

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 § 103(a)(1), Title 8 of the Delaware Code by making deletions as shown by strikethrough as follows:

(a) Whenever an instrument is to be filed with the Secretary of State or in accordance with this section or chapter, such instrument shall be executed as follows:

(1) The certificate of incorporation, and any other instrument to be filed before the election of the initial board of directors if the initial directors were not named in the certificate of incorporation, shall be signed by the incorporator or incorporators (or, in the case of any such other instrument, such incorporator's or incorporators' successors and assigns). If any incorporator is not available, ~~by reason of death, incapacity, unknown address, or refusal or neglect to act,~~ then any such other instrument may be signed, with the same effect as if such incorporator had signed it, by any person for whom or on whose behalf such incorporator, in executing the certificate of incorporation, was acting directly or indirectly as employee or agent, provided that such other instrument shall state that such incorporator is not available and the reason therefor, that such incorporator in executing the certificate of incorporation was acting directly or indirectly as employee or agent for or on behalf of such person, and that such person's signature on such instrument is otherwise authorized and not wrongful.

Section 2. Amend § 108 Title 8 of the Delaware Code by inserting a new § 108(d) as follows:

(d) If any incorporator is not available to act, then any person for whom or on whose behalf the incorporator was acting directly or indirectly as employee or agent, may take any action that such incorporator would have been authorized to take under this section or § 107 of this title; provided that any instrument signed by such other person, or any record of the proceedings of a meeting in which such person participated, shall state that such incorporator is not available and the reason therefor, that such incorporator was acting directly or indirectly as employee or agent for or on behalf of such person, and that such person's signature on such instrument or participation in such meeting is otherwise authorized and not wrongful.

Section 3. Amend § 141(f), Title 8 of the Delaware Code by making additions as shown by underlining as follows:

Unless otherwise restricted by the certificate of incorporation or bylaws, any action required or permitted to be taken at any meeting of the board of directors or of any committee thereof may be taken without a meeting if all members of the board or committee, as the case may be, consent thereto in writing, or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the board, or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form. Any person (whether or not then a director) may provide, whether through instruction to an agent or otherwise, that a consent to action will be effective at a future time (including a time determined upon the happening of an event), no later than 60 days after such instruction is given or such provision is made and such consent shall be deemed to have been given for purposes of this subsection at such effective time so long as such person is then a director and did not revoke the consent prior to such time. Any such consent shall be revocable prior to its becoming effective.

Section 4. Amend § 218(a) and § 218(b), Title 8 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

(a) One stockholder or 2 or more stockholders may by agreement in writing deposit capital stock of an original issue with or transfer capital stock to any person or persons, or entity or entities authorized to act as trustee, for the purpose of vesting in such person or persons, entity or entities, who may be designated voting trustee, or voting trustees, the right to vote thereon for any period of time determined by such agreement, upon the terms and conditions stated in such agreement. The agreement may contain any other lawful provisions not inconsistent with such purpose. After ~~the filing~~ delivery of a copy of the agreement ~~in~~ to the registered office of the corporation in this State or the principal place of business of the corporation, which copy shall be open to the inspection of any stockholder of the corporation or any beneficiary of the trust under the agreement daily during business hours, certificates of stock or uncertificated stock shall be issued to the voting trustee or trustees to represent any stock of an original issue so deposited with such voting trustee or trustees, and any certificates of stock or uncertificated stock so transferred to the voting trustee or trustees shall be surrendered and cancelled and new certificates or uncertificated stock shall be issued therefore to the voting trustee or trustees. In the certificate so issued, if any, it shall be stated that it is issued pursuant to such agreement, and that fact shall also be stated in the stock ledger of the corporation. The voting trustee or trustees may vote the stock so issued or transferred during the period specified in the agreement. Stock standing in the name of the voting trustee or trustees may be voted either in person or by proxy, and in voting the stock, the voting trustee or trustees shall incur no responsibility as stockholder, trustee or otherwise, except for their own individual malfeasance. In any case where 2 or more persons or entities are designated as voting trustees, and the right and method of voting any stock standing in

their names at any meeting of the corporation are not fixed by the agreement appointing the trustees, the right to vote the stock and the manner of voting it at the meeting shall be determined by a majority of the trustees, or if they be equally divided as to the right and manner of voting the stock in any particular case, the vote of the stock in such case shall be divided equally among the trustees.

(b) Any amendment to a voting trust agreement shall be made by a written agreement, a copy of which shall be ~~filed in~~ delivered to the registered office of the corporation in this State or principal place of business of the corporation.

Section 5. Amend § 228(c), Title 8 of the Delaware Code by making insertions as shown by underlining as follows:

Every written consent shall bear the date of signature of each stockholder or member who signs the consent, and no written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest dated consent delivered in the manner required by this section to the corporation, written consents signed by a sufficient number of holders or members to take action are delivered to the corporation by delivery to its registered office in this State, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders or members are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. Any person executing a consent may provide, whether through instruction to an agent or otherwise, that such a consent will be effective at a future time (including a time determined upon the happening of an event), no later than 60 days after such instruction is given or such provision is made, and, for the purposes of this section, if evidence of such instruction or provision is provided to the corporation, such later effective time shall serve as the date of signature. Unless otherwise provided, any such consent shall be revocable prior to its becoming effective.

Section 6. Amend § 242, Title 8 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough 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 shares of any class or series of a class of shares into a greater or lesser number of outstanding 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 (i) 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 (ii) 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 clause (1) or (7) of subsection (a). 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. At the meeting a vote of the stockholders entitled to vote thereon shall be taken for and against ~~the any~~ proposed amendment. If 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.

(2) The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the certificate of incorporation, if the amendment would increase or decrease the aggregate number of authorized shares of such class, increase or decrease the par value of the shares of such class, or alter or change the powers, preferences, or special rights of the shares of such class so as to affect them adversely. If any proposed amendment would alter or change the powers, preferences, or special rights of 1 or more series of any class so as to affect them adversely, but shall not so affect the entire class, then only the shares of the series so affected by the amendment shall be considered a separate class for the purposes of this paragraph. The number of authorized shares of any such class or classes of stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of the corporation entitled to vote irrespective of this subsection, if so provided in the original certificate of incorporation, in any amendment thereto which created such class or classes of stock or which was adopted prior to the issuance of any shares of such class or classes of stock, or in any amendment thereto which was authorized by a resolution or resolutions adopted by the affirmative vote of the holders of a majority of such class or classes of stock.

(3) If the corporation is a nonstock corporation, then the governing body thereof shall adopt a resolution setting forth the amendment proposed and declaring its advisability. If a majority of all the members of the governing body shall vote in favor of such amendment, a certificate thereof shall be executed, acknowledged and filed and shall become effective in accordance with § 103 of this title. The certificate of incorporation of any nonstock corporation may contain a provision requiring any amendment thereto to be approved by a specified number or percentage of the members or of any specified class of members of such corporation in which event such proposed amendment shall be submitted to the members or to any specified class of members of such corporation in the same manner, so far as applicable, as is provided in this section for an amendment to the certificate of incorporation of a stock corporation; and in the event of the adoption thereof by such members, a certificate evidencing such amendment

shall be executed, acknowledged and filed and shall become effective in accordance with § 103 of this title.

(4) Whenever the certificate of incorporation shall require for action by the board of directors of a corporation other than a nonstock corporation or by the governing body of a nonstock corporation, by the holders of any class or series of shares or by the members, or by the holders of any other securities having voting power the vote of a greater number or proportion than is required by any section of this title, the provision of the certificate of incorporation requiring such greater vote shall not be altered, amended or repealed except by such greater vote.

(c) The resolution authorizing a proposed amendment to the certificate of incorporation may provide that at any time prior to the effectiveness of the filing of the amendment with the Secretary of State, notwithstanding authorization of the proposed amendment by the stockholders of the corporation or by the members of a nonstock corporation, the board of directors or governing body may abandon such proposed amendment without further action by the stockholders or members.

Section 7. Amend § 251(h), Title 8 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

(h) Notwithstanding the requirements of subsection (c) of this section, unless expressly required by its certificate of incorporation, no vote of stockholders of a constituent corporation whose shares are listed on a national securities exchange or held of record by more than 2,000 holders immediately prior to the execution of the agreement of merger by such constituent corporation shall be necessary to authorize a merger if:

(1) The agreement of merger, ~~which must be entered into on or after August 1, 2013,~~ expressly (i) permits or requires such merger to be effected under this subsection and (ii) provides that such merger shall be governed by this subsection and shall be effected as soon as practicable following the consummation of the offer referred to in paragraph (h)(2) of this section if such merger is effected under this subsection;

(2) A corporation consummates a tender or exchange offer for any and all of the outstanding stock of such constituent corporation on the terms provided in such agreement of merger that, absent this subsection, would be entitled to vote on the adoption or rejection of the agreement of merger; provided, however, that such offer may exclude stock of such constituent corporation that is owned at the commencement of such offer by: (i) such constituent corporation, (ii) the corporation making such offer; (iii) any person that owns, directly or indirectly, all of the outstanding stock of the corporation making such offer; or (iv) any direct or indirect wholly-owned subsidiary of any of the foregoing;

(3) Following the consummation of ~~such offer,~~ the offer referred to in paragraph (h)(2) of this section, the stock irrevocably accepted for purchase or exchange

pursuant to such offer and received by the depository prior to expiration of such offer, plus the stock otherwise owned by the consummating corporation owns equals at least such percentage of the stock, and of each class or series thereof, of such constituent corporation that, absent this subsection, would be required to adopt the agreement of merger by this chapter and by the certificate of incorporation of such constituent corporation;

~~(4) At the time such constituent corporation's board of directors approves the agreement of merger, no other party to such agreement is an "interested stockholder" (as defined in § 203(e) of this title) of such constituent corporation;~~

~~(5)(4) The corporation consummating the offer described referred to in paragraph (h)(2) of this section merges with or into such constituent corporation pursuant to such agreement; and~~

~~(65) The Each outstanding shares share of each class or series of stock of the constituent corporation not to be canceled in the merger are that is the subject of and not irrevocably accepted for purchase or exchange in the offer referred to in paragraph (h)(2) of this section is to be converted in such merger into, or into the right to receive, the same amount and kind of cash, property, rights or securities to be paid for shares of such class or series of stock of such constituent corporation upon consummation of the offer referred to in paragraph (h)(2) of this section. irrevocably accepted for purchase or exchange in such offer.~~

As used in this section only, the term (i) "consummates" (and with correlative meaning, "consummation" and "consummating") means irrevocably accepts for purchase or exchange stock tendered pursuant to a tender or exchange offer, (ii) "depository" means an agent, including a depository, appointed to facilitate consummation of the offer referred to in paragraph (h)(2) of this section, (iii) "person" means any individual, corporation, partnership, limited liability company, unincorporated association or other entity and (iv) "received" (solely for purposes of paragraph (h)(3) of this section) means physical receipt of a stock certificate in the case of certificated shares and transfer into the depository's account, or an agent's message being received by the depository, in the case of uncertificated shares.

If an agreement of merger is adopted without the vote of stockholders of a corporation pursuant to this subsection, the secretary or assistant secretary of the surviving corporation shall certify on the agreement that the agreement has been adopted pursuant to this subsection and that the conditions specified in this subsection (other than the condition listed in paragraph ~~(h)~~~~(5)(h)~~(4) of this section) have been satisfied; provided that such certification on the agreement shall not be required if a certificate of merger is filed in lieu of filing the agreement. The agreement so adopted and certified shall then be filed and shall become effective, in accordance with § 103 of this title. Such filing shall constitute a representation by the person who executes the agreement that the facts stated in the certificate remain true immediately prior to such filing.

Section 8. This Act shall become effective on August 1, 2014, except that Section 7 shall be effective with respect to merger agreements entered into on or after August 1, 2014.

SYNOPSIS

Section 1 amends Section 103(a)(1) to remove any limitation on the reason for the incorporator's unavailability.

Section 2 amends Section 108 to provide a means for the incorporator's actions required by this section to be taken in the event the incorporator is unavailable to act.

Section 3 amends Section 141(f) to clarify that a person may execute a consent, and that such consent may be placed in escrow (or similar arrangement), to become effective at a later time, even if the person is not a director at the time the consent is executed, so long as the escrow period does not exceed 60 days.

Section 4 amends Sections 218(a) and (b) to provide that a voting trust agreement, or any amendment thereto, may be delivered to the principal place of business of the corporation in lieu of the registered office of the corporation.

Section 5 amends Section 228(c) to clarify that a person may execute a consent, and that such consent may be placed in escrow (or similar arrangement), to become effective at a later time even if the person is not a stockholder at the time the consent is executed and that the later effective time would then be treated as the date the consent was signed. In contrast to the similar amendment made to Section 141(f) (addressing consents of directors) the amendment to Section 228(c) does not expressly state the signatory need not be a stockholder when the consent is signed. The reason for this difference is that a person executing a written consent need not be a stockholder at the time of execution under current law, but only on the relevant record date. The amendment does not affect the requirement that the consent bear the actual date of signature.

Section 6 amends Section 242 to authorize corporations to file certificates of amendment that either change the corporate name or delete historical provisions relating to the corporation's incorporator, initial board of directors or initial subscribers for shares and provisions relating to previously effected changes to stock, in each case without submitting the amendment for stockholder approval. The changes also eliminate the requirement that the notice of a meeting at which an amendment is to be voted on contain a copy of the amendment itself or a brief summary thereof, but only when notice constitutes a notice of internet availability of proxy materials for Securities Exchange Act purposes.

Section 7 amends Section 251(h) in several respects, including revisions to (i) eliminate Section 4, which precluded the use of Section 251(h) when a party to the merger agreement is an "interested stockholder" (as that term is defined in Section 203),

(ii) clarify when a corporation consummating an offer referred to in Section 251(h) is entitled to effect a merger pursuant to such section, and (iii) clarify that shares of stock tendered into an offer referred to in Section 251(h) are not counted for purposes of Section 251(h) unless irrevocably accepted for exchange and received by the depository prior to expiration of such offer. The amendments do not change the fiduciary duties of directors in connection with mergers effected pursuant to Section 251(h) or the level of judicial scrutiny that will apply to the decision to enter into such a merger agreement, each of which will be determined based on the common law of fiduciary duty, including the duty of loyalty.

Section 8 provides that the effective date of these amendments is August 1, 2014, with a limitation that Section 7 is effective only for merger agreements entered into on or after that date.