



SPONSOR: Rep. Valihura & Rep. M Marshall & Sen. Adams & Sen. DeLuca;  
Reps. Hudson, Lavelle, Stone, Wagner, Johnson, Mitchell; Sens. McDowell, Amick, Simpson

HOUSE OF REPRESENTATIVES  
144th GENERAL ASSEMBLY

HOUSE BILL NO. 160

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 § 141(d), Title 8, Delaware Code, by inserting before the last sentence thereof, the following  
2 sentence: "Any such provision conferring greater or lesser voting power shall apply to voting in any committee or  
3 subcommittee, unless otherwise provided in the certificate of incorporation or bylaws."

4           Section 2. Amend § 203(b)(4), Title 8, Delaware Code, by deleting the words "authorized for quotation on The  
5 NASDAQ Stock Market; or (iii)" and adding the word "or" in lieu thereof.

6           Section 3. Amend § 216(4), Title 8, Delaware Code, by inserting after the words "with respect to that vote on that  
7 matter and" the following: ", in all matters other than the election of directors,".

8           Section 4. Amend § 251(c), Title 8, Delaware Code, by inserting before the period in the fifth sentence thereof the  
9 following: ", provided that such certification on the agreement shall not be required if a certificate of merger or  
10 consolidation is filed in lieu of filing the agreement".

11           Section 5. Amend § 251(c)(2), Title 8, Delaware Code, by deleting "certified," therefrom.

12           Section 6. Amend § 251(f), Title 8, Delaware Code, by inserting before the period in the third sentence thereof the  
13 following: ", provided that such certification on the agreement shall not be required if a certificate of merger or  
14 consolidation is filed in lieu of filing the agreement".

15           Section 7. Amend § 251(g), Title 8, Delaware Code, by inserting before the period in the third sentence of the  
16 second paragraph thereof the following: ", provided that such certification on the agreement shall not be required if a  
17 certificate of merger or consolidation is filed in lieu of filing the agreement".

18           Section 8. Amend § 255(c), Title 8, Delaware Code, by inserting before the period in the fifth sentence thereof the  
19 following: ", provided that such certification on the agreement shall not be required if a certificate of merger or  
20 consolidation is filed in lieu of filing the agreement".

21 Section 9. Amend § 255(d), Title 8, Delaware Code, by inserting after the words "members of a corporation" in  
22 the third sentence thereof the following: ", provided that such certification on the agreement shall not be required if a  
23 certificate of merger or consolidation is filed in lieu of filing the agreement,".

24 Section 10. Amend § 258(b), Title 8, Delaware Code, by inserting after the words "adopted, approved," in the last  
25 sentence thereof the following: "certified,".

26 Section 11. Amend § 262(b)(1), Title 8, Delaware Code, by deleting the words "or designated as a national market  
27 system security on an interdealer quotation system by the National Association of Securities Dealers, Inc.".

28 Section 12. Amend § 262(b)(2)(b), Title 8, Delaware Code, by deleting the words "or designated as a national  
29 market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc.".

30 Section 13. Amend § 262(e), Title 8, Delaware Code, by deleting the text thereof in its entirety and inserting in  
31 lieu thereof, the following:

32 "(e) Within 120 days after the effective date of the merger or consolidation, the surviving  
33 or resulting corporation or any stockholder who has complied with subsections (a) and (d)  
34 hereof and who is otherwise entitled to appraisal rights, may commence an appraisal  
35 proceeding by filing a petition in the Court of Chancery demanding a determination of the  
36 value of the stock of all such stockholders. Notwithstanding the foregoing, at any time  
37 within 60 days after the effective date of the merger or consolidation, any stockholder who  
38 has not commenced an appraisal proceeding or joined that proceeding as a named party  
39 shall have the right to withdraw such stockholder's demand for appraisal and to accept the  
40 terms offered upon the merger or consolidation. Within 120 days after the effective date of  
41 the merger or consolidation, any stockholder who has complied with the requirements of  
42 subsections (a) and (d) hereof, upon written request, shall be entitled to receive from the  
43 corporation surviving the merger or resulting from the consolidation a statement setting  
44 forth the aggregate number of shares not voted in favor of the merger or consolidation and  
45 with respect to which demands for appraisal have been received and the aggregate number  
46 of holders of such shares. Such written statement shall be mailed to the stockholder within  
47 10 days after such stockholder's written request for such a statement is received by the  
48 surviving or resulting corporation or within 10 days after expiration of the period for  
49 delivery of demands for appraisal under subsection (d) hereof, whichever is later.  
50 Notwithstanding subsection (a) of this section, a person who is the beneficial owner of  
51 shares of such stock held either in a voting trust or by a nominee on behalf of such person

52 may, in such person's own name, file a petition or request from the corporation the  
53 statement described in this subsection."

54 Section 14. Amend § 262(h), Title 8, Delaware Code, by deleting the text thereof in its entirety and inserting in  
55 lieu thereof, the following:

56 "(h) After the Court determines the stockholders entitled to an appraisal, the appraisal  
57 proceeding shall be conducted in accordance with the rules of the Court of Chancery,  
58 including any rules specifically governing appraisal proceedings. Through such  
59 proceeding the Court shall determine the fair value of the shares exclusive of any element  
60 of value arising from the accomplishment or expectation of the merger or consolidation,  
61 together with interest, if any, to be paid upon the amount determined to be the fair value.  
62 In determining such fair value, the Court shall take into account all relevant factors. Unless  
63 the Court in its discretion determines otherwise for good cause shown, interest from the  
64 effective date of the merger through the date of payment of the judgment shall be  
65 compounded quarterly and shall accrue at 5% over the Federal Reserve discount rate  
66 (including any surcharge) as established from time to time during the period between the  
67 effective date of the merger and the date of payment of the judgment. Upon application by  
68 the surviving or resulting corporation or by any stockholder entitled to participate in the  
69 appraisal proceeding, the Court may, in its discretion, proceed to trial upon the appraisal  
70 prior to the final determination of the stockholders entitled to an appraisal. Any  
71 stockholder whose name appears on the list filed by the surviving or resulting corporation  
72 pursuant to subsection (f) of this section and who has submitted such stockholder's  
73 certificates of stock to the Register in Chancery, if such is required, may participate fully in  
74 all proceedings until it is finally determined that such stockholder is not entitled to  
75 appraisal rights under this section."

76 Section 15. Amend Section 262(i), Title 8, Delaware Code, by deleting the second sentence thereof.

77 Section 16. Amend Section 262(k), Title 8, Delaware Code, by adding the following immediately after the words  
78 "deems just":

79 "; provided, however that this provision shall not affect the right of any stockholder who has not  
80 commenced an appraisal proceeding or joined that proceeding as a named party to withdraw such stockholder's demand for  
81 appraisal and to accept the terms offered upon the merger or consolidation within 60 days after the effective date of the  
82 merger or consolidation, as set forth in subsection (e) of this section".

83           Section 17. Sections 1 through 10 shall be effective on August 1, 2007, and Sections 11 through 16 shall be  
84 effective only with respect to transactions consummated pursuant to agreements entered into after August 1, 2007 (or, in the  
85 case of mergers pursuant to Section 253, resolutions of the board of directors adopted after August 1, 2007), and appraisal  
86 proceedings arising out of such transactions.

#### SYNOPSIS

Section 1. The amendment to § 141(d) clarifies that when a provision of the certificate of incorporation endows some directors with greater or lesser voting power than other directors, that differentiation of voting power applies both in voting by the board of directors and in voting by committees of the board and in subcommittees, unless otherwise provided in the certificate of incorporation or bylaws.

Section 2. This amendment revises the specifications regarding the application of § 203, in order to accommodate ongoing changes in the structure and identification of securities trading markets, including recent changes in the configuration and status of securities trading markets administered by The NASDAQ Stock Market, Inc.

Section 3. The amendment to § 216(4) clarifies that, unless otherwise provided in the certificate of incorporation or the bylaws, a plurality vote (and not a majority of the quorum) is the vote required to elect directors where one or more classes or series of stock votes as a separate class or series on the election of directors.

Sections 4 through 9. The amendments to § 251 and § 255 eliminate the requirement that an agreement of merger or consolidation include a certification by the secretary or assistant secretary of the corporation that the agreement has been adopted by the requisite vote of the stockholders or members, as applicable, or otherwise approved in accordance with § 251 without a vote of the stockholders, if a certificate of merger or consolidation is filed in lieu of filing the agreement. The certification requirement for a Delaware corporation is also eliminated from § § 252, 254, 256, 257, 258, 263 and 264 by virtue of the cross-references to § 251 and § 255. Any certification required under other applicable law is not affected by the amendments to § 251 and § 255.

Section 10. The amendment to § 258(b) clarifies that the agreement of merger or consolidation must also be certified by each of the constituent foreign corporations in accordance with the laws under which each was formed.

Sections 11-12. These amendments revise the specifications regarding the application of § 262 and the availability of appraisal rights, in order to accommodate ongoing changes in the structure and identification of securities trading markets, including recent changes in the configuration and status of securities trading markets administered by The National Association of Securities Dealers, Inc.

Sections 13 and 16. The amendment to § 262(k) and an amendment to § 262(e) clarify the right of a stockholder who has demanded appraisal to withdraw that demand and receive the merger consideration at any time within 60 days after the effective date of the merger, even if a petition for appraisal has been filed, as long as that stockholder has not filed such a petition or otherwise joined the proceeding as a named party. Another amendment to § 262(e) enables beneficial holders of shares of stock held in street name to (i) file petitions for appraisal, and (ii) request a statement of shares with respect to which demands for appraisal have been received, in their own name rather than in the name of the stockholder of record.

Sections 14 and 15. These Sections amend the approach to awarding interest in appraisal proceedings, principally by establishing a presumption that interest is to be awarded for the period from the effective date of the merger until the date of payment of judgment, compounded quarterly and accruing at the rate of 5% over the Federal Reserve discount rate, giving effect to any variation in that rate during that period. The Court of Chancery may depart from this presumptive approach for good cause, in order, for example, to avoid an inequitable result such as rewarding, or insufficiently compensating for, improper delay of the proceeding or unreasonable or bad faith assertion of valuation claims. The amendments to § 262(h) also clarify that the Court of Chancery in appraisal proceedings does not determine the fair value of shares on its own initiative, and that appraisal proceedings are adversary proceedings to be litigated in accordance with generally applicable rules of the Court of Chancery.

Section 17. The amendment describes the effective time for the amendments.