SPONSOR: [INSERT SPONSORS]

DELAWARE [HOUSE OF REPRESENTATIVES][STATE SENATE]
[152nd GENERAL ASSEMBLY]

[HOUSE][SENATE] BILL NO. [●]

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

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

(a) 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 the form and in the manner that 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. Stock may be issued in 1 or more transactions, in the numbers, at the times and for the consideration as set forth in a resolution of the board of directors.

(b) A resolution of the board of directors may delegate to a person or body, in addition to the board of directors, the authority to enter into 1 or more transactions to issue stock, and with respect to such transactions, shares of stock may be issued in the numbers, at the times and for the consideration as such person or body may determine; provided the resolution fixes (i) a maximum number of shares that may be issued pursuant to such resolution, (ii) a time period during which such shares may be issued and (iii) ~~a~~ the minimum ~~amount of~~ consideration for which such shares

may be issued. No such resolution shall permit a person or body to issue stock to such person or body.

(d) In the absence of actual fraud in the transaction, the judgment of the directors as to the value of the consideration (or minimum ~~amount of~~ consideration) received by the corporation for the issuance of stock shall be conclusive. The capital stock issued in accordance with this section shall be deemed to be fully paid and nonassessable stock upon receipt by the corporation of such consideration; provided, however, nothing contained ~~herein~~ in this subsection shall prevent the board of directors from issuing partly paid shares under § 156 of this title.

(e) The minimum consideration for which shares of stock may be issued by the corporation may not be less than the consideration (if any) required under § 153 of this title.

Section 2. Amend § 153, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 153. Consideration for stock.

(c) Treasury shares may be disposed of by the corporation in the same manner that shares of stock are issued pursuant to § 152(a) through (d) of this title, or may be disposed of for such consideration as determined by the stockholders if the certificate of incorporation so provides. The consideration received for treasury shares may have a value greater or less than, or equal to, the par value (if any) of such shares and may consist of cash, any tangible or intangible property or any benefit to the corporation, or any combination thereof.

Section 3. Amend § 157, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 157. Rights and options respecting stock.

(b) Rights and options may be issued in 1 or more transactions, in the numbers, at the times and for the consideration as set forth in a resolution of the board of directors. 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~~ of the board of directors ~~or by another person or body authorized pursuant to this section~~.

(c) The board of directors may adopt a resolution to delegate to a person or body, in addition to the board of directors, the authority to enter into 1 or more transactions to issue rights or options, and with respect to such transactions, the rights or options may be issued in such numbers, at such times and for such consideration, and the terms upon which shares may be acquired from the corporation upon the exercise of any such rights or options may be, as such person or body may determine; provided that the resolution fixes (i) the maximum number of ~~rights or options, and the maximum number of~~ shares issuable upon exercise ~~thereof,~~ of the rights or options that may be issued pursuant to such resolution, (ii) a time period during which such rights or options, and a time period during which the shares issuable upon exercise thereof, may be issued, and (iii) ~~a~~ the minimum ~~amount of~~ consideration (if any) for which such rights or options may be issued and ~~a~~ the minimum ~~amount of~~ consideration for the shares issuable upon exercise thereof. No such resolution shall permit a person or body to issue rights or options to such person or body.

(e) The minimum consideration ~~to be received~~ for ~~the~~ which shares of stock of the corporation ~~to~~ may be issued upon exercise of such rights or options shall be no less than the ~~amount set forth in~~ consideration (if any) required by § 153 of this title.

Section 4. Amend § 160, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 160. Corporation's powers respecting ownership, voting, etc., of its own stock; rights of stock called for redemption.

(b) Nothing in this section limits or affects a corporation's right to resell, under § 153(c) of this title, any of its shares theretofore purchased or redeemed out of surplus and which have not been, ~~retired, for such consideration as shall be fixed by the board of directors~~ or are not required by the certificate of incorporation to be, retired.

Section 5. Amend § 204, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 204. Ratification of defective corporate acts and stock.

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

(1) (A) 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 such defective corporate act to be ratified, either at the time of such defective corporate act or at the time the board of directors adopts the resolutions ratifying such defective corporate act pursuant to paragraph (b)(1) of this section; and

(B) Such defective corporate act did not result from a failure to comply with § 203 of this title; or

(2) As of the ~~record date for determining the stockholders entitled to vote on the ratification of such defective corporate act~~ adoption of the resolutions of the board of directors

adopted pursuant to paragraph (b)(1) of this section, there are no shares of valid stock outstanding and entitled to vote thereon, regardless of whether there then exist any shares of putative stock.

(d)(1) If the ratification of a defective corporate act is required to be submitted to stockholders for approval pursuant to subsection (c) of this section, 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.

(2) 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 (or, in the case of any defective corporate act that involved the establishment of a record date for notice of or voting at any meeting of stockholders, for action by written consent of stockholders in lieu of a meeting, or for any other purpose, the record date for notice of or voting at such meeting, the record date for action by written consent, or the record date for such other action, as the case may be), other than holders whose identities or addresses cannot be determined from the records of the corporation.

(3) The notice shall contain a copy of the resolutions adopted by the board of directors pursuant to paragraph (b)(1) of this section or the information required by paragraphs (b)(1)(A) through (E) 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 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.

(4) At such meeting, the quorum and voting requirements applicable to ratification of such defective corporate act shall be the quorum and voting requirements applicable to the type of defective corporate act proposed to be ratified at the time of the approval of the ratification, except that:

~~(1)~~ a. 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 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)~~ b. The 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)~~ c. 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.

(5) Shares of putative stock ~~on~~ as of the ~~record date for determining stockholders entitled to vote on any matter submitted to stockholders~~ adoption by the board of directors of resolutions pursuant to ~~subsection~~ paragraph (~~c~~ b)(1) of this section (and without giving effect to any ratification that becomes effective after such ~~record date~~ adoption) shall neither be entitled to vote nor counted for quorum purposes in any vote to ratify any defective corporate act.

(e)(1) If 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~~ and either (x) 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) or (y) ~~not~~ a certificate was not previously filed under § 103 of this title in respect of ~~such~~ the defective corporate act ~~and~~, then, 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.

(2) 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) 2 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) 2 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.

(3) The certificate of validation shall set forth:

a. ~~Each~~ that the corporation has ratified one or more defective corporate acts that ~~is~~ would have required the ~~subject of the~~ filing of a 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~~ under § 103 of this title,

b. that each such defective corporate act ~~was~~ has been 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

c. the ~~I~~information required by 1 of the following paragraphs:

~~a.~~1. ~~If a certificate was previously filed under § 103 of this title in respect of 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 (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)~~A. the name, title and filing date of the certificate so previously filed and of any certificate of correction thereto,

~~(y)~~B. 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)~~C. the date and time that such certificate shall be deemed to have become effective pursuant to this section; or

~~c.~~ 2. 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. 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)~~B. the date and time that such certificate shall be deemed to have become effective pursuant to this section.

(4) A certificate attached to a certificate of validation ~~pursuant to paragraph (e)(3)b. or c. 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.

(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 the board of directors adopts the resolutions approving such defective corporate act, or as of a date within 60 days after such date of adoption, 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 resolutions adopted pursuant to subsection (b) of this section or the information specified in paragraphs (b)(1)(A) through (E) or paragraphs (b)(2)(A) through (C) 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 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 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 and ~~the second sentence of~~ subsection (d) of this section 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) (15 U.S.C. § 78m, § 77n or § 78o(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 and the record date for determining the stockholders entitled to notice of such meeting had been the date for determining the stockholders entitled to notice under the first sentence of this subsection 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 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:

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

a. The time at which the defective corporate act submitted to the stockholders for approval pursuant to subsection (c) of this section is approved by such stockholders or if no such vote of stockholders is required to approve the ratification of the defective corporate act, immediately following the time at which the board of directors adopts the resolutions required by paragraph (b)(1) or (b)(2) of this section;

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 paragraph (b)(1) or (b)(2) of this section, which time shall not precede the time at which such resolutions are adopted; and

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.

Section 6. Amend § 228, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 228. Consent of stockholders or members in lieu of meeting.

(e) ~~Prompt~~ If an action by consent under subsections (a) or (b) of this section has been taken by stockholders or members by less than unanimous consent, prompt notice of the taking of ~~the corporate action without a meeting by less than unanimous consent~~ the action by consent shall be given to those stockholders or members as of the record date for the action by consent who have not consented and who~~, if the action had been taken at a meeting,~~ would have been entitled to notice of the meeting if the action had been taken at a meeting and the record date for the notice of ~~such~~ the meeting ~~had been the date that consents signed by a sufficient number of holders or~~

~~members to take the action were delivered to the corporation as provided in this section~~ were the record date for the action by consent. The notice required by this subsection may be provided by a notice which constitutes a notice of internet availability of proxy materials under rules promulgated under the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq. In the event that the action which is consented to is such as would have required the filing of a certificate under any other section of this title, if such action had been voted on by stockholders or by members at a meeting thereof, the certificate filed under such other section shall state, in lieu of any statement required by such section concerning any vote of stockholders or members, that consent has been given in accordance with this section.

Section 7. Amend § 242, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 242. Amendment of certificate of incorporation after receipt of payment for stock; nonstock corporations.

(a) After a corporation has received payment for any of its capital stock, or after a nonstock corporation has members, it may amend its certificate of incorporation, from time to time, in any and as many respects as may be desired, so long as its certificate of incorporation as amended would contain only such provisions as it would be lawful and proper to insert in an original certificate of incorporation filed at the time of the filing of the amendment; and, if a change in stock or the rights of stockholders, or an exchange, reclassification, subdivision, combination or cancellation of stock or rights of stockholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification, subdivision, combination or cancellation. In particular, and without limitation upon such general power of amendment, a corporation may amend its certificate of incorporation, from time to time, so as:

(1) To change its corporate name; or

(2) To change, substitute, enlarge or diminish the nature of its business or its corporate powers and purposes; or

(3) To increase or decrease its authorized capital stock or to reclassify the same, by changing the number, par value, designations, preferences, or relative, participating, optional, or other special rights of the shares, or the qualifications, limitations or restrictions of such rights, or by changing shares with par value into shares without par value, or shares without par value into shares with par value either with or without increasing or decreasing the number of shares, or by subdividing or combining the ~~outstanding~~ issued shares of any class or series of a class of shares into a greater or lesser number of ~~outstanding~~ issued shares; or

(4) To cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared; or

(5) To create new classes of stock having rights and preferences either prior and superior or subordinate and inferior to the stock of any class then authorized, whether issued or unissued; or

(6) To change the period of its duration; or

(7) To delete:

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 or all such changes or alterations may be effected by 1 certificate of amendment.

(b) Every amendment authorized by subsection (a) of this section shall be made and effected in the following manner:

(1) If the corporation has capital stock, its board of directors shall adopt a resolution setting forth the amendment proposed, declaring its advisability, and either calling a special meeting of the stockholders entitled to vote in respect thereof for the consideration of such amendment or directing that the amendment proposed be considered at the next annual meeting of the stockholders~~; provided, however, that unless otherwise expressly required by the certificate of incorporation, no meeting or vote of stockholders shall be required to adopt an amendment that effects only changes described in paragraph (a)(1) or (7) of this section~~. Such special or annual meeting shall be called and held upon notice in accordance with § 222 of this title. The notice shall set forth such amendment in full or a brief summary of the changes to be effected thereby unless such notice constitutes a notice of internet availability of proxy materials under the rules promulgated under the Securities Exchange Act of 1934 [15 U.S.C. § 78a et seq.]. At the meeting a vote of the stockholders entitled to vote thereon shall be taken for and against any proposed amendment that requires adoption by stockholders. If no vote of stockholders is required to effect such amendment, or if a majority of the outstanding stock entitled to vote thereon, and a majority of the outstanding stock of each class entitled to vote thereon as a class has been voted in favor of the amendment, a certificate setting forth the amendment and certifying that such amendment has been duly adopted in accordance with this section shall be executed, acknowledged and filed and shall become effective in accordance with § 103 of this title.

(d) Notwithstanding the provisions of subsection (b) of this section, unless otherwise expressly required by the certificate of incorporation:

(1) No meeting or vote of stockholders shall be required to adopt an amendment that (A) effects only changes described in paragraph (a)(1) or (7) of this section; or (B) reclassifies by subdividing the issued shares of a class of stock into a greater number of issued shares of the same class of stock (and, in connection therewith, such amendment may increase the number of authorized shares of such class of stock up to an amount proportionate to the subdivision), provided the corporation has only one class of stock outstanding and such class is not divided into series; and

(2) An amendment to increase or decrease the authorized number of shares of a class of capital stock or an amendment to reclassify by combining the issued shares of a class of capital stock into a lesser number of issued shares of the same class of stock may be made and effected, without obtaining the vote or votes of stockholders otherwise required by subsection (b) of this section if: (A) the shares of such class are listed on a national securities exchange immediately before such amendment becomes effective and meet the listing requirement of such national securities exchange relating to the minimum number of holders immediately after such amendment becomes effective, (B) at a meeting called in accordance with paragraph (b)(1) of this section, a vote of the stockholders entitled to vote thereon, voting as a single class, is taken for and against the proposed amendment, and the votes cast for the amendment exceed the votes cast against the amendment, and (C) if the amendment increases or decreases the authorized number of shares of a class of capital stock for which no provision has been made pursuant to the last sentence of paragraph (b)(2) of this section, the votes cast for the amendment by the holders of such class exceed the votes cast against the amendment by the holders of such class.

Section 8. Amend § 260, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 260. Powers of corporation surviving or resulting from merger or consolidation or upon conversion or domestication; issuance of stock, bonds or other indebtedness.

(a) When 2 or more corporations are merged or consolidated, or an other entity is converted to, or a non-United States entity becomes domesticated as, a corporation of this State, the corporation surviving or resulting from the merger or consolidation or upon conversion or domestication may issue bonds or other obligations, negotiable or otherwise, and with or without coupons or interest certificates thereto attached, to an amount sufficient with its capital stock to provide for all the payments it will be required to make, or obligations it will be required to assume, in order to effect the merger ~~or,~~ consolidation, conversion or domestication.

(b) For the purpose of securing the payment of any ~~such~~ bonds and obligations ~~it shall be lawful for~~ issued under subsection (a) of this section, the surviving ~~or,~~ resulting, converted or domesticated corporation ~~to~~ may mortgage its corporate franchise, rights, privileges and property, real, personal or mixed.

(c) The surviving ~~or,~~ resulting, converted or domesticated corporation may ~~issue certificates~~ take any of the following actions in order to effect the merger or consolidation in the manner and on the terms specified in the agreement or in order to effect the conversion or domestication in the manner and on the terms, or pursuant to a plan of conversion or plan of domestication, approved by the other entity or the non-United States entity, as applicable:

(1) Issue shares of its capital stock ~~or uncertificated stock if authorized to do so~~ and other securities ~~to the stockholders of the constituent corporations~~ upon conversion of or in exchange ~~or payment~~ for the ~~original~~ shares, rights, or securities of or interests in any constituent corporation, converting other entity or domesticating non-United States entity.

(2) Cancel any shares, rights, securities, or interests~~in such amount as shall be necessary in accordance with the terms of the agreement of merger or consolidation in order to effect such merger or consolidation in the manner and on the terms specified in the agreement~~.

Section 9. Amend § 262, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 262. Appraisal rights.

(a) Any stockholder of a corporation of this State who holds shares of stock on the date of the making of a demand pursuant to subsection (d) of this section with respect to such shares, who continuously holds such shares through the effective date of the merger, consolidation, ~~or~~ conversion, transfer, domestication or continuance, who has otherwise complied with subsection (d) of this section and who has neither voted in favor of the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance 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 under the circumstances described in subsections (b) and (c) of this section. As used in this section, the word "stockholder" means a holder of record of stock in a corporation; the words "stock" and "share" mean and include what is ordinarily meant by those words; the words "depository receipt" mean a receipt or other instrument issued by a depository representing an interest in 1 or more shares, or fractions thereof, solely of stock of a corporation, which stock is deposited with the depository; the words "beneficial owner" mean a person who is the beneficial owner of shares of stock held either in voting trust or by a nominee on behalf of such person; and the word "person" means any individual, corporation, partnership, unincorporated association or other entity.

(b) Appraisal rights shall be available for the shares of any class or series of stock of a constituent ~~or~~, converting, transferring, domesticating or continuing corporation in a merger, consolidation ~~or~~, conversion, transfer, domestication or continuance to be effected pursuant to § 251 (other than a merger effected pursuant to § 251(g) of this title), § 252, § 254, § 255, § 256, § 257, § 258, § 263, § 264 ~~or~~, § 266 or § 390 of this title (other than, in each case and solely with respect to a converted or domesticated corporation, a merger, consolidation ~~or~~, conversion, transfer, domestication or continuance authorized pursuant to and in accordance with the provisions of § 265 or § 388 of this title):

(1) 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, or at the record date fixed to determine the stockholders entitled to consent pursuant to § 228 of this title, to act upon the agreement of merger or consolidation or the resolution providing for the conversion, transfer, domestication or continuance (or, in the case of a merger pursuant to § 251(h) of this title, as of immediately prior to the execution of the agreement of merger), were either: (i) listed on a national securities exchange or (ii) held of record by more than 2,000 holders; and further provided that no appraisal rights shall be available for any shares of stock of the constituent corporation surviving a merger if the merger did not require for its approval the vote of the stockholders of the surviving corporation as provided in § 251(f) of this title.

(2) Notwithstanding paragraph (b)(1) of this section, appraisal rights under this section shall be available for the shares of any class or series of stock of a constituent ~~or~~, converting, transferring, domesticating or continuing corporation if the holders thereof are required by the terms of an agreement of merger or consolidation, or by the terms of a resolution providing for

conversion, transfer, domestication or continuance, pursuant to § 251, § 252, § 254, § 255, § 256, § 257, § 258, § 263, § 264 ~~or~~, § 266 or § 390 of this title to accept for such stock anything except:

a. Shares of stock of the corporation surviving or resulting from such merger or consolidation, or of the converted entity or the entity resulting from a transfer, domestication or continuance if such entity is a corporation as a result of the conversion, transfer, domestication or continuance, or depository receipts in respect thereof;

b. 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, consolidation ~~or~~, conversion, transfer, domestication or continuance will be either listed on a national securities exchange or held of record by more than 2,000 holders;

(c) Any corporation may provide in its certificate of incorporation that appraisal rights under this section shall be available for the shares of any class or series of its stock as a result of an amendment to its certificate of incorporation, any merger or consolidation in which the corporation is a constituent corporation, the sale of all or substantially all of the assets of the corporation ~~or~~, a conversion effected pursuant to § 266 of this title or a transfer, domestication or continuance effected pursuant to § 390 of this title. If the certificate of incorporation contains such a provision, the provisions of this section, including those set forth in subsections (d), (e), and (g) of this section, shall apply as nearly as is practicable.

(d) Appraisal rights shall be perfected as follows:

(1) If a proposed merger, consolidation ~~or~~, conversion, transfer, domestication or continuance for which appraisal rights are provided under this section is to be submitted for approval at a meeting of stockholders, the corporation, not less than 20 days prior to the meeting, shall notify each of its stockholders who was such on the record date for notice of such meeting

(or such members who received notice in accordance with § 255(c) of this title) with respect to shares for which appraisal rights are available pursuant to subsection (b) or (c) of this section that appraisal rights are available for any or all of the shares of the constituent corporations or the converting, transferring, domesticating or continuing corporation, and shall include in such notice either a copy of this section (and, if 1 of the constituent corporations or the converting corporation is a nonstock corporation, a copy of § 114 of this title) or information directing the stockholders to a publicly available electronic resource at which this section (and, § 114 of this title, if applicable) may be accessed without subscription or cost. Each stockholder electing to demand the appraisal of such stockholder's shares shall deliver to the corporation, before the taking of the vote on the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance, a written demand for appraisal of such stockholder's shares; provided that a demand may be delivered to the corporation by electronic transmission if directed to an information processing system (if any) expressly designated for that purpose in such notice. Such demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such stockholder's shares. A proxy or vote against the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance shall not constitute such a demand. A stockholder electing to take such action must do so by a separate written demand as herein provided. Within 10 days after the effective date of such merger, consolidation ~~or~~, conversion, transfer, domestication or continuance, the surviving, resulting or converted entity shall notify each stockholder of each constituent or converting, transferring, domesticating or continuing corporation who has complied with this subsection and has not voted in favor of or consented to the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance, and any beneficial owner who has demanded appraisal under paragraph (d)(3) of this section, of the

date that the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance has become effective; or

(2) If the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance was approved pursuant to § 228, § 251(h), § 253, or § 267 of this title, then either a constituent ~~or~~ , converting, transferring, domesticating or continuing corporation before the effective date of the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance, or the surviving, resulting or converted entity within 10 days after such effective date, shall notify each stockholder of any class or series of stock of such constituent ~~or~~ , converting, transferring, domesticating or continuing corporation who is entitled to appraisal rights of the approval of the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance and that appraisal rights are available for any or all shares of such class or series of stock of such constituent ~~or~~ , converting, transferring, domesticating or continuing corporation, and shall include in such notice either a copy of this section (and, if 1 of the constituent corporations or the converting, transferring, domesticating or continuing corporation is a nonstock corporation, a copy of § 114 of this title) or information directing the stockholders to a publicly available electronic resource at which this section (and § 114 of this title, if applicable) may be accessed without subscription or cost. Such notice may, and, if given on or after the effective date of the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance, shall, also notify such stockholders of the effective date of the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance. Any stockholder entitled to appraisal rights may, within 20 days after the date of giving such notice or, in the case of a merger approved pursuant to § 251(h) of this title, within the later of the consummation of the offer contemplated by § 251(h) of this title and 20 days after the date of giving such notice, demand in writing from the surviving ~~or~~, resulting or converted entity the appraisal of such holder's shares;

provided that a demand may be delivered to such entity by electronic transmission if directed to an information processing system (if any) expressly designated for that purpose in such notice. Such demand will be sufficient if it reasonably informs such entity of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such holder's shares. If such notice did not notify stockholders of the effective date of the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance, either (i) each such constituent corporation or the converting, transferring, domesticating or continuing corporation shall send a second notice before the effective date of the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance notifying each of the holders of any class or series of stock of such constituent ~~or~~, converting, transferring, domesticating or continuing corporation that are entitled to appraisal rights of the effective date of the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance or (ii) the surviving, resulting or converted entity shall send such a second notice to all such holders on or within 10 days after such effective date; provided, however, that if such second notice is sent more than 20 days following the sending of the first notice or, in the case of a merger approved pursuant to § 251(h) of this title, later than the later of the consummation of the offer contemplated by § 251(h) of this title and 20 days following the sending of the first notice, such second notice need only be sent to each stockholder who is entitled to appraisal rights and who has demanded appraisal of such holder's shares in accordance with this subsection and any beneficial owner who has demanded appraisal under paragraph (d)(3) of this section. An affidavit of the secretary or assistant secretary or of the transfer agent of the corporation or entity that is required to give either notice that such notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein. For purposes of determining the stockholders entitled to receive either notice, each constituent corporation or the converting, transferring,

domesticating or continuing corporation may fix, in advance, a record date that shall be not more than 10 days prior to the date the notice is given, provided, that if the notice is given on or after the effective date of the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance, the record date shall be such effective date. If no record date is fixed and the notice is given prior to the effective date, the record date shall be the close of business on the day next preceding the day on which the notice is given.

(3) Notwithstanding subsection (a) of this section (but subject to this paragraph (d)(3)), a beneficial owner may, in such person's name, demand in writing an appraisal of such beneficial owner's shares in accordance with either paragraph (d)(1) or (2) of this section, as applicable; provided that (i) such beneficial owner continuously owns such shares through the effective date of the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance and otherwise satisfies the requirements applicable to a stockholder under the first sentence of subsection (a) of this section and (ii) the demand made by such beneficial owner reasonably identifies the holder of record of the shares for which the demand is made, is accompanied by documentary evidence of such beneficial owner's beneficial ownership of stock and a statement that such documentary evidence is a true and correct copy of what it purports to be, and provides an address at which such beneficial owner consents to receive notices given by the surviving, resulting or converted entity hereunder and to be set forth on the verified list required by subsection (f) of this section.

(e) Within 120 days after the effective date of the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance, the surviving, resulting or converted entity, or any person who has complied with subsections (a) and (d) of this section ~~hereof~~ and who is otherwise entitled to appraisal rights, may commence an appraisal proceeding by filing a petition in the Court of Chancery demanding a determination of the value of the stock of all such stockholders.

Notwithstanding the foregoing, at any time within 60 days after the effective date of the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance, any person entitled to appraisal rights who has not commenced an appraisal proceeding or joined that proceeding as a named party shall have the right to withdraw such person's demand for appraisal and to accept the terms offered upon the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance. Within 120 days after the effective date of the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance, any person who has complied with the requirements of subsections (a) and (d) of this section ~~hereof~~, upon request given in writing (or by electronic transmission directed to an information processing system (if any) expressly designated for that purpose in the notice of appraisal), shall be entitled to receive from the surviving, resulting or converted entity a statement setting forth the aggregate number of shares not voted in favor of the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance (or, in the case of a merger approved pursuant to § 251(h) of this title, the aggregate number of shares (other than any excluded stock (as defined in § 251(h)(6)d. of this title)) that were the subject of, and were not tendered into, and accepted for purchase or exchange in, the offer referred to in § 251(h)(2) of this title)), and, in either case, with respect to which demands for appraisal have been received and the aggregate number of stockholders or beneficial owners holding or owning such shares (provided that, where a beneficial owner makes a demand pursuant to paragraph (d)(3) of this section, the record holder of such shares shall not be considered a separate stockholder holding such shares for purposes of such aggregate number). Such statement shall be given to the person within 10 days after such person's request for such a statement is received by the surviving, resulting or converted entity or within 10 days after expiration of the period for delivery of demands for appraisal under subsection (d) of this section ~~hereof~~, whichever is later.

(g) At the hearing on such petition, the Court shall determine the persons who have complied with this section and who have become entitled to appraisal rights. The Court may require the persons who have demanded an appraisal for their shares and who hold stock represented by certificates to submit their certificates of stock to the Register in Chancery for notation thereon of the pendency of the appraisal proceedings; and if any person fails to comply with such direction, the Court may dismiss the proceedings as to such person. If immediately before the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance the shares of the class or series of stock of the constituent ~~or~~, converting, transferring, domesticating or continuing corporation as to which appraisal rights are available were listed on a national securities exchange, the Court shall dismiss the proceedings as to all holders of such shares who are otherwise entitled to appraisal rights unless (1) the total number of shares entitled to appraisal exceeds 1% of the outstanding shares of the class or series eligible for appraisal, (2) the value of the consideration provided in the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance for such total number of shares exceeds $1 million, or (3) the merger was approved pursuant to § 253 or § 267 of this title.

(h) After the Court determines the persons entitled to an appraisal, the appraisal proceeding shall be conducted in accordance with the rules of the Court of Chancery, including any rules specifically governing appraisal proceedings. Through such proceeding the Court shall determine the fair value of the shares exclusive of any element of value arising from the accomplishment or expectation of the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance, together with interest, if any, to be paid upon the amount determined to be the fair value. In determining such fair value, the Court shall take into account all relevant factors. Unless the Court in its discretion determines otherwise for good cause shown, and except as provided in this

subsection, interest from the effective date of the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance through the date of payment of the judgment shall be compounded quarterly and shall accrue at 5% over the Federal Reserve discount rate (including any surcharge) as established from time to time during the period between the effective date of the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance and the date of payment of the judgment. At any time before the entry of judgment in the proceedings, the surviving, resulting or converted entity may pay to each person entitled to appraisal an amount in cash, in which case interest shall accrue thereafter as provided herein only upon the sum of (1) the difference, if any, between the amount so paid and the fair value of the shares as determined by the Court, and (2) interest theretofore accrued, unless paid at that time. Upon application by the surviving, resulting or converted entity or by any person entitled to participate in the appraisal proceeding, the Court may, in its discretion, proceed to trial upon the appraisal prior to the final determination of the persons entitled to an appraisal. Any person whose name appears on the list filed by the surviving, resulting or converted entity pursuant to subsection (f) of this section may participate fully in all proceedings until it is finally determined that such person is not entitled to appraisal rights under this section.

(k) ~~From~~ Subject to the remainder of this subsection, from and after the effective date of the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance, no person who has demanded appraisal rights with respect to some or all of such person's shares as provided in subsection (d) of this section shall be entitled to vote such shares for any purpose or to receive payment of dividends or other distributions on such shares (except dividends or other distributions payable to stockholders of record at a date which is prior to the effective date of the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance)~~; provided, however, that if~~

~~no petition for an appraisal is filed within the time provided in subsection (e) of this section, or if.~~ If a person who has made a demand for an appraisal in accordance with this section shall deliver to the surviving, resulting or converted entity a written withdrawal of such person's demand for an appraisal in respect of some or all of such person's shares in accordance with subsection (e) of this section, either within 60 days after such effective date or thereafter with the written approval of the corporation, then the right of such person to an appraisal of the shares subject to the withdrawal shall cease. Notwithstanding the foregoing, ~~no~~ an appraisal proceeding in the Court of Chancery shall not be dismissed as to any person without the approval of the Court, and such approval may be conditioned upon such terms as the Court deems just, including without limitation, a reservation of jurisdiction for any application to the Court made under subsection (j) of this section; provided, however that this provision shall not affect the right of any person who has not commenced an appraisal proceeding or joined that proceeding as a named party to withdraw such person's demand for appraisal and to accept the terms offered upon the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance within 60 days after the effective date of the merger, consolidation ~~or~~, conversion, transfer, domestication or continuance, as set forth in subsection (e) of this section. If a petition for an appraisal is not filed within the time provided in subsection (e) of this section, the right to appraisal with respect to all shares shall cease.

Section 10. Amend § 265, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 265. Conversion of other entities to a domestic corporation.

(c) The certificate of conversion to corporation shall state:

(4) ~~[Repealed~~If a plan of conversion is adopted in accordance with subsection (k) of this section, that all provisions of the plan of conversion shall be approved prior to the effectiveness of such certificate in accordance with all law applicable to the other entity, including any approval required under such applicable law for the authorization of the type of corporate action specified in the plan of conversion.

(k) In connection with a conversion under this section, the converting other entity may adopt a plan of conversion that may state: (i) the terms and conditions of the conversion, (ii) that the certificate of incorporation of the converted corporation of this State shall be as set forth in an attachment to the plan of conversion, (iii) the manner, if any, of exchanging or converting shares of stock, rights or securities of, or interests in, the other entity that is to be converted to a corporation of this State, in accordance with subsection (j) of this section, (iv) any corporate action to be taken by the converted corporation of this State in connection with the conversion of the other entity, each of which shall require approval in accordance with all law applicable to the other entity, including any approval required under such applicable law for the authorization of the type of corporate action specified in the plan of conversion, (v) any details or provisions as are deemed desirable, and (vi) such other provisions or facts as shall be required to be set forth in a plan of conversion by the laws applicable to the other entity. Any of the terms of the plan of conversion may be made dependent upon facts ascertainable outside of such plan, provided that the manner in which such facts shall operate upon the terms of the plan of conversion is clearly and expressly set forth in the plan of conversion. The term "facts," as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the other entity or the converted corporation.

(l) Any corporate action to be taken by the converted corporation of this State in connection with the conversion of the other entity that is set forth in a plan of conversion approved in the manner provided for by subsection (k) of this section and that is within the power of a corporation under subchapter II of this chapter shall be deemed authorized, adopted and approved, as applicable, by the converted corporation of this State and the board of directors, stockholders or members of the corporation, as applicable, and shall not require any further action of the board of directors, stockholders or members of the corporation under this title. In the event that any such action requires the filing of a certificate under any other section of this title, the certificate shall state that in accordance with this section, no action by the board of directors, stockholders, members or as otherwise required by such other section of this title is required.

Section 11. Amend § 266, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 266. Conversion of a domestic corporation to other entities.

(b) The board of directors of the corporation which desires to convert under this section shall adopt a resolution approving such conversion, specifying the type of entity into which the corporation shall be converted and recommending the approval of such conversion by the stockholders of the corporation. If a plan of conversion is to be adopted in accordance with subsection (l) of this section, such plan shall be approved together with the resolution approving the conversion. Such resolution shall be submitted to the stockholders of the corporation at an annual or special meeting. Due notice of the time, and purpose of the meeting shall be given to each holder of stock, whether voting or nonvoting, of the corporation at the address of the stockholder as it appears on the records of the corporation, at least 20 days prior to the date of the meeting. At the meeting, the resolution shall be considered and a vote taken for its adoption or

rejection. If a majority of the outstanding shares of stock of the corporation, entitled to vote thereon shall be voted for the adoption of the resolution, the conversion shall be authorized, provided that, if the corporation is converting to a partnership having 1 or more general partners, then, in addition to the foregoing approval, authorization of the conversion shall require approval of each stockholder of the corporation who will become a general partner of such partnership as a result of the conversion.

(c) If a corporation shall convert in accordance with this section to another entity organized, formed or created under the laws of a jurisdiction other than the State of Delaware, the corporation shall file with the Secretary of State a certificate of conversion executed in accordance with § 103 of this title, which certifies:

(7) If a plan of conversion is adopted in accordance with subsection (l) of this section, that all provisions of the plan of conversion shall be approved in accordance with this section.

(g) In connection with a conversion of a domestic corporation to another entity pursuant to this section, shares of stock~~,~~ of the corporation of this State which is to be converted may be exchanged for or converted into cash, property, or shares of stock, rights or securities of, or interests in, the entity to which the corporation of this State is being converted or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, shares of stock, rights or securities of, or interests in, another domestic corporation or other entity or may be cancelled.

(l) In connection with a conversion under this section, the converting corporation may adopt a plan of conversion that may state: (i) the terms and conditions of the conversion, (ii) that the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the entity to which the converting corporation is being converted and the conduct of its

business shall be as set forth in an attachment to the plan of conversion, (iii) the manner, if any, of exchanging or converting shares of stock of the converting corporation which are to be exchanged for or converted into cash, property, or shares of stock, rights or securities of, or interests in, the entity to which the corporation of this State is being converted or, in addition to or in lieu thereof, cash, property, shares of stock, rights or securities of, or interests in, another domestic corporation or other entity or cancelling such shares, in accordance with subsection (g) of this section, (iv) any details or provisions as are deemed desirable, and (v) such other provisions or facts as shall be required to be set forth in a plan of conversion by the laws applicable to the entity to which the corporation of this State is being converted. Any of the terms of the plan of conversion may be made dependent upon facts ascertainable outside of such plan, provided that the manner in which such facts shall operate upon the terms of the plan of conversion is clearly and expressly set forth in the plan of conversion. The term "facts," as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the entity to which the corporation of this State is being converted or the converting corporation.

Section 12. Amend § 272, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 272. Mortgage or pledge of assets.

(a) The authorization or consent of stockholders to the mortgage or pledge of a corporation's property and assets shall not be necessary, except to the extent that the certificate of incorporation otherwise provides.

(b) Without limiting the rights of a secured party under applicable law, no resolution by stockholders shall be required by § 271(a) of this title for a sale, lease or exchange of property or

assets if such property or assets are collateral that secures a mortgage or are pledged to a secured party and either:

(1) The secured party exercises its rights under the law governing such mortgage or pledge or other applicable law, whether under Article 9 of a Uniform Commercial Code, a real property law or other law, to effect such sale, lease or exchange without the consent of the corporation; or

(2) In lieu of the secured party exercising such rights, the board of directors of the corporation authorizes an alternative sale, lease or exchange of such property or assets, whether with the secured party or with another person, that results in the reduction or elimination of the total liabilities or obligations secured by such property or assets, provided that (i) the value of such property or assets is less than or equal to the total amount of such liabilities or obligations being eliminated or reduced and (ii) such sale, lease or exchange is not prohibited by the law governing such mortgage or pledge. The provision of consideration to the corporation or to its stockholders shall not create a presumption that the value of such property or assets is greater than the total amount of such liabilities or obligations being eliminated or reduced.

(c) A failure to satisfy the proviso in subsection (b)(2)(i) of this section shall not result in the invalidation of a sale, lease or exchange if the transferee of the property or assets provided value therefor (which may include the reduction or elimination of the total liabilities or obligations secured by such property or assets) and acted in good faith (as defined in § 1-201(b)(20) of Title 6). The preceding sentence shall not apply to a proceeding against the corporation and any other necessary parties to enjoin such sale, lease or exchange before the consummation thereof and shall not eliminate any liability for monetary damages for any claim, including a claim in the right of

the corporation, based upon a violation of fiduciary duty by a current or former director or officer or stockholder.

(d) A provision of the certificate of incorporation that requires the authorization or consent of stockholders for a sale, lease or exchange of property or assets shall not apply to a transaction permitted by subsection (b) of this section unless such provision expressly so requires; provided that this subsection (d) shall apply only to certificate of incorporation provisions that first become effective on or after August 1, 2023.

Section 13. Amend § 390, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 390. Transfer, domestication or continuance of domestic corporations.

(b) The board of directors of the corporation which desires to transfer to or domesticate or continue in a foreign jurisdiction shall adopt a resolution approving such transfer, domestication or continuance, specifying the foreign jurisdiction to which the corporation shall be transferred or in which the corporation shall be domesticated or continued and, if applicable, that in connection with such transfer, domestication or continuance the corporation's existence as a corporation of this State is to continue and recommending the approval of such transfer or domestication or continuance by the stockholders of the corporation. If a plan of transfer, domestication or continuance is to be adopted in accordance with subsection (j) of this section, such plan shall be approved together with the resolution approving the transfer, domestication or continuance. Such resolution shall be submitted to the stockholders of the corporation at an annual or special meeting. Due notice of the time, place and purpose of the meeting shall be given to each holder of stock, whether voting or nonvoting, of the corporation at the address of the stockholder as it appears on the records of the corporation, at least 20 days prior to the date of the meeting. At the meeting, the

resolution shall be considered and a vote taken for its adoption or rejection. If ~~all~~ a majority of the outstanding shares of stock of the corporation, ~~whether voting or nonvoting,~~ entitled to vote thereon shall be voted for the adoption of the resolution (provided that, if the corporation is transferring, domesticating or continuing as a partnership having 1 or more general partners, then, in addition to the foregoing approval, authorization of the transfer, domestication or continuance shall require approval of each stockholder of the corporation who will become a general partner of such partnership as a result of the transfer, domestication or continuance), the corporation shall file with the Secretary of State a certificate of transfer if its existence as a corporation of this State is to cease or a certificate of transfer and domestic continuance if its existence as a corporation of this State is to continue, executed in accordance with § 103 of this title, which certifies:

(7) If a plan of transfer, domestication or continuance is adopted in accordance with subsection (j) of this section, that all provisions of the plan of transfer, domestication or continuance shall be approved in accordance with this section.

(j) In connection with a transfer, domestication or continuance under this section, the transferring, domesticating or continuing corporation may adopt a plan of transfer, domestication or continuance, as applicable, that may state: (i) the terms and conditions of the transfer, domestication or continuance, (ii) the mode of carrying the same into effect, (iii) that the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the resulting entity and the conduct of its business shall be as set forth in an attachment to the plan, (iv) the manner, if any, of exchanging or converting shares of stock of the corporation of this State which are to be exchanged for or converted into cash, property, or shares of stock, rights or securities of, or interests in, the resulting entity or, in addition to or in lieu thereof, cash, property, shares of stock, rights or securities of, or interests in, another domestic corporation or other entity

or cancelling such shares, in accordance with subsection (g) of this section, (v) any details or provisions as are deemed desirable, and (vi) such other provisions or facts as shall be required to be set forth in a plan of transfer, domestication or continuance, as applicable, by the laws applicable to the resulting entity. Any of the terms of the plan of transfer, domestication or continuance may be made dependent upon facts ascertainable outside of such plan, provided that the manner in which such facts shall operate upon the terms of the plan is clearly and expressly set forth in the plan. The term "facts," as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the resulting entity or the transferring, domesticating or continuing corporation.

(k) Any provision of the certificate of incorporation of a corporation incorporated before August 1, 2023, or any provision in any voting trust agreement or other written agreement between or among any such corporation and 1 or more of its stockholders in effect on or before August 1, 2023, that restricts, conditions or prohibits the consummation of a merger or consolidation shall be deemed to apply to a transfer, domestication or continuance as if it were a merger or consolidation unless the certificate of incorporation or such agreement expressly provides otherwise with respect to a transfer, domestication or continuance or, if the certificate of incorporation or such agreement does not so expressly provide, a conversion, in which case such express provision shall be deemed to apply to a transfer, domestication or continuance as if it were a conversion.

Section 14. Sections 1 through 8, 11 and 12 shall be effective on August 1, 2023.

Section 15. Section 9 of this Act only applies to the following transactions:

(1) A merger, conversion, domestication, transfer, or continuance effected under §§ 253, 266, or 390 of Title 8 of the Delaware Code that is authorized or provided for pursuant to resolutions of the board of directors adopted on or after August 1, 2023.

(2) A merger effected under § 267 of Title 8 of the Delaware Code that is authorized on or after August 1, 2023, in accordance with an entity's governing documents and the laws of the jurisdiction under which the entity is formed or organized.

(3) Except as otherwise provided in paragraphs (1) and (2) of this Section, any other merger or consolidation consummated pursuant to an agreement of merger or consolidation entered into on or after August 1, 2023.

Section 16. Section 10 of this Act only applies to corporations that have converted under § 265 of Title 8 of the Delaware Code and with respect to which a plan of conversion is entered into on or after August 1, 2023, or, if a plan of conversion is not entered into in connection with the conversion, a corporation with respect to which the approvals required by § 265(h) of Title 8 of the Delaware Code are obtained on or after August 1, 2023.

Section 17. Section 13 of this Act only applies to domestications, transfers, or continuances effected under § 390 of Title 8 of the Delaware Code that are authorized pursuant to resolutions of the board of directors adopted on or after August 1, 2023.

Ssynopsis

Sections 1, 2, 3 and 4. Sections 1, 2, 3 and 4 of this Act amend §§ 152, 153, 157 and 160 of Title 8.

Amended §§ 152 and 153 clarify that treasury shares may be sold for less than par value. Amended § 153(c) clarifies the types of consideration that a corporation may receive for selling treasury shares, and references to "amounts" of minimum consideration have been deleted from §§ 152 and 157 to eliminate redundancy.

Amended § 157(b) clarifies that § 157(c) is the exclusive means to delegate to a person or body the authority to enter into transactions to issue rights or options. A reference in § 157(b) to permitting the exercise price of a right or option to be determined by formula has been deleted to eliminate redundancy because such formulas are permitted by § 157(d). Amended § 157(c) eliminates the requirement that the board of directors, or a board committee, fix a maximum number of rights or options that may be authorized for issuance by a person or body under a § 157(c) delegation. Amended § 157(c) also clarifies that the board, or a board committee, may fix two different time periods in a § 157(c) delegation: a period during which rights or options may be issued and a different time period during which shares may be issued upon exercise of the rights or options.

Amended § 160(b) clarifies that treasury shares resulting from a stock redemption or repurchase may be resold under § 153(c), unless the treasury shares are retired. Amended § 160(b) also clarifies that treasury shares may not be resold if the shares are required to be retired by a provision of the certificate of incorporation.

Section 5. Section 5 of this Act amends § 204 of Title 8 to make the following technical changes:

(1) The amendments to § 204(c)(2), which currently dispenses with the need for a vote of stockholders in circumstances where no valid stock is outstanding and entitled to vote, clarifies that the determination as to whether any shares of valid stock are outstanding and entitled to vote must be made at the time the board adopts the resolutions approving the defective corporate act.

(2) The amendment to § 204(d) similarly applies the time of the board's adoption of the resolutions ratifying the defective corporate act as the time for determining which shares constitute valid stock and which shares constitute putative stock entitled to vote on the adoption of the ratification of a defective corporate act requiring a vote of the holders of valid stock.

(3) The amendments to § 204(e) dispense with the need for filing a certificate of validation in circumstances where the underlying defective corporate act required the filing of a certificate under another section of the Delaware General Corporation Law and such a certificate has been filed and requires no change to give effect to the defective corporate act.

(4) The amendments to § 204(e) also simplify the required contents of a certificate of validation, including eliminating the requirement that certificates of validation describe the underlying defective corporate acts and the nature of the failure of authorization relating to those acts.

Section 6. Section 6 of this Act amends § 228(e) of Title 8 to simplify the determination of the record date to be used for purposes of identifying the stockholders or members who are entitled to notice of action by consent by stockholders or members. There are three different possibilities for determining the record date for action by consent under § 213(b) of Title 8, which could differ from the record date for the notice required by § 228(e) of Title 8 before the changes

made by this Section. The changes made by this Section provide that a notice of action by consent shall be provided to those persons (i) who were stockholders or members as of the record date for the action by consent, (ii) who would have been entitled to notice of the meeting if the action had been taken at a meeting and the record date for the notice of the meeting was the record date for the action by consent, and (iii) who have not consented to the action by consent.

The changes to § 228(e) of Title 8 also provide that a notice that constitutes a notice of internet availability of proxy materials for purposes of the federal Securities Exchange Act will satisfy the notice requirements of § 228(e) for corporations entitled to use such notices under the relevant regulation promulgated under the Securities Exchange Act.

Section 7. Section 7 of this Act amends § 242 of Title 8 to add a new subsection (d). Paragraph (d)(1) includes the language that had previously been in paragraph (b)(1) providing that no meeting or vote of stockholders is required to adopt an amendment to the certificate of incorporation that effects only changes described in paragraphs (a)(1) or (a)(7). Paragraph (d)(1) also provides that no meeting or vote of stockholders is required for an amendment to the certificate of incorporation that reclassifies by subdividing the issued shares of a class of stock into a greater number of issued shares, i.e., a forward stock split, provided that such class is the only class of such corporation's capital stock then outstanding (and is not divided into series). Paragraph (d)(1) also provides that no vote of stockholders is required, in connection with such subdivision, for such amendment to increase the authorized number of shares of such class, up to an amount proportionate to the subdivision.

Paragraph (d)(2) provides that a corporation listed on a national securities exchange can amend its certificate of incorporation to reclassify by combining the issued shares of a class into a lesser number of issued shares, i.e., a reverse stock split, without obtaining the vote or votes otherwise required by subsection (b) if (i) the shares are listed on a national exchange immediately before the amendment becomes effective and such corporation meets the listing requirement of such exchange relating to the minimum number of holders immediately after the amendment becomes effective, (ii) at a meeting of stockholders at which a vote is taken for and against the proposed amendment, the votes cast for the amendment exceed the votes cast against the amendment and (iii) if the amendment increases or decreases the number of shares of a class of stock that has not opted out of the class vote pursuant to the last sentence of paragraph (b)(2), the votes cast for the amendment by the holders of such class exceed the votes cast against the amendment by the holders of such class. Under the voting standard set forth in paragraph (d)(2)(B) and (C), abstentions have no effect on whether the required approval is obtained.

The addition of subsection (d) does not eliminate the stockholder vote required to change the par value of a class of stock, whether or not in connection with any subdivision or combination.

Notably, the "unless otherwise expressly required by the certificate of incorporation" lead-in to subsection (d) permits a corporation to "opt in" to the stockholder votes that otherwise would be required under subsection (b) in connection with any subdivision or combination of the issued shares or increase or decrease in the authorized number of shares contemplated by subsection (d). Any such provision in the certificate of incorporation must expressly state that the stockholder vote otherwise required under subsection (b) is required to adopt any amendment to the certificate of incorporation specified in subsection (d) or must expressly "opt out" of the provisions of

subsection (d). A general recitation in the certificate of incorporation of the vote generally required under subsection (b) without a specific reference to the amendments specified in subsection (d) is not sufficient.

Section 242(a)(3) is also being amended to require that reclassifications by way of subdividing and combining, i.e., forward stock splits and reverse stock splits, must apply to outstanding shares and shares held in treasury, i.e., all "issued" shares. New subsection (d) also reflects this change.

Section 8. Section 8 of this Act amends § 260 of Title 8 to confirm the authority of a corporation, following a merger, consolidation, conversion, or domestication, to issue bonds, other obligations, shares of its capital stock, and other securities, and to mortgage its franchise, rights, privileges, and property, in connection with such merger, consolidation, conversion, or domestication.

Section 9. Section 9 of this Act amends § 262 of Title 8, in connection with the amendments to § 390 of Title 8 set forth in Section 13 of this Act, to provide appraisal rights to stockholders in connection with a transfer, domestication, or continuance of the corporation in a foreign jurisdiction, unless appraisal rights are denied under the "market out" exception set forth in amended § 262(b). Amended § 262 eliminates appraisal rights in connection with a merger, consolidation, conversion, or domestication of an entity that has converted to a Delaware corporation under § 265, if the merger, consolidation, conversion, or domestication is authorized under § 265, as amended by Section 3 of this Act. Conforming changes to the other subsections of § 262 provide that appraisal rights are available in a domestication in a similar manner as a merger, consolidation, or conversion. Amended §262(k) clarifies that an appraisal demand may be withdrawn more than 60 days after the effective date of the transaction resulting in appraisal rights if the withdrawal is approved by the corporation, but the amendment does not change the existing rule that appraisal rights cease if a petition for appraisal is not filed under §262(e).

Sections 10, 11 and 13. Sections 10, 11 and 13 of this Act amend §§ 265, 266 and 390 of Title 8 to permit an other entity or corporation to adopt a plan of conversion or a plan of domestication setting forth the terms and conditions of the conversion or domestication, including the manner of exchanging or converting the equity interests of the other entity or corporation to be converted or domesticated and any other details or provisions deemed desirable. A plan of conversion, adopted under amended § 265, also may set forth corporate action to be taken by the converted corporation in connection with the conversion, each of which must be approved in accordance with the requirements of all applicable law before effectiveness of the conversion. Once so approved, any such corporate action that is within the power of a Delaware corporation under Chapter 1 of Title 8 set forth in the plan of conversion shall be deemed authorized, adopted, and approved, as applicable, by the converted corporation and its board of directors, stockholders, or members, as applicable, and does not require any further action of the board of directors, stockholders, or members of the converted corporation under Title 8. The amendments to §§ 265, 266, and 390 provide that the terms of a plan of conversion or plan of domestication may be made dependent upon facts ascertainable outside of such plan if the manner in which such facts operate upon the terms of the plan is clearly and expressly set forth in such plan. The amendments further provide that a certificate of conversion, certificate of transfer or certificate of transfer and domestic continuance, adopted under §§ 266 or 390, and that a certificate of conversion, adopted under §

265, shall certify that, prior to the time such certificate becomes effective, the plan of conversion or plan of domestication, as applicable, shall be approved in accordance with §§ 266 or 390 or in accordance with all law applicable to the other entity.

Also, Section 13 changes the requirement for stockholder approval of the transfer, domestication, or continuance of a corporation in a foreign jurisdiction, from all of the outstanding shares of stock of the corporation to a majority of the outstanding shares of stock entitled to vote on a transfer, domestication, or continuance. If the corporation is transferring, domesticating, or continuing as a partnership with one or more general partners, the transfer, domestication, or continuance also requires the approval of each stockholder that is to become a general partner of the partnership. The amendments require that a certificate of domestication to be filed with the Secretary of State must contain the agreement of the transferring, domesticating or continuing corporation to be served with process in the State of Delaware for any action for enforcement of any obligation of the resulting entity arising from the transfer, domestication, or continuance as well as in appraisal proceedings under § 262 of Title 8. The amendments also provide that, for any corporation incorporated before August 1, 2023, any provision contained in its certificate of incorporation or in a voting trust agreement or other written agreement between or among the corporation and one or more stockholders in effect on or before August 1, 2023 that restricts, conditions or prohibits consummation of a merger or consolidation is also deemed to apply to a transfer, domestication, or continuance, unless the certificate of incorporation or such agreement expressly provides otherwise with respect to a transfer, domestication, or continuance, or if the certificate of incorporation or such agreement does not so expressly provide, a conversion as contemplated by § 266(k) in which case such express provision shall be deemed to apply to a transfer, domestication or continuance as if it were a conversion.

Section 12. Section 12 of this Act amends § 272 of Title 8. New § 272(b) adds a safe harbor for selling, leasing or exchanging collateral assets that secure a mortgage or pledge without obtaining stockholder approval under § 271 of Title 8. Amended § 272(b)(1) clarifies this approval is not required if the secured party can sell the collateral without the corporation's consent (including without the consent of its board of directors and stockholders) under the law governing the mortgage or pledge or other applicable law. If a secured party is entitled to sell the collateral in such circumstances, but wishes not to, § 272(b)(2) permits the secured party and the board of directors to agree to an alternative transaction (e.g., a strict foreclosure or sale to a third party), without obtaining § 271 stockholder approval, if the value of the assets is less than or equal to the amount of the liability or obligation being reduced or eliminated as a result of the transaction. A specific type of asset valuation is not prescribed, and a transaction would not fail the asset value test solely because consideration is paid to the corporation or its stockholders. For example, consideration might be paid to those parties in the ordinary course of similar transactions or paid as "nuisance value" to avoid claims in litigation. Amended § 272(b) is not intended to affect a secured party's obligation to comply with article 9 of a uniform commercial code, real property law or other applicable law.

Amended § 272 does not create a general insolvency exception to § 271 of the type that the Supreme Court of the State of Delaware declined to adopt in *Stream TV Networks, Inc. v. SeeCubic, Inc.*, 279 A.3d 323 (Del. 2022). The amendments to § 272 establish safe harbors for when stockholder approval is not required by § 271. Amended § 272 does not preclude further case law

developments on which transactions constitute a "sale, lease or exchange" of assets for purposes of § 271, nor is amended § 272 intended to preclude further development of the quantitative and qualitative analyses used by the Delaware courts to interpret § 271.

New § 272(c) provides that, after a transaction is completed, it cannot be invalidated for failure to satisfy the asset value test if the transferee of the assets provided value and acted in good faith (as defined in § 1-201(b)(20) of Title 6). However, a transaction may be enjoined before consummation, and § 272(c) does not preclude monetary damages for a claim based on a violation of fiduciary duty by a director, officer or stockholder. New § 272(c) does not change the fiduciary duties of directors or officers (or, as applicable, stockholders) in connection with a sale, lease or exchange, or the level of judicial scrutiny that will apply to the decision to enter into a sale, lease or exchange, each of which will be determined based on the common law of fiduciary duty, including the duty of loyalty. New § 272(c) does not eliminate defenses otherwise available, including based on § 141(e) of Title 8 or a § 102(b)(7) of Title 8 provision. The adoption of § 272(c) is not intended to preclude application of a similar remedies scheme for a § 271 violation.

New § 272(d) provides that a certificate of incorporation provision that requires stockholder authorization of a sale, lease or exchange of assets does not apply to a sale, lease or exchange permitted by § 272(b) unless the certificate of incorporation expressly so provides. New § 272(d) applies only to certificate of incorporation provisions that first become effective after August 1, 2023.

The amendments to § 272 apply to nonstock corporations through the translator provisions of § 114.

Section 14. Section 14 provides that the effective date of Sections 1 through 8, 11 and 12 is August 1, 2023.

Sections 15. Section 15 provides that Section 9 only applies to mergers, consolidations, conversions, domestications, transfers, and continuances adopted or entered into on or after August 1, 2023, as determined under Section 15.

Section 16, Section 16 provides that Section 10 only applies to corporations with respect to which a plan of conversion is entered into on or after August 1, 2023, or, if a plan of conversion is not entered into in connection with the conversion, any such corporations with respect to which the approvals required by § 265(h), as amended by this Act, are obtained on or after August 1, 2023.

Section 17. Section 17 provides that Section 13 is effective only with respect to corporations domesticating, transferring, or continuing pursuant to resolutions of the board of directors approving the action that are adopted on or after August 1, 2023.