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DELAWARE STATE SENATE

134TH GENERAL ASSEMBLY

SENATE BILL NO. _____ 93 MAR 31 1987

AN ACT TO AMEND TITLE 8, DELAWARE CODE, RELATING TO THE GENERAL CORPORATION LAW OF THE STATE OF DELAWARE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

1 Section 1. Amend §102(a)(4), Title 8, Delaware Code, by deleting the sentence which
2 reads "Such grant of authority may include the power to specify the number of shares of any
3 series" and by deleting the second sentence thereof in its entirety and inserting in lieu
4 thereof the following:

5 "If the corporation is to be authorized to issue more than one class of stock, the
6 certificate of incorporation shall set forth the total number of shares of all classes
7 of stock which the corporation shall have authority to issue and the number of shares of
8 each class, and shall specify each class the shares of which are to be without par value
9 and each class the shares of which are to have par value and the par value of the shares
10 of each such class."

11 Section 2. Amend §141(d), Title 8, Delaware Code, by adding the following sentence at
12 the end of such subsection:

13 "If the certificate of incorporation provides that directors elected by the holders
14 of a class or series of stock shall have more or less than 1 vote per director on any
15 matter, every reference in this chapter to a majority or other proportion of directors
16 shall refer to a majority or other proportion of the votes of such directors."

17 Section 3. Amend §141(e), Title 8, Delaware Code, by deleting that subsection and
18 substituting in lieu thereof the following:

19 "A member of the board of directors, or a member of any committee designated by the
20 board of directors, shall, in the performance of his duties, be fully protected in

1 relying in good faith upon the records of the corporation and upon such information,
2 opinions, reports or statements presented to the corporation by any of the corporation's
3 officers or employees, or committees of the board of directors, or by any other person
4 as to matters the member reasonably believes are within such other person's professional
5 or expert competence and who has been selected with reasonable care by or on behalf of
6 the corporation."

7 Section 4. Amend §151(g), Title 8, Delaware Code, by deleting the words "class or" in
8 the second sentence of that subsection the first time they appear, by deleting the
9 parenthetical in the second sentence after the word "increased" the first time it appears
10 and inserting "(but not above the total number of authorized shares of the class)" in lieu
11 thereof, and by inserting before the last sentence thereof the following:

12 "Unless otherwise provided in the certificate of incorporation, if no shares of
13 stock have been issued of a class or series of stock established by a resolution of the
14 board of directors, the voting powers, designations, preferences and relative,
15 participating, optional or other rights, if any, or the qualifications, limitations or
16 restrictions thereof, may be amended by a resolution or resolutions adopted by the board
17 of directors. A certificate which (1) states that no shares of the class or series have
18 been issued, (2) sets forth a copy of the resolution or resolutions and (3) if the
19 designation of the class or series is being changed, indicates the original designation
20 and the new designation, shall be executed, acknowledged, filed, recorded shall become
21 effective, in accordance with §103 of this title."

22 Further amend said Section by striking the period at the end thereof and by inserting in
23 lieu thereof the following:

24 "; except that neither the filing of such certificate nor the filing of a restated
25 certificate of incorporation pursuant to §245 of this title shall prohibit the board of
26 directors from subsequently adopting such resolutions as authorized by this subsection."

27 Section 5. Amend §172, Title 8, Delaware Code, by deleting such section in its entirety
28 and substituting in lieu thereof the following:

29 "A member of the board of directors, or a member of any committee designated by the
30 board of directors, shall be fully protected in relying in good faith upon the records
31 of the corporation and upon such information, opinions, reports or statements presented
32 to the corporation by any of its officers or employees, or committees of the board of
33 directors, or by any other person as to matters the director reasonably believes are
34 within such other person's professional or expert competence and who has been selected
35 with reasonable care by or on behalf of the corporation, as to the value and amount of

1 the assets, liabilities and/or net profits of the corporation, or any other facts
2 pertinent to the existence and amount of surplus or other funds from which dividends
3 might properly be declared and paid, or with which the corporation's stock might
4 properly be purchased or redeemed."

5 Section 6. Amend Title 8, Delaware Code, by deleting §203 in its entirety.

6 Section 7. Amend §213(a), Title 8, Delaware Code, by deleting that subsection in its
7 entirety and inserting in lieu thereof the following:

8 "(a) In order that the corporation may determine the stockholders entitled to
9 notice of or to vote at any meeting of stockholders or any adjournment thereof, the
10 board of directors may fix a record date, which record date shall not precede the date
11 upon which the resolution fixing the record date is adopted by the board of directors,
12 and which record date shall not be more than sixty nor less than ten days before the
13 date of such meeting. If no record date is fixed by the board of directors, the record
14 date for determining stockholders entitled to notice of or to vote at a meeting of
15 stockholders shall be at the close of business on the day next preceding the day on
16 which notice is given, or, if notice is waived, at the close of business on the day next
17 preceding the day on which the meeting is held. A determination of stockholders of
18 record entitled to notice of or to vote at a meeting of stockholders shall apply to any
19 adjournment of the meeting; provided, however, that the board of directors may fix a new
20 record date for the adjourned meeting."

21 Section 8. Amend §213(b), Title 8, Delaware Code, by deleting that subsection in its
22 entirety and inserting in lieu thereof the following:

23 "(b) In order that the corporation may determine the stockholders entitled to
24 consent to corporate action in writing without a meeting, the board of directors may fix
25 a record date, which record date shall not precede the date upon which the resolution
26 fixing the record date is adopted by the board of directors, and which date shall not be
27 more than ten days after the date upon which the resolution fixing the record date is
28 adopted by the board of directors. If no record date has been fixed by the board of
29 directors, the record date for determining stockholders entitled to consent to corporate
30 action in writing without a meeting, when no prior action by the board of directors is
31 required by this chapter, shall be the first date on which a signed written consent
32 setting forth the action taken or proposed to be taken is delivered to the corporation
33 at its registered office in this State or at its principal place of business.. If no
34 record date has been fixed by the board of directors and prior action by the board of
35 directors is required by this chapter, the record date for determining stockholders

1 entitled to consent to corporate action in writing without a meeting shall be at the
2 close of business on the day on which the board of directors adopts the resolution
3 taking such prior action."

4 Section 9. Amend §213(c), Title 8, Delaware Code, by deleting that subsection in its
5 entirety and inserting in lieu thereof the following:

6 "(c) In order that the corporation may determine the stockholders entitled to
7 receive payment of any dividend or other distribution or allotment of any rights or the
8 stockholders entitled to exercise any rights in respect of any change, conversion or
9 exchange of stock, or for the purpose of any other lawful action, the board of directors
10 may fix a record date, which record date shall not precede the date upon which the
11 resolution fixing the record date is adopted, and which record date shall be not more
12 than sixty days prior to such action. If no record date is fixed, the record date for
13 determining stockholders for any such purpose shall be at the close of business on the
14 day on which the board of directors adopts the resolution relating thereto."

15 Section 10. Amend §216(2), Title 8, Delaware Code, by adding at the beginning of that
16 paragraph the words "In all matters other than the election of directors," and deleting
17 "and," after the semi-colon at the end of such paragraph.

18 Section 11. Amend §216, Title 8, Delaware Code, by deleting paragraph (3) thereof and
19 substituting in lieu thereof the following:

20 "(3) Directors shall be elected by a plurality of the votes of the shares present
21 in person or represented by proxy at the meeting and entitled to vote on the election of
22 directors; and

23 (4) Where a separate vote by a class or classes is required, a majority of the
24 shares of such class or classes present in person or represented by proxy shall
25 constitute a quorum entitled to take action with respect to that vote on that matter and
26 the affirmative vote of the majority of shares of such class or classes present in
27 person or represented by proxy at the meeting shall be the act of such class."

28 Section 12. Amend §228(a), Title 8, Delaware Code, by adding the words "or consents"
29 after the word "consent" the first time it appears in such subsection and adding "and shall
30 be delivered to the corporation at the office of its registered agent within this State or
31 at its principal place of business" after the word "voted".

32 Section 13. Amend §228(b), Title 8, Delaware Code, by adding the words "or consents"
33 after the word "consent" the first time it appears in such subsection and adding "and shall
34 be delivered to the corporation at the office of its registered agent within this State or
35 at its principal place of business" at the end of the subsection after the word "voted".

1 Section 14. Amend §228(c), Title 8, Delaware Code, by redesignating such subsection as
2 subsection "(d)" and inserting the following as a new subsection (c):

3 "(c) Every written consent shall bear the date of signature of each stockholder or
4 member who signs the consent and no written consent shall be effective to take the
5 corporate action referred to therein unless, within sixty days of the earliest dated
6 consent delivered to the corporation, written consents signed by a sufficient number of
7 holders or members to take action are delivered to the corporation at the office of its
8 registered agent within this State or at its principal place of business."

9 Section 15. Amend §243(a), Title 8, Delaware Code, by deleting the second sentence, so
10 that the entire subsection shall read:

11 "A corporation, by resolution of its board of directors, may retire any shares of
12 its capital stock that are issued but are not outstanding."

13 Section 16. Amend §243(b), Title 8, Delaware Code, to read in its entirety as follows:

14 "(b) Whenever any shares of the capital stock of a corporation are retired, they
15 shall resume the status of authorized and unissued shares of the class or series to
16 which they belong unless the certificate of incorporation otherwise provides. If the
17 certificate of incorporation prohibits the reissuance of such shares, or prohibits the
18 reissuance of such shares as a part of a specific series only, a certificate stating
19 that reissuance of the shares (as part of the class or series) is prohibited identifying
20 the shares and reciting their retirement shall be executed, acknowledged and filed and
21 shall become effective in accordance with §103 of this Title. When such certificate
22 becomes effective, it shall have the effect of amending the certificate of incorporation
23 so as to reduce accordingly the number of authorized shares of the class or series to
24 which such shares belong or, if such retired shares constitute all of the authorized
25 shares of the class or series to which they belong, of eliminating from the certificate
26 of incorporation all reference to such class or series of stock."

27 Section 17. Amend §251(b)(3), Title 8, Delaware Code, by deleting such subsection in
28 its entirety and inserting in lieu thereof the following:

29 "(3) in the case of a merger, such amendments or changes in the certificate of
30 incorporation of the surviving corporation as are desired to be effected by the merger,
31 or, if no such amendments or changes are desired, a statement that the certificate of
32 incorporation of the surviving corporation shall be its certificate of incorporation;".

33 Section 18. Amend §251(b)(4), Title 8, Delaware Code, by inserting a new subsection
34 (b)(4) as follows and renumbering the current subsection (b)(4) as subsection (b)(5) and
35 the remaining subsections accordingly:

"(4) in the case of a consolidation, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the agreement;".

Section 19. Amend §251(c), Title 8, Delaware Code, by inserting the following sentence between the second and third sentences thereof:

"The notice shall contain a copy of the agreement or a brief summary thereof, as the directors shall deem advisable."

Section 20. Amend §251(c), Title 8, Delaware Code, by adding the words "required by this Section" after the words "In lieu of filing and recording the agreement of merger or consolidation" in the last sentence thereof.

Section 21. Amend §251(c)(2), Title 8, Delaware Code, by deleting the word "subsection" and inserting in lieu thereof the word "Section".

Section 22. Amend §251(c)(4), Title 8, Delaware Code, by deleting that subsection and inserting in lieu thereof the following:

"(4) in the case of a merger, such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger, or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation,"

Section 23. Amend §251(c)(5), Title 8, Delaware Code, by inserting a new subsection (c)(5) to read as follows and renumbering the current subsection (c)(5) as subsection (c)(6) and the remaining subsections accordingly:

"(5) in the case of a consolidation, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the certificate,"

Section 24. Amend §252(c)(4), Title 8, Delaware Code, by deleting said subsection and inserting in lieu thereof the following:

"(4) in the case of a merger, such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger, or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation,"

Section 25. Amend §252(c)(5), Title 8, Delaware Code, by deleting said subsection and inserting in lieu thereof the following:

"(5) in the case of a consolidation, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the certificate,"

Section 26. Amend §253(a), Title 8, Delaware Code, by inserting the words "if the parent corporation is a corporation of this State or state that the proposed merger has been adopted, approved, certified, executed and acknowledged by the parent corporation in

1 accordance with the laws under which it is organized if the parent corporation is not a
2 corporation of this State" after the words "as it appears on the records of the
3 corporation" and before the "." in the second sentence thereof.

4 Section 27. Amend §254(d)(4), Title 8, Delaware Code, by deleting that subsection and
5 inserting in lieu thereof the following:

6 "(4) in the case of a merger, such amendments or changes in the certificate of
7 incorporation of the surviving corporation as are desired to be effected by the merger,
8 or, if no such amendments or changes are desired, a statement that the certificate of
9 incorporation of the surviving corporation shall be its certificate of incorporation;"

10 Section 28. Amend §254(d)(5), Title 8, Delaware Code, by inserting a new subsection
11 (d)(5) as follows and renumbering the current subsection (d)(5) as subsection (d)(6) and
12 the remaining subsections accordingly:

13 "(5) in the case of a consolidation, that the certificate of incorporation of the
14 resulting corporation shall be as is set forth in an attachment to the certificate."

15 Section 29. Amend §255(c), Title 8, Delaware Code, by inserting the following sentence
16 between the second and third sentences thereof:

17 "The notice shall contain a copy of the agreement or a brief summary thereof, as
18 the governing body shall deem advisable."

19 Section 30. Amend §262(a), Title 8, Delaware Code, by deleting the first sentence
20 thereof and substituting in lieu thereof the following:

21 "Any stockholder of a corporation of this State who holds shares of stock on the
22 date of the making of a demand pursuant to the provisions of subsection (d) of this
23 section with respect to such shares, who continuously holds such shares through the
24 effective date of the merger or consolidation, who has otherwise complied with the
25 provisions of subsection (d) of this Section and who has neither voted in favor of the
26 merger or consolidation nor consented thereto in writing pursuant to §228 of this
27 Chapter shall be entitled to an appraisal by the Court of Chancery of the fair value of
28 his shares of stock under the circumstances described in subsections (b) and (c) of this
29 Section."

30 Section 31. Amend §262(b), Title 8, Delaware Code, by inserting the words "or
31 consolidation" after the words "in a merger" and before the words "to be effected pursuant
32 to sections" in the first sentence thereof.

33 Section 32. Amend §262(i), Title 8, Delaware Code, by inserting the following sentence
34 after the first sentence thereof:

35 "Interest may be simple or compound, as the Court may direct."

1 Section 33. Amend §274, Title 8, Delaware Code, by deleting the title thereto and
2 replacing it with "Dissolution before the issuance of shares or beginning of business;
3 procedure."; by deleting the first two words of such section and substituting "If a
4 corporation has not issued shares or has not commenced" in lieu thereof; by adding a comma
5 after the word "organized" the first time it appears in such Section; by inserting "that no
6 shares of stock have been issued or" after the word "stating" the first time it appears in
7 such Section; by adding "that if the corporation has begun business but it has not issued
8 shares, all debts of the corporation have been paid; that if the corporation has not begun
9 business but has issued stock certificates" after the phrase "has been returned to those
10 entitled thereto:"; and by deleting the word "that" as it appears before "all issued stock
11 certificates, if any,".

12 Section 34. Amend §275, Title 8, Delaware Code, by deleting subsections (b) and (c),
13 and inserting in lieu thereof the following:

14 "(b) At the meeting a vote shall be taken upon the proposed dissolution. If a
15 majority of the outstanding stock of the corporation entitled to vote thereon shall vote
16 for the proposed dissolution, a certification of dissolution shall be filed with the
17 Secretary of State pursuant to subsection (d) of this Section.

18 "(c) Dissolution of a corporation may also be authorized without action of the
19 directors if all the stockholders entitled to vote thereon shall consent in writing and
20 a certificate of dissolution shall be filed with the Secretary of State pursuant to
21 subsection (d) of this Section.

22 "(d) If dissolution is authorized in accordance with this Section, a certificate of
23 dissolution shall be executed, acknowledged and filed, and shall become effective, in
24 accordance with §103 of this Title. Such certificate of dissolution shall set forth:

25 (i) the name of the corporation;

26 (ii) the date dissolution was authorized;

27 (iii) that the dissolution has been authorized by the board of directors and
28 stockholders of the corporation, in accordance with subsections (a) and (b) of this
29 Section, or that the dissolution has been authorized by all of the stockholders of
30 the corporation entitled to vote on a dissolution, in accordance with subsection
31 (c) of this section; and

32 (iv) the names and addresses of the directors and officers of the corporation.

33 (e) The resolution authorizing a proposed dissolution may provide that
34 notwithstanding authorization or consent to the proposed dissolution by the
35 stockholders, or the members of a nonstock corporation pursuant to §276 of this title,

1 the board of directors or governing body may abandon such proposed dissolution without
2 further action by the stockholders or members.

3 (f) Upon a certificate of dissolution becoming effective in accordance with §103
4 of this title, the corporation shall be dissolved."

5 Section 35. Amend §276, Title 8, Delaware Code, by deleting "nonprofit", from the title
6 thereof; by designating the current text of such section as "(a)"; by deleting "not for
7 profit and" the two times such words appear in §276; by deleting "not for profit or" the
8 one time such words appear in §276; and by adding a new subsection (b) to read as follows:

9 "(b) If a corporation having no capital stock has not commenced the business for
10 which the corporation was organized, a majority of the governing body or, if none, a
11 majority of the incorporators may surrender all of the corporation rights and franchises
12 by filing in the office of the Secretary of State a certificate, executed and
13 acknowledged by a majority of the incorporators or governing body, conforming as nearly
14 as may be to the certificate prescribed by §274 of this title.

15 Section 36. Amend §278, Title 8, Delaware Code by deleting the last sentence and
16 inserting in lieu thereof the following:

17 "With respect to any action, suit or proceeding begun by or against the corporation
18 either prior to or within 3 years after the date of its expiration or dissolution the
19 action shall not abate by reason of the dissolution of the corporation; the corporation
20 shall, solely for the purpose of such action, suit or proceeding, be continued as a body
21 corporate beyond the 3-year period and until any judgments, orders or decrees therein
22 shall be fully executed, without the necessity for any special direction to that effect
23 by the Court of Chancery."

24 Section 37. Amend §279, Title 8, Delaware Code, by adding "; duties." to the end of the
25 title thereof and by deleting the text coming after the phrase "the Court of Chancery on
26 application of any creditor" and before the phrase "shows good cause therefor" and by
27 inserting in lieu thereof ", stockholder or director of the corporation, or any other
28 person who".

29 Section 38. Amend Title 8, Delaware Code, by deleting §280 in its entirety and
30 inserting in lieu thereof the following:

31 "§280. Notice to Claimants: Filing of Claims

32 (a)(1) After a corporation has been dissolved in accordance with the procedures
33 set forth in this chapter, the corporation or any successor entity may give notice of
34 the dissolution requesting all persons having a claim against the corporation to present

1 their claims against the corporation in accordance with such notice. Such notice shall
2 state;

3 (i) that all claims must be presented in writing and must contain sufficient
4 information reasonably to inform the corporation or successor entity of the identity of
5 the claimant and the substance of the claim;

6 (ii) the mailing address to which a claim must be sent;

7 (iii) the date by which a claim must be received by the corporation or successor
8 entity, which date shall be no earlier than 60 days from the date thereof; and

9 (iv) that the corporation or a successor entity may make distributions to other
10 claimants and the corporation's stockholders or persons interested as having been such
11 without further notice to the claimant.

12 Such notice shall also be published at least once a week for two consecutive weeks
13 in a newspaper of general circulation in the county in which the office of the
14 corporation's last registered agent in this State is located and in the corporation's
15 principal place of business and, in the case of a corporation having \$10 million or more
16 in total assets at the time of its dissolution, at least once in all editions of a daily
17 newspaper with a national circulation. On or before the date of the first publication
18 of such notice, the corporation or successor entity shall mail a copy of such notice by
19 registered mail return receipt requested to each known claimant of the corporation.

20 (2) A corporation or successor entity may reject, in whole or in part, any claim
21 made by a claimant pursuant to this subsection by mailing notice of such rejection by
22 certified mail return receipt requested to the claimant within 90 days after receipt of
23 such claim and, in all events, at least 150 days before the expiration of the period
24 described in §278 of this title. A notice sent by a corporation or successor entity
25 pursuant to this subsection shall be accompanied by a copy of §278-283 of this title.

26 (b)(1) A corporation or successor entity electing to follow the procedures
27 described in subsection (a) of this section shall also give notice of the dissolution of
28 the corporation to persons with claims contingent upon the occurrence or nonoccurrence
29 of future events or otherwise conditional or unmatured, and request that such persons
30 present such claims in accordance with the terms of such notice. Such notice shall be
31 in substantially the form, and sent and published in the same manner, as described in
32 subsection (a)(1) of this section.

33 (2) The corporation or successor entity shall offer any claimant whose claim is
34 contingent, conditional or unmatured, such security as the corporation or successor
35 entity determines is sufficient to provide compensation to the claimant if the claim

1 matures. The corporation or successor entity shall mail such offer to the claimant by
2 certified mail return receipt requested, within 90 days of receipt of such claim and, in
3 all events, at least 150 days before the expiration of the period described in §278 of
4 this title. If the claimant offered such security does not deliver in writing to the
5 corporation or successor entity a notice rejecting the offer within 120 days after
6 receipt of such offer for security, the claimant shall be deemed to have accepted such
7 security as the sole source from which to satisfy his claim against the corporation.

8 (c)(1) A corporation or successor entity which has given notice in accordance with
9 subsections (a) and (b) of this section shall petition the Court of Chancery to
10 determine the amount and form of security that will be sufficient to provide
11 compensation to any claimant who has rejected the offer for security made pursuant to
12 subsection (b)(2) of this section.

13 (2) A corporation or successor entity which has given notice in accordance with
14 subsection (a) of this section shall petition the Court of Chancery to determine the
15 amount and form of security which will be sufficient to provide compensation to
16 claimants whose claims are known to the corporation or successor entity but whose
17 identities are unknown. The Court of Chancery shall appoint a guardian ad litem to
18 represent all claimants whose identities are unknown in any proceeding brought under
19 this subsection. The reasonable fees and expenses of such guardian, including all
20 reasonable expert witness fees, shall be paid by the petitioner in such proceeding.

22 (d) The giving of any notice or making of any offer pursuant to the provisions of
23 this section shall not revive any claim then barred or constitute acknowledgment by the
24 corporation or successor entity that any person to whom such notice is sent is a proper
25 claimant and shall not operate as a waiver of any defense or counterclaim in respect of
26 any claim asserted by any person to whom such notice is sent.

27 (e) As used in this section, the term 'successor entity' shall include any trust,
28 receivership or other legal entity governed by the laws of this State to which the
29 remaining assets and liabilities of a dissolved corporation are transferred and which
30 exists solely for the purposes of prosecuting and defending suits, by or against the
31 dissolved corporation, enabling the dissolved corporation to settle and close the
32 business of the dissolved corporation, to dispose of and convey the property of the
33 dissolved corporation, to discharge the liabilities of the dissolved corporation, and to
34 distribute to the dissolved corporation's stockholders any remaining assets, but not for
35 the purpose of continuing the business for which the dissolved corporation was
36 organized."

1 Section 39. Amend Title 8, Delaware Code, by deleting §281 and inserting in lieu
2 thereof the following:

3 "§281. Payment and Distribution to Claimants and Stockholders

4 (a) A dissolved corporation or successor entity which has followed the procedures
5 described in §280 of this title (i) shall pay the claims made and not rejected in
6 accordance with §280(a) of this title, (ii) shall post the security offered and not
7 rejected pursuant to §280(b)(2) of this title, (iii) shall post any security ordered by
8 the Court of Chancery in any proceeding under §280(c) of this title and (iv) shall pay
9 or make provision for all other obligations of the corporation or such successor
10 entity. Such claims or obligations shall be paid in full and any such provision for
11 payment shall be made in full if there are sufficient funds. If there are insufficient
12 funds, such claims and obligations shall be paid or provided for according to their
13 priority, and, among claims of equal priority, ratably to the extent of funds legally
14 available therefor. Any remaining funds shall be distributed to the stockholders of the
15 dissolved corporation; provided, however, that such distribution shall not be made
16 before the expiration of 150 days from the date of the last notice of rejections given
17 pursuant to §280(a)(2) of this title. In the absence of actual fraud, the judgment of
18 the directors of the dissolved corporation or the governing persons of such successor
19 entity as to the provision made for the payment of all obligations under (iv) above
20 shall be conclusive.

21 (b) A dissolved corporation or successor entity which has not followed the
22 procedures described in Section 280 of this title shall pay or make reasonable provision
23 to pay all claims and obligations, including all contingent, conditional, or unmatured
24 claims known to the corporation or such successor entity and all claims which are known
25 to the dissolved corporation or such successor entity but for which the identity of the
26 claimant is unknown. Such claims shall be paid in full and any such provision for
27 payment made shall be made in full if there are sufficient funds. If there are
28 insufficient funds, such claims and obligations shall be paid or provided for according
29 to their priority and, among claims of equal priority, ratably to the extent of funds
30 legally available therefor. Any remaining funds shall be distributed to the
31 stockholders of the dissolved corporation.

32 (c) Directors of a dissolved corporation or governing persons of a successor
33 entity which has complied with subsections (a) or (b) of this section shall not be
34 personally liable to the claimants of the dissolved corporation.

1 (d) As used in this section, the term 'successor entity' has the meaning set forth
2 in §280(e) of this title."

3 Section 40. Amend Title 8, Delaware Code, by deleting §282 and inserting in lieu
4 thereof the following:

5 "§282. Liability of Stockholders of Dissolved Corporations

6 (a) A stockholder of a dissolved corporation the assets of which were distributed
7 pursuant to §281(a) or (b) of this title shall not be liable for any claim against the
8 corporation in an amount in excess of such stockholder's pro rata share of the claim or
9 the amount so distributed to him, whichever is less.

10 (b) A stockholder of a dissolved corporation the assets of which were distributed
11 pursuant to §281(a) of this title shall not be liable for any claim against the
12 corporation on which an action, suit or proceeding is not begun prior to the expiration
13 of the period described in §278 of this title.

14 (c) The aggregate liability of any stockholder of a dissolved corporation for
15 claims against the dissolved corporation shall not exceed the amount distributed to him
16 in dissolution."

17 Section 41. Amend §283 and §284, Title 8, Delaware Code, by redesignating such sections
18 as §284 and §285 respectively and by inserting in lieu of §283 the following:

19 "§283. Jurisdiction of the Court

20 The Court of the Chancery shall have jurisdiction of any application prescribed in
21 this subchapter and of all questions arising in the proceedings thereon, and may make
22 such orders and decrees and issue injunctions therein as justice and equity shall
23 require."

24 Section 42. This Bill shall become effective on July 1, 1987, provided that (i)
25 Sections 19 and 29 shall be effective only with respect to mergers or consolidations for
26 which the notice of the stockholders meeting to vote thereon has been mailed after the
27 Effective Date, (ii) Section 30 shall be effective only with respect to mergers or
28 consolidations consummated pursuant to an agreement of merger or consolidation entered into
29 after the Effective Date and (iii) Sections 8, 12, 13 and 14 shall be effective with
30 respect to corporate actions taken by written consent, and to such written consent or
31 consents, as to which the first written consent is executed or solicited after the
32 Effective Date.

SYNOPSIS

Commentary on Section 102(a)(4)

Section 141(c) of Title 8 was amended in 1985 to provide that a committee of a board of directors would have the power to "fix the number of shares of any series of stock or authorize the increase or decrease of the shares of any series" in a situation where the board was authorized to fix the designations of stock as provided in Section 151(a). Although corporations already had the ability to grant to the full board of directors the power to fix the number of shares in a series by providing for such in the certificate of incorporation under Section 102(a), that section was also amended in 1985 to add the following sentence: "Such grant of authority may include the power to specify the number of shares of any series." This new language created the incorrect implication that, without such an express grant of authority in the certificate of incorporation, a board (or committee) would not have the power so to specify the number of shares in a given series. The sentence is now being eliminated to avoid the incorrect implication. Section 102(b)(4) was also amended in 1985 to add "and shall specify with respect to each class those shares that are to be without par value and those shares that are to have a par value" in the second sentence thereof. This language has been interpreted by some as authorizing different series of stock within a class to have differing par values. Such was not the intent of the 1985 amendment and the second sentence of Section 102(b)(4) has been modified to remove any such implication.

Commentary on Section 141

Two subsections of Section 141, which deals with the authority and operations of the board of directors, have been amended. Subsection (d) of Section 141 has been amended to clarify that in instances when directors elected by a class or series of stock have more or less than one vote, provisions of the Corporation Law which require action by a majority (or other proportion) of directors shall refer to a majority (or other proportion) of the number of votes which may be cast by directors rather than the number of directors. Subsection (e) has been amended to clarify that directors may rely in good faith upon all corporate records, reports of employees and committees of the board and the written or oral advice or opinions of any professionals and experts who are selected with reasonable care and are reasonably believed to be acting within the scope of their expertise.

Commentary on Section 151(g)

Subsection (g) has been amended to permit the board of directors to amend, by resolution, the terms of a class or series of stock established by resolution provided that no shares of such class or series have been issued; to make clear that the board of directors may only increase or decrease the number of shares of stock of a series, and not the class of which such series is a part, for which the voting powers, designations, preferences and relative, participating, optional or other rights, if any, or the qualifications, limitations and restrictions thereof, if any, shall have been provided for in a resolution or resolutions adopted by the board of directors; and to make clear that the filing of a certificate of designation or of a restated certificate of incorporation which incorporates terms previously established by certificate of designation does not itself prohibit the board of directors from thereafter adopting the further resolutions permitted under subsection (g).

Commentary on Section 172

Section 172 has been amended to clarify that directors, in determining whether a dividend may lawfully be declared or paid or stock may legally be purchased or redeemed, will be fully protected in relying in good faith upon all corporate records, reports of employees and committees of the board and the written or oral advice or opinions of any professionals and experts who are selected with reasonable care and who are reasonably believed to be acting within the scope of their expertise.

Commentary on Section 203

Section 203 has been held unconstitutional on Supremacy and Commerce Clause grounds, see, e.g., Loral Corp. v. Sanders Associates, Inc., D. Del., No. 86-296, Schwartz, J. (July 8, 1986), and the Section is consequently being repealed.

Commentary on Section 213

Section 213 has been reorganized to deal separately with the topics of record dates for meetings (in subsection (a)), for consents (in subsection (b)) and other matters for which a record date may be established (in subsection (c)). The principal modification made to subsection (a), and one which has been made to all subsections, is to replace the phrase "in advance" with "which record date shall not precede

the date upon which the resolutions fixing the record date is adopted." This change was made because the "in advance" language was a source of some confusion.

Subsection (b) authorizes the board of directors to establish a record date for determining those stockholders entitled to act by written consent, which date may not be more than 10 days after the date of the board action. If the board has not taken action to establish a record date and no prior board action is required under the General Corporation Law, subsection (b) establishes the record date as the date upon which the first signed consent setting forth the action to be taken has been delivered to the corporation at its registered office in Delaware or its principal place of business. If prior board action is necessary and no record date has been established by the board, the last sentence of subsection (b) provides that the record date shall be on the close of business on the date upon which the board adopts resolutions taking such necessary prior action.

Commentary on Section 216

In the absence of a provision in the certificate of incorporation or bylaws, Section 216 sets the quorum and voting rules that apply at stockholders' meetings. The Delaware rule has been that a vote of a majority of those present is required to take stockholder action. However, it was thought that at least in the case of the election of directors, the statute should only require a plurality vote. Thus, paragraphs (2) and (3) have been amended to provide for such a plurality vote. There has also been some concern over how to determine if a quorum is present when a class vote is required, particularly if one class of stockholders deliberately fails to attend a meeting to frustrate the ability of another class to vote. The amendment to paragraph (4) is designed to avoid that problem by separately defining when a quorum exists in such cases.

Commentary on Section 228

Section 228, which deals with action by stockholders by means of written consent, has been modified to require, in both subsections (a) and (b), the delivery of written consents to a corporation's principal place of business or the office of the corporation's registered agent in Delaware for such consents to be effective. A new subsection (c) has been added which requires that consents be dated the date upon which the stockholder or member signs the consent and provides that no written consent is effective unless written consents signed by enough stockholders to take the action referred to in the

consent are delivered to the corporation or its registered agent within sixty days of the date the first stockholder or member signs a consent.

Commentary on Section 243

The second sentence of subsection (a) is surplusage and has been deleted. The sentence has created some confusion stemming from a prior amendment to the section, which eliminated the requirement of the filing of a certificate of reduction of capital upon retirement of shares. The amendments to subsection (b) of Section 243 are intended to make clear that, where there are several series within a class of shares of stock, upon retirement stock in such series shall resume the status of authorized and unissued shares of their original series designation unless otherwise provided in the certificate of incorporation.

Commentary on Section 251

Section 251(b)(3), has been replaced by new subsections (b)(3) and (b)(4) to conform the statute to the prevailing practice of the Office of the Secretary of State. The new subsections provide that parties to a merger or consolidation agreement may not choose the certification of incorporation of a constituent corporation which is not the surviving corporation in the merger as the certificate of incorporation of the surviving corporation and that in a consolidation the certificate of the resulting corporation is to be attached to the agreement of merger. Corresponding changes have been made to Sections 251(c)(4), 251(c)(5), 254(d)(4) and 254(d)(5).

Sections 251(c) and 255(c) have been amended to require the board of directors to submit to stockholders an agreement of merger or consolidation or a brief summary thereof with the notice of the stockholders meeting to vote on the merger, as is presently required under Section 242 for an amendment to a certificate of incorporation.

Sections 251(c) and 251(c)(2) have been amended to clarify that a certificate of merger may be used for all mergers effected pursuant to Section 251, including mergers under subsection (f).

Commentary on Section 252

See Commentary to Section 251. In addition, the requirement of former Section 252(c)(5) that the certificate of incorporation of a non-Delaware surviving corporation be attached to a certificate of merger has been deleted.

Commentary on Section 253

Section 253(a) has been amended to permit for purposes of Delaware law, in a short-form merger in which the parent corporation is not a Delaware corporation, the stockholders of the parent corporation to approve the merger in accordance with the requirements of the laws of its state of incorporation.

Commentary on Section 254

See Commentary to Section 251(b)(3).

Commentary on Section 255

See Commentary to Section 251(c).

Commentary on Section 262

Section 262(a) has been amended to resolve any question as to when a stockholder must be a stockholder to qualify for appraisal rights. In order to be entitled an appraisal of the fair value of his shares, a person must be stockholder both on the date he makes a demand for appraisal under Section 262(d) and on the effective date of the merger or consolidation. In addition, the stockholder must continuously hold such shares of record throughout the period between the date of demand and the effective date of the merger or consolidation. The word "stockholder" means a stockholder as defined in subsection 262(a), i.e., a stockholder of record, and its use is meant to reinforce the fact that appraisal rights are available only to, and may be exercised only by, stockholders of record.

Commentary on Section 274

Section 274 has been amended to provide a simplified procedure for the dissolution of a corporation which has begun the business for which it was organized but has not issued any stock. Like a corporation which has not begun the business for which it was organized, such a corporation now can be dissolved by the action of a majority of the incorporators or directors, without the necessity of first issuing stock and then obtaining the approval of the stockholders. The section was further amended to provide that, in such a case, the certificate of dissolution shall state that all debts of the corporation have been paid.

Commentary on Section 275

Section 275 describes the dissolution procedures of general application. It has been reorganized by deleting from subsections (b) and (c) the description of the certificates to be filed when the dissolution is approved (i) by both the board of directors and the holders of a majority of the outstanding stock of the corporation entitled to vote thereon (subsection (b)) or (ii) by unanimous consent of the stockholders (subsection (c)). A new subsection (d) is added describing the form and content of a uniform certificate to be filed in either situation. Section 275 is also amended by adding a new subsection (e) permitting a resolution of dissolution to authorize its abandonment by the board of directors or governing body without further stockholder or member action. Finally, Section 275 is amended by adding a new subsection (f) which simplifies the statute by replacing language to the same effect now found in subsections (b) and (c).

Commentary on Section 276

Former Section 276 governed the dissolution of "nonprofit, nonstock corporations." The section is amended by deleting the references to "nonprofit" and "not for profit" to make clear that Section 276 applies to all nonstock corporations and by adding a new subsection (b) describing procedures parallel to those of Section 274 for the dissolution of a nonstock corporation which has not commenced the business for which it was organized.

Commentary on Section 278

Section 278 generally provides that corporations which dissolve or expire continue their legal existence for a period of three years thereafter, or such longer time as the Court of Chancery may order, for the purpose of winding up their affairs. At the end of that period, the corporation can no longer sue or be sued and, except for defined, limited purposes, ceases to exist. Such a corporation does continue its legal existence beyond that period for the purpose of prosecuting or defending any action begun by or against it prior to the expiration of that period. Section 278 is amended to make clear that any such action does not abate by reason of the dissolution of the corporation and that the continuation of a corporation's legal existence beyond the period described in Section 278 by reason of the pendency of an action, suit or proceeding is solely for the purpose of that action, suit or proceeding. These changes made Section 282 unnecessary and, thus, it has been repealed.

Commentary on Section 279

Section 279 is amended to make explicit that a director of a dissolved corporation is a person entitled to petition the Court of Chancery for the appointment of a trustee or receiver of the corporation's property.

Commentary on Section 280

Former Section 280 is renumbered Section 283. That section, which conferred jurisdiction on the Court of Chancery in actions under Section 279, is expanded to include actions under any provision of Subchapter X, including the new provisions of Section 280.

New Section 280 creates a procedure that corporations may elect to follow in winding up their affairs, paying claims against the corporate assets and distributing any remaining assets to the stockholders. The section (and Section 281, as amended) is designed to provide a "safe harbor" such that if the procedures described in Section 280 are followed and assets are distributed in accordance with Section 281, as amended, directors (or governing persons of a "successor entity" as defined in subsection (d)) will not be held personally liable to unpaid claimants of the corporation for having improperly distributed assets.

Commentary on Section 281

Section 281 is substantially new. Subsections (a) and (b) prescribe the procedures for distributing assets, including the distribution of remaining assets to stockholders, of a dissolved corporation which has and has not, respectively, complied with the provisions of Section 280. Subsection (c) deals with the liability of directors (and governing persons of "successor entities") to claimants whose claims against the dissolved corporation are ultimately unsatisfied.

Commentary on Section 282

Section 282 is new and addresses the liability of stockholders to corporate creditors where the assets of the corporation have been distributed by the corporation or a successor entity. Subsection (a) provides that where the corporation has distributed its assets pursuant to either Section 281(a) or (b), the liability of a stockholder to an unsatisfied creditor of the corporation will be the lesser of that stockholder's proportionate share of the claim or the

amount of assets distributed to that stockholder in dissolution. In the case of a corporation distributing assets pursuant to Section 281(a), the amount a creditor can recover from a stockholder will not be so limited if the board of directors (or governing body of a successor entity) did not comply with the requirements of that subsection in paying or making reasonable provision for the payment of the claims and obligations of the corporation.

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