with a number of companies, from start-ups to major international organizations in six different countries. Mr. Smith had an 18 year career in a number of roles at News Corporation, where he was responsible for the construction and commissioning of several major new ventures, acted as technology co-coordinator, served as a director on the boards of various News Corporation subsidiary companies and finally acted as technology and strategic advisor to its Chairman and Board of Directors. He retired as a corporate executive in February 2000 and since then has served as a consultant to various other companies. Mr. Smith received a B.Sc. and a B.E. with first class honors from the University of Sydney.

Mr. Smith brings large global public company executive, operational, governance, strategic, technology and industry expertise to the Board of Directors, particularly in the IT, deployment services, communications, and media and entertainment areas. During his career with News Corporation, Mr. Smith's roles included general



manager, New Technology for News Ltd Australia, president of News Technology for News America, and executive vice president, television, and director, technology, for News International (UK). News Ltd., News Technology and News International (UK) are affiliated divisions and companies of News Corporation, an international media and entertainment company. These experiences are particularly germane to strategy formation and initiatives for a large segment of our market, customer and licensee initiatives and the services work of the company.

**Bernard Whitney** was elected to our Board of Directors in July 2008, and has served as Chair of the Audit Committee since that time. Mr. Whitney is a retired corporate executive with twenty-eight years of experience in the high technology and finance sectors, and since 2002 has served as an independent director and consultant. He currently serves as a director for a number of private and non-profit entities. He previously served as a director and audit committee chair of Plumtree Software, Inc. (Nasdaq: PLUM) from 2000 to 2005. Mr. Whitney received a B.S. in business administration, majoring in finance, from California State University Chico, and a masters degree in business administration from San Jose State University.

Mr. Whitney brings public company financial, operational, and industry expertise to the Board of Directors, particularly in the high technology and financial areas. Prior to joining our Board, Mr. Whitney was vice president and chief financial officer of Handspring, Inc, a handheld computer and wireless communications manufacturer, executive vice president and chief financial officer of Sanmina Corporation, a high-end data com and telecom manufacturer, vice president of finance & manufacturing operations and corporate controller of Network General Corporation, a developer of network management software, and served in a number of senior financial management positions at Conner Peripherals, Inc., a disk and tape drive manufacturer, and as a financial analyst and accountant at Friden Alcatel, an electronic office equipment supplier, and Randtron Systems, an electronic antenna systems manufacturer. These experiences are particularly germane to the financial performance, audit, reporting, internal control and risk assessment activities of the company.

#### **Determination of Independence**

Our Board of Directors believes that maintaining a strong, independent group of directors is important for good governance, and all but one of our directors qualify as independent. The Board of Directors has determined that each of Messrs. Miller, Richardson, Smith, and Whitney, collectively representing a majority of the members of our Board of Directors, is independent as that term is defined by Nasdaq Listing Rule 5605. There were no related person transactions involving any of the independent directors of Digimarc considered by the Board of Directors in connection with the determination of whether any particular director is independent.

#### **Vote Required**

If a quorum is present, the five candidates receiving the highest number of affirmative votes present or represented and voting on this proposal at the Annual Meeting will be elected to the Board of Directors. Abstentions and broker non-votes will be counted for the purpose of determining the presence or absence of a quorum, but will have no effect on the election of directors once a quorum is established.

**The Board of Directors recommends a vote FOR the election of each of the nominees named above.**

---

**APPROVAL OF PROPOSAL TO CHANGE THE COMPANY'S STATE OF INCORPORATION**

**FROM DELAWARE TO OREGON BY MEANS OF A MERGER OF THE COMPANY INTO A NEWLY FORMED, WHOLLY OWNED OREGON SUBSIDIARY AND THE TERMS OF THE AGREEMENT RELATED THERETO**

**(Proposal No. 2)**

**Vote Required**

At the annual meeting, stockholders will consider and vote upon a proposal (the Reincorporation Proposal) to change the state of incorporation of the Company from Delaware to Oregon (the Reincorporation) by adoption of the Agreement and Plan of Merger (the Merger Agreement), attached as Appendix A to this Proxy Statement. If a quorum is present, the affirmative vote of a majority of the shares outstanding and entitled to vote at the Annual Meeting will be required to approve the proposal to change the state of incorporation from Delaware to Oregon. Abstentions and broker non-votes will have the effect of a vote against approval of the proposal to change the state of incorporation from Delaware to Oregon.

The Merger Agreement provides for the merger (the Merger) of the Company into Digimarc Oregon Corporation (Digimarc Oregon). Digimarc Oregon is a wholly owned subsidiary of the Company formed under the laws of Oregon solely for the purpose of reincorporating the Company in Oregon.

Prior to the Merger, Digimarc Oregon will have no operating history, assets, or liabilities. At the Effective Time of the Merger (as defined in the Merger Agreement), the name of Digimarc Oregon will be changed to Digimarc Corporation. After the Effective Time, the Company will be governed by the articles of incorporation and bylaws of Digimarc Oregon, which are substantially similar to the governing documents of the Company, except as described in this proxy statement. The Merger will not change the business or management of the Company. The following discussion summarizes key aspects of the Reincorporation Proposal. This summary is not intended to be complete and is qualified in its entirety by reference to the Merger Agreement attached as Appendix A, Digimarc Oregon's articles of incorporation (the Articles of Incorporation), attached as Appendix B, and Digimarc Oregon's bylaws (the Bylaws), attached as Appendix C.

**General**

The proposed Reincorporation will be accomplished by merging the Company into Digimarc Oregon, with Digimarc Oregon surviving. Concurrent with the merger, Digimarc Oregon will amend its Articles of Incorporation to change its name from Digimarc Oregon Corporation to Digimarc Corporation.

Pursuant to the Merger Agreement, at the Effective Time, each outstanding share of Common Stock (Common Stock) of the Company, will automatically be converted into one share of Common Stock of Digimarc Oregon, and each outstanding share of Series A Redeemable Nonvoting Preferred Stock (Series A Preferred Stock) of the Company, will automatically be converted into one share of Series A Preferred Stock of Digimarc Oregon. Each outstanding certificate representing shares of the Company's Common Stock will continue to represent the same number of shares of Common Stock of Digimarc Oregon, and each outstanding certificate representing shares of Series A Preferred Stock of the Company will continue to represent the same number of shares of Series A Preferred Stock of Digimarc Oregon. It will not be necessary for stockholders to exchange existing Delaware stock certificates for Oregon stock certificates.

Approval of the Reincorporation Proposal will effect a change in the legal domicile of the Company and other changes described in this Proxy Statement. Reincorporation of the Company will not, in and of itself, result in any change in the name, business, management, or location of the principal executive offices, assets or liabilities of the Company. The Digimarc Oregon Board of Directors will consist of the same individuals who presently serve as directors of the Company. Each of the officers of Digimarc Oregon is now serving as an officer of the Company. The Company's 2008 Incentive Plan and Equity Compensation Program for Nonemployee Directors under the Digimarc Corporation 2008 Incentive Plan (the Plans) will be continued by Digimarc Oregon, and

each option or other right to purchase the Company's Common Stock issued pursuant to the Plans will automatically be converted into an option or right to purchase the same number of shares of Common Stock of Digimarc Oregon, upon the same terms and subject to the same conditions as set forth in the Plans.

The Company's other employee benefit plans and arrangements will be continued by Digimarc Oregon upon the terms and subject to the conditions now in effect. In addition, Digimarc Oregon will assume the Company's Rights Agreement, and the purchase rights issued and issuable under that agreement will become exercisable for shares of Digimarc Oregon Series R Participating Cumulative Preferred Stock.

The Company's Common Stock will continue to be traded on the Nasdaq Global Market without interruption under the same symbol (DMRC) as at present. Delivery of Company Common Stock certificates will continue to constitute "good delivery" for transactions following the Merger. Digimarc Oregon will succeed to all the assets and liabilities of the Company. The stated purposes of Digimarc Oregon, as set forth in its Articles of Incorporation, will permit the Company in the future to enter into any lawful business activity, with such power and authority as is equivalent to the Company's current status under the Delaware General Corporation Law (DGCL) and the Company's current Restated Certificate of Incorporation. The Reincorporation will not change the financial condition of the Company and will involve only the Company and a wholly owned subsidiary of the Company formed for the sole purpose of the Reincorporation. If stockholders approve the Reincorporation Proposal, the Reincorporation will be completed at a time that the Boards of Directors of the Company and Digimarc Oregon determine is advisable. The Merger will take effect on the date upon which the Merger Agreement is filed with the offices of the Secretaries of State of the states of Oregon and Delaware, which filing is anticipated to be as soon as practicable after approval of the Merger Agreement by the Company's stockholders. Approval of the Reincorporation Proposal requires the affirmative vote of the holders of a majority of the Company's outstanding Common Stock.

#### **Purposes of the Reincorporation**

The Board of Directors of the Company believes that the best interests of the Company and its stockholders will be served by changing the Company's state of incorporation from Delaware to Oregon. Operating as an Oregon corporation will provide Digimarc with certain advantages over operating as a Delaware corporation, including significant savings in government fees. The Board of Directors and management of the Company are committed to supporting the Oregon business community and the economic growth of both the Company and the State of Oregon. The Company's headquarters are located in Oregon and many of its employees are Oregon residents. In addition, the franchise tax and related fees that the Company pays as a Delaware corporation (and fees for qualifying to do business as a foreign corporation in the state of Oregon) are significantly higher than comparable fees for an Oregon corporation. In 2009, the Company incurred franchise tax fees payable to the state of Delaware in the amount of \$128,800. The Company estimates that, had it been incorporated in Oregon in 2009, it would have incurred under Oregon's minimum corporate tax approximately \$15,000 payable to the state of Oregon. Management estimates that, in addition to other efficiencies, the Reincorporation will result in savings of state taxes alone aggregating approximately \$113,800 per year.

#### **Comparison of Oregon and Delaware Corporation Laws**

The Company is a Delaware corporation and is governed by the DGCL. As an Oregon corporation, Digimarc Oregon will be governed by the Oregon Business Corporation Act (OBCA). Because of differences in the corporation laws of Oregon and Delaware, the rights of the Company's stockholders will change in various respects as a result of the proposed Reincorporation. The following discussion is a summary of principal differences in the rights of stockholders following the Reincorporation. The summary is qualified in its entirety by reference to the relevant provisions of the OBCA and the DGCL and to the provisions of the Digimarc Oregon Articles of Incorporation and Bylaws attached to this Proxy Statement.

***Special Meetings of Stockholders***

*Delaware Corporation Law.* Under the DGCL, special meetings of stockholders may be called only by the board of directors or by any other person authorized in the corporation's certificate of incorporation or the bylaws. Generally, all stockholders of record entitled to vote must receive notice of stockholder meetings not less than 10 nor more than 60 days before the date of the stockholder meeting.

The Restated Certificate of Incorporation of the Company provides that special meetings of the stockholders may be called only by (1) the Chairman of the Board; or (2) the Board of Directors pursuant to a resolution approved by a majority of the total number of directors which the Company would have if there were no vacancies or unfilled newly created directorships.

*Oregon Corporation Law.* Under the OBCA, for a publicly traded corporation such as the Company, special meetings of shareholders generally may be called by (1) the board of directors; (2) any other person authorized in the corporation's articles of incorporation or the bylaws; or (3) if the articles of incorporation or bylaws specifically so provide, by demand by holders of the percentage of voting stock specified in the articles of incorporation or bylaws. Generally, all shareholders of record entitled to vote must receive notice of shareholder meetings not less than 10 nor more than 60 days before the date of the shareholder meeting.

The Articles of Incorporation and the Bylaws of Digimarc Oregon provide that special meetings of the shareholders may be called only by the (1) Chairman of the Board, or (2) the Board of Directors pursuant to a resolution approved by a majority of the total number of directors which Digimarc Oregon would have if there were no vacancies or unfilled newly created directorships.

***Stockholder Action Without a Meeting***

*Delaware Corporation Law.* The DGCL allows action to be taken by stockholders without a meeting by written consent of the holders of the minimum number of votes that would be needed to approve the matter at an annual or special meeting of stockholders at which all stockholders entitled to vote on the action were present and voted. The DGCL further provides that this right to act by written consent without a meeting may be denied in the certificate of incorporation.

The Restated Certificate of Incorporation of the Company expressly prohibits Company stockholders from acting by written consent and provides that stockholder action must take place at a duly called annual or a special meeting of stockholders.

*Oregon Corporation Law.* The OBCA allows action to be taken by shareholders without a meeting by written consent of all of the holders entitled to vote on the action. The OBCA further provides that the articles of incorporation may provide that action may be taken without a meeting by written consent of the shareholders having not less than the minimum number of votes that would be necessary to take such action at a meeting at which all shareholders entitled to vote on the action were present and voted.

The Articles of Incorporation of Digimarc Oregon do not permit action to be taken without a meeting by written consent of the shareholders having fewer than all of the shares entitled to vote on the action.

***Stockholder Nominations For Board of Directors and Proposals for Consideration at Annual Meeting***

Under both Oregon and Delaware law, a corporation may require stockholders wishing to nominate persons for election to the board of directors to give notice of the nomination by a date prior to the annual meeting. The Amended and Restated Bylaws of the Company provide that, in order for a stockholder to bring a director nomination or other business before an annual meeting, the stockholder must give timely, written notice to the Secretary of the Company. To be timely, the stockholder notice must be delivered to the Secretary at the

principal office of the Company no earlier than the close of business on the 120th day prior to the first anniversary of the previous year's annual meeting, and no later than the close of business on the 90th day prior to first anniversary of the prior year's annual meeting.

The Bylaws of Digimarc Oregon provide that in order for a shareholder to bring a director nomination or other business before an annual meeting, the shareholder must give timely, written notice to the Secretary of Digimarc Oregon. To be timely, the shareholder notice must be delivered to the Secretary at the principal office of the Company no earlier than the close of business on the 120th day prior to the first anniversary of the previous year's annual meeting, and no later than the close of business on the 90th day prior to first anniversary of the prior year's annual meeting.

#### ***State Anti-Takeover Provisions***

Section 203 of the DGCL and Sections 825 through 845 of the OBCA may, in specified circumstances, make it more difficult for a person who would be an interested stockholder (defined generally as a person with 15 percent or more of a corporation's outstanding voting stock) to effect a business combination (defined generally as a merger, consolidation, or other transaction, including sale, lease, or other disposition of assets with an aggregate market value equal to 10 percent or more of the aggregate market value of the corporation) with the corporation for a three-year period following the time the stockholder became an interested stockholder. A corporation may in specified circumstances avoid the restrictions imposed by Section 203 of the DGCL and Sections 825 through 845 of the OBCA. Moreover, a corporation's certificate or articles of incorporation or bylaws may exclude a corporation from the restrictions imposed by Section 203 of the DGCL or Sections 825 through 845 of the OBCA.

Sections 801 through 816 of the OBCA, referred to as the Oregon Control Share Act, regulates the process by which a person may acquire control of an Oregon public corporation without the consent and cooperation of the corporation's board of directors. An Oregon public corporation is subject to the Oregon Control Share Act if it has 100 or more shareholders, assets with a fair market value of at least \$1 million within Oregon, and at least 10 percent of its shares are owned by Oregon residents. A corporation's articles of incorporation or bylaws, however, may exclude the corporation from the provisions of the Oregon Control Share Act. The Oregon Control Share Act restricts the ability to vote shares of stock acquired in a transaction that causes the acquiring person to control at least one-fifth, one-third or one-half of the votes entitled to be cast in the election of directors. Shares acquired in a control share acquisition have no voting rights except as authorized by a vote of the shareholders. The DGCL has no provision comparable to the Oregon Control Share Act.

The Company has not opted out of Section 203 of the DGCL in its Restated Certificate of Incorporation or its Amended and Restated Bylaws, and Digimarc Oregon has not opted out of the Oregon Business Combination Act or the Oregon Control Share Act in its Articles of Incorporation or Bylaws.

#### ***Dividends, Distributions and Stock Repurchases***

*Delaware Corporation Law.* Under the DGCL, corporations may pay dividends out of surplus and, if there is no surplus, out of net profits for the current and/or the preceding fiscal year, unless the net assets of the corporation are less than the capital represented by issued and outstanding stock having a preference on asset distributions. Surplus is defined under the DGCL as the excess of the corporation's net assets over capital, as such capital may be adjusted by the board of directors. Net assets is defined as the amount by which total assets exceed total liabilities. Delaware corporations may repurchase their own shares of any class except when their capital is impaired or would be impaired by the purchase. If the corporation has surplus, the corporation may repurchase out of its capital any shares that are entitled upon any distribution of its assets to a preference over another class or series of its stock, provided that the repurchased shares are to be retired and the corporation's capital reduced. If no shares entitled to such a preference are outstanding, a corporation may repurchase any of its shares and reduce its capital accordingly.

*Oregon Corporation Law.* The OBCA prohibits distributions (including dividends) to shareholders unless, after giving effect to the distribution, (1) the corporation would be able to pay its debts as they become due in the usual course of business, and (2) the corporation's total assets would be at least equal to the sum of its total liabilities plus, unless the articles of incorporation provide otherwise, the amount that would be needed if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders with preferential rights are superior to those receiving the distribution.

The Company and Digimarc Oregon are each authorized to issue 2,500,000 shares of preferred stock. Ten thousand shares of the authorized preferred stock of each company have been designated as Series A Redeemable Nonvoting Preferred Stock. In the event of the liquidation, dissolution or other winding up of the Company or Digimarc Oregon, as applicable, before any payment or distribution is made to the holders of common stock, holders of the Series A Redeemable Nonvoting Preferred Stock will be entitled to receive a value of \$5.00 per share of Series A Redeemable Nonvoting Preferred Stock held by the stockholder. The Series A Redeemable Nonvoting Preferred Stock of each Company has no voting rights, except as required by law, and may be redeemed by the board of directors at any time on or after June 18, 2013. The Company has issued to the executive officers of the Company an aggregate of 10,000 shares of Series A Preferred Stock. At the Effective Time each share of the Company's Series A Preferred Stock will be converted into one share of Series A Preferred Stock of Digimarc Oregon.

#### ***Limitation of Personal Liability of Directors and Indemnification***

*Delaware Corporation Law.* Section 102(b)(7) of the DGCL provides that a corporation may, in its certificate of incorporation, eliminate or limit the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided that the provision shall not eliminate or limit the liability of a director (a) for any breach of the director's duty of loyalty to the corporation or its stockholders, (b) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (c) under Section 174 of the DGCL (regarding, among other things, the payment of unlawful dividends) or (d) for any transaction from which the director derived an improper personal benefit.

The DGCL provides that a corporation may indemnify any person who is made a party to any third-party action, suit or proceeding on account of being a director, officer, employee or agent of the corporation (or is or was serving at the request of the corporation in such capacity for another corporation, partnership, joint venture, trust or other enterprise) against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with the action, suit or proceeding through, among other things, a majority vote of a quorum consisting of directors who were not parties to the suit or proceeding or by a committee of such directors designated by majority vote of such directors, even though less than a quorum, if the person: (i) acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, and (ii) in a criminal proceeding, had reasonable cause to believe his or her conduct was lawful.

The DGCL also permits indemnification by a corporation under similar circumstances for expenses (including attorneys' fees) actually and reasonably incurred by such persons in connection with the defense or settlement of a derivative action or suit, except that no indemnification may be made in respect of any claim, issue or matter as to which the person is adjudged to be liable to the corporation unless the Delaware Court of Chancery or the court in which the action or suit was brought determines upon application that the person is fairly and reasonably entitled to indemnity for the expenses which the court deems to be proper.

To the extent a director, officer, employee or agent is successful in the defense of such an action, suit or proceeding, the corporation is required by the DGCL to indemnify such person for reasonable expenses incurred thereby. Expenses (including attorneys' fees) incurred by persons in defending any action, suit or proceeding may be paid in advance of the final disposition of the action, suit or proceeding upon receipt of an undertaking by or on behalf of that person to repay the amount if it is ultimately determined that that person is not entitled to indemnification.

The DGCL further authorizes a corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation (or is or was serving at the request of the corporation in such capacity for another corporation, partnership, joint venture, trust or other enterprise) against any liability asserted against the person and incurred by the person in that capacity, arising out of such person's status as such, whether or not the corporation would otherwise have the power to indemnify the person against liability under Section 145.

Article XI of the Company's Restated Certificate of Incorporation provides that no director shall be personally liable to the corporation or any of its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Company or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the DGCL or (iv) for any transaction from which the director derived an improper personal benefit.

The Company's Amended and Restated Bylaws require indemnification of directors and officers to the full extent permitted by the DGCL.

*Oregon Corporation Law.* The OBCA provides that a corporation may eliminate or limit the personal liability of a director to the corporation or its shareholders for monetary damages for conduct as a director, provided that no such provision shall eliminate or limit the liability of a director for:

any breach of the director's duty of loyalty to the corporation or its shareholders,

acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law,

any distribution that is unlawful under the OBCA; or

any transaction from which the director derived an improper personal benefit.

The OBCA provides that a corporation may indemnify an individual made a party to a proceeding because the individual is or was a director against liability incurred in the proceeding if the conduct of the individual was in good faith; the individual reasonably believed that the individual's conduct was in the best interests of the corporation, or at least not opposed to its best interests; and in the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful. Furthermore, the OBCA provides that, unless limited by its articles of incorporation, a corporation *must* indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because of being a director of the corporation against reasonable expenses incurred by the director in connection with the proceeding. A corporation may not indemnify a director in connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation or in connection with any other proceeding charging improper personal benefit to the director in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.

The OBCA further provides that a corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if the director furnishes the corporation a written affirmation of the director's good faith belief that the director has met the standard of conduct described in the OBCA and the director furnishes a written undertaking to repay the advance if it is ultimately determined that the director did not meet the standard of conduct.

The OBCA further provides that a corporation may purchase and maintain insurance on behalf of an individual against liability asserted against or incurred by the individual who is or was a director, officer, employee or agent of the corporation or who, while a director, officer, employee or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan or other enterprise. The corporation may purchase and maintain the insurance even if the corporation has no power to indemnify the individual against the same liability under the OBCA.

The OBCA further provides that, unless the articles of incorporation provide otherwise, an officer of the corporation is entitled to mandatory indemnification and is entitled to apply for court-ordered indemnification to the same extent as a director. The corporation may also indemnify and advance expenses to an officer to the same extent as to a director.

Article IX of Digimarc Oregon's Articles of Incorporation provides that no director of the corporation shall be personally liable to the corporation or its shareholders for monetary damages for conduct as a director, provided that such article shall not eliminate the liability of a director for any act or omission for which such elimination of liability is not permitted under the OBCA, as the same may be amended or supplemented from time to time. The OBCA prohibits the elimination or limitation of the personal liability of a director for: (i) any breach of the director's duty of loyalty to the corporation or its shareholders, (ii) acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (iii) any distribution that is unlawful under the OBCA; or (iv) any transaction from which the director derived an improper personal benefit.

Digimarc Oregon's Articles of Incorporation and Bylaws require indemnification of directors and officers to the full extent permitted by the OBCA.

#### ***Authority of Board Committees***

Both the DGCL and the OBCA permit corporate boards of directors to delegate to committees of the board significant responsibilities.

*Delaware Corporation Law.* The DGCL does not permit delegation to a committee the power or authority to: (1) adopt, amend or repeal any bylaw of the corporation or (2) approve, adopt or recommend to stockholders any action or matter (other than election or removal of directors) expressly required by the DGCL to be submitted to the stockholders for approval.

*Oregon Corporation Law.* The OBCA permits a board committee to generally exercise the full authority of the board of directors, except the authority to: (1) authorize distributions, except according to a formula or method, or within limits, prescribed by the board of directors; (2) approve or submit to shareholders any action requiring shareholder approval; (3) fill vacancies on the board of directors or, subject to specified exceptions, any of its committees; or (4) adopt, amend or repeal bylaws.

#### ***Stockholder Derivative Suits***

*Delaware Corporation Law.* The DGCL requires that the stockholder bringing a derivative suit have been a stockholder at the time of the wrong complained of or that the stock devolved to him or her by operation of law from a person who was a stockholder at the time of the wrong complained of. In addition, Delaware case law provides that the stockholder must remain a stockholder throughout the litigation.

*Oregon Corporation Law.* The OBCA also requires that the shareholder bringing the derivative suit have been a shareholder at the time the transaction complained of occurred or have become a shareholder through transfer by operation of law from one who was a shareholder at that time. The OBCA does not require the shareholder remain a shareholder throughout the litigation.

#### ***Amendments to Articles or Certificate of Incorporation and Bylaws***

*Delaware Corporation Law.* Under the DGCL, an amendment to the certificate of incorporation requires that the board of directors approve the amendment, declare it advisable, and submit it to stockholders for adoption. The amendment must be adopted by a majority in voting power of all issued and outstanding shares and any greater vote required by the certificate of incorporation. Except in limited circumstances, any proposed amendment to the certificate of incorporation that would (1) increase or decrease the authorized shares of a class of stock; (2) increase or decrease the par value of the shares of a class of stock; or (3) alter or change the powers,



preferences, or special rights of the shares of a class of stock (so as to affect them adversely) requires approval of the holders of a majority of the outstanding shares of the affected class, voting as a separate class, in addition to the approval of a majority of the shares entitled to vote on that proposed amendment. If any proposed amendment would alter or change the powers, preferences, or special rights of any series of a class of stock so as to affect them adversely, but does not affect the entire class, then only the shares of the series affected by the proposed amendment are considered a separate class for purposes of the immediately preceding sentence.

Under the DGCL, the power to adopt, amend or repeal bylaws is provided to the stockholders entitled to vote; provided, however, any corporation may, in its certificate of incorporation, confer the power to adopt, amend or repeal bylaws upon the directors. The fact that this power has been conferred upon the directors does not divest the stockholders of the power, nor limit their power, to adopt, amend or repeal bylaws.

Article X of the Company's Restated Certificate of Incorporation provides that the provisions of Article VI ( Board of Directors ), Article VII ( Amending the Bylaws ), Article IX ( Stockholder Meetings ), and Article X ( Supermajority Amendment ) may not be altered, amended or repealed unless the alteration, amendment or repeal is approved by the affirmative vote of the holders of not less than sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the voting power of all of the outstanding shares of capital stock of the Company entitled to vote generally in the election of directors, considered for purposes of Article X as a single class. The Company's Restated Certificate of Incorporation provides that the holders of the Company's Series A Preferred Stock have no voting rights other than as required by Section 242(b)(2) of the DGCL or any similar provision later enacted; provided that an amendment of the Company's Restated Certificate of Incorporation to increase or decrease (but not below the number of shares then outstanding) the number of authorized shares of Company Series A Preferred Stock may be adopted by resolution adopted by the Board of Directors of the Company and approved by the affirmative vote of the holders of a majority of the voting power of all outstanding shares of the Company's Common Stock and all other outstanding shares of stock of the Company entitled to vote thereon irrespective of the provisions of Section 242(b)(2) of the DGCL or any similar provision later enacted. The outstanding shares of Common Stock of the Company and other stock will be treated as a single class, and no vote of the holders of the Company's Series A Preferred Stock, voting separately as a class, will be required.

Article VII of the Company's Restated Certificate of Incorporation provides that the Board of Directors is authorized and empowered to adopt, amend and repeal the Bylaws of the Company at any regular or special meeting, or by written consent, subject to the power of the stockholders of the Company to adopt, amend or repeal any Bylaws. The Restated Certificate of Incorporation further provides that any adoption, amendment or repeal of the Bylaws by the stockholders must be approved by the affirmative vote of the holders of not less than sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the voting power of all of the outstanding shares of capital stock of the Company entitled to vote generally in the election of directors, considered for purposes of Article VII as a single class.

The Company's Amended and Restated Bylaws provide that, subject to the provisions of the Restated Certificate of Incorporation, the Amended and Restated Bylaws may be amended or repealed and new bylaws adopted by the Board of Directors or the stockholders of the Company.

*Oregon Corporation Law.* Under the OBCA, an amendment to the articles of incorporation requires that the board of directors adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting. Unless the OBCA, articles of incorporation, or board of directors requires a greater vote or a vote by voting groups, the amendment to be adopted must be approved by a majority of the shares held by shareholders of every voting group for which the amendment would create dissenters' rights and every other voting group entitled to vote on the amendment. Any proposed amendment to the articles of incorporation that would increase or decrease the authorized shares of a class of stock; change the designation, rights, preferences, or limitations of all or part of the shares of a class of stock; create a new class of shares having rights or preferences with respect to distributions or dissolution that are prior, superior, or substantially equal to the shares of a class; or affect a class of stock in other ways enumerated

by the OBCA requires approval of the holders of a majority of the outstanding shares of the affected class, voting as a separate voting group, if shareholder voting is otherwise required, in addition to the approval of a majority of the shares entitled to vote on that proposed amendment. If any proposed amendment would affect a series of a class of stock in any of the ways described in the preceding sentence, then the shares of the series affected by the proposed amendment are entitled to vote as a separate voting group on the proposed amendment; provided, however, that if a proposed amendment would affect two or more series in the same or a substantially similar way, the shares of all the series so affected must vote together as a single voting group on the proposed amendment.

Under the OBCA, the board of directors may amend or repeal the corporation's bylaws unless the articles of incorporation or the OBCA reserves this power exclusively to the shareholders in whole or in part, or the shareholders in amending or repealing a particular bylaw provide expressly that the board of directors may not amend or repeal that bylaw. A corporation's bylaws may also be amended or repealed by the shareholders even though the bylaws may also be amended or repealed by its board of directors.

Article VI of Digimarc Oregon's Articles of Incorporation provides that the provisions of Article IV ( Board of Directors ), Article V ( Amending the Bylaws ), Article VI ( Amending the Articles of Incorporation ) and Article VII ( Shareholder Meetings ) may not be altered, amended or repealed unless the alteration, amendment or repeal is approved by the affirmative vote of the holders of not less than sixty-six and two-thirds percent (66 <sup>2</sup>/<sub>3</sub>%) of the voting power of all of the outstanding shares of capital stock of Digimarc Oregon entitled to vote generally in the election of directors, considered for purposes of Article VI as a single class. Digimarc Oregon's Articles of Incorporation provides that the holders of the Company's Series A Preferred Stock have no voting rights. The outstanding shares of the Company's Common Stock and other stock will be treated as a single class, and no vote of the holders of the Company's Series A Preferred Stock, voting separately as a class, will be required.

Article V of Digimarc Oregon's Articles of Incorporation and Article IX of Digimarc Oregon's Bylaws provide that the Board of Directors is authorized and empowered to adopt, amend and repeal the Bylaws of the Digimarc Oregon at any regular or special meeting, or by written consent, subject to the power of the shareholders of Digimarc Oregon to adopt, amend or repeal any Bylaws. The Articles of Incorporation and Bylaws further provide that any adoption, amendment or repeal of the Bylaws by the shareholders must be approved by the affirmative vote of the holders of not less than sixty-six and two-thirds percent (66 <sup>2</sup>/<sub>3</sub>%) of the voting power of all of the outstanding shares of capital stock of Digimarc Oregon entitled to vote generally in the election of directors, considered for purposes of Article V as a single class.

#### ***Mergers, Consolidations and Other Transactions***

*Delaware Corporation Law.* Under the DGCL, the board of directors and the holders of a majority of the outstanding shares entitled to vote must approve a merger, consolidation, or sale of all or substantially all of a corporation's assets. However, unless the corporation provides otherwise in its certificate of incorporation, no stockholder vote of a constituent corporation surviving a merger is required if:

the merger agreement does not amend the constituent corporation's certificate of incorporation;

each share of stock of the constituent corporation outstanding immediately before the merger is to be an identical outstanding or treasury share of the surviving corporation after the merger; and

either (a) no shares of common stock of the surviving corporation and no shares, securities, or obligations convertible into such stock are to be issued or delivered under the plan of merger or (b) the authorized unissued shares or the treasury shares of common stock of the surviving corporation to be issued or delivered under the plan of merger plus those initially issuable upon conversion of any other shares, securities, or obligations to be issued or delivered under the plan do not exceed 20 percent of the shares of common stock of the constituent corporation outstanding immediately prior to the effective date of the merger.

Neither the Company's Restated Certificate of Incorporation nor its Amended and Restated Bylaws contains any super-majority voting requirements governing mergers, consolidations, sales of substantially all of the assets, liquidations, reclassifications, or recapitalizations.

*Oregon Corporation Law.* Under the OBCA, the board of directors and the holders of a majority of the outstanding shares entitled to vote must approve a merger, consolidation, or sale of all or substantially all of a corporation's assets. However, unless the corporation provides otherwise in its certificate of incorporation, no shareholder vote of a constituent corporation surviving a merger is required if:

the articles of incorporation of the surviving corporation will not differ, except for amendments that do not require shareholder approval under the OBCA;

each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after;

the number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or by the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than 20 percent the total number of voting shares of the surviving corporation outstanding immediately before the merger; and

the number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or by the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than 20 percent the total number of participating shares outstanding immediately before the merger. Neither Digimarc Oregon's Articles of Incorporation nor its Bylaws contains any super-majority voting requirements governing mergers, consolidations, sales of substantially all of the assets, liquidations, reclassifications, or recapitalizations.

#### ***Appraisal Rights***

*Delaware Corporation Law.* Under the DGCL, stockholders of Delaware corporations are entitled to appraisal rights in the case of a merger or consolidation if an agreement of merger or consolidation requires the stockholder to accept in exchange for its shares anything other than:

Shares of stock of the corporation surviving or resulting from the merger or consolidation;

Shares of any other corporation that on the effective date of the merger or consolidation will be either: (1) listed on a national securities exchange; or (2) held of record by more than 2,000 stockholders;

Cash in lieu of fractional shares of the corporation; or

Any combination thereof.

Under the DGCL, if directed by the court upon completion of the appraisal proceedings, the corporation must pay to the dissenting stockholder the fair value of the shares.

A stockholder of a Delaware corporation does not have appraisal rights in connection with a merger or consolidation or, in the case of a disposition, if:

## Edgar Filing: Digimarc CORP - Form PRE 14A

The shares of the corporation are (1) listed on a national securities exchange or (2) held of record by more than 2,000 stockholders; or

The corporation will be the surviving corporation of the merger and approval of the merger requires no vote of the stockholders of the surviving corporation.

*Oregon Corporation Law.* Under the OBCA, a shareholder eligible to vote may dissent from, and obtain payment for shares in the event of, the following shareholder-approved corporate actions:

A merger to which the corporation is a party, if the shareholder was entitled to vote on the merger;

A merger of a subsidiary with its parent;

A share exchange plan to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan;

The sale or exchange of all or substantially all of the corporation's assets, other than in the usual course of business;

An amendment to the articles of incorporation that materially and adversely affects the dissenter's shares by altering or abolishing a preemptive right or reducing the number of shares owned by the shareholder to a fraction of a share to be acquired for cash;

Other actions for which the articles of incorporation, bylaws or resolutions by the board of directors provide the right of dissent and appraisal; or

A conversion to a non-corporate business entity.

Dissent and appraisal rights are not available to shareholders of Oregon corporations for:

Shares of stock which, on the record date for the shareholder meeting approving the corporate action, or at the time of the merger, were listed on a national securities exchange, unless the articles of incorporation provide otherwise;

The sale of assets pursuant to court order; or

The sale of assets for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one year after the date of sale.

Under the OBCA, a shareholder asserting dissenter's rights must give the corporation notice of his or her intent in writing prior to the vote on the action and must not vote in favor of the action. A corporation is required to make payment to the dissenting shareholder of its estimated value of the shares, plus accrued interest, upon the proposed action being taken, or upon the dissenter's demand. If the dissenting shareholder disagrees with the corporation's estimate of the value of the shares, he or she can propose his or her own estimate. If a payment demand remains unsettled, the corporation must commence a proceeding within 60 days after receiving the demand and petition the court for an appraisal.

#### ***Inspection of Corporate Books and Records***

Both Delaware and Oregon permit stockholders to examine and make extracts from the corporation's books and records for a proper purpose. Under the OBCA, inspection requires that: (1) the shareholder's demand be made in good faith and for a proper purpose; (2) the shareholder describe with reasonable particularity the shareholder's purpose and the records the shareholder desires to inspect; and (3) the records requested be directly connected with the shareholder's purpose. Oregon law also requires the shareholder to give the corporation five business days written notice of the demand to inspect.

#### ***Number, Election, Vacancy, and Removal of Directors***

## Edgar Filing: Digimarc CORP - Form PRE 14A

*Delaware Corporation Law.* Unless otherwise provided by the DGCL or the corporation's certificate of incorporation, a majority of the directors in office can fill any vacancy or newly created directorship. Except where the board of directors is classified or the certificate of incorporation provides for cumulative voting, a director may be removed with or without cause by a majority of the shares entitled to vote at an election of the directors.

The Company's board of directors consists of five members. The Company's Amended and Restated Certificate of Incorporation and Amended