

SPONSOR:

[HOUSE OF REPRESENTATIVES/DELAWARE STATE SENATE]
149th 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):

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

3 (a) The certificate of incorporation shall set forth:

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

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

44 Section 2. Amend § 114(b), Title 8 of the Delaware Code, by making insertions as shown by underline and
45 deletions as shown by strike through as follows:

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

47 (1) Sections 102(a)(4), (b)(1) and (2), 109(a), 114, 141, 154, 215, 228, 230(b), 241, 242, 253, 254,
48 255, 256, 257, 258, 271, 276, 311, 312, 313, 390, and 503 of this title, which apply to nonstock
49 corporations by their terms;

50 (2) Sections 102(f), 109(b) (last sentence), 151, 152, 153, 155, 156, 157(d), 158, 161, 162, 163,
51 164, 165, 166, 167, 168, 203, ~~204, 205~~, 211, 212, 213, 214, 216, 219, 222, 231, 243, 244, 251,
52 252, 267, 274, 275, 324, 364, 366(a), 391 and 502(a)(5) of this title; and

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

54 Section 3. Amend § 114(c), Title 8 of the Delaware Code, by making insertions as shown by underline and
55 deletions as shown by strike through as follows:

56 (c) In the case of a nonprofit nonstock corporation, subsection (a) of this section shall not apply to:

57 (1) The sections and subchapters listed in subsection (b) of this section;

58 (2) Sections 102(b)(3), 111(a)(2) and (3), 144(a)(2), 217, 218(a) and (b), and 262 of this title; and

59 (3) Subchapter V, subchapter VI (other than Sections 204 and 205) and subchapter XV of this
60 chapter.

61 Section 4. Amend § 204(c), Title 8 of the Delaware Code, by making insertions as shown by underline and
62 deletions as shown by strike through as follows:

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

65 (1) (A) No other provision of this title, and no provision of the certificate of incorporation or
66 bylaws of the corporation, or of any plan or agreement to which the corporation is a party, would
67 have required stockholder approval of such defective corporate act to be ratified, either at the time
68 of such defective corporate act or at the time the board of directors adopts the resolutions ratifying
69 such defective corporate act pursuant to paragraph (b)(1) of this section; and ~~(2) Such~~ (B) such
70 defective corporate act did not result from a failure to comply with § 203 of this title; or

71 (2) As of the record date for determining the stockholders entitled to vote on the ratification of
72 such defective corporate act, there are no shares of valid stock outstanding and entitled to vote
73 thereon, regardless of whether there then exist any shares of putative stock.

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

76 (d) If the ratification of a defective corporate act is required to be submitted to stockholders for approval
77 pursuant to subsection (c) of this section, due notice of the time, place, if any, and purpose of the meeting shall be

78 given at least 20 days before the date of the meeting to each holder of valid stock and putative stock, whether voting
79 or nonvoting, at the address of such holder as it appears or most recently appeared, as appropriate, on the records of
80 the corporation. The notice shall also be given to the holders of record of valid stock and putative stock, whether
81 voting or nonvoting, as of the time of the defective corporate act (or, in the case of any defective corporate act that
82 involved the establishment of a record date for notice of or voting at any meeting of stockholders, for action by
83 written consent of stockholders in lieu of a meeting, or for any other purpose, the record date for notice of or voting
84 at such meeting, the record date for action by written consent, or the record date for such other action, as the case
85 may be), other than holders whose identities or addresses cannot be determined from the records of the corporation.
86 The notice shall contain a copy of the resolutions adopted by the board of directors pursuant to paragraph (b)(1) of
87 this section or the information required by paragraph (b)(1)(A) through (E) of this section and a statement that any
88 claim that the defective corporate act or putative stock ratified hereunder is void or voidable due to the failure of
89 authorization, or that the Court of Chancery should declare in its discretion that a ratification in accordance with this
90 section not be effective or be effective only on certain conditions must be brought within 120 days from the
91 applicable validation effective time. At such meeting, the quorum and voting requirements applicable to ratification
92 of such defective corporate act shall be the quorum and voting requirements applicable to the type of defective
93 corporate act proposed to be ratified at the time of the approval of the ratification, except that:

94 (1) If the certificate of incorporation or bylaws of the corporation, any plan or agreement to which
95 the corporation was a party or any provision of this title in effect as of the time of the defective
96 corporate act would have required a larger number or portion of stock or of any class or series
97 thereof or of specified stockholders for a quorum to be present or to approve the defective
98 corporate act, the presence or approval of such larger number or portion of stock or of such class
99 or series thereof or of such specified stockholders shall be required for a quorum to be present or
100 to approve the ratification of the defective corporate act, as applicable, except that the presence or
101 approval of shares of any class or series of which no shares are then outstanding, or of any person
102 that is no longer a stockholder, shall not be required;

103 (2) The approval by stockholders of the ratification of the election of a director shall require the
104 affirmative vote of the majority of shares present at the meeting and entitled to vote on the election
105 of such director, except that if the certificate of incorporation or bylaws of the corporation then in

106 effect or in effect at the time of the defective election require or required a larger number or
107 portion of stock or of any class or series thereof or of specified stockholders to elect such director,
108 the affirmative vote of such larger number or portion of stock or of any class or series thereof or of
109 such specified stockholders shall be required to ratify the election of such director, except that the
110 presence or approval of shares of any class or series of which no shares are then outstanding, or of
111 any person that is no longer a stockholder, shall not be required; and

112 (3) In the event of a failure of authorization resulting from failure to comply with the provisions of
113 § 203 of this title, the ratification of the defective corporate act shall require the vote set forth in §
114 203(a)(3) of this title, regardless of whether such vote would have otherwise been required.

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

119 Section 6. Amend § 204(g), Title 8 of the Delaware Code, by making insertions as shown by underline and
120 deletions as shown by strike through as follows:

121 (g) In respect of each defective corporate act ratified by the board of directors pursuant to subsection (b) of
122 this section, prompt notice of the ratification shall be given to all holders of valid stock and putative stock, whether
123 voting or nonvoting, as of the date the board of directors adopts the resolutions approving such defective corporate
124 act, or as of a date within 60 days after such date of adoption, as established by the board of directors, at the address
125 of such holder as it appears or most recently appeared, as appropriate, on the records of the corporation. The notice
126 shall also be given to the holders of record of valid stock and putative stock, whether voting or nonvoting, as of the
127 time of the defective corporate act, other than holders whose identities or addresses cannot be determined from the
128 records of the corporation. The notice shall contain a copy of the resolutions adopted pursuant to subsection (b) of
129 this section or the information specified in paragraphs (b)(1)(A) through (E) or paragraphs (b)(2)(A) through (C) of
130 this section, as applicable, and a statement that any claim that the defective corporate act or putative stock ratified
131 hereunder is void or voidable due to the failure of authorization, or that the Court of Chancery should declare in its
132 discretion that a ratification in accordance with this section not be effective or be effective only on certain conditions
133 must be brought within 120 days from the later of the validation effective time or the time at which the notice

134 required by this subsection is given. Notwithstanding the foregoing, (i) no such notice shall be required if notice of
135 the ratification of the defective corporate act is to be given in accordance with subsection (d) of this section, and (ii)
136 in the case of a corporation that has a class of stock listed on a national securities exchange, the notice required by
137 this subsection and the second sentence of subsection (d) of this section may be deemed given if disclosed in a
138 document publicly filed by the corporation with the Securities and Exchange Commission pursuant to §§ 13, 14 or
139 15(d) [15 U.S.C. §§ 78m, 77n or 78o(d)] of the Securities Exchange Act of 1934, as amended, and the rules and
140 regulations promulgated thereunder, or the corresponding provisions of any subsequent United States federal
141 securities laws, rules or regulations. If any defective corporate act has been approved by stockholders acting
142 pursuant to § 228 of this title, the notice required by this subsection may be included in any notice required to be
143 given pursuant to § 228(e) of this title and, if so given, shall be sent to the stockholders entitled thereto under §
144 228(e) and to all holders of valid and putative stock to whom notice would be required under this subsection if the
145 defective corporate act had been approved at a meeting other than any stockholder who approved the action by
146 consent in lieu of a meeting pursuant to § 228 of this title or any holder of putative stock who otherwise consented
147 thereto in writing. Solely for purposes of subsection (d) of this section and this subsection, notice to holders of
148 putative stock, and notice to holders of valid stock and putative stock as of the time of the defective corporate act,
149 shall be treated as notice to holders of valid stock for purposes of §§ 222 and 228, 229, 230, 232 and 233 of this title.

150 Section 7. Amend § 204(h)(1), Title 8 of the Delaware Code, by making insertions as shown by underline
151 and deletions as shown by strike through as follows:

152 (1) "Defective corporate act" means an overissue, an election or appointment of directors that is
153 void or voidable due to a failure of authorization, or any act or transaction purportedly taken by or
154 on behalf of the corporation that is, and at the time such act or transaction was purportedly taken
155 would have been, within the power of a corporation under subchapter II of this chapter (without
156 regard to the failure of authorization identified in § 204(b)(1)(D) of this title), but is void or
157 voidable due to a failure of authorization;

158 Section 8. Amend § 204(h)(2), Title 8 of the Delaware Code, by making insertions as shown by underline
159 and deletions as shown by strike through as follows:

160 (2) "Failure of authorization" means: (i) the failure to authorize or effect an act or transaction in
161 compliance with (A) the provisions of this title, (B) the certificate of incorporation or bylaws of

162 the corporation, or (C) any plan or agreement to which the corporation is a party or the disclosure
163 set forth in any proxy or consent solicitation statement, if and to the extent such failure would
164 render such act or transaction void or voidable; or (ii) the failure of the board of directors or any
165 officer of the corporation to authorize or approve any act or transaction taken by or on behalf of
166 the corporation that would have required for its due authorization the approval of the board of
167 directors or such officer;

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

170 (b) Appraisal rights shall be available for the shares of any class or series of stock of a constituent
171 corporation in a merger or consolidation to be effected pursuant to § 251 (other than a merger effected pursuant to §
172 251(g) of this title ~~and, subject to paragraph (b)(3) of this section, § 251(h) of this title~~), § 252, § 254, § 255, § 256,
173 § 257, § 258, § 263 or § 264 of this title:

174 (1) Provided, however, that, except as expressly provided in § 363(b) of this title, no appraisal
175 rights under this section shall be available for the shares of any class or series of stock, which
176 stock, or depository receipts in respect thereof, at the record date fixed to determine the
177 stockholders entitled to receive notice of the meeting of stockholders to act upon the agreement of
178 merger or consolidation (or, in the case of a merger pursuant to § 251(h), as of immediately prior
179 to the execution of the agreement of merger), were either: (i) listed on a national securities
180 exchange or (ii) held of record by more than 2,000 holders; and further provided that no appraisal
181 rights shall be available for any shares of stock of the constituent corporation surviving a merger if
182 the merger did not require for its approval the vote of the stockholders of the surviving corporation
183 as provided in § 251(f) of this title.

184 (2) Notwithstanding paragraph (b)(1) of this section, appraisal rights under this section shall be
185 available for the shares of any class or series of stock of a constituent corporation if the holders
186 thereof are required by the terms of an agreement of merger or consolidation pursuant to §§ 251,
187 252, 254, 255, 256, 257, 258, 263 and 264 of this title to accept for such stock anything except:

188 a. Shares of stock of the corporation surviving or resulting from such merger or
189 consolidation, or depository receipts in respect thereof;

- 190 b. Shares of stock of any other corporation, or depository receipts in respect thereof,
191 which shares of stock (or depository receipts in respect thereof) or depository receipts at
192 the effective date of the merger or consolidation will be either listed on a national
193 securities exchange or held of record by more than 2,000 holders;
- 194 c. Cash in lieu of fractional shares or fractional depository receipts described in the
195 foregoing paragraphs (b)(2)a. and b. of this section; or
- 196 d. Any combination of the shares of stock, depository receipts and cash in lieu of
197 fractional shares or fractional depository receipts described in the foregoing paragraphs
198 (b)(2)a., b. and c. of this section.

199 (3) In the event all of the stock of a subsidiary Delaware corporation party to a merger effected
200 under ~~§ 251(h)~~, § 253 or § 267 of this title is not owned by the parent immediately prior to the
201 merger, appraisal rights shall be available for the shares of the subsidiary Delaware corporation.

202 (4) In the event of an amendment to a corporation's certificate of incorporation contemplated by §
203 363(a) of this title, appraisal rights shall be available as contemplated by § 363(b) of this title, and
204 the procedures of this section, including those set forth in subsections (d) and (e) of this section,
205 shall apply as nearly as practicable, with the word "amendment" substituted for the words "merger
206 or consolidation," and the word "corporation" substituted for the words "constituent corporation"
207 and/or "surviving or resulting corporation."

208 Section 10. Amend § 262(e), Title 8 of the Delaware Code, by making insertions as shown by underline
209 and deletions as shown by strike through as follows:

210 (e) Within 120 days after the effective date of the merger or consolidation, the surviving or resulting
211 corporation or any stockholder who has complied with subsections (a) and (d) of this section hereof and who is
212 otherwise entitled to appraisal rights, may commence an appraisal proceeding by filing a petition in the Court of
213 Chancery demanding a determination of the value of the stock of all such stockholders. Notwithstanding the
214 foregoing, at any time within 60 days after the effective date of the merger or consolidation, any stockholder who
215 has not commenced an appraisal proceeding or joined that proceeding as a named party shall have the right to
216 withdraw such stockholder's demand for appraisal and to accept the terms offered upon the merger or consolidation.
217 Within 120 days after the effective date of the merger or consolidation, any stockholder who has complied with the

218 requirements of subsections (a) and (d) of this section hereof, upon written request, shall be entitled to receive from
219 the corporation surviving the merger or resulting from the consolidation a statement setting forth the aggregate
220 number of shares not voted in favor of the merger or consolidation ~~and~~(or, in the case of a merger approved pursuant
221 to § 251(h) of this title, the aggregate number of shares (other than any excluded stock (as defined in § 251(h)(6)d.
222 of this title)) that were the subject of, and were not tendered into, and accepted for purchase or exchange in, the offer
223 referred to in § 251(h)(2)), and, in either case, with respect to which demands for appraisal have been received and
224 the aggregate number of holders of such shares. Such written statement shall be mailed to the stockholder within 10
225 days after such stockholder's written request for such a statement is received by the surviving or resulting
226 corporation or within 10 days after expiration of the period for delivery of demands for appraisal under subsection
227 (d) of this section hereof, whichever is later. Notwithstanding subsection (a) of this section, a person who is the
228 beneficial owner of shares of such stock held either in a voting trust or by a nominee on behalf of such person may,
229 in such person's own name, file a petition or request from the corporation the statement described in this subsection.

230 Section 11. Amend § 284, Title 8 of the Delaware Code, by making insertions as shown by underline and
231 deletions as shown by strike through as follows:

232 § 284 Revocation or forfeiture of charter; proceedings.

233 (a) ~~The~~Upon motion by the Attorney General, the Court of Chancery shall have jurisdiction to revoke or
234 forfeit the charter of any corporation for abuse, misuse or nonuse of its corporate powers, privileges or franchises.
235 The Attorney General shall, ~~upon the Attorney General's own motion or upon the relation of a proper party,~~ proceed
236 for this purpose by complaint in the ~~county in which the registered office of the corporation is located~~ Court of
237 Chancery.

238 (b) The Court of Chancery shall have power, by appointment of trustees, receivers or otherwise, to
239 administer and wind up the affairs of any corporation whose charter shall be revoked or forfeited by ~~any court~~the
240 Court of Chancery under ~~any this section of this title or otherwise,~~ and to make such orders and decrees with respect
241 thereto as shall be just and equitable respecting its affairs and assets and the rights of its stockholders and creditors.

242 (c) No proceeding shall be instituted under this section for nonuse of any corporation's powers, privileges
243 or franchises during the first 2 years after its incorporation.

244 Section 12. Amend § 313(b), Title 8 of the Delaware Code, by making insertions as shown by underline
245 and deletions as shown by strike through as follows:

246 (b) Upon the filing by the corporation of the proof of classification as required by subsection (a) of this
247 section, the filing of the certificate of revival and payment of the required filing fees, ~~the Secretary of State shall~~
248 ~~issue a certificate that the corporation's certificate of incorporation or charter has been revived as of the date of the~~
249 ~~certificate and~~ the corporation shall be revived with the same force and effect as provided in § 312(e) of this title for
250 other corporations.

251 Section 13. Amend § 502(a), Title 8 of the Delaware Code, by making insertions as shown by underline
252 and deletions as shown by strike through as follows:

253 (a) Annually on or before March 1, every corporation now existing or hereafter incorporated under Chapter
254 1 of this title or which has accepted the Constitution of this State, shall make an annual franchise tax report to the
255 Secretary of State. The report shall be made on a form designated by the Secretary of State and shall be signed by
256 the corporation's president, secretary, treasurer or other proper officer duly authorized so to act, or by any of its
257 directors, or if filing an initial report by any incorporator in the event its board of directors shall not have been
258 elected. The fact that an individual's name is signed on the report shall be prima facie evidence that such individual
259 is authorized to certify the report on behalf of the corporation; however, the official title or position of the individual
260 signing the corporate report shall be designated. The report shall contain the following information:

- 261 (1) The location of its registered office in this State, which shall include the street, number, city
262 and postal code;
- 263 (2) The name of the agent upon whom service of process against the corporation may be served;
- 264 (3) The location of the principal place of business of the corporation, which shall include the
265 street, number, city, state or foreign country;
- 266 (4) The names and addresses of all the directors as of the filing date of the report and the name and
267 address of the officer who signs the report; provided, that other than an initial report, all reports
268 shall list a director or directors excepting any report filed in conjunction with a certificate of
269 dissolution filed by an incorporator pursuant to § 274 of this title or a certificate of dissolution
270 filed pursuant to § 275(c) of this title;
- 271 (5) The number of shares and the par value per share of each class of capital stock having a par
272 value and the number of shares of each class of stock without par value which the corporation is
273 authorized to issue; and

274 ~~(6) If exempt from taxation for any cause, the specific facts entitling the corporation to exemption~~
275 ~~from taxation; and~~

276 (7) Such additional information, schedules and attachments as the Secretary shall require to
277 ascertain the franchise tax due to the State.

278 Section 14. Section 1 shall be effective on August 1, 2019.

279 Section 15. Sections 2 and 3 and Sections 11 through 13 shall be effective on August 1, 2018.

280 Section 16. Sections 4 through 8 shall be effective only with respect to defective corporate acts ratified or
281 to be ratified pursuant to resolutions adopted by a board of directors on or after August 1, 2018.

282 Section 17. Sections 9 and 10 shall be effective only with respect to a merger or consolidation
283 consummated pursuant to an agreement entered into on or after August 1, 2018.

284 SYNOPSIS

285 Section 1. Section 1 of this Act amends Section 102(a)(1) to provide that the name of a corporation must
286 be such as to distinguish it from the name of any registered series of a limited liability company.

287 Section 2. Sections 2 and 3 of this Act amend Section 114. Section 114 translates the provisions of Title 8,
288 to determine which provisions apply to nonstock corporations. As amended, Section 114 allows nonstock
289 corporations to use the provisions of Sections 204 and 205 to ratify defective corporate acts.

290 Section 3. Sections 4 through 8 of this Act amend Section 204. The addition of new Section 204(c)(2)
291 confirms that Section 204 remains available for use in ratifying defective corporate acts in circumstances where no
292 valid stock is outstanding, consistent with the existing provisions of Section 204 specifying that only valid stock is
293 entitled to vote on the ratification of a defective corporate act that requires or required a vote of stockholders.

294 The changes to Section 204(d) clarify that, in cases where a vote of stockholders is being sought for the
295 ratification of a defective corporate act at a meeting of stockholders, the notice that is required to be given to holders
296 of valid stock or putative stock as of the time of the defective corporate act may be given to the holders of valid
297 stock or putative stock as of the record date for the defective corporate act if such defective corporate act involved
298 the establishment of a record date. Section 204(g) is also being amended to provide that public companies may give
299 such notice through disclosure in a document publicly filed with the Securities and Exchange Commission pursuant
300 to Sections 13, 14 or 15(d) of the Securities Exchange Act of 1934.

301 Section 204(h)(1) is being amended to clarify and confirm that any act or transaction that a corporation
302 takes that is within its power under subchapter II of the Delaware General Corporation Law (i.e., any act or
303 transaction other than those that are expressly denied, such as the power of issuing bills, notes, or other evidences of
304 debt for circulation as money, or carrying on the business of receiving deposits of money) may be subject to
305 ratification under Section 204 if such act or transaction was void or voidable due to a "failure of authorization." The
306 amendments to Section 204(h)(1) are intended to eliminate any implication from *Nguyen v. View, Inc.*, C.A. No.
307 11138-VCS (Del. Ch. June 6, 2017), suggesting that an act or transaction may not be within the power of a
308 corporation—and therefore may not constitute a "defective corporate act" susceptible to cure by ratification—solely
309 on the basis that it was not approved in accordance with the provisions of the Delaware General Corporation Law or
310 the corporation's certificate of incorporation or bylaws. The amendments would not, however, disturb the power of
311 the Court of Chancery to decline to validate a defective corporate act that had been ratified under Section 204, or to
312 declare invalid any defective corporate act, on the basis that the failure of authorization that rendered such act void
313 or voidable involved a deliberate withholding of any consent or approval required under the Delaware General
314 Corporation Law, the certificate of incorporation or bylaws, nor would it limit, eliminate, modify or qualify any
315 other power expressly granted to the Court of Chancery under Section 205 of the Delaware General Corporation
316 Law.

317 Section 204(h)(2) is being amended to make clear that the failure of an act or transaction to be approved in
318 compliance with the disclosure set forth in any proxy or consent solicitation statement may constitute a failure of
319 authorization.

320 Section 4. Sections 9 and 10 of this Act amend Section 262. The amendments to Section 262(b) will apply
321 the "market out" exception to the availability of statutory appraisal rights to "intermediate form" mergers effected
322 pursuant to Section 251(h). As currently drafted, Section 262(b)(3) provides that, if all of the stock of a subsidiary
323 Delaware corporation party to a merger effected pursuant to Section 251(h) are not owned by the parent immediately
324 prior to the merger, appraisal rights will be available for the shares of the subsidiary Delaware corporation, whether
325 or not the market out exception would otherwise apply to an analogous "long form" merger, effectively ensuring that
326 the market out exception will not be available to any exchange offer effected pursuant to Section 251(h). As
327 amended, Section 262(b) will provide that, in the case of a merger pursuant to Section 251(h), appraisal rights will
328 not be available for the shares of any class or series of stock of a target corporation that were listed on a national

329 securities exchange or held of record by more than 2,000 holders as of immediately prior to the execution of the
330 agreement of merger, so long as such holders are not required to accept for their shares anything except (i) stock of
331 the surviving corporation (or depository receipts in respect thereof), (ii) stock of any other corporation (or depository
332 receipts in respect thereof) that at the effective time of the merger will be listed on a national securities exchange or
333 held of record by more than 2,000 holders, (iii) cash in lieu of fractional shares or fractional depository receipts in
334 respect of the foregoing, or (iv) any combination of the foregoing shares of stock, depository receipts and cash in
335 lieu of fractional shares or fractional depository receipts.

336 The changes to Section 262(e) effect a technical clarifying change with respect to the statement required to
337 be furnished by the surviving corporation thereunder. Currently, Section 262(e) requires the surviving corporation
338 to provide, upon request and subject to specified conditions, a statement to dissenting stockholders setting forth the
339 aggregate number of shares that were not voted in favor of the merger or consolidation and as to which demands for
340 appraisal have been received, and the aggregate number of holders of such shares. The changes to Section 262(e)
341 give recognition to the fact that, in the case of a merger effected pursuant to Section 251(h), no shares are "voted"
342 for the adoption of the agreement of merger. Instead, if a requisite number of shares of a target corporation are
343 tendered for purchase or exchange in a tender offer satisfying the requirements of Section 251(h), the merger of the
344 target corporation may be effected without a vote of its stockholders. The amendment to Section 262(e) thus
345 clarifies that the statement provided pursuant thereto in connection with a merger effected under Section 251(h)
346 must set forth the relevant shares not tendered for exchange or purchase rather than the shares not voted for the
347 merger.

348 Section 5. Section 11 of this Act amends Section 284 to clarify that the Attorney General has the exclusive
349 authority to move for the revocation or forfeiture of a charter of a corporation pursuant to Section 284. As amended,
350 Section 284 also clarifies that, in light of electronic filing, the Attorney General may file a complaint seeking
351 revocation or forfeiture in the Court of Chancery without regard to county. Section 284 is also amended to provide
352 expressly that the Court of Chancery has the power to appoint a trustee to administer and wind up the affairs of a
353 corporation whose charter has been revoked or forfeited pursuant to Section 284.

354 Section 6. Section 12 of this Act amends Section 313(b) to reflect the current practice of the Office of the
355 Secretary of State relating to the filing of certificates of revival for exempt corporations. Section 13 of this Act

356 amends Section 502(a) to reflect the current practice of the Office of the Secretary of State relating to the filing of
357 annual reports for exempt corporations.

358 Section 7. Sections 14 through 17 of this Act relate to the effectiveness of the amendments to Title 8.
359 Section 14 of this Act provides that Section 1 of this Act (relating to the amendments to Section 102(a)(1)) are
360 effective on August 1, 2019. Section 15 of this Act provides that Sections 2 and 3 and Sections 11 through 13 of
361 this Act (relating to the amendments to Sections 114, 284, 313(b) and 502(a)) are effective on August 1, 2018.
362 Section 16 of this Act provides that Sections 4 through 8 of this Act (relating to the amendments to Section 204) are
363 effective only with respect to defective corporate acts ratified or to be ratified pursuant to resolutions adopted by a
364 board of directors on or after August 1, 2018. Section 17 of this Act provides that Sections 9 and 10 of this Act
365 (relating to the amendments to Section 262) are effective only with respect to a merger or consolidation
366 consummated pursuant to an agreement entered into on or after August 1, 2018.