Lifevantage Corp
Form DEFA14A
January 23, 2018
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 ý
Filed by a Party other than the Registrant o
Check the appropriate box:
o Preliminary Proxy Statement
o Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
o Definitive Proxy Statement
ý Definitive Additional Materials
o Soliciting Material Pursuant to §240.14a-12
LIFEVANTAGE 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):
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(1) Title of each class of securities to which transaction applies:

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(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):

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SUPPLEMENT TO PROXY STATEMENT
2018 ANNUAL MEETING OF SHAREHOLDERS

For the Annual Meeting of Shareholders
To Be Held On February 2, 2018

This supplement, dated January 23, 2018 (this "Supplement") amends and supplements the disclosures contained in the definitive proxy statement (the "Proxy Statement") of LifeVantage Corporation (the "Company"), filed with the Securities and Exchange Commission on December 20, 2017, relating to the Company's fiscal year 2018 Annual Meeting of Shareholders to be held on February 2, 2018. The additional and revised disclosures in this Supplement amend and supplement the disclosures contained in the Proxy Statement, and should be read in conjunction with the disclosures contained in the Proxy Statement, which in turn should be read in its entirety and together with any documents incorporated by reference therein. To the extent that information in this Supplement differs from or updates information contained in the Proxy Statement, the information in this Supplement shall supersede or supplement the information in the Proxy Statement. Capitalized and other certain defined terms used herein, but not otherwise defined, shall have the meanings ascribed to such terms in the Proxy Statement. Unless stated otherwise, new text (including in Annexes A, E and F attached to this Supplement) is underlined to highlight the supplemental information being provided to you and any deleted text is identified with a strike out. The amendments and supplements:

(1) Revise Proposal 2 "Approval of an Amendment to the 2017 Long-Term Incentive Plan to Increase Authorized Shares" to decrease the number of additional shares to be added, and to disclose certain additional amendments, to the 2017 LTIP, subject to shareholder approval of this Proposal.

(2) Revise the 2017 LTIP document attached as Annex A to the Proxy Statement to reflect the changes to the 2017 LTIP described in (1) above.

(3) Revise the disclosure in the table "Comparison of Shareholder Rights Before and After the Reincorporation" under Proposal 4 "Approval of the Reincorporation of the Company from the State of Colorado to the State of Delaware" to:

a. Provide that advisory amendments to the Delaware Certificate may be proposed by the holders of shares representing at least 10% of all of the shares entitled to vote upon the amendment.

b. Provide that amendments to the Delaware Bylaws may approved by a majority of the votes cast at a duly-called stockholder meeting.

(4) Revise (i) the draft Delaware Certificate attached as Annex E to the Proxy Statement so that amendments to the Delaware Bylaws may approved by a majority of the votes cast at a duly-called stockholder meeting and (ii) the draft Delaware Bylaws attached as Annex F to the Proxy Statement so that advisory proposals to amend the Delaware Certificate may be proposed by the holders of shares representing at least 10% of all of the shares that would be entitled to vote upon the amendment. The draft Delaware Certificate and draft Delaware Bylaws, as revised, are attached as Annex E and Annex F below, respectively.

(5) Make certain other changes.

Important Notice Regarding the Availability of Proxy Materials for the Annual Meeting of Shareholders to be Held on February 2, 2018:
The Proxy Statement, this Supplement, the proxy card and Annual Report to Shareholders for the fiscal year ended June 30, 2017 are available on the Internet at http://investor.lifevantage.com/sec.cfm.

THIS SUPPLEMENT CONTAINS IMPORTANT ADDITIONAL INFORMATION AND SHOULD BE READ IN CONJUNCTION WITH THE PROXY STATEMENT.

Please be aware that if you have voted or hereafter vote with respect to Proposal 2 or 4, such vote will constitute a vote with respect to Proposal 2 or 4, respectively, as supplemented by this Supplement. You may also revoke your proxy as further described in the Proxy Statement and on page 16 of this Supplement.

Except as described in this Supplement, the information provided in the Proxy Statement continues to apply. This Supplement is being first made available to shareholders of record as of the Record Date on or about January 23, 2018.

Supplemental Information Regarding Proposal 2 -
Approval of an Amendment to the 2017 Long-Term Incentive Plan to Increase the Authorized Shares

In response to the negative recommendation issued by Institutional Shareholder Services ("ISS") with respect to Proposal 2, we have further amended our 2017 Long-Term Incentive Plan (the "2017 LTIP") as follows:

- To decrease the number of shares of common stock we seek to add, subject to shareholder approval of this Proposal 2, to the shares available for grant under the 2017 LTIP, from 675,000 shares to 425,000 shares;
- To clarify the language of the 2017 LTIP to provide that while dividends or dividend equivalent rights may accrue or attach with respect to the unvested portion of plan awards, no dividend amounts will be paid on such awards that do not thereafter vest; and
- To provide that no awards granted under the 2017 LTIP on or after July 1, 2018 may vest, become exercisable or be settled prior to the first anniversary of the grant date of the award. This minimum vesting requirement does not apply:
  - To up to 5% of the aggregate number of shares reserved for issuance under the 2017 LTIP,
  - In the context of a change of control or similar acquisition of LifeVantage, or
  - With respect to an award held by a participant whose service with us terminates as a result of his or her death or disability.

Historically, by practice, substantially all awards that we have granted, other than to non-employee directors, include vesting schedules that require an employee to provide services for at least a year before such awards become exercisable or settled prior to the first anniversary of the date of grant. Therefore, the proposed amendment codifies our historic practice. If our shareholders approve this Proposal 2 and the minimum vesting requirement is incorporated into the 2017 LTIP, our Board of Directors will restructure our non-employee director compensation program in a manner that complies with this requirement.

If Proposal 2 is approved by our shareholders, the maximum number of shares available for issuance under the 2017 LTIP would increase from 1,125,000 to 1,550,000 (which includes up to 475,000 shares previously reserved for issuance under our 2010 Long-Term Incentive Plan that may become available under the 2017 LTIP). The 2017 LTIP, as proposed to be amended, provides that no more than 1,550,000 shares plus (i) shares underlying forfeited or terminated awards that become available again for issuance under the 2017 LTIP and (ii) shares that are utilized to pay an award's exercise price or tax withholding obligations, may be issued pursuant to the exercise of ISOs. Our board of directors (our "Board") approved the amendments to the 2017 LTIP on November 16, 2017 and on January 19, 2018 (the "Amendment"), subject to shareholder approval. If this Proposal 2 is not approved by our shareholders, none of the above-described amendments will be effective and the amendments approved by our Board will be without effect.

As of January 12, 2018, there were awards with respect to 450,800 shares of restricted stock and restricted stock units outstanding under the 2017 LTIP, assuming at-target achievement of outstanding performance-based awards. No options to purchase shares of our common stock were outstanding under the 2017 LTIP as of such date. As of January 12, 2018, the number of shares available for grant under the 2017 LTIP was 252,198 shares, if we assume that all performance-based restricted stock units vest at 200% of target (maximum performance achievement), or 578,998 shares if we assume target (100%) achievement level. The fair market value of a share of our common stock (as determined by the closing price quoted on the Nasdaq) on January 12, 2018 was $4.35.

The proposed Amendment to increase the number of shares available for issuance under the 2017 LTIP by 425,000 shares is intended to provide us with a sufficient number of shares to satisfy our expected equity grant requirements through approximately January 2019, based on the anticipated structure and timing of annual grants of our equity incentive program. We intend following the fiscal 2018 Annual Meeting of Shareholders, to resume granting stock options to certain of our employees, including our executive officers, in addition to or in lieu of full value awards, as our compensation committee believes that stock options offer the best performance-based incentive at this time and stage of the company's life. As we transition from full value awards to stock options, we anticipate that our share usage will increase in order to allow us to provide market competitive long-term incentive compensation. Currently, the shares available for issuance and number of awards outstanding as a percentage of the Company's common stock outstanding as of January 12, 2018 is 11.8%. The awards outstanding include awards outstanding under our 2007

Long-Term Incentive Plan (“2007 LTIP”), 2010 Long-Term Incentive Plan (“2010 LTIP”) and 2017 LTIP. If this proposal is approved by our shareholders, the potential additional dilution to shareholders would increase by 3.0% to 14.8%.

The approximate impact of the requested share reserve for the 2017 LTIP on shareholder dilution is shown in the below table (the below figures are a percentage of our outstanding shares as of January 12, 2018 and include outstanding awards under our 2007 LTIP, 2010 LTIP and 2017 LTIP:

Dilutive effect of new reserve shares under the 2017 LTIP	3.0 %
Total potential dilution (including currently outstanding equity compensation awards)	14.8%

The complete text of the 2017 LTIP, as proposed to be amended, is attached as Annex A to this Supplement. Shareholders are urged to review it together with the information contained in this Supplement and in the Proxy Statement, which information is qualified in its entirety by reference to the complete text of the 2017 LTIP. If there is any inconsistency between the description of the 2017 LTIP included in the Proxy Statement, as updated by this Supplement, and the terms of the 2017 LTIP, the terms of the 2017 LTIP shall govern.

The Tax Cuts and Jobs Act of 2017 (the "Act"), enacted on December 22, 2017, amended Section 162(m) of the Internal Revenue Code (the "Code"). As a result, awards that we may grant under the 2017 LTIP to certain of our executive officers that previously could have been structured to ensure their full deductibility, including stock options, performance-based restricted shares, performance-based stock units and performance-based cash awards, may not be fully deductible for us in future years when the officer is required to recognize income with respect to an award. The discussion in the Proxy Statement of the impact of Section 162(m) of the Code in connection with the 2017 LTIP is hereby updated to incorporate this recent change in federal tax law.

OUR BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT YOU VOTE FOR APPROVAL OF PROPOSAL 2, AS SUPPLEMENTED BY THIS SUPPLEMENT, FOR THE AMENDMENT TO THE 2017 LONG-TERM INCENTIVE PLAN TO INCREASE THE AUTHORIZED SHARES AVAILABLE TO BE ISSUED THEREUNDER.

Supplemental Information Regarding Proposal 4 -
Approval of the Reincorporation of the Company from the State of Colorado to the State of Delaware

In response to the negative recommendation issued by Institutional Shareholder Services ("ISS") we have further amended the Delaware Certificate and Delaware Bylaws (as set forth on Annex E and Annex F hereto, respectively) to:

- Provide that advisory amendments to the Delaware Certificate may be proposed by the holders of shares representing at least 10% of all of the shares entitled to vote upon the amendment.
- Provide that amendments to the Delaware Bylaws may approved by a majority of the votes cast at a duly-called stockholder meeting.

If a stockholder or group of stockholders holding at least 10% of the outstanding shares of Common Stock entitled to vote upon an amendment timely and properly submits an advisory proposal to amend the Delaware Certificate, we would include such advisory proposal in our proxy statement for the next annual meeting of stockholders.

Additionally, we have made corresponding revisions to the table titled "Comparison of Shareholder Rights Before and After the Reincorporation" as set forth below.

If Proposal 4 is approved by our shareholders, the Delaware Certificate and Delaware Bylaws, as appended to this Supplement will govern LifeVantage-Delaware as a Delaware Corporation. Our board of directors approved the Delaware Certificate and Delaware Bylaws on January 19, 2018, subject to shareholder approval.

Comparison of Shareholder Rights Before and After the Reincorporation

Although the Delaware Certificate and the Delaware Bylaws are substantially similar to provisions from the current Colorado Articles and Colorado Bylaws, they also include certain provisions that are different from the provisions contained in the Colorado Articles and Bylaws. The following discussion briefly summarizes some of the changes resulting from the Reincorporation and the significant differences between the CBCA and the Colorado Articles and Bylaws and the DGCL and the Delaware Certificate and Bylaws.

The foregoing summary does not purport to be a complete statement of the respective rights of holders of our common stock and LifeVantage Delaware common stock, and is qualified in its entirety by reference to the CBCA and DGCL, respectively, and to the Colorado Articles and Bylaws and to the Delaware Certificate and Bylaws, respectively.

Authorized Capital Stock	
Colorado	Delaware
The Colorado Articles authorize 300,000,000 shares of capital stock, par value $0.0001 per share, comprised of 250,000,000 shares of common stock, par value $0.0001 per share, and 50,000,000 shares of preferred stock, par value $0.0001 per share. As of immediately prior to the Reincorporation, approximately 14,233,644 shares of LifeVantage Common Stock and no shares of preferred stock of the Company will be outstanding.	The Delaware Certificate will authorize 45,000,000 shares of capital stock, par value $0.0001 per share, comprised of 40,000,000 shares of common stock, par value $0.0001 per share, and 5,000,000 shares of preferred stock, par value $0.0001 per share. As of immediately following the Reincorporation, approximately 14,233,644 shares of LifeVantage Common Stock and no shares of preferred stock of LifeVantage will be outstanding.
Blank Check Preferred	
Colorado	Delaware

Under the CBCA, if the articles of incorporation so provide, a corporation may issue one or more classes of stock or one or more series of stock within any class, with such preferences, limitations and relative rights as determined by the board of directors without shareholder approval ("Blank Check Preferred Stock").

The DGCL also permits, if authorized by the certificate of incorporation, the issuance of Blank Check Preferred Stock with preferences, limitations and relative rights determined by a corporation's board of directors without stockholder approval.

The Colorado Articles authorize 50,000,000 shares of preferred stock. As of immediately prior to the Reincorporation, the authorized preferred stock will constitute undesignated Blank Check Preferred Stock.	The Delaware Certificate will authorize 5,000,000 shares of preferred stock. As of immediately following the Reincorporation, the authorized preferred stock will constitute undesignated Blank Check Preferred Stock.
Special Meetings of Shareholders Colorado	Delaware
Under the CBCA, a special meeting of shareholders shall be held if: (i) called by the board of directors or any person authorized by the bylaws or a resolution of the board of directors to call such a meeting; or (ii) if the corporation receives one or more written demands for a special meeting, stating the purpose or purposes for which it is to be held, signed and dated by the holders of shares representing at least 10% of all of the votes entitled to be cast on any issue proposed to be considered at the special meeting.	Under the DGCL, a special meeting of stockholders may be called by the corporation's board of directors or by such persons as may be authorized by the corporation's certificate of incorporation or bylaws. The DGCL does not require a corporation to call a special meeting at the request of stockholders.
The Colorado Bylaws provide that a special meeting of the Company's shareholders may be called by the Board, by the Company's Chief Executive Officer or at the request of the holders of not less than 10% of the shares of LifeVantage Common Stock entitled to vote at the special meeting.	The Delaware Certificate and the Delaware Bylaws provide that special meetings of stockholders may be called by a majority of the authorized number of directors of LifeVantage, the Chairman of the Board or the Chief Executive Officer, or at the request of the holders of not less than 10% of the shares of LifeVantage Common Stock entitled to vote at the special meeting.
Corporate Action without a Shareholder/Stockholder Meeting Colorado	Delaware
The CBCA provides that, unless the articles of incorporation require such action be taken at a shareholder meeting or expressly authorize that such action can be taken by less than unanimous written consent, any action required or permitted to be taken at a shareholder meeting may be taken without a meeting if all of the shareholders entitled to vote consent to such action in writing.	Unless otherwise provided in the certificate of incorporation, the DGCL permits corporate action without a meeting of stockholders upon the written consent of the holders of that number of shares necessary to authorize the proposed corporate action being taken.
The Colorado Articles and the Colorado Bylaws provide that any action required or permitted by the provisions of the CBCA to be taken at a shareholder meeting may be taken without a meeting, and shall have the same force and effect as a unanimous vote of all shareholders of the Company, if the Company receives a written consent (or counterpart thereof) setting forth the action to be taken, signed by all the shareholders entitled to vote thereon.	The Delaware Certificate prohibits stockholder action without a meeting, except in the case of holders of LifeVantage preferred stock, if any, which are entitled to take action by written consent as provided in the applicable certificate of designation.
Amendment or Repeal of the Articles of Incorporation or the Certificate of Incorporation Colorado	Delaware
Under the CBCA, amendments to the articles of incorporation, other than ministerial amendments authorized by the board of directors without shareholder action, may be proposed by the board of directors	Under the DGCL, stockholders are not entitled to enact an amendment to the certificate of incorporation without appropriate action taken

or by the holders of shares representing at least 10% of all of the shares entitled to vote upon the amendment. The board of directors must recommend the amendment to the shareholders unless the amendment is proposed by the shareholders or the board of directors determines that because of a conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the amendment.

by the board of directors. Amendments to the certificate of incorporation generally require that the board of directors adopt a resolution setting forth the amendment, declaring its advisability and submitting it to a vote of the stockholders.

	The Delaware Certificate expressly reserves the right of LifeVantage to amend or repeal any provision contained in the Delaware Certificate in the manner prescribed by Delaware law, provided that approval of the holders of at least a majority of the outstanding voting stock of LifeVantage is also obtained.
The Colorado Articles provide that the Company reserves the right to amend or repeal any provision contained in the Colorado Articles in any manner permitted under the CBCA. Under the Colorado Articles all rights and powers conferred upon directors and shareholders are granted subject to the reservation.	Additionally, the Delaware Bylaws provide that advisory proposals to amend the Delaware Certificate may be proposed by the holders of shares representing at least 10% of all of the shares that would be entitled to vote upon the amendment. Provided that such proposal is timely and properly submitted, the Company would include such proposal in the Company's proxy statement for the next annual meeting of stockholders.
Amendment or Repeal of Bylaws Colorado	
Under the CBCA, shareholders may amend the corporation's bylaws. Unless otherwise specified in the corporation's articles of incorporation or bylaws, directors also are permitted to amend the bylaws, other than bylaws establishing greater quorums or voting requirements for shareholders or directors. Directors may not amend the bylaws to change the quorum or voting requirements for shareholders, and directors may amend the bylaws to change the quorum or voting requirements for directors only if such provision was originally adopted by the directors or if such provision specifies that it may be amended by the directors.	Delaware The DGCL provides that stockholders may amend the bylaws and, if provided in its certificate of incorporation, the board of directors also has this power.
The Colorado Bylaws provide that the LifeVantage bylaws may at any time and from time to time be amended, supplemented, or repealed by the Board or the shareholders.	The Delaware Certificate and the Delaware Bylaws provide that, subject to the rights of holders of preferred stock of LifeVantage, if any, bylaws may be adopted, amended or repealed (i) by the approval of a majority of the authorized number of directors of LifeVantage, or (ii) upon the approval of the holders of at least a majority of the outstanding voting stock of LifeVantage votes cast at meeting of stockholders by the stockholders entitled to vote thereon.
Anti-Takeover Statutes	

Colorado The CBCA does not contain provisions designed to deter takeovers of public companies, such as a "fair price" statute, "business combination" statute, "control share acquisition" statute or "cash-out" statute. However, a company's articles of incorporation may include such provisions.	Delaware Section 203 of the DGCL establishes "business combination" restrictions that may deter or delay takeovers, although a corporation's certificate of incorporation or stockholders may elect to exclude the corporation from the restrictions in Section 203. Section 203 provides that, subject to certain exceptions specified therein, a corporation shall not engage in any business combination with any "interested stockholder" for a three-year period following the date that such stockholder becomes an interested stockholder unless: (i) prior to such date, the board of directors of the corporation approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder; (ii) upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced (excluding shares held by directors who are also officers and employee stock purchase plans in which employee participants do not have the right to determine, confidentially, whether plan shares will be tendered in a tender or exchange offer); or (iii) on or subsequent to such date, the business combination is approved by the board of directors of the corporation and by the affirmative vote at an annual or special meeting, and not by written consent, of at least 66 $^{2}/_{3}$ of the outstanding voting stock that is not owned by the interested stockholder. Except as specified in Section 203, an interested stockholder is defined to include: (a) any person that is the owner of 15% or more of the outstanding voting stock of the corporation or is an affiliate or associate of the corporation and was the owner of 15% or more of the outstanding voting stock of the corporation, at any time within three years immediately prior to the relevant date; and (b) the affiliates and associates of any such person. The provisions of Section 203 do not apply to a corporation if, subject to certain requirements, the certificate of incorporation or bylaws of the corporation contain a provision expressly electing not to be governed by the provisions of the statute or the corporation does not have voting stock listed on a national securities exchange or held of record by more than 2,000 stockholders.

The Colorado Articles provide, similar to Delaware law, that, subject to certain exceptions specified therein, the Company shall not engage in any business combination with any "interested shareholder" for a three-year period following the date that such shareholder becomes an interested shareholder unless: (i) prior to such date, the Board approved either the business combination or the transaction that resulted in the shareholder becoming an interested shareholder; (ii) upon consummation of the transaction which resulted in the shareholder becoming an interested shareholder, the interested shareholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced (excluding shares held by directors who are also officers and employee stock purchase plans in which employee participants do not have the right to determine, confidentially, whether plan shares will be tendered in a tender or exchange offer); or (iii) on or subsequent to such date, the business combination is approved by the Board and by the affirmative vote at an annual or special meeting, and not by written consent, of at least 66 $^{2}/_{3}$ % of the outstanding voting stock that is not owned by the interested shareholder.

The restrictions in the Colorado Articles do not apply if the Colorado Articles are amended by the shareholders to repeal the applicable section of the Colorado Articles, provided that such amendment shall not be effective until twelve months after the adoption of such amendment and shall not apply to any business combination between the Company and a person who became an interested shareholder on or prior to the date of such adoption.

Because neither the Delaware Certificate nor the Delaware Bylaws includes any provision to "opt-out" of Section 203, the statute will apply to business combinations involving LifeVantage.

Under certain circumstances, Section 203 may make it more difficult for a person who would be an "interested stockholder" to effect various business combinations with LifeVantage for a three-year period. The provisions of Section 203 may encourage companies interested in acquiring LifeVantage to negotiate in advance with the LifeVantage Board of Directors, since the stockholder approval requirement would be avoided if a majority of the directors then in office approve either the business combination or the transaction that results in the stockholder becoming an interested stockholder.

Number of Directors

Colorado

Under the CBCA, the number of directors must be specified in the corporation's bylaws.

The Colorado Articles provide that the number of directors may be stated in or fixed in accordance with the Colorado Bylaws. The Colorado Bylaws provide that the number of directors of the Company shall be fixed from time to time by the Board, but no decrease shall have the effect of shortening the term of any incumbent director.

Term

Colorado

Delaware

The DGCL permits the number of directors to be specified in either a corporation's bylaws or the corporation's certificate of incorporation. If the number of directors is specified in the corporation's certificate of incorporation, a change in the number of directors may be made only by amendment of the certificate of incorporation

The Delaware Certificate and the Delaware Bylaws provide that, subject to any rights of preferred stockholders of LifeVantage, the number of directors shall be fixed from time to time pursuant to a resolution adopted by the affirmative vote of a majority of the authorized number of directors of LifeVantage.

Delaware

The CBCA permits (but does not require) classifications of a corporation's board of directors.	The DGCL permits (but does not require) classifications of a corporation's board of directors into one, two or three classes, with each class comprised of as equal a number of directors as is possible. In the event of multiple classes of directors, the DGCL provides for staggered terms of two years if there are two classes of directors or three years if there are three classes of directors.

The Colorado Bylaws provide that the Company's directors be elected annually. All directors hold office until the next annual meeting of shareholders following their election or until their successors are elected and qualified, or until their earlier death, resignation or removal.	The Delaware Certificate, like the Colorado Articles, provides that LifeVantage's directors are elected annually. Under the Delaware Certificate, subject to the rights of holders of preferred stock of LifeVantage, if any, all directors hold office until the next annual meeting of stockholders following their election or until their successors are elected and qualified, or until their earlier death, resignation, disqualification or removal.
Removal	
Colorado	Delaware
Under the CBCA, one or more directors may be removed from office by the shareholders with or without cause, unless a corporation's articles of incorporation provide that directors may be removed only for cause, and only if the number of votes cast in favor of removal exceeds the number of votes cast against removal.	Under the DGCL, unless otherwise provided in the certificate of incorporation, one or more directors serving on a non-classified board may be removed, with or without cause, by the holders of a majority of the corporation's outstanding shares entitled to vote at an election of directors. In the case of a corporation having cumulative voting, if less than the entire board is to be removed, no director may be removed without cause if the votes cast against such director's removal would be sufficient to elect such director if then cumulatively voted at an election of the entire board of directors, or, if there are classes of directors, at an election of the class of directors of which the director is a part.
The Colorado Articles do not prohibit shareholders from removing a director without cause. The Colorado Bylaws provide that shareholders may remove directors from office with or without cause at a shareholder meeting duly called for such purpose, only if the number of votes cast in favor of removal exceeds the number of votes cast against such removal.	The Delaware Certificate provides that, subject to the rights of holders of any preferred stock of LifeVantage, if any, directors may be removed at any time, with our without cause and only by the vote of the holders of a majority of the votes cast at a duly-called stockholder meeting.
Vacancies	
Colorado	Delaware
Under the CBCA, unless otherwise provided in the articles of incorporation, any vacancy on the board of directors, including a vacancy resulting from an increase in the number of directors, may be filled by the shareholders or the board of directors, except that if the directors remaining in office constitute fewer than a quorum, the board of directors may fill the vacancy by the affirmative vote of a majority of the remaining directors.	Under the DGCL, unless otherwise provided in the certificate of incorporation or bylaws, any vacancy on the board of directors, including any vacancy resulting from an increase in the number of directors, may be filled by a majority of the directors then in office, although less than a quorum, or by the sole remaining director. Under the DGCL (unless otherwise provided in the articles of incorporation or bylaws), stockholders may fill the vacancy only if (i) at the time of the filling of any vacancy or newly created directorship, the directors in office constitute less than a majority of the whole board (as constituted immediately prior to any such increase) and (ii) the Delaware Chancery Court, upon application of stockholders holding at least 10% of a corporation's outstanding voting shares, orders an election to fill any such position.
The Colorado Articles do not alter the procedures specified in the CBCA. The Colorado Bylaws provide that any vacancy	Under the Delaware Certificate and the Delaware Bylaws, unless otherwise required by law or by resolution of LifeVantage's Board of Directors, vacancies on the board of directors may be filled, subject to the

on the Board may be filled by a majority of the remaining directors in office or by the shareholders at the next annual meeting or at a special meeting called for that purpose.

rights of holders of preferred stock of LifeVantage, if any, by a vote of a majority of the remaining directors in office, although less than a quorum.

Cumulative Voting; Vote Required for the Election of Directors

Colorado	Delaware
Under the CBCA, shareholders have the right to cumulate their votes in the election of directors unless otherwise provided in the articles of incorporation. In addition, the CBCA provides that, absent a provision to the contrary in a corporation's articles of incorporation, the election of directors will be by a plurality vote of the shareholders entitled to vote.	Similar to the CBCA, the DGCL permits cumulative voting if provided in the certificate of incorporation. In addition, the DGCL provides for the election of directors by plurality vote of the stockholders entitled to vote, unless the corporation's certificate of incorporation or bylaws provide otherwise.
The Colorado Articles expressly prohibit cumulative voting for the election of directors. The Colorado Articles do not alter the default plurality voting standard for the election of directors and the Colorado Bylaws specifically adopt a plurality voting standard for the election of the Company's directors.	The Delaware Certificate does not provide for cumulative voting. The Delaware Certificate and Delaware Bylaws do not alter the default plurality voting standard for the election of directors.
Limitation of Liability of Directors	
Colorado	Delaware
The CBCA permits a corporation to include a provision in its articles of incorporation eliminating the liability of a director to the corporation or its shareholders for monetary damages for breach of the director's fiduciary duty in certain cases. Under the CBCA, a provision eliminating the liability of a director to the corporation or its shareholders for monetary liability for breach of the director's fiduciary duty in certain cases must be contained in the corporation's articles of incorporation. In addition, a director may not be exculpated from liability: (i) for any breach of the director's duty of loyalty to the corporation or its shareholders; (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law; (iii) arising from transactions relating to certain unlawful distributions; or (iv) for any transaction from which the director derived an improper personal benefit.	Under the DGCL, a provision eliminating the liability of a director to the corporation or its stockholders for monetary liability for breach of the director's fiduciary duty in certain cases must be contained in the corporation's certificate of incorporation. In addition, a director may not be exculpated from liability: (i) for any breach of the director's duty of loyalty to the corporation or its shareholders; (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law; (iii) arising from transactions relating to certain unlawful distributions; or (iv) for any transaction from which the director derived an improper personal benefit.
The Colorado Articles exculpates directors of the Company from personal liability for all monetary damages for breach of fiduciary duty as a director to the fullest extent allowed under the CBCA, except that the Colorado Articles do not eliminate or limit the liability of the Company's directors for monetary damages otherwise existing for: (i) any breach of the director's duty of loyalty to the Company or to its shareholders; (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (iii) certain acts specified in the CBCA relating to any unlawful distribution; or (iv) any transaction from which the director directly or indirectly derived any improper personal benefit.	The Delaware Certificate exculpates directors of LifeVantage from all 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 LifeVantage or its stockholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (iii) for unlawful payment of dividends; or (iv) for any transaction from which the director derived an improper personal benefit.

Colorado

The CBCA provisions regarding indemnification rights are substantially similar to the provisions contained in the DGCL, except as noted below.

Permissive Indemnification. In addition to the limitations of the DGCL, the CBCA prohibits a corporation from indemnifying a director, officer, employee or agent of a corporation (each, an “Indemnitee”) adjudged liable of receiving an improper personal benefit.

The CBCA also allows a corporation to indemnify an Indemnitee who is not a director to a greater extent than specified in the CBCA, if not inconsistent with public policy. However, a corporation may only indemnify a director as specified in the CBCA.

The CBCA requires a corporation to provide its shareholders with written notice of any indemnification payments or expense advancements paid to a director on or before the notice of the next shareholder’s meeting after making such payments.