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HOUSE OF REPRESENTATIVES
147th GENERAL ASSEMBLY

HOUSE BILL NO. 329

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

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

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

15 Section 2. Amend § 108, Title 8 of the Delaware Code by making deletions as shown by strikethrough and
16 insertions as shown by underline as follows:

17 § 108 Organization meeting of incorporations or directors named in certificate of incorporation.

18 (d) If any incorporator is not available to act, then any person for whom or on whose behalf the incorporator was
19 acting directly or indirectly as employee or agent, may take any action that such incorporator would have been authorized
20 to take under this section or § 107 of this title; provided that any instrument signed by such other person, or any record of

21 the proceedings of a meeting in which such person participated, shall state that such incorporator is not available and the
22 reason therefor, that such incorporator was acting directly or indirectly as employee or agent for or on behalf of such
23 person, and that such person's signature on such instrument or participation in such meeting is otherwise authorized and not
24 wrongful.

25 Section 3. Amend § 141(f), Title 8 of the Delaware Code by making deletions as shown by strikethrough and
26 additions as shown by underline as follows:

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

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

40 (a) One stockholder or 2 or more stockholders may by agreement in writing deposit capital stock of an original
41 issue with or transfer capital stock to any person or persons, or entity or entities authorized to act as trustee, for the purpose
42 of vesting in such person or persons, entity or entities, who may be designated voting trustee, or voting trustees, the right to
43 vote thereon for any period of time determined by such agreement, upon the terms and conditions stated in such agreement.
44 The agreement may contain any other lawful provisions not inconsistent with such purpose. After ~~the filing~~ delivery of a
45 copy of the agreement ~~in~~ to the registered office of the corporation in this State or the principal place of business of the
46 corporation, which copy shall be open to the inspection of any stockholder of the corporation or any beneficiary of the trust
47 under the agreement daily during business hours, certificates of stock or uncertificated stock shall be issued to the voting
48 trustee or trustees to represent any stock of an original issue so deposited with such voting trustee or trustees, and any
49 certificates of stock or uncertificated stock so transferred to the voting trustee or trustees shall be surrendered and cancelled
50 and new certificates or uncertificated stock shall be issued therefore to the voting trustee or trustees. In the certificate so

51 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
52 ledger of the corporation. The voting trustee or trustees may vote the stock so issued or transferred during the period
53 specified in the agreement. Stock standing in the name of the voting trustee or trustees may be voted either in person or by
54 proxy, and in voting the stock, the voting trustee or trustees shall incur no responsibility as stockholder, trustee or
55 otherwise, except for their own individual malfeasance. In any case where 2 or more persons or entities are designated as
56 voting trustees, and the right and method of voting any stock standing in their names at any meeting of the corporation are
57 not fixed by the agreement appointing the trustees, the right to vote the stock and the manner of voting it at the meeting
58 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
59 in any particular case, the vote of the stock in such case shall be divided equally among the trustees.

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

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

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

75 Section 6. Amend § 242, Title 8 of the Delaware Code by making insertions as shown by underline and deletions
76 as shown by strikethrough as follows:

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

78 (a) After a corporation has received payment for any of its capital stock, or after a nonstock corporation has
79 members, it may amend its certificate of incorporation, from time to time, in any and as many respects as may be desired,
80 so long as its certificate of incorporation as amended would contain only such provisions as it would be lawful and proper

81 to insert in an original certificate of incorporation filed at the time of the filing of the amendment; and, if a change in stock
82 or the rights of stockholders, or an exchange, reclassification, subdivision, combination or cancellation of stock or rights of
83 stockholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification,
84 subdivision, combination or cancellation. In particular, and without limitation upon such general power of amendment, a
85 corporation may amend its certificate of incorporation, from time to time, so as:

86 (1) To change its corporate name; or

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

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

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

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

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

100 (7) To delete (i) such provisions of the original certificate of incorporation which named the incorporator
101 or incorporators, the initial board of directors and the original subscribers for shares, and (ii) such provisions
102 contained in any amendment to the certificate of incorporation as were necessary to effect a change, exchange,
103 reclassification, subdivision, combination or cancellation of stock, if such change, exchange, reclassification,
104 subdivision, combination or cancellation has become effective.

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

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

108 (1) If the corporation has capital stock, its board of directors shall adopt a resolution setting forth the
109 amendment proposed, declaring its advisability, and either calling a special meeting of the stockholders entitled to
110 vote in respect thereof for the consideration of such amendment or directing that the amendment proposed be

111 considered at the next annual meeting of the stockholders; provided, however, that unless otherwise expressly
112 required by the certificate of incorporation, no meeting or vote of stockholders shall be required to adopt an
113 amendment that effects only changes described in paragraph (1) or (7) of subsection (a). Such special or annual
114 meeting shall be called and held upon notice in accordance with § 222 of this title. The notice shall set forth such
115 amendment in full or a brief summary of the changes to be effected thereby unless such notice constitutes a notice
116 of internet availability of proxy materials under the rules promulgated under the Securities Exchange Act of 1934.
117 At the meeting a vote of the stockholders entitled to vote thereon shall be taken for and against ~~the any~~ proposed
118 amendment. ~~If~~ that requires adoption by stockholders. If no vote of stockholders is required to effect such
119 amendment, or if a majority of the outstanding stock entitled to vote thereon, and a majority of the outstanding
120 stock of each class entitled to vote thereon as a class has been voted in favor of the amendment, a certificate
121 setting forth the amendment and certifying that such amendment has been duly adopted in accordance with this
122 section shall be executed, acknowledged and filed and shall become effective in accordance with § 103 of this
123 title.

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

138 (3) If the corporation is a nonstock corporation, then the governing body thereof shall adopt a resolution
139 setting forth the amendment proposed and declaring its advisability. If a majority of all the members of the
140 governing body shall vote in favor of such amendment, a certificate thereof shall be executed, acknowledged and

141 filed and shall become effective in accordance with § 103 of this title. The certificate of incorporation of any
142 nonstock corporation may contain a provision requiring any amendment thereto to be approved by a specified
143 number or percentage of the members or of any specified class of members of such corporation in which event
144 such proposed amendment shall be submitted to the members or to any specified class of members of such
145 corporation in the same manner, so far as applicable, as is provided in this section for an amendment to the
146 certificate of incorporation of a stock corporation; and in the event of the adoption thereof by such members, a
147 certificate evidencing such amendment shall be executed, acknowledged and filed and shall become effective in
148 accordance with § 103 of this title.

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

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

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

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

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

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

177 (3) Following the consummation of ~~such offer,~~ the offer referred to in paragraph (h)(2) of this section, the
178 stock irrevocably accepted for purchase or exchange pursuant to such offer and received by the depository prior to
179 expiration of such offer, plus the stock otherwise owned by the consummating corporation owns equals at least
180 such percentage of the stock, and of each class or series thereof, of such constituent corporation that, absent this
181 subsection, would be required to adopt the agreement of merger by this chapter and by the certificate of
182 incorporation of such constituent corporation;

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

186 ~~(5)(4)~~ The corporation consummating the offer ~~described~~ referred to in paragraph (h)(2) of this section
187 merges with or into such constituent corporation pursuant to such agreement; and

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

194 As used in this section only, the term (i) "consummates" (and with correlative meaning, "consummation" and
195 "consummating") means irrevocably accepts for purchase or exchange stock tendered pursuant to a tender or exchange
196 offer, (ii) "depository" means an agent, including a depository, appointed to facilitate consummation of the offer referred to
197 in paragraph (h)(2) of this section, (iii) "person" means any individual, corporation, partnership, limited liability company,
198 unincorporated association or other entity, and (iv) "received" (solely for purposes of paragraph (h)(3) of this section)

199 means physical receipt of a stock certificate in the case of certificated shares and transfer into the depository's account, or
200 an agent's message being received by the depository, in the case of uncertificated shares.

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

208 Section 8. This Act shall become effective on August 1, 2014, except that Section 7 shall be effective with respect
209 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.