SPONSOR: Sen. Townsend & Sen. Henry & Rep. Mitchell & Rep. M. Smith & Rep. Lynn
Sens. Blevins, Bonini, Bushweller, Cloutier, Ennis, Hall-Long, Lavelle, Marshall, McBride, McDowell, Peterson, Poore, Sokola, Reps. Brady, Dukes, Heffernan, Hudson, J. Johnson, Keeley, Longhurst, Paradee, Peterman, B. Short, D. Short, Smyk, Spiegelman, Wilson

DELAWARE STATE SENATE
148th GENERAL ASSEMBLY

SENATE BILL NO. 75

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

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

Section 1. Amend § 102(a)(1), Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

§ 102 Contents of certificate of incorporation.

(a) The certificate of incorporation shall set forth:

(1) The name of the corporation, which (i) shall contain 1 of the words "association," "company," "corporation," "club," "foundation," "fund," "incorporated," "institute," "society," "union," "syndicate," or "limited," (or abbreviations thereof, with or without punctuation), or words (or abbreviations thereof, with or without punctuation) of like import of foreign countries or jurisdictions (provided they are written in roman characters or letters); provided, however, that the Division of Corporations in the Department of State may waive such requirement (unless it determines that such name is, or might otherwise appear to be, that of a natural person) if such corporation executes, acknowledges and files with the Secretary of State in accordance with § 103 of this title a certificate stating that its total assets, as defined in § 503(i) of this title, are not less than $10,000,000, or, in the sole discretion of the Division of Corporations in the Department of State, if the corporation is both a nonprofit nonstock corporation and an association of professionals, (ii) shall be such as to distinguish it upon the records in the office of the Division of Corporations in the Department of State from the names that are reserved on such records and from the names on such records of each other corporation, partnership, limited partnership, limited liability company or statutory trust organized or registered as a domestic or foreign corporation, partnership, limited partnership, limited liability company or statutory trust under the laws of this State, except with the written consent of the person who has reserved such name or such other foreign corporation or domestic or foreign partnership, limited partnership, limited liability company or statutory trust, executed, acknowledged and filed with the

Secretary of State in accordance with § 103 of this title, or except that, without prejudicing any rights of the person who has reserved such name or such other foreign corporation or domestic or foreign partnership, limited partnership, limited liability company or statutory trust, the Division of Corporations in the Department of State may waive such requirement if the corporation demonstrates to the satisfaction of the Secretary of State that the corporation or a predecessor entity previously has made substantial use of such name or a substantially similar name, that the corporation has made reasonable efforts to secure such written consent, and that such waiver is in the interest of the State, (iii) except as permitted by § 395 of this title, shall not contain the word "trust," and (iv) shall not contain the word "bank," or any variation thereof, except for the name of a bank reporting to and under the supervision of the State Bank Commissioner of this State or a subsidiary of a bank or savings association (as those terms are defined in the Federal Deposit Insurance Act, as amended, at 12 U.S.C. § 1813), or a corporation regulated under the Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1841 et seq., or the Home Owners' Loan Act, as amended, 12 U.S.C. § 1461 et seq.; provided, however, that this section shall not be construed to prevent the use of the word "bank," or any variation thereof, in a context clearly not purporting to refer to a banking business or otherwise likely to mislead the public about the nature of the business of the corporation or to lead to a pattern and practice of abuse that might cause harm to the interests of the public or the State as determined by the Division of Corporations in the Department of State;

Section 2. Amend § 102, Title 8 of the Delaware Code, by adding a new section, § 102(f), shown by underline as follows:

(f) The certificate of incorporation may not contain any provision that would impose liability on a stockholder for the attorneys' fees or expenses of the corporation or any other party in connection with an internal corporate claim, as defined in § 115 of this title.

Section 3. Amend § 109(b), Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

(b) The bylaws may contain any provision, not inconsistent with law or with the certificate of incorporation, relating to the business of the corporation, the conduct of its affairs, and its rights or powers or the rights or powers of its stockholders, directors, officers or employees. The bylaws may not contain any provision that would impose liability on a stockholder for the attorneys' fees or expenses of the corporation or any other party in connection with an internal corporate claim, as defined in § 115 of this title.

Section 4. Amend § 114(b), Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

(b) Subsection (a) of this section shall not apply to:

(1) Sections 102(a)(4), (b)(1) and (2), 109(a), 114, 141, 154, 215, 228, 230(b), 241, 242, 253, 254, 255, 256, 257, 258, 271, 276, 311, 312, 313, 390, and 503 of this title, which apply to nonstock corporations by their terms;

(2) Sections 102(f), 109(b) (last sentence), 151, 152, 153, 155, 156, 157(d), 158, 161, 162, 163, 164, 165, 166, 167, 168, 203, 204, 205, 211, 212, 213, 214, 216, 219, 222, 231, 243, 244, 251, 252, 267, 274, 275, 324, 364, 366(a), 391 and 502(a)(5) of this title; and

(3) Subchapter XIV and subchapter XVI of this chapter.

Section 5. Amend Title 8 of the Delaware Code by adding a new section, § 115, shown by underline as follows:

§ 115. Forum selection provisions.

The certificate of incorporation or the bylaws may require, consistent with applicable jurisdictional requirements, that any or all internal corporate claims shall be brought solely and exclusively in any or all of the courts in this State, and no provision of the certificate of incorporation or the bylaws may prohibit bringing such claims in the courts of this State. "Internal corporate claims" means claims, including claims in the right of the corporation, (i) that are based upon a violation of a duty by a current or former director or officer or stockholder in such capacity, or (ii) as to which this title confers jurisdiction upon the Court of Chancery.

Section 6. Amend § 152 Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

§ 152 Issuance of stock; lawful consideration; fully paid stock.

The consideration, as determined pursuant to § 153(a) and (b) of this title, for subscriptions to, or the purchase of, the capital stock to be issued by a corporation shall be paid in such form and in such manner as the board of directors shall determine. The board of directors may authorize capital stock to be issued for consideration consisting of cash, any tangible or intangible property or any benefit to the corporation, or any combination thereof. The resolution authorizing the issuance of capital stock may provide that any stock to be issued pursuant to such resolution may be issued in one or more transactions in such numbers and at such times as are set forth in or determined by or in the manner set forth in the resolution, which may include a determination or action by any person or body, including the corporation, provided the resolution fixes a maximum number of shares that may be issued pursuant to such resolution, a time period during which such shares may be issued and a minimum amount of consideration for which such shares may be issued. The board of directors may determine the amount of ~~such~~ consideration for which shares may be issued by setting a minimum amount of consideration or approving a formula by which the amount or minimum amount of consideration is determined. The formula may include or be made dependent upon facts ascertainable outside the formula, provided the manner in which such facts shall operate upon the formula is clearly and expressly set forth in the formula or in the resolution approving the

formula. In the absence of actual fraud in the transaction, the judgment of the directors as to the value of such consideration shall be conclusive. The capital stock so issued shall be deemed to be fully paid and nonassessable stock upon receipt by the corporation of such consideration; provided, however, nothing contained herein shall prevent the board of directors from issuing partly paid shares under § 156 of this title.

Section 7. Amend § 157(b) Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

(b) The terms upon which, including the time or times which may be limited or unlimited in duration, at or within which, and the consideration (including a formula by which such consideration may be determined) for which any such shares may be acquired from the corporation upon the exercise of any such right or option, shall be such as shall be stated in the certificate of incorporation, or in a resolution adopted by the board of directors providing for the creation and issue of such rights or options, and, in every case, shall be set forth or incorporated by reference in the instrument or instruments evidencing such rights or options. A formula by which such consideration may be determined may include or be made dependent upon facts ascertainable outside the formula, provided the manner in which such facts shall operate upon the formula is clearly and expressly set forth in the formula or in the resolution approving the formula. In the absence of actual fraud in the transaction, the judgment of the directors as to the consideration for the issuance of such rights or options and the sufficiency thereof shall be conclusive.

Section 8. Amend § 204, Title 8 of the Delaware Code by making insertions as shown by underline and deletions as shown by strike through as follows:

§ 204 Ratification of defective corporate acts and stock.

(a) Subject to subsection (f) of this section, no defective corporate act or putative stock shall be void or voidable solely as a result of a failure of authorization if ratified as provided in this section or validated by the Court of Chancery in a proceeding brought under § 205 of this title.

(b) (1) In order to ratify ~~a~~ one or more defective corporate ~~act~~ acts pursuant to this section (other than the ratification of an election of the initial board of directors pursuant to subsection (b)(2) of this section), the board of directors of the corporation shall adopt ~~a resolution~~ resolutions stating:

~~(1) The~~ (A) The defective corporate act or acts to be ratified;

~~(2) The time of the~~ (B) The date of each defective corporate act or acts;

~~(3) If~~ (C) If such defective corporate act or acts involved the issuance of shares of putative stock, the number and type of shares of putative stock issued and the date or dates upon which such putative shares were purported to have been issued;

~~(4) The~~ (D) The nature of the failure of authorization in respect of ~~the~~ each defective corporate act to be ratified; and

~~(5) That~~ (E) That the board of directors approves the ratification of the defective corporate act or acts.

~~The resolution~~ Such resolutions may also provide that, at any time before the validation effective time in respect of any defective corporate act set forth therein, notwithstanding ~~adoption of the resolution~~ the approval of the ratification of such defective corporate act by stockholders, the board of directors may abandon the ~~resolution~~ ratification of such defective corporate act without further action of the stockholders. The quorum and voting requirements applicable to the ~~adoption of such resolution~~ ratification by the board of directors of any defective corporate act shall be the quorum and voting requirements applicable ~~at the time of such adoption for~~ to the type of defective corporate act proposed to be ratified at the time the board adopts the resolutions ratifying the defective corporate act; provided that if the certificate of incorporation or bylaws of the corporation, any plan or agreement to which the corporation was a party or any provision of this title, in each case as in effect as of the time of the defective corporate act, would have required a larger number or portion of directors or of specified directors for a quorum to be present or to approve the defective corporate act, such larger number or portion of such directors or such specified directors shall be required for a quorum to be present or to adopt the ~~resolution~~ resolutions to ratify the defective corporate act, as applicable, except that the presence or approval of any director elected, appointed or nominated by holders of any class or series of which no shares are then outstanding, or by any person that is no longer a stockholder, shall not be required.

(2) In order to ratify a defective corporate act in respect of the election of the initial board of directors of the corporation pursuant to § 108 of this title, a majority of the persons who, at the time the resolutions required by this subsection (b)(2) are adopted, are exercising the powers of directors under claim and color of an election or appointment as such may adopt resolutions stating:

(A) The name of the person or persons who first took action in the name of the corporation as the initial board of directors of the corporation;

(B) The earlier of the date on which such persons first took such action or were purported to have been elected as the initial board of directors; and

(C) That the ratification of the election of such person or persons as the initial board of directors is approved.

~~(c) The resolution adopted pursuant to subsection (b)~~ (c) Each defective corporate act ratified pursuant to subsection (b)(1) of this section shall be submitted to stockholders for ~~adoption~~ approval as provided in subsection (d) of this section, unless:

(1) No other provision of this title, and no provision of the certificate of incorporation or bylaws of the corporation, or of any plan or agreement to which the corporation is a party, would have required stockholder approval of ~~the~~ such defective corporate act to be ratified, either at the time of ~~the~~ such defective corporate act or at the time ~~when the resolution required by~~ the board of directors adopts the resolutions ratifying such defective corporate act pursuant to subsection (b)(1) of this section ~~is adopted~~; and

(2) ~~The~~ Such defective corporate act ~~to be ratified~~ did not result from a failure to comply with § 203 of this title.

(d) If the ratification of a defective corporate act is required to be submitted to stockholders for approval pursuant to subsection (c) of this section ~~requires that the resolution be submitted to stockholders~~, due notice of the time, place, if any, and purpose of the meeting shall be given at least 20 days before the date of the meeting to each holder of valid stock and putative stock, whether voting or nonvoting, at the address of such holder as it appears or most recently appeared, as appropriate, on the records of the corporation. The notice shall also be given to the holders of record of valid stock and putative stock, whether voting or nonvoting, as of the time of the defective corporate act, other than holders whose identities or addresses cannot be determined from the records of the corporation. The notice shall contain a copy of the ~~resolution~~ resolutions adopted by the board of directors pursuant to subsection (b)(1) of this section or the information required by paragraphs (A) through (E) of subsection (b)(1) of this section and a statement that any claim that the defective corporate act or putative stock ratified hereunder is void or voidable due to the ~~identified~~ failure of authorization, or that the Court of Chancery should declare in its discretion that a ratification in accordance with this section not be effective or be effective only on certain conditions must be brought within 120 days from the applicable validation effective time. At such meeting, the quorum and voting requirements applicable to the ~~adoption~~ ratification of such ~~resolution by the stockholders~~ defective corporate act shall be the quorum and voting requirements applicable ~~at the time of such adoption for~~ to the type of defective corporate act proposed to be ratified at the time of the approval of the ratification, except that:

(1) If the certificate of incorporation or bylaws of the corporation, any plan or agreement to which the corporation was a party or any provision of this title in effect as of the time of the defective corporate act would have required a larger number or portion of stock or of any class or series thereof or of specified stockholders for a quorum to be present or to approve the defective corporate act, the presence or approval of such larger number or portion of stock or of such class or series thereof or of such specified stockholders shall be required for a quorum to be present or to

~~adopt the resolution~~ approve the ratification of the defective corporate act, as applicable, except that the presence or approval of shares of any class or series of which no shares are then outstanding, or of any person that is no longer a stockholder, shall not be required;

(2) The ~~adoption of a resolution to ratify~~ approval by stockholders of the ratification of the election of a director shall require the affirmative vote of the majority of shares present at the meeting and entitled to vote on the election of such director, except that if the certificate of incorporation or bylaws of the corporation then in effect or in effect at the time of the defective election require or required a larger number or portion of stock or of any class or series thereof or of specified stockholders to elect such director, the affirmative vote of such larger number or portion of stock or of any class or series thereof or of such specified stockholders shall be required to ratify the election of such director, except that the presence or approval of shares of any class or series of which no shares are then outstanding, or of any person that is no longer a stockholder, shall not be required; and

(3) In the event of a failure of authorization resulting from failure to comply with the provisions of § 203 of this title, the ratification of the defective corporate act shall require the vote set forth in § 203(a)(3) of this title, regardless of whether such vote would have otherwise been required.

Shares of putative stock on the record date for determining stockholders entitled to vote on any matter submitted to stockholders pursuant to subsection (c) of this section (and without giving effect to any ratification that becomes effective after such record date) shall neither be entitled to vote nor counted for quorum purposes in any vote to ratify any defective corporate act.

(e) If ~~the~~ a defective corporate act ratified pursuant to this section would have required under any other section of this title the filing of a certificate in accordance with § 103 of this title, then, whether or not a certificate was previously filed in respect of such defective corporate act and in lieu of filing the certificate otherwise required by this title, the corporation shall file a certificate of validation with respect to such defective corporate act in accordance with § 103 of this title. A separate certificate of validation shall be required for each defective corporate act requiring the filing of a certificate of validation under this section, except that (i) two or more defective corporate acts may be included in a single certificate of validation if the corporation filed, or to comply with this title would have filed, a single certificate under another provision of this title to effect such acts, and (ii) two or more overissues of shares of any class, classes or series of stock may be included in a single certificate of validation, provided that the increase in the number of authorized shares of each such class or series set forth in the certificate of validation shall be effective as of the date of the first such overissue. The certificate of validation shall set forth:

~~(1) The resolution adopted in accordance with subsection (b) of this section, the date of adoption of such resolution by the board of directors and, if applicable, by the stockholders and a statement that such resolution was duly adopted in accordance with this section;~~

(1) each defective corporate act that is the subject of the certificate of validation (including, in the case of any defective corporate act involving the issuance of shares of putative stock, the number and type of shares of putative stock issued and the date or dates upon which such putative shares were purported to have been issued), the date of such defective corporate act, and the nature of the failure of authorization in respect of such defective corporate act;

(2) a statement that such defective corporate act was ratified in accordance with this section, including the date on which the board of directors ratified such defective corporate act and the date, if any, on which the stockholders approved the ratification of such defective corporate act; and

(3) the information required by one of the following paragraphs:

~~(2) If~~ a. If a certificate was previously filed under § 103 of this title in respect of ~~the defective corporate act, the title and date of filing of such prior certificate and any certificates~~ such defective corporate act and no changes to such certificate are required to give effect to such defective corporate act in accordance with this section, the certificate of validation shall set forth (x) the name, title and filing date of the certificate previously filed and of any certificate of correction thereto~~; and~~ and (y) a statement that a copy of the certificate previously filed, together with any certificate of correction thereto, is attached as an exhibit to the certificate of validation;

b. If a certificate was previously filed under § 103 of this title in respect of the defective corporate act and such certificate requires any change to give effect to the defective corporate act in accordance with this section (including a change to the date and time of the effectiveness of such certificate), the certificate of validation shall set forth (x) the name, title and filing date of the certificate so previously filed and of any certificate of correction thereto, (y) a statement that a certificate containing all of the information required to be included under the applicable section or sections of this title to give effect to the defective corporate act is attached as an exhibit to the certificate of validation, and (z) the date and time that such certificate shall be deemed to have become effective pursuant to this section; or

c. If a certificate was not previously filed under § 103 of this title in respect of the defective corporate act and the defective corporate act ratified pursuant to this section would have required under any other section of this title the filing of a certificate in accordance with § 103 of this title, the certificate of validation shall set forth (x) a

statement that a certificate containing all of the information required to be included under the applicable section or sections of this title to give effect to the defective corporate act is attached as an exhibit to the certificate of validation, and (y) the date and time that such certificate shall be deemed to have become effective pursuant to this section.

A certificate attached to a certificate of validation pursuant to paragraph b. or c. of subsection (e)(3) of this section need not be separately executed and acknowledged and need not include any statement required by any other section of this title that such instrument has been approved and adopted in accordance with the provisions of such other section.

~~(3) Such provisions as would be required under any other section of this title to be included in the certificate that otherwise would have been required to be filed pursuant to this title with respect to such defective corporate act.~~

(f) From and after the validation effective time, unless otherwise determined in an action brought pursuant to § 205 of this title:

~~(1) Each~~ (1) Subject to the last sentence of subsection (d), each defective corporate act ~~set forth in the resolution adopted pursuant to subsection (b) of~~ ratified in accordance with this section shall no longer be deemed void or voidable as a result of ~~a~~ the failure of authorization ~~identified in such resolution~~ described in the resolutions adopted pursuant to subsection (b) of this section and such effect shall be retroactive to the time of the defective corporate act; and

~~(2) Each~~ (2) Subject to the last sentence of subsection (d), each share or fraction of a share of putative stock issued or purportedly issued pursuant to any such defective corporate act ~~and identified in the resolution required by subsection (b) of this section~~ shall no longer be deemed void or voidable ~~as a result of a failure of authorization identified in such resolution and, in the absence of any failure of authorization not ratified,~~ and shall be deemed to be an identical share or fraction of a share of outstanding stock as of the time it was purportedly issued.

~~(g) Prompt notice of the adoption of a resolution pursuant to~~ (g) In respect of each defective corporate act ratified by the board of directors pursuant to subsection (b) of this section, prompt notice of the ratification shall be given to all holders of valid stock and putative stock, whether voting or nonvoting, as of the date ~~of adoption of such resolution by~~ the board of directors adopts the resolutions approving such defective corporate act, or as of a date within 60 days after ~~the~~ such date of adoption ~~of such resolution~~, as established by the board of directors, at the address of such holder as it appears or most recently appeared, as appropriate, on the records of the corporation. The notice shall also be given to the holders of record of valid stock and putative stock, whether voting or nonvoting, as of the time of the defective corporate act, other than holders whose identities or addresses cannot be determined from the records of the corporation. The notice shall contain a copy of the ~~resolution~~ resolutions adopted pursuant to subsection (b) of this section or the information specified in paragraphs (A) through (E) of subsection (b)(1) or paragraphs (A) through (C) of

subsection (b)(2) of this section, as applicable, and a statement that any claim that the defective corporate act or putative stock ratified hereunder is void or voidable due to the ~~identified~~ failure of authorization, or that the Court of Chancery should declare in its discretion that a ratification in accordance with this section not be effective or be effective only on certain conditions must be brought within 120 days from the later of the validation effective time or the time at which the notice required by this subsection is given. Notwithstanding the foregoing, (i) no such notice shall be required if notice of the ~~resolution~~ ratification of the defective corporate act is to be given in accordance with subsection (d) of this section, and (ii) in the case of a corporation that has a class of stock listed on a national securities exchange, the notice required by this subsection may be deemed given if disclosed in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to §§ 13, 14 or 15(d) of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder, or the corresponding provisions of any subsequent United States federal securities laws, rules or regulations. If any defective corporate act has been approved by stockholders acting pursuant to § 228 of this title, the notice required by this subsection may be included in any notice required to be given pursuant to § 228(e) of this title and, if so given, shall be sent to the stockholders entitled thereto under § 228(e) and to all holders of valid and putative stock to whom notice would be required under this subsection if the defective corporate act had been approved at a meeting other than any stockholder who approved the action by consent in lieu of a meeting pursuant to § 228 of this title or any holder of putative stock who otherwise consented thereto in writing. Solely for purposes of ~~subsections (d) and (g)~~ subsection (d) of this section and this subsection, notice to holders of putative stock, and notice to holders of valid stock and putative stock as of the time of the defective corporate act, shall be treated as notice to holders of valid stock for purposes of § 222 and §§ 228, 229, 230, 232 and 233 of this title.

(h) As used in this section and in § 205 of this title only, the term:

(1) "Defective corporate act" means an overissue, an election or appointment of directors that is void or voidable due to a failure of authorization, or any act or transaction purportedly taken by or on behalf of the corporation that is, and at the time such act or transaction was purportedly taken would have been, within the power of a corporation under subchapter II of this chapter, but is void or voidable due to a failure of authorization;

(2) "Failure of authorization" means (i) the failure to authorize or effect an act or transaction in compliance with the provisions of this title, the certificate of incorporation or bylaws of the corporation, or any plan or agreement to which the corporation is a party, if and to the extent such failure would render such act or transaction void or voidable, or (ii) the failure of the board of directors or any officer of the corporation to authorize or approve any

act or transaction taken by or on behalf of the corporation that would have required for its due authorization the approval of the board of directors or such officer;

(3) "Overissue" means the purported issuance of:

a. Shares of capital stock of a class or series in excess of the number of shares of such class or series the corporation has the power to issue under § 161 of this title at the time of such issuance; or

b. Shares of any class or series of capital stock that is not then authorized for issuance by the certificate of incorporation of the corporation;

(4) "Putative stock" means the shares of any class or series of capital stock of the corporation (including shares issued upon exercise of options, rights, warrants or other securities convertible into shares of capital stock of the corporation, or interests with respect thereto that were created or issued pursuant to a defective corporate act) that:

a. But for any failure of authorization, would constitute valid stock; or

b. Cannot be determined by the board of directors to be valid stock;

(5) "Time of the defective corporate act" means the date and time the defective corporate act was purported to have been taken;

(6) "Validation effective time" with respect to any defective corporate act ratified pursuant to this section means the ~~later~~ latest of:

a. The time at which the ~~resolution~~ defective corporate act submitted to the stockholders for ~~adoption~~ approval pursuant to subsection (c) of this section is ~~adopted~~ approved by such stockholders~~,~~ or if no such vote of stockholders is required to ~~adopt the resolution~~ approve the ratification of the defective corporate act, the time at which the ~~notice~~ board of directors adopts the resolutions required by subsection ~~(g)~~(b)(1) or (b)(2) of this section ~~is given; and~~;

b. Where no certificate of validation is required to be filed pursuant to subsection (e) of this section, the time, if any, specified by the board of directors in the resolutions adopted pursuant to subsection (b)(1) or (b)(2) of this section, which time shall not precede the time at which such resolutions are adopted; and

~~b. The~~ c. The time at which any certificate of validation filed pursuant to subsection (e) of this section shall become effective in accordance with § 103 of this title.

(7) "Valid stock" means the shares of any class or series of capital stock of the corporation that have been duly authorized and validly issued in accordance with this title~~;~~.

In the absence of actual fraud in the transaction, the judgment of the board of directors that shares of stock are valid stock or putative stock shall be conclusive, unless otherwise determined by the Court of Chancery in a proceeding brought pursuant to § 205 of this title.

(i) Ratification under this section or validation under § 205 of this title shall not be deemed to be the exclusive means of ratifying or validating any act or transaction taken by or on behalf of the corporation, including any defective corporate act, or any issuance of stock, including any putative stock, or of adopting or endorsing any act or transaction taken by or in the name of the corporation prior to the commencement of its existence, and the absence or failure of ratification in accordance with either this section or validation under § 205 of this title shall not, of itself, affect the validity or effectiveness of any act or transaction or the issuance of any stock properly ratified under common law or otherwise, nor shall it create a presumption that any such act or transaction is or was a defective corporate act or that such stock is void or voidable.

Section 9. Amend § 205(f), Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

(f) Notwithstanding any other provision of this section, no action asserting:

(1) That a defective corporate act or putative stock ratified in accordance with § 204 of this title is void or voidable due to a failure of authorization identified in the resolution adopted in accordance with 204(b); or

(2) That the Court of Chancery should declare in its discretion that a ratification in accordance with § 204 of this title not be effective or be effective only on certain conditions,

may be brought after the expiration of 120 days from the later of the validation effective time and the time notice, if any, that is required to be given pursuant to § 204(g) of this title is given with respect to such ratification, except that this subsection shall not apply to an action asserting that a ratification was not accomplished in accordance with § 204 of this title or to any person to whom notice of the ratification was required to have been given pursuant to § 204(d) or (g) of this title, but to whom such notice was not given.

Section 10. Amend § 245(c), Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

(c) A restated certificate of incorporation shall be specifically designated as such in its heading. It shall state, either in its heading or in an introductory paragraph, the corporation's present name, and, if it has been changed, the name under which it was originally incorporated, and the date of filing of its original certificate of incorporation with the Secretary of State. A restated certificate shall also state that it was duly adopted in accordance with this section. If it was adopted by the board of directors without a vote of the stockholders (unless it was adopted pursuant to § 241 of this title or

without a vote of members pursuant to § 242(b)(3) of this title), it shall state that it only restates and integrates and does not further amend (except, if applicable, as permitted under § 242(a)(1) and § 242(b)(1) of this title) the provisions of the corporation's certificate of incorporation as theretofore amended or supplemented, and that there is no discrepancy between those provisions and the provisions of the restated certificate. A restated certificate of incorporation may omit (a) such provisions of the original certificate of incorporation which named the incorporator or incorporators, the initial board of directors and the original subscribers for shares, and (b) such provisions contained in any amendment to the certificate of incorporation as were necessary to effect a change, exchange, reclassification, subdivision, combination or cancellation of stock, if such change, exchange, reclassification, subdivision, combination or cancellation has become effective. Any such omissions shall not be deemed a further amendment.

Section 11. Amend § 362(c), Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

(c) The name of the public benefit corporation ~~shall, without exception,~~ may contain the words "public benefit corporation," or the abbreviation "P.B.C.," or the designation "PBC," which shall be deemed to satisfy the requirements of § 102(a)(l)(i) of this title. If the name does not contain such language, the corporation shall, prior to issuing unissued shares of stock or disposing of treasury shares, provide notice to any person to whom such stock is issued or who acquires such treasury shares that it is a public benefit corporation; provided that such notice need not be provided if the issuance or disposal is pursuant to an offering registered under the Securities Act of 1933 or if, at the time of issuance or disposal, the corporation has a class of securities that is registered under the Securities Exchange Act of 1934.

Section 12. Amend § 363(a), Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

(a) Notwithstanding any other provisions of this chapter, a corporation that is not a public benefit corporation, may not, without the approval of ~~90%~~2/3 of the outstanding ~~shares of each class of the~~ stock of the corporation ~~of which there are outstanding shares, whether voting or nonvoting~~ entitled to vote thereon:

(1) Amend its certificate of incorporation to include a provision authorized by § 362(a)(1) of this title; or

(2) Merge or consolidate with or into another entity if, as a result of such merger or consolidation, the shares in such corporation would become, or be converted into or exchanged for the right to receive, shares or other equity interests in a domestic or foreign public benefit corporation or similar entity.

The restrictions of this section shall not apply prior to the time that the corporation has received payment for any of its capital stock, or in the case of a nonstock corporation, prior to the time that it has members.

Section 13. Amend § 363(b), Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

(b) Any stockholder of a corporation that is not a public benefit corporation that holds shares of stock of such corporation immediately prior to the effective time of:

(1) An amendment to the corporation's certificate of incorporation to include a provision authorized by § 362(a)(1) of this title; or

(2) A merger or consolidation that would result in the conversion of the corporation's stock into or exchange of the corporation's stock for the right to receive shares or other equity interests in a domestic or foreign public benefit corporation or similar entity;

and has neither voted in favor of such amendment or such merger or consolidation nor consented thereto in writing pursuant to § 228 of this title, shall be entitled to an appraisal by the Court of Chancery of the fair value of the stockholder's shares of stock; provided, however, that no appraisal rights under this section shall be available for the shares of any class or series of stock, which stock, or depository receipts in respect thereof, at the record date fixed to determine the stockholders entitled to receive notice of the meeting of stockholders to act upon the agreement of merger or consolidation, or amendment, were either: (i) listed on a national securities exchange or (ii) held of record by more than 2,000 holders, unless, in the case of a merger or consolidation, the holders thereof are required by the terms of an agreement of merger or consolidation to accept for such stock anything except (A) shares of stock of any other corporation, or depository receipts in respect thereof, which shares of stock (or depository receipts in respect thereof) or depository receipts at the effective date of the merger or consolidation will be either listed on a national securities exchange or held of record by more than 2,000 holders; (B) cash in lieu of fractional shares or fractional depository receipts described in the foregoing clause (A); or (C) any combination of the shares of stock, depository receipts and cash in lieu of fractional shares or fractional depository receipts described in the foregoing clauses (A) and (B).

Section 14. Amend § 363(c), Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

(c) Notwithstanding any other provisions of this chapter, a corporation that is a public benefit corporation may not, without the approval of 2/3 of the outstanding ~~shares of each class of the~~ stock of the corporation ~~of which there are outstanding shares, whether voting or nonvoting~~ entitled to vote thereon:

(1) Amend its certificate of incorporation to delete or amend a provision authorized by § 362(a)(1) or § 366(c) of this title; or

(2) Merge or consolidate with or into another entity if, as a result of such merger or consolidation, the shares in such corporation would become, or be converted into or exchanged for the right to receive, shares or other equity interests in a domestic or foreign corporation that is not a public benefit corporation or similar entity and the certificate of incorporation (or similar governing instrument) of which does not contain the identical provisions identifying the public benefit or public benefits pursuant to § 362(a) of this title or imposing requirements pursuant to § 366(c) of this title.

Section 15. Amend § 391(c), Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

(c) The Secretary of State may issue photocopies or electronic image copies of instruments on file, as well as instruments, documents and other papers not on file, and for all such photocopies or electronic image copies which are not certified by the Secretary of State, a fee of $10 shall be paid for the first page and $2.00 for each additional page. ~~The Secretary of State may also issue microfiche copies of instruments on file as well as instruments, documents and other papers not on file, and for each such microfiche a fee of $2.00 shall be paid therefor.~~ Notwithstanding Delaware's Freedom of Information Act [Chapter 100 of Title 29] or any other provision of ~~this Code~~ law granting access to public records, the Secretary of State upon request shall issue only photocopies~~, microfiche~~ or electronic image copies of public records in exchange for the fees described ~~above~~ in this section, and in no case shall the Secretary of State be required to provide copies (or access to copies) of such public records (including without limitation bulk data, digital copies of instruments, documents and other papers, databases or other information) in an electronic medium or in any form other than photocopies or electronic image copies of such public records in exchange, as applicable, for the fees described in this section or § 2318 of Title 29 for each such record associated with a file number.

Section 16. Sections 1 through 7, 10 through 12 and 14 shall be effective on August 1, 2015. Sections 8 and 9 shall be effective only with respect to defective corporate acts and proposed issuances of putative stock ratified or to be ratified pursuant to resolutions adopted by a board of directors on or after August 1, 2015. Section 13 shall be effective only with respect to mergers and consolidations consummated pursuant to agreements entered into on or after August 1, 2015, or in the case of amendments, amendments approved by the board of directors on or after August 1, 2015. Section 15 shall be effective upon its enactment into law.

Ssynopsis

Section 1. Section 1 amends Section 102(a)(1) to enable the Division of Corporations in the Department of State to waive the requirement under Section 102(a)(1)(ii) in certain limited circumstances.

Section 2. In *ATP Tour, Inc. v. Deutscher Tennis Bund*, 91 A.3d 554 (Del. 2014), the Delaware Supreme Court upheld as facially valid a bylaw imposing liability for certain legal fees of the nonstock corporation on certain members who participated in the litigation. In combination with the amendments to Sections 109(b) and 114(b)(2), new subsection (f) does not disturb that ruling in relation to nonstock corporations. In order to preserve the efficacy of the enforcement of fiduciary duties in stock corporations, however, new subsection (f) would invalidate a provision in the certificate of incorporation of a stock corporation that purports to impose liability upon a stockholder for the attorneys' fees or expenses

of the corporation or any other party in connection with an internal corporate claim, as defined in new Section 115. New subsection (f) is not intended, however, to prevent the application of such provisions pursuant to a stockholders agreement or other writing signed by the stockholder against whom the provision is to be enforced.

Section 3. Like the concurrent amendment to Section 102, the new last sentence of subsection (b) would invalidate a provision in the bylaws of a stock corporation that purports to impose liability upon a stockholder for the attorneys' fees or expenses of the corporation or any other party in connection with an internal corporate claim, as defined in new Section 115. The new last sentence of subsection (b) is not intended, however, to prevent the application of any provision in a stockholders agreement or other writing signed by the stockholder against whom the provision is to be enforced.

Section 4. The amendment to Section 114 has the effect of avoiding the application to nonstock corporations of new Section 102(f) and the new last sentence of Section 109(b).

Section 5. New Section 115 confirms, as held in *Boilermakers Local 154 Retirement Fund v. Chevron Corporation*, 73 A.3d 934 (Del. Ch. 2013), that the certificate of incorporation and bylaws of the corporation may effectively specify, consistent with applicable jurisdictional requirements, that claims arising under the DGCL, including claims of breach of fiduciary duty by current or former directors or officers or controlling stockholders of the corporation, or persons who aid and abet such a breach, must be brought only in the courts (including the federal court) in this State. Section 115 does not address the validity of a provision of the certificate of incorporation or bylaws that selects a forum other than the Delaware courts as an additional forum in which internal corporate claims may be brought, but it invalidates such a provision selecting the courts in a different State, or an arbitral forum, if it would preclude litigating such claims in the Delaware courts. Section 115 is not intended, however, to prevent the application of any such provision in a stockholders agreement or other writing signed by the stockholder against whom the provision is to be enforced. Section 115 is not intended to foreclose evaluation of whether the specific terms and manner of adoption of a particular provision authorized by Section 115 comport with any relevant fiduciary obligation or operate reasonably in the circumstances presented. For example, such a provision may not be enforceable if the Delaware courts lack jurisdiction over indispensable parties or core elements of the subject matter of the litigation. Section 115 is also not intended to authorize a provision that purports to foreclose suit in a federal court based on federal jurisdiction, nor is Section 115 intended to limit or expand the jurisdiction of the Court of Chancery or the Superior Court.

Section 6. The amendment to Section 152 clarifies that the board of directors may authorize stock to be issued in one or more transactions in such numbers and at such times as is determined by a person or body other than the board of directors or a committee of the board, provided the resolution of the board of directors or committee of the board authorizing the issuance fixes the maximum number of shares that may be issued, the time frame during which such shares may be issued and establishes a minimum amount of consideration for which such shares may be issued. The minimum amount of consideration cannot be less than the consideration required pursuant to Section 153. The amendment further clarifies that a formula by which the consideration for stock is determined may include reference to or be made dependent upon the operation of extrinsic facts, such as, without limitation, market prices on one or more dates or averages of market prices on one or more dates. Among other things, without limitation, the amendment is intended to make clear that the board of directors may authorize stock to be issued pursuant to "at the market" programs without having to separately authorize each individual stock issuance pursuant to such program.

Section 7. The amendment to Section 157(b) clarifies that a formula by which the consideration for stock issued upon the exercise of rights and options in respect of stock is determined may include reference to or be made dependent upon the operation of extrinsic facts, such as market prices on one or more dates, or averages of market prices on one or more dates.

Section 8. Section 204, which became effective on April 1, 2014, sets forth procedures for ratifying stock or corporate acts that, due to a "failure of authorization," would be void or voidable. This legislation clarifies and confirms the operation of specified provisions of Section 204 and makes certain other changes in respect of the procedures by which stock and defective corporate acts may be statutorily ratified.

The amendments to Section 204(b)(1) confirm that the resolutions that the board of directors adopts to ratify a defective corporate act may include one or more other defective corporate acts. The amendments make clear that the quorum and voting requirements applicable to each defective corporate act contained in a set of board resolutions ratifying one or more defective corporate acts are those applicable to each defective corporate act, viewed on an act-by-act basis. For example, if the resolutions adopted pursuant to subsection 204(b)(1) address two defective corporate acts—the filing of an amendment to the certificate of incorporation and an issuance of shares—and the former required at all relevant times for its approval under the certificate of incorporation the affirmative vote of 75% of the total number of directors, while the latter required for its approval at all relevant times the affirmative vote of a majority of the directors present at a meeting at which a quorum is present, the resolutions must be adopted, with respect to the defective amendment, by the affirmative vote of 75% of the total number of directors, and with respect to the defective issuance, by the vote of a majority of the directors present at the meeting at which the resolutions are submitted to a vote of directors (provided a quorum is established at that meeting). Nothing in the statute is intended to prevent the board from cross-conditioning its own ratification of a defective corporate act on the approval of one or more other defective corporate acts, or from

conditioning its ratification of any defective corporate act on the approval by stockholders of one or more other defective corporate acts, whether or not such vote is required by Section 204(c).

Section 204(b)(2) is new. The new subsection addresses the situation in which the initial board of directors was not named in the original certificate of incorporation and has not been constituted by the incorporator. It permits those persons who have been acting as the corporation's directors under claim and color of an election or appointment to adopt resolutions ratifying the election of those persons who, despite having not been named in the certificate of incorporation or by the incorporator as the initial directors, first took action on behalf of the corporation as the board of directors. Nothing in this subsection is intended to prevent a corporation from correcting its certificate of incorporation pursuant to Section 103(f) if the certificate of incorporation inadvertently omitted the provision naming the initial directors or otherwise constitutes an inaccurate record with respect to the naming of the initial directors.

The amendments to Section 204(c) are designed to conform that subsection to the changes to Section 204(b) clarifying that the board may adopt a single set of resolutions ratifying multiple defective corporate acts. The changes to Section 204(c) provide that each defective corporate act—rather than the board's resolutions ratifying one or more defective corporate acts—must be submitted to stockholders for their approval, except where the defective corporate act would not have required a vote of stockholders under the General Corporation Law, the certificate of incorporation or bylaws of the corporation, or any plan to which the corporation is a party, either at the time of the defective corporate act or the time the board adopts the resolutions ratifying the act (and provided that the defective corporate act did not result from a failure to comply with Section 203).

Section 204(d), which specifies the voting standards applicable to the stockholders' approval of a defective corporate act, has been revised principally to conform with the changes to Section 204(b)(1) and Section 204(c). Consistent with the revisions to Section 204(c), Section 204(d) eliminates references to the board's resolution ratifying a defective corporate act being submitted to stockholders and instead describes the circumstances under which a defective corporate act must be submitted to stockholders for approval. Because Section 204(d), as revised, eliminates the requirement that the board's "resolution" adopting a defective corporate act be submitted to stockholders, it requires that, where the ratification of a defective corporate act is submitted to stockholders for approval at a meeting, the notice must include either the board's resolutions ratifying the defective corporate act or the information set forth in paragraphs (A) through (E) of Section 204(b)(1). As with the voting standards applicable to the board's adoption of resolutions ratifying any defective corporate act, the amendments to Section 204(d) make clear that the quorum and voting requirements applicable to the ratification of each defective corporate act submitted to stockholders are those applicable to the particular defective corporate act, viewed on an act-by-act basis. For example, if the board submits two defective corporate acts to stockholders for their approval—one involving a defective amendment to the certificate of incorporation and the other involving a defective issuance of shares—and the former required at all relevant times for its approval under the certificate of incorporation the affirmative vote of a majority of the outstanding voting power of the capital stock, while the latter required for its approval at all relevant times the affirmative vote of a majority of the Series A Preferred Stock, voting as a single class, the defective amendment must be approved by the affirmative vote of a majority in voting power of the outstanding capital stock, while the defective issuance must be approved by the vote of a majority of the outstanding Series A Preferred Stock. Nothing in the statute is intended to prevent the corporation from cross-conditioning the stockholders' approval of one defective corporate act on the stockholders' approval of one or more other defective corporate acts. Next, Section 204(d) has been amended to clarify that the only stockholders entitled to vote on the ratification of a defective corporate act, or to be counted for purposes of a quorum for such vote, are the holders of record of valid stock as of the record date for determining stockholders entitled to vote thereon. It does so by confirming that shares of putative stock will not be counted for purposes of determining the stockholders entitled to vote or to be counted for purposes of a quorum in any vote on the ratification of any defective corporate act. Corresponding changes are being made to Section 204(f) to clarify that the "retroactive" validity that Section 204 gives to putative stock will not result in shares of putative stock being considered valid stock as of the record date for the vote on the ratification of a defective corporate act or acts previously submitted to stockholders.

Section 204(d)(2), which deals with the voting standards applicable to the ratification of the election of a director requiring a vote of stockholders, has been revised such that the voting standard conforms with that of Section 204(d)(1). Thus, as with Section 204(d)(1), if the certificate of incorporation or bylaws in effect at the time of the vote on the ratification of the election of directors or at the time of the defective election require or required a larger portion of stock or of any class or series of stock or of any specified stockholder to elect such director, then the affirmative vote of such larger number or portion or stock or of any class or series of stock or of such specified stockholder will be required to ratify the election. As with Section 204(d)(1), the amendments to Section 204(d)(2) provide that the presence or approval of shares of any class or series of which no shares are then outstanding, or of any person that is no longer a stockholder, will not be required for purposes of the vote on the ratification of an election.

The amendments to Section 204(e) are intended to clarify the requirements in respect of certificates of validation. First, the changes to Section 204(e) dispense with the requirement that the board's resolutions ratifying the defective corporate act be attached to the certificate of validation. The changes to Section 204(e) require instead that the certificate of validation set forth specified information regarding the defective corporate act and the related failure of authorization.

The changes to Section 204(e) clarify that a separate certificate of validation must be filed in respect of each defective corporate act that requires the filing of a certificate of validation, except in two limited cases. The first case occurs where the corporation had filed (or, to comply with the General Corporation Law, would have filed) a single certificate under another provision of the General Corporation Law to effect multiple defective corporate acts. For example, if two or more subsidiaries of a parent corporation were merged with and into such parent corporation, albeit defectively, and the parent corporation purportedly effected both such mergers through the filing of a single certificate of merger, the defective corporate acts (i.e., both such mergers that were defectively consummated due to a failure of authorization) may be included in a single certificate of validation. The second case occurs where two or more overissues are being validated. In that case, a single certificate of validation may be used so long as the total increase in the authorized capital stock of each class or series of stock is effective as of the date of the earliest overissue referenced in the certificate of validation.

Second, the amendments clarify the information that must be included in the form of certificate of validation in cases where (x) a certificate in respect of the defective corporate act had previously been filed and no changes are required to give effect to the ratification of the defective corporate act that is the subject of the certificate of validation, (y) a certificate in respect of the defective corporate act had previously been filed and changes are required to that certificate to give effect to the ratification of the defective corporate act that is the subject of the certificate of validation, and (z) no certificate had previously been filed and the filing of a certificate was required to give effect to the ratification of a defective corporate act.

Where a certificate had previously been filed and no changes to it are required, Section 204(e) now requires that the certificate as previously filed with the Secretary of State be attached to the certificate of validation as an exhibit. Thus, if a corporation defectively amended its certificate of incorporation due to, for example, the fact that the board adopted the amendment by written consent of fewer than all directors, but a certificate of amendment was previously filed and requires no changes, the file-stamped copy of the certificate of amendment as previously filed would be attached to the certificate of validation as an exhibit.

Where a certificate had previously been filed and changes are required, Section 204(e) now expressly requires that a certificate containing all of the information required under the other section of the General Corporation Law, including the changes necessary to give effect to the ratification of the defective corporate act, be attached to the certificate of validation as an exhibit. The certificate of validation must also state the date and time as of which the certificate attached to it would have become effective. Thus, for example, if the corporation defectively effected a forward stock split of its outstanding common stock and filed a certificate of amendment that increased the authorized shares of common stock to account for the forward split but failed to include the language required by Section 242(b) of the General Corporation Law to effect the forward split of the outstanding shares of common stock, a copy of the certificate of amendment as it would have been filed, including both the increase in the authorized number of shares of common stock and the language effecting the forward stock split of the then outstanding shares of common stock, must be attached as an exhibit to the certificate of validation. The certificate attached to the certificate of validation under these circumstances need not be separately executed and acknowledged, and it need not include any statement required by any other section of the General Corporation Law that the instrument has been approved and adopted in accordance with such other section.

Where no certificate in respect of the defective corporate act had previously been filed and a certificate would have been required to be filed to give effect to the defective corporate act, Section 204(e) now expressly requires that a certificate containing all of the information required under the other section of the General Corporation Law be attached to the certificate of validation as an exhibit. The certificate of validation must also state the date and time as of which the certificate attached to it would have become effective. Thus, for example, if a corporation defectively effected a reverse stock split by board action alone, and failed to file a certificate of amendment including the language necessary to effect the reverse stock split, a certificate of amendment that includes all of the provisions that would be required under Section 242(b) of the General Corporation Law must be attached to the certificate of validation. The certificate attached to the certificate of validation under these circumstances need not be separately executed and acknowledged, and it need not include any statement required by any other section of the General Corporation Law that the instrument has been approved and adopted in accordance with such other section.

Consistent with the amendments to Section 204(d), the amendments to Section 204(f) are intended to make clear that the stockholders entitled to vote and be counted for quorum purposes on the ratification of a defective corporate act that requires a vote of stockholders are the holders of valid stock as of the record date for the approval of the ratification of the defective corporate act. By making the "retroactive effect" that Section 204(f) grants to defective corporate acts subject to the provision of Section 204(d) that expressly states that shares of putative stock will not be counted for purposes of determining the shares entitled to vote or be counted for quorum purposes on the ratification of a defective corporate act, Section 204(f) confirms that the ratification of a defective corporate act will not result in putative shares being retroactively validated such that they would need to be included in the vote on the ratification of a defective corporate act. For example, if, as of the record date for the approval of the ratification of a defective corporate act that involved the issuance of putative shares of preferred stock, the corporation has 100 shares of valid common stock outstanding and 100 shares of putative preferred stock "outstanding," only the shares of common stock would be counted as shares entitled to vote on the ratification of such defective corporate act and any other defective corporate act submitted

to stockholders at such time, even if the shares of preferred stock, by virtue of the ratification, will be deemed to have been validly issued as of a date prior to such record date.

Section 204(g) is being amended to provide that corporations that have a class of stock listed on a national securities exchange may give the notice required by Section 204(g) by means of a public filing pursuant to specified provisions of the Securities Exchange Act of 1934, as amended. Section 204(g) is also being amended to provide clarity as to the manner in which notice may be given when stockholders are approving the ratification of a defective corporate act by written consent in lieu of a meeting. The amendments provide that, where the ratification of a defective corporate act is approved by consent of stockholders in lieu of a meeting, the notice required by Section 204(g) may be included in the notice required to be given pursuant to Section 228(e). The amendments further clarify that, where a notice sent pursuant to Section 204(g) is included in a notice sent pursuant to Section 228(e), the notice must be sent to the parties entitled to receive the notice under both Section 204(g) and Section 228(e). The amendments to Section 204(g) also clarify that no such notice need be provided to any holder of valid shares that acted by written consent in lieu of a meeting to approve the ratification of a defective corporate act or to putative stockholders who otherwise consented to the ratification.

Section 204(h)(2) is being amended to clarify that the failure of the board of directors or any officer of the corporation to approve an act or transaction taken by or on behalf of the corporation that would have required approval by the board or such officer may constitute a "failure of authorization." The amendment is intended to clarify that any act taken without such approval by the board or such officer could constitute a defective corporate act susceptible to cure by ratification under Section 204. The amendment is intended solely to confirm the broad scope of acts that may be ratified under Section 204 and is not intended to imply that any specific acts suffering from such a failure of authorization would necessarily be void or voidable or that they may not be susceptible to cure by ratification under principles of common law.

Section 204(h)(6) currently defines "validation effective time" as the later of (x) the time at which the ratification of the defective corporate act is approved by stockholders (or, if no vote is required, the time at which the notice required by Section 204(g) is given) and (y) the time at which any certificate of validation has become effective. The amendments to Section 204(h)(6) confirm that, in respect of the ratification of any defective corporate act that requires stockholder approval but does not require the filing of a certificate of validation, the "validation effective time" is the time at which the stockholders approve the ratification of the defective corporate act, whether the stockholders are acting at a meeting or by consent in lieu of a meeting pursuant to Section 228. (Although the statute clarifies that, in such cases, the validation effective time commences upon the stockholders' approval of the ratification of the defective corporate act, a corresponding amendment to Section 204(g) is being made to confirm that the 120-day period during which stockholders may challenge the ratification of a defective corporate act commences from the later of the validation effective time and the time at which the notice required by Section 204(g) is given). The term "validation effective time" in Section 204(h)(6) is being further amended to permit the board of directors to fix a future validation effective time for any defective corporate act that is not required to be submitted to a vote of stockholders and that does not require the filing of a certificate of validation. Again, the 120-day period during which challenges to the ratification may be brought would commence from the later of the validation effective time and the time at which the notice required by Section 204(g) is given. The amendment is intended to obviate logistical issues that may arise in connection with the delivery of notices in situations where multiple defective corporate acts are being ratified at the same time. As amended, Section 204(h)(6) enables the board to set one date on which the ratification of all defective corporate acts approved by the board will be effective, regardless of when the notice under Section 204(g) is sent.

Section 204(i) provides that Section 204 is not the exclusive means of ratifying corporate acts, recognizing that certain "voidable" acts may be susceptible to cure by ratification under common law. The amendments to Section 204(i) are intended to clarify that the scope of the subsection encompasses actions ratified under the common law "pre-incorporation doctrine," which generally provides that a corporation is competent to adopt and ratify agreements made by its organizer or promoter in contemplation of its organization.

Section 9. Section 205(f) is being amended to conform that subsection to amended Section 204(g). These amendments confirm that the 120-day period during which stockholders may challenge the ratification of a defective corporate act under Section 205 commences from the later of the validation effective time and the time at which the notice required by Section 204(g) is given.

Section 10. The amendment to Section 245(c) clarifies that a restated certificate is not required to state that it does not further amend the provisions of the corporation's certificate of incorporation if the only amendment thereto is to change the corporation's name without a vote of the stockholders.

Section 11. Section 11 deletes the requirement of a public benefit corporation specific identifier in the name of a public benefit corporation, but requires notification to purchasers of shares in public benefit corporations under certain circumstances.

Section 12. Section 12 amends Section 363(a) to change the approval required under that Section.

Section 13. Section 13 provides a market out to the provisions requiring appraisal in certain transactions involving public benefit corporations.

Section 14. Section 14 amends Section 363(c) to change the approval required under that Section.

Section 15. Section 15 amends Section 391(c) to confirm that in exchange for the fees described the Secretary of State may issue public records in the form of photocopies or electronic image copies and need not provide public records in any other form.

Section 16. Section 16 provides that the effective date of Sections 1 through 7, 10 through 12 and 14 is August 1, 2015, that Sections 8 and 9 shall be effective only with respect to defective corporate acts and proposed issuances of putative stock ratified or to be ratified pursuant to resolutions adopted by a board of directors on or after August 1, 2015, that Section 13 shall be effective only with respect to mergers and consolidations consummated pursuant to agreements entered into on or after August 1, 2015, or in the case of amendments, amendments approved by the board of directors on or after August 1, 2015, and that Section 15 shall be effective upon its enactment into law. The effective date of Sections 8 and 9 is intended to provide certainty as to the notice and filing procedures applicable where a ratification under Section 204 has been commenced prior to August 1, 2015 but the validation effective time in respect thereof has not yet occurred. Nothing in Section 16 is intended to imply that the clarifying and confirmatory amendments to Section 204 are inapplicable in determining the proper interpretation of Section 204 with respect to ratifications that were commenced or became effective prior to August 1, 2015.

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