CHAPTER 355

AN ACT concerning corporate mergers and consolidations and amending N.J.S.14A:10-3 and N.J.S.14A:10-4.1.

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

1. N.J.S.14A:10-3 is amended to read as follows:

Approval by shareholders.

14A:10-3. Approval by shareholders.

(1) The board of each corporation, upon approving such plan of merger or plan of consolidation, shall direct that the plan be submitted to a vote at a meeting of shareholders. Written notice shall be given not less than 20 nor more than 60 days before such meeting to each shareholder of record, whether or not entitled to vote at such meeting, in the manner provided in this act for the giving of notice of meetings of shareholders. Such notice shall include, or shall be accompanied by

(a) A copy or a summary of the plan of merger or consolidation; and

(b) A statement informing shareholders who, under Chapter 11 of this act, are entitled to dissent, that they have the right to dissent and to be paid the fair value of their shares and outlining briefly, with particular reference to the time periods within which actions must be taken, the procedures set forth in Chapter 11 of this act with which they must comply in order to assert and enforce such right.

(2) At each such meeting, a vote of the shareholders shall be taken on the proposed plan of merger or consolidation. Such plan shall be approved upon receiving the affirmative vote of a majority of the votes cast by the holders of shares of each such corporation entitled to vote thereon, and, in addition, if any class or series is entitled to vote thereon as a class, the affirmative vote of a majority of the votes cast in each class vote; except that, in the case of a corporation organized prior to January 1, 1969, the plan of merger or consolidation shall be approved upon receiving the affirmative vote of two-thirds of the votes so cast. Any class or series of shares of any such corporation shall be entitled to vote as a class if the plan of merger or consolidation, as the case may be, contains any provision which, if contained in a proposed amendment to the certificate of incorporation, would entitle such class or series of shares to vote as a class unless such provision is one which could be adopted by the board without shareholder approval as referred to in subsection 14A:9-2(2). The voting requirements of this section shall be subject to such greater requirements as are provided in this act for specific amendments or as may be provided in the certificate of incorporation.

(3) Subject to the provisions of section 14A:5-12, a corporation organized prior to January 1, 1969, may adopt the majority voting requirements prescribed in subsection 14A:10-3(2) by an amendment of its certificate of incorporation adopted by the affirmative vote of two-thirds of the votes cast by the holders of shares entitled to vote thereon.

(4) Notwithstanding the provisions set forth in subsections 14A:10-3(1) and 14A:10-3(2), the approval of the shareholders of a surviving corporation shall not be required to authorize a merger (unless its certificate of incorporation otherwise provides) if

(a) The plan of merger does not make an amendment of the certificate of incorporation of the surviving corporation which is required by the provisions of this act to be approved by the shareholders;

(b) Each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and rights, immediately after;

(c) The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable on conversion of other securities or on exercise of rights and warrants issued pursuant to the merger, will not exceed by more than 40% the total number of voting shares of the surviving corporation outstanding immediately before the merger; and

(d) The number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable on conversion of other securities or on exercise of rights and warrants issued pursuant to the merger, will not exceed by more than 40% the total number of participating shares of the surviving corporation outstanding immediately before the merger.

(5) As used in subsection 14A:10-3(4):

(a) "Participating shares" means shares that entitle their holders to participate without limitation in distributions.

(b) "Voting shares" means shares that entitle their holders to vote unconditionally in elections of directors.

(6) Notwithstanding the provisions set forth in subsections 14A:10-3(1) and 14A:10-3(2), the approval of the shareholders of a corporation shall not be required to authorize a merger with or into a single indirect wholly-owned subsidiary of that corporation (unless its certificate of incorporation otherwise provides) if:

(a) the corporation, the holding company and the indirect wholly-owned subsidiary of the corporation are the only parties to the merger; and

(b) each shareholder of the corporation will hold the same number of shares of the holding company, with identical designations, preferences, limitations and rights, immediately after the effective date of the merger; and

(c) the corporation, the indirect wholly-owned subsidiary and the holding company are domestic corporations; and

(d) the certificate of incorporation and bylaws of the holding company immediately after the effective date of the merger contain provisions identical to the certificate of incorporation and bylaws of the corporation immediately before the effective date of the merger, other than provisions, if any, regarding the incorporators, the corporate name, the registered office and agent, the initial board of directors, the initial subscribers for shares and the provisions necessary to effect a change, exchange, reclassification or cancellation of shares, if such change, exchange, reclassification or cancellation has become effective prior to the effective date of the merger; and

(e) the surviving corporation, as a result of the merger, remains or becomes a direct or indirect wholly-owned subsidiary of the holding company; and

(f) the directors of the corporation remain or become the directors of the holding company upon the effective date of the merger; and

(g) the certificate of incorporation of the surviving corporation immediately after the effective date of the merger is identical to the certificate of incorporation of the corporation immediately before the effective date of the merger, other than provisions, if any, regarding the incorporators, the corporate name, the registered office and agent, the initial board of directors, the initial subscribers for shares and the provisions necessary to effect a change, exchange, reclassification or cancellation of shares, if such change, exchange, reclassification or cancellation has become effective prior to the effective date of the merger; provided that: (i) the certificate of incorporation of the surviving corporation shall contain a provision requiring that any act or transaction by or involving the surviving corporation that requires for its adoption under N.J.S.14A:1-1 et seq., or its certificate of incorporation,

approval by the shareholders of the surviving corporation, other than the election or removal of directors of the surviving corporation, shall require approval by the shareholders of the holding company (or any successor by merger), by the same vote as is required by N.J.S.14A:1-1 et seq. or by the certificate of incorporation of the surviving corporation, until thereafter otherwise amended by approval of the shareholders of the surviving corporation and the holding company; and (ii) the certificate of incorporation of the surviving corporation may be amended to reduce the number of classes and shares of capital stock that the surviving corporation is authorized to issue; and

(h) the shareholders of the corporation do not recognize a gain or loss for United States federal income tax purposes as determined by the board of directors of the corporation.

(7) On and after the effective date of a merger authorized by action of the board of directors of a corporation and without any vote of the shareholders pursuant to subsection (6) of N.J.S.14A:10-3:

(a) to the extent that the restrictions of the "New Jersey Shareholders' Protection Act," P.L.1986, c.74 (C.14A:10A-1 et seq.), applied to the corporation and its shareholders at the effective date of the merger, the restrictions shall apply to the holding company and its shareholders immediately after the effective date of the merger in the same manner as if it were the corporation and all shares of the holding company acquired in the merger shall for purposes of the "New Jersey Shareholders' Protection Act," P.L.1986, c.74 (C.14A:10A-1 et seq.) be deemed to have been acquired at the time that the shares of the corporation converted in the merger were acquired, and provided further that any shareholder who, immediately prior to the effective date of the merger, was not an interested stockholder within the meaning of section 3 of the "New Jersey Shareholders' Protection Act," P.L.1986, c.74 (C.14A:10A-3) shall not solely by reason of the merger become an interested stockholder of the holding company; and

(b) if the corporate name of the holding company immediately after the effective date of the merger is the same as the corporate name of the corporation immediately prior to the effective date of the merger, the shares of the holding company into which the shares of the corporation are converted in the merger shall be represented by the stock certificates that previously represented shares of the corporation.

(8) As used in subsections (6) and (7) of N.J.S.14A:10-3, "holding company" means a corporation which, from its incorporation until consummation of a merger governed by subsections (6) and (7) of N.J.S.14A:10-3, was at all times a direct wholly-owned subsidiary of the corporation and shares of which are issued in the merger; and "indirect wholly-owned subsidiary of the corporation" means a corporation all the shares of which are owned, directly or indirectly, by the holding company.

(9) A corporation may agree to submit the plan of merger or consolidation to a vote of its shareholders regardless of whether the board of directors determines at any time subsequent to approving the plan that the plan is no longer advisable and recommends that the shareholders reject or vote against the plan.

(10) Any plan of merger or consolidation may contain a provision that the boards of directors of the corporations may amend the plan of merger or consolidation at any time prior to the time that the merger or consolidation contemplated by the plan of merger or consolidation becomes effective, provided that an amendment made subsequent to the adoption of the agreement by the shareholders of any corporation shall not, without further shareholder approval:

(a) alter or change the amount or kind of shares, securities, cash, property, or rights to be received in exchange for, or on conversion of, all or any of the shares of any class or series thereof of such corporation;

(b) alter or change any term of the certificate of incorporation of the surviving corporation to be effected by the merger or consolidation; or

(c) unless the plan of merger or consolidation expressly provides otherwise, alter or change any of the terms and conditions of the plan, if that alteration or change would materially and adversely affect the shareholders of either corporation who are or were entitled to vote on the plan. In the event the plan of merger or consolidation is amended after the filing of a certificate of merger or consolidation with the Secretary of State but prior to the time the merger or consolidation has become effective, a certificate of amendment of merger or consolidation shall be filed in accordance with subsection (3) of N.J.S.14A:10-4.1.

2. N.J.S.14A:10-4.1 is amended to read as follows:

Certificate of merger or consolidation.

14A:10-4.1. Certificate of merger or consolidation.

(1) After approval of the plan of merger or consolidation, a certificate of merger or a certificate of consolidation shall be executed on behalf of each corporation. The certificate shall set forth

(a) The name of the surviving or new corporation or new other business entity and the names of the merging or consolidating corporations or other business entities;

(b) The plan of merger or the plan of consolidation;

(c) The date or dates of approval by the shareholders of each corporation of the plan of merger or the plan of consolidation;

(d) As to each corporation whose shareholders are entitled to vote, the number of shares entitled to vote thereon, and, if the shares of any class or series are entitled to vote thereon as a class, the designation and number of shares entitled to vote thereon of each class or series;

(e) As to each corporation whose shareholders are entitled to vote, the number of shares voted for and against the plan, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each class or series voted for and against the plan, respectively;

(f) In the case of a merger governed by subsection 14A:10-3 (4), that the plan of merger was approved by the board of directors of the surviving corporation and that no vote of the shareholders of the surviving corporation was required because of the applicability of that subsection;

(g) If, pursuant to subsection 14A:10-4.1(2), the merger is to become effective at a time subsequent to the date of filing with the Secretary of State, the date when the merger is to become effective; and

(h) In the case of a merger governed by subsection (6) of N.J.S.14A:10-3, that the plan of merger was approved by the board of directors of the surviving corporation, that no vote of the shareholders of the surviving corporation was required because of the applicability of that subsection, and that the conditions of paragraphs (a) through (h) of that subsection have been satisfied.

(2) The executed original and a copy of the certificate shall be filed in the office of the Secretary of State and the merger or consolidation shall become effective upon the date of the filing or at a later time, not to exceed 90 days after the date of filing, as may be set forth

in the certificate. The Secretary of State shall, upon filing, forward the copy of the certificate to the Director of the Division of Taxation.

(3) Following the filing of a certificate of merger or consolidation with the Secretary of State but prior to the time when the merger or consolidation becomes effective, and upon the amendment of the plan of merger or consolidation in accordance with subsection (10) of N.J.S.14A:10-3, a certificate of amendment of merger or consolidation shall be filed in the office of the Secretary of State amending the plan of merger or consolidation. The certificate of amendment shall state that the plan of merger or consolidation has been amended and shall contain the amended plan of merger or consolidation.

3. This act shall take effect immediately.

Approved January 16, 2018.