

## CHAPTER 15

AN ACT concerning certain actions taken by shareholders without a meeting and amending N.J.S.14A:5-6.

**BE IT ENACTED** *by the Senate and General Assembly of the State of New Jersey:*

1. N.J.S.14A:5-6 is amended to read as follows:

Action by shareholders without a meeting.

14A:5-6. Action by shareholders without a meeting.

(1) Any action required or permitted to be taken at a meeting of shareholders by this act or the certificate of incorporation or bylaws of a corporation, may be taken without a meeting if all the shareholders entitled to vote thereon consent thereto in writing, except that in the case of any action to be taken pursuant to N.J.S.14A:10-1 et seq., such action may be taken without a meeting only if all shareholders consent thereto in writing or if all shareholders entitled to vote thereon consent thereto in writing and the corporation provides to all other shareholders the advance notification required by paragraph (b) of subsection (2) of this section.

(2) Except as otherwise provided in the certificate of incorporation and subject to the provisions of this subsection, any action required or permitted to be taken at a meeting of shareholders by this act, the certificate of incorporation, or bylaws, other than the annual election of directors, may be taken without a meeting, without prior notice and without a vote, upon the written consent of shareholders who would have been entitled to cast the minimum number of votes which would be necessary to authorize such action at a meeting at which all shareholders entitled to vote thereon were present and voting.

(a) If any shareholder shall have the right to dissent from the proposed action, pursuant to N.J.S.14A:11-1 et seq., the board shall fix a date on which written consents are to be tabulated; in any other case, it may fix a date for tabulation. If no date is fixed, consents may be tabulated as they are received. No consent shall be counted which is received more than 60 days after the date of the board action authorizing the solicitation of consents or, in a case in which consents, or proxies for consents, are solicited from all shareholders who would have been entitled to vote at a meeting called to take such action, more than 60 days after the date of mailing of solicitation of consents, or proxies for consents.

(b) Except as provided in paragraph (c) of this subsection, the corporation, upon receipt and tabulation of the requisite number of written consents, shall promptly notify all non-consenting shareholders, who would have been entitled to notice of a meeting to vote upon such action, of the action consented to, the proposed effective date of such action, and any conditions precedent to such action. In the case of any action taken pursuant to N.J.S.14A:10-1 et seq., such notification shall be given at least 20 days in advance of the proposed effective date of such action. Any shareholder who did not consent, personally, or by proxy, to any action which he has a right to dissent from as provided in N.J.S.14A:11-1 et seq. shall in such notice also be informed that he has the right to dissent and to be paid the fair value of his shares, provided he files with the corporation a written notice of dissent as required by subsection (1) of N.J.S.14A:11-2 within 20 days from the date of giving of the notice, or such greater period of time as may be granted by the corporation, and outlining briefly, with particular reference to the time periods within which actions must be taken, the procedures set forth in N.J.S.14A:11-1 et seq. with which he must comply in order to assert and enforce such right.

(c) The corporation need not provide the notification required by paragraph (b) of this subsection if it

(i) solicits written consents or proxies for consents from all shareholders who would have been entitled to vote at a meeting called to take such action, and at the same time gives notice of the proposed action to all other shareholders who would have been entitled to notice of a meeting called to vote upon such action;

(ii) advises all shareholders, if any, who are entitled to dissent from the proposed action, as provided in N.J.S.14A:11-1 et seq., of their right to do so and to be paid the fair value of their shares, provided they file with the corporation before the date fixed for tabulation of the written consents a written notice of dissent as required by subsection (1) of N.J.S.14A:11-2, and outlining briefly, with particular reference to the time periods within which actions must be taken, the procedures set forth in N.J.S.14A:11-1 et seq. with which they must comply in order to assert and enforce such right; and

(iii) in the case of any proposed action to be taken pursuant to N.J.S.14A:10-1 et seq., fixes a date for tabulation of consents not less than 20 days, and not more than 60 days, after the date of mailing of solicitations of consents or proxies for consents.

(d) Any consent obtained pursuant to paragraph (c) of this subsection may be revoked at any time prior to the day fixed for tabulation of consents. Any other consent may be revoked at any time prior to the day on which the proposed action could be taken upon compliance with paragraph (b) of this subsection. No revocation shall be effective unless in writing and until received by the corporation at the place fixed for receipt of consents or, if none, at the main business office or headquarters of the corporation.

(3) Whenever action is taken pursuant to subsection (1) or (2) of this section, the written consents of the shareholders consenting thereto or the written report of inspectors appointed to tabulate such consents shall be filed with the minutes of proceedings of shareholders.

(4) Any action taken pursuant to subsection (1) or (2) of this section shall have the same effect for all purposes as if such action had been taken at a meeting of the shareholders.

(5) If any other provision of this act requires the filing of a certificate upon the taking of an action by shareholders, and such action is taken in the manner authorized by subsection (1) or (2) of this section, such certificate shall state that such action was taken without a meeting pursuant to the written consents of the shareholders and shall set forth the number of shares represented by such consents.

2. This act shall take effect immediately.

Approved May 6, 2010.