

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2031

Session of
1987

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AS REPORTED FROM COMMITTEE ON BUSINESS AND COMMERCE, HOUSE OF REPRESENTATIVES, AS AMENDED, FEBRUARY 2, 1988

AN ACT

1 Amending the act of May 5, 1933 (P.L.364, No.106), entitled, as
2 amended, "An act relating to corporations; defining and
3 providing for the organization, merger, consolidation,
4 reorganization, winding up and dissolution of certain
5 corporations for profit; conferring certain rights, powers,
6 duties and immunities upon them and their officers and
7 shareholders; prescribing the conditions on which such
8 corporations may exercise their powers; providing for the
9 inclusion of certain existing corporations and associations
10 within the provisions of this act; prescribing the terms and
11 conditions upon which certain foreign corporations may be
12 admitted, or may continue, to do business within the
13 Commonwealth; conferring powers and imposing duties on the
14 courts of common pleas, and certain State departments,
15 commissions, and officers; authorizing certain State
16 departments, boards, commissions, or officers to collect fees
17 for services required to be rendered by this act; imposing
18 penalties; and repealing certain acts and parts of acts
19 relating to corporations and other entities," ~~further~~

<—

~~providing for the rights of shareholders. PROVIDING FOR~~
~~OPTION AND CONVERSION RIGHTS; AND FURTHER PROVIDING FOR THE~~
~~RIGHTS OF SHAREHOLDERS.~~

<—

The General Assembly of the Commonwealth of Pennsylvania
hereby enacts as follows:

~~Section 1. Section 611 of the act of May 5, 1933 (P.L.364,~~
~~No.106), known as the Business Corporation Law, amended July 20,~~
~~1968 (P.L.459, No.216), is amended to read:~~

<—

~~Section 611. Option Rights and Conversion Rights; Preemptive~~
~~Rights of Shareholders. A. Except as otherwise provided [in~~
~~subsection B of this section or] in its articles[, a business~~
~~corporation may issue shares, option rights or securities having~~
~~conversion or option rights, without first offering them to~~
~~shareholders of any class or classes.] prior to the creation and~~
~~issuance thereof, a business corporation may create and issue~~
~~(whether or not in connection with the issuance of any of its~~
~~shares of other securities), option rights or securities having~~
~~conversion or option rights entitling the holders thereof to~~
~~purchase or acquire shares, option rights, securities having~~
~~conversion or option rights, or obligations, of any class or~~
~~series, or assets, of the corporation, or to purchase or acquire~~
~~from the corporation, shares, option rights, securities having~~
~~conversion or option rights, or obligations, of any class or~~
~~series, owned by the corporation issued by any other person.~~
~~Except as otherwise provided in subsection B of this section or~~
~~in its articles, the shares, option rights, securities having~~
~~conversion or option rights, or obligations shall be evidenced~~
~~in such manner as the corporation may determine and may be~~
~~offered without first offering them to shareholders of any class~~
~~or classes.~~

~~B. Unless otherwise provided in its articles, the~~

1 ~~shareholders of an unlisted corporation shall have a preemptive~~
2 ~~right to subscribe for shares, option rights, or securities~~
3 ~~having option rights, issued for cash by the corporation, if the~~
4 ~~corporation was not incorporated hereunder and its shareholders~~
5 ~~were or are entitled to preemptive rights at the date the~~
6 ~~corporation became or becomes subject to this act, but this~~
7 ~~subsection shall apply neither to the holders of shares of a~~
8 ~~class issued after the date such corporation became or becomes~~
9 ~~subject to this act nor to the issue of securities having~~
10 ~~conversion rights.~~

11 ~~C. Except as otherwise provided in the articles, shares (or~~
12 ~~any option rights or securities having conversion or option~~
13 ~~rights with respect to such shares) which have been offered to~~
14 ~~shareholders having a preemptive right thereto, at a price and~~
15 ~~upon terms duly fixed, and which have not been subscribed for by~~
16 ~~them within the time duly fixed by the articles or the board of~~
17 ~~directors, may be thereafter offered for subscription to any~~
18 ~~person or persons at a price and upon terms not more favorable~~
19 ~~than those at which they were offered to such shareholders.~~

20 ~~D. The securities, contracts, warrants, or other instruments~~
21 ~~evidencing any shares, option rights, securities having~~
22 ~~conversion or option rights, or obligations of a corporation may~~
23 ~~contain such terms as are fixed by the board of directors,~~
24 ~~including, without limiting the generality of such authority:~~
25 ~~restrictions upon the authorization or issuance of additional~~
26 ~~shares, option rights, securities having conversion or option~~
27 ~~rights, or obligations; provisions for the adjustment of the~~
28 ~~conversion or option rights price; provisions concerning rights~~
29 ~~or adjustments in the event of reorganization, merger,~~
30 ~~consolidation, sale of assets or other fundamental changes;~~

~~provisions for the reservation of authorized but unissued shares or other securities; restrictions upon the declaration or payment of dividends or distributions or related party transactions; and conditions relating to the exercise, conversion, transfer or receipt of such shares, option rights, securities having conversion or option rights, or obligations, specifically including, but not limited to, conditions that preclude or limit any person or persons owning or offering to acquire a specified number or percentage of the outstanding common shares, other shares, option rights, securities having conversion or option rights, or obligations of such a corporation or transferee or transferees of any such person or persons from exercising, converting, transferring or receiving such shares, option rights, securities having conversion or option rights, or obligations.~~

~~Section 2. Section 910 of the act, added December 23, 1983 (P.L.395, No.92), is amended to read:~~

~~Section 910. Right of Shareholders to Receive Payment for Shares Following a Control Transaction. [A. Unless (1) the bylaws, by amendment adopted within ninety days of the date of enactment of this section and not subsequently rescinded by an article amendment, or (2) the articles explicitly provide that this section shall not be applicable to the corporation, any holder of voting shares of a business corporation that becomes the subject of a control transaction described in subsection B who shall object to the transaction shall be entitled to the rights and remedies herein provided.]~~

~~A. Any holder of voting shares of a business corporation that becomes the subject of a control transaction described in subsection B who shall object to the transaction shall be~~

~~entitled to the rights and remedies herein provided, unless (1) the bylaws, by amendment adopted either (i) by March 23, 1984, or (ii) within ninety days after the effective date of this act, and, in either event, not subsequently rescinded by an article amendment, explicitly provide that this section shall not be applicable to the corporation or (2) the articles explicitly provide that this section shall not be applicable to the corporation by a provision included in the original articles, by an article amendment adopted prior to the date of such control transaction and prior to or on the effective date of this act pursuant to the procedures then applicable to the corporation, or by an article amendment adopted prior to the date of such control transaction and subsequent to the effective date of this act pursuant to both (i) the procedures then applicable to the corporation and (ii) unless such proposed amendment has been approved by the board of directors of the corporation, in which event under clause (ii) shall not be applicable, the affirmative vote of the shareholders entitled to cast at least eighty per cent of the votes which all shareholders are entitled to cast thereon. The rights and remedies herein provided shall be in addition to, and not in lieu of, any other rights or remedies provided by this act, the articles of the corporation, the bylaws of the corporation, any securities, option rights or obligations of the corporation or otherwise.~~

~~B.—(1) A controlling person or group shall mean for the purpose of this section a person who has, or a group of persons acting in concert that has, voting power over voting shares of the corporation that would entitle the holders thereof to cast at least [thirty] twenty per cent of the votes that all shareholders would be entitled to cast in an election of~~

1 ~~directors of the corporation.~~

2 ~~(2) Notwithstanding the above, (i) a person or group which~~
3 ~~would otherwise be a controlling person or group within the~~
4 ~~meaning of this section shall not be deemed such a controlling~~
5 ~~person or group unless, subsequent to the [enactment of this~~
6 ~~section] later of the effective date of this act or the date~~
7 ~~this section becomes applicable to a corporation by bylaw or~~
8 ~~article amendment or otherwise, that person or group increases~~
9 ~~the percentage of outstanding voting shares of the corporation~~
10 ~~over which it has voting power to in excess of the percentage of~~
11 ~~outstanding voting shares of the corporation over which that~~
12 ~~person or group had voting power on [the date of enactment of~~
13 ~~this section] such later date, and to at least the amount~~
14 ~~specified in clause (1), as the result of forming or enlarging a~~
15 ~~group, or acquiring, by purchase, voting power over voting~~
16 ~~shares of the corporation and (ii) nor person or group shall be~~
17 ~~deemed to be a controlling person or group at any particular~~
18 ~~time if voting power over any of the following voting shares is~~
19 ~~required to be counted at such time in order to meet the twenty~~
20 ~~percent minimum:~~

21 ~~(a) shares which have been held continuously by a natural~~
22 ~~person since January 1, 1983, and which are held by such natural~~
23 ~~person at such time; or~~

24 ~~(b) shares which are held at such time by any natural person~~
25 ~~or trust, estate, foundation or other similar entity to the~~
26 ~~extent such shares were acquired solely by gift, inheritance,~~
27 ~~bequest, devise or other testamentary distribution or series of~~
28 ~~such transactions, directly or indirectly, from a natural person~~
29 ~~who had acquired such shares prior to January 1, 1983; or~~

30 ~~(c) shares which were acquired pursuant to a stock split,~~

~~stock dividend or similar recapitalization with respect to
shares described under clause (ii) that have been held
continuously since their issuance by the corporation by the
natural person or entity that acquired them from the
corporation, or that were acquired, directly or indirectly, from
such natural person or entity, solely pursuant to a transaction
or series of transactions described in paragraph (b) of clause
(ii), and that are held at such time by a natural person or
entity described in such paragraph (b).~~

~~(3) (i) A person shall not be a controlling person under
clause (1) if such person holds voting power, in good faith and
not for the purpose of circumventing this section, as an agent,
bank, broker, nominee or trustee for one or more beneficial
owners who do not individually or, if they are a group acting in
concert, as a group have the voting power specified in clause
(1) or who are not deemed a controlling person or group under
clause (2).~~

~~(ii) For the purposes of this section, a person has voting
power over a voting share if such person has or shares, directly
or indirectly, through any option, contract, arrangement,
understanding, conversion right or relationship, or by acting
jointly or in concert or otherwise, the power to vote, or to
direct the voting of, such voting share.~~

~~(4) A control transaction shall mean, for the purposes of
this section, the acquisition by a person or group of the status
of a controlling person or group.~~

~~C. Prompt notice that a control transaction has occurred
shall be given by the controlling person or group to (i) each
shareholder of record of the corporation holding voting shares
and (ii) to the court of common pleas in the county in this~~

~~1 Commonwealth where the registered office of the corporation is
2 located, accompanied by a petition to such court praying that
3 the fair value (as defined in subsection E) of the voting shares
4 of the corporation be determined pursuant to subsection E if the
5 court should receive pursuant to such subsection certificates
6 from shareholders of such corporation. If the controlling person
7 or group so requests, the corporation shall, at the option of
8 the corporation and at the expense of the person or group,
9 either furnish a list of all such shareholders to the person or
10 group or mail the notice to all such shareholders. The notice
11 must state that (1) all shareholders are entitled to demand that
12 they be paid the fair value of their shares; (2) the minimum
13 value the shareholder can receive under this section is the
14 highest price paid per share by the controlling person or group
15 within the ninety day period ending on and including the date of
16 the control transaction, and stating that value; and (3) if the
17 shareholder believes the fair value of his shares is higher,
18 that this section provides an appraisal procedure for
19 determining the fair value of such shares, specifying the name
20 of the court referenced above and its address and the caption of
21 the petition referenced above, and stating that such information
22 is provided for the possible use by such shareholder in electing
23 to proceed with a court appointed appraiser under subsection E.
24 The controlling person or group may, at its option, supply with
25 the notice referenced in clause (1) a form for shareholder to
26 demand payment of the minimum value referred to in clause (2)
27 directly from the controlling person or group without utilizing
28 the court appointed appraiser procedure of subsection E,
29 requiring the shareholder to state the number and class or
30 series, if any, of the shares owned by him, and stating where~~

1 ~~the payment demand must be sent and the procedures to be~~
2 ~~followed.~~ There shall be included in, or enclosed with, the
3 notice a copy of this section [and subsections F through I of
4 section 515 of this act].

5 ~~D.— After the occurrence of the control transaction, any~~
6 ~~holder of voting shares of the corporation may, prior to or~~
7 ~~within a reasonable time after the notice required by subsection~~
8 ~~C is given, which time period may be specified in the notice,~~
9 ~~make written demand on the controlling person or group for~~
10 ~~payment of the amount provided in subsection E with respect to~~
11 ~~the voting shares of the corporation held by the shareholder,~~
12 ~~and the controlling person or group shall [agree] be required to~~
13 ~~pay that amount to the shareholder pursuant to the procedures~~
14 ~~specified in subsection E [upon surrender of the share~~
15 ~~certificate or certificates representing such shares]. The~~
16 ~~demand of the shareholder shall state the number and class or~~
17 ~~series, if any, of the shares owned by him with respect to which~~
18 ~~the demand is made.~~

19 ~~Nothing contained in this section shall preclude a~~
20 ~~controlling person or group subject to this section from~~
21 ~~offering, whether in such notice or otherwise, to purchase~~
22 ~~voting shares of the corporation at a price other than that~~
23 ~~provided in subsection E, and nothing contained in this section~~
24 ~~shall preclude any shareholder from agreeing to sell his voting~~
25 ~~shares at that or any other price to any person.~~

26 ~~E.— (1) A shareholder making written demand under subsection~~
27 ~~D shall be entitled to receive cash for each of his shares in an~~
28 ~~amount equal to the fair value of each voting share as of the~~
29 ~~[day prior to the] date on which the control transaction occurs,~~
30 ~~taking into account all relevant factors, including an increment~~

~~representing a proportion of any value payable for acquisition of control of the corporation. [Either the controlling person or group or the shareholder may proceed under subsections F through I of section 515 for a determination of the fair value of such share as defined in this subsection. The date of notice of the occurrence of the control transaction, or if no notice is given, the date of written demand made by the shareholder, shall be deemed to be the effective date of the plan, the shareholders who make written demand shall be deemed to be the dissenting shareholders, and the controlling person or group shall be deemed to be the corporation for the purposes of those subsections.] For the purposes of this subsection, fair value means a value not less than the highest price paid per share by the controlling person or group at any time during the ninety-day period ending on and including the date of the control transaction plus an increment representing any value, including without limitation any proportion of any value payable for acquisition of control of the corporation, that may not be reflected in such price.~~

~~(2) If, (i) within forty five days (or such other time period, if any, as required by applicable law) after the date of the notice required by subsection C, or (ii) if such notice was not provided prior to the date of the written demand by the shareholder under subsection D, then within forty five days (or such other time period, if any, as required by applicable law) of the date of such written demand, the controlling person or group and the shareholder are unable to agree on the fair value of the shares or on a binding procedure to determine the fair value of the shares, then each shareholder who is unable to agree on both the fair value and on such a procedure with the~~

~~1 controlling person or group and who so desires to obtain the
2 rights and remedies herein provided shall, no later than thirty
3 days after the expiration of the applicable forty five (or
4 other) day period, surrender to the court of common pleas
5 referenced in subsection C certificates representing such shares
6 duly endorsed for transfer to the controlling person or group,
7 with a notice stating that such certificates are being
8 surrendered in connection with the petition referenced in
9 subsection C, or, if no such petition has theretofore been
10 filed, such shareholder may file a petition within such thirty-
11 day period in such court praying that the fair value (as defined
12 herein) of such shares be determined. Any such shareholder who
13 does not so surrender such certificates within such time period
14 shall have no further right to receive, with respect to shares
15 the certificates of which were not so surrendered under clause
16 (2), payment under clause (2) from the controlling person or
17 group with respect to the control transaction giving rise to the
18 shareholder's rights hereunder. Such court shall hold such
19 certificates surrendered to it in escrow for, and shall
20 promptly, following the expiration of the time period during
21 which such certificates may be surrendered, provide a notice to
22 the controlling person or group of the number of shares so
23 surrendered. The controlling person or group shall then make a
24 partial payment for the shares so surrendered to such court,
25 within ten business days of receipt of the notice from such
26 court, at a per share price equal to the highest price paid per
27 share by the controlling person or group within the ninety day
28 period ending on and including the date of the control
29 transaction. Such court shall then make payment, as soon as
30 practicable but in any event within ten business days, to the~~

~~shareholders who so surrendered their shares to the court of the appropriate per share amount received from the controlling person or group.~~

~~Upon receipt of any share certificate surrendered pursuant to this section, such court shall, as soon as practicable but in any event within thirty days, appoint an appraiser with experience in appraising share values of companies of like nature to the corporation to determine the fair value of such shares. The appraiser so appointed by the court shall, as soon as reasonably practicable, determine the fair value of the shares subject to its appraisal and the appropriate market rate of interest on the amount then owed by the controlling person or group to the holders of such shares. The determination of any appraiser so appointed by the court shall be final and binding on both the controlling person or group and all shareholders who so surrendered their share certificates to such court.~~

~~(3) Any amount agreed upon between the parties or determined pursuant to the procedure agreed upon between the parties shall be payable by the controlling person or group after it is so agreed upon or so determined and upon and concurrently with the delivery of the certificate or certificates representing such shares to the controlling person or group by the shareholder.~~

~~Any amount owed, together with interest, as determined pursuant to clause (2) shall be payable by the controlling person or group after it is so determined and upon and concurrently with the delivery of the certificate or certificates representing shares surrendered to the court referenced in subsection C to the controlling person or group by such court (which shall make such delivery of the certificate or certificates surrendered to it to the controlling person or~~

~~group as soon as practicable but in any event within ten business days after the determination of the amount owed), and such court shall then make payment, as soon as practicable but in any event within ten business days after receipt of payment from the controlling person or group, to the shareholders who so surrendered their shares to such court of the appropriate per share amount received from the controlling person or group.~~

~~Upon full payment by the controlling person or group of the amount owed to the shareholder or to the court, as appropriate, the shareholder shall cease to have any interest in such shares.~~

~~(4) Shareholders who surrender their shares to the court pursuant to clause (2) shall retain the right to vote their shares and receive dividends or other distributions thereon until the court receives payment in full for each of the shares so surrendered of the highest price paid per share by the controlling person or group within the ninety day period ending on and including the date of the control transaction (and, thereafter, the controlling person or group shall be entitled to vote such shares and receive dividends or other distributions thereon). The fair value (as determined by the appraiser) of any dividends or other distributions so received by such shareholders shall be subtracted from any amount owing to such shareholders hereunder.~~

~~(5) The court referenced in subsection C may appoint such agents, including the transfer agent of the corporation, or any other institution, to hold the shares so surrendered, to effect any necessary change in record ownership of such shares after the payment by the controlling person or group to the court of the amount specified in clause (4), to receive and disburse dividends or other distributions, to provide notices to~~

~~shareholders and to take such other actions as the court shall determine are appropriate to effect the purposes of this section.~~

~~(6) The costs and expenses of any appraiser or other agents so appointed by the court shall be assessed against the controlling person or group. The costs and expenses of any other procedure to determine fair value shall be paid as agreed to by the parties agreeing to such procedure.~~

~~(7) The jurisdiction of the court referenced under subsection C in which the proceeding is commenced is plenary and exclusive and the controlling person or group and all shareholders who so surrendered their shares to such court shall be made a party to the proceeding as in an action against their shares.~~

~~(8) The corporation shall comply with requests for information, which may be submitted pursuant to procedures maintaining the confidentiality of such information, made by the court or the appraiser so selected by the court.~~

~~F. A person or group that proposes to engage in a control transaction may comply with the requirements of this section in connection with the control transaction, and the effectiveness of the rights afforded herein to shareholders may be conditioned upon the consummation of the control transaction.~~

~~The person or group shall give prompt written notice of the satisfaction of any such condition to each shareholder who has made demand as herein provided.~~

~~G. Subsections A through F shall not apply to any corporation that does not have a class of voting shares registered under the Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.) or to any person or group that inadvertently~~

~~becomes a controlling person or group if that controlling person or group, as soon as practicable, divests itself of a sufficient amount of its voting shares so that it is no longer a controlling person or group, or to any corporation that on the effective date of this section is a subsidiary of any other corporation.~~

~~For purposes of this subsection, subsidiary shall mean any corporation as to which any other corporation has or has the right to acquire, directly or indirectly, through the exercise of all warrants, options and rights and the conversion of all convertible securities, whether issued or granted by the subsidiary or otherwise, voting power over voting shares of the subsidiary that would entitle the holders thereof to cast in excess of fifty per cent of the votes that all shareholders would be entitled to cast in the election of directors of such subsidiary: Provided, however, That a subsidiary will not be deemed to cease being a subsidiary so long as such corporation remains a controlling person or group within the meaning of subsection B.~~

~~Section 3. The act is amended by adding a section to read:~~

~~Section 911. Requirements Relating to Certain Business Combinations. A. For the purposes of this section:~~

~~(1) "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a specified person.~~

~~(2) "Announcement Date" when used in reference to any business combination, means the date of the first public announcement of the final, definitive proposal for such business combination.~~

~~(3) "Associate" when used to indicate a relationship with~~

~~1 any person, means (a) any corporation or organization of which
2 such person is an officer, director or partner or is, directly
3 or indirectly, the beneficial owner of shares entitling that
4 person to cast at least ten percent of the votes that all
5 shareholders would be entitled to cast in an election of
6 directors of the corporation or organization, (b) any trust or
7 other estate in which such person has a substantial beneficial
8 interest or as to which such person serves as trustee or in a
9 similar fiduciary capacity, and (c) any relative or spouse of
10 such person, or any relative of such spouse, who has the same
11 home as such person.~~

~~12 (4) "Beneficial Owner" when used with respect to any shares,
13 means a person:~~

~~14 (i) that, individually or with or through any of its
15 affiliates or associates, beneficially owns such shares,
16 directly or indirectly; or~~

~~17 (ii) that, individually or with or through any of its
18 affiliates or associates, has (a) the right to acquire such
19 shares (whether such right is exercisable immediately or only
20 after the passage of time), pursuant to any agreement,
21 arrangement or understanding (whether or not in writing), or
22 upon the exercise of conversion rights, exchange rights,
23 warrants or options, or otherwise: Provided, however, That a
24 person shall not be deemed the beneficial owner of shares
25 tendered pursuant to a tender or exchange offer made by such
26 person or any of such person's affiliates or associates until
27 such tendered shares are accepted for purchase or exchange; or
28 (b) the right to vote such shares pursuant to any agreement,
29 arrangement or understanding (whether or not in writing):
30 Provided, however, That a person shall not be deemed the~~

~~beneficial owner of any shares under this item if the agreement,
arrangement or understanding to vote such shares (I) arises
solely from a revocable proxy or consent given in response to a
proxy or consent solicitation made in accordance with the
applicable rules and regulations under the Exchange Act and (II)
is not then reportable on a Schedule 13D under the Exchange Act
(or any comparable or successor report); or~~

~~(iii) that has any agreement, arrangement or understanding
(whether or not in writing), for the purpose of acquiring,
holding, voting (except voting pursuant to a revocable proxy or
consent as described in paragraph (b) of clause (4) of
subsection A), or disposing of such shares with any other person
that beneficially owns, or whose affiliates or associates
beneficially own, directly or indirectly, such shares.~~

~~(5) "Business Combination" when used in reference to any
business corporation and any interested shareholder of such
business corporation, means:~~

~~(i) any merger or consolidation of such business corporation
or any subsidiary of such business corporation with (a) such
interested shareholder or (b) any other corporation (whether or
not itself an interested shareholder of such business
corporation) which is, or after such merger or consolidation
would be, an affiliate or associate of such interested
shareholder;~~

~~(ii) any sale, lease, exchange, mortgage, pledge, transfer
or other disposition (in one transaction or a series of
transactions) to or with such interested shareholder or any
affiliate or associate of such interested shareholder of assets
of such business corporation or any subsidiary of such business
corporation (a) having an aggregate market value equal to ten~~

~~per cent or more of the aggregate market value of all the assets, determined on a consolidated basis, of such business corporation, (b) having an aggregate market value equal to ten per cent or more of the aggregate market value of all the outstanding shares of such business corporation, or (c) representing ten per cent or more of the earning power or net income, determined on a consolidated basis, of such business corporation;~~

~~(iii) the issuance or transfer by such business corporation or any subsidiary of such business corporation (in one transaction or a series of transactions) of any shares of such business corporation or any subsidiary of such business corporation which has an aggregate market value equal to five per cent or more of the aggregate market value of all the outstanding shares of such business corporation to such interested shareholder or any affiliate or associate of such interested shareholder except pursuant to the exercise of option rights to purchase shares, or pursuant to the conversion of securities having conversion rights, offered, or a dividend or distribution paid or made, pro rata to all shareholders of such business corporation;~~

~~(iv) the adoption of any plan or proposal for the liquidation or dissolution of such business corporation proposed by, or pursuant to any agreement, arrangement or understanding (whether or not in writing) with, such interested shareholder or any affiliate or associate of such interested shareholder;~~

~~(v) any reclassification of securities (including, without limitation, any split of shares, dividend of shares, or other distribution of shares in respect of shares, or any reverse split of shares), or recapitalization of such business~~

~~corporation, or any merger or consolidation of such business corporation with any subsidiary of such business corporation, or any other transaction (whether or not with or into or otherwise involving such interested shareholder), proposed by, or pursuant to any agreement, arrangement or understanding (whether or not in writing) with, such interested shareholder or any affiliate or associate of such interested shareholder, which has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class or series of voting shares or securities convertible into voting shares of such business corporation or any subsidiary of such business corporation which is, directly or indirectly, owned by such interested shareholder or any affiliate or associate of such interested shareholder, except as a result of immaterial changes due to fractional share adjustments; or~~

~~(vi) any receipt by such interested shareholder or any affiliate or associate of such interested shareholder of the benefit, directly or indirectly (except proportionately as a shareholder of such business corporation) of any loans, advances, guarantees, pledges or other financial assistance or any tax credits or other tax advantages provided by or through such business corporation.~~

~~(6) "Business Corporation" means an issuer of voting shares which is organized under the laws of this Commonwealth. No business corporation, which is organized under the laws of this Commonwealth, shall cease to be a business corporation as defined herein by reason of events occurring or actions taken while such business corporation is subject to the provisions of this section.~~

~~(7) "Common Shares" means any shares other than preferred~~

1 ~~shares.~~

2 ~~(8) "Consummation Date" with respect to any business~~
3 ~~combination, means the date of consummation of such business~~
4 ~~combination, or, in the case of a business combination as to~~
5 ~~which a shareholder vote is taken, the later of the business day~~
6 ~~prior to the vote or twenty days prior to the date of~~
7 ~~consummation of such business combination.~~

8 ~~(9) "Control" including the terms "Controlling," "Controlled~~
9 ~~By," and "Under Common Control With," means the possession,~~
10 ~~directly or indirectly, of the power to direct or cause the~~
11 ~~direction of the management and policies of a person, whether~~
12 ~~through the ownership of voting shares, by contract, or~~
13 ~~otherwise. A person's beneficial ownership of shares entitling~~
14 ~~that person to cast at least ten per cent of the votes that all~~
15 ~~shareholders would be entitled to cast in an election of~~
16 ~~directors of the corporation shall create a presumption that~~
17 ~~such person has control of such corporation. Notwithstanding the~~
18 ~~foregoing, a person shall not be deemed to have control of a~~
19 ~~corporation if such person holds voting shares, in good faith~~
20 ~~and not for the purpose of circumventing this section, as an~~
21 ~~agent, bank, broker, nominee, custodian or trustee for one or~~
22 ~~more beneficial owners who do not individually or as a group~~
23 ~~have control of such corporation.~~

24 ~~(10) "Exchange Act" means the Securities Exchange Act of~~
25 ~~1934 (48 Stat. 881, 15 U.S.C. § 78a et seq.), as the same has~~
26 ~~been or hereafter may be amended from time to time.~~

27 ~~(11) "Interested Shareholder," when used in reference to any~~
28 ~~business corporation, means any person (other than such business~~
29 ~~corporation or any subsidiary of such business corporation)~~
30 ~~that:~~

~~(i) (a) is the beneficial owner, directly or indirectly, of shares entitling that person to cast at least twenty per cent of the votes that all shareholders would be entitled to cast in an election of directors of the corporation; or~~

~~(b) is an affiliate or associate of such business corporation and at any time within the five year period immediately prior to the date in question was the beneficial owner, directly or indirectly, of shares entitling that person to cast at least twenty per cent of the votes that all shareholders would be entitled to cast in an election of directors of the corporation;~~

~~(ii) provided that, for the purpose of determining whether a person is an interested shareholder, (a) the number of votes that would be entitled to be cast in an election of directors of such business corporation shall be calculated by including shares deemed to be beneficially owned by the person through application of clause 4 of subsection A of this section but excluding any other unissued shares of such business corporation which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion or option rights, or otherwise; and (b) there shall be excluded from the beneficial ownership of such interested shareholder any:~~

~~(I) shares which have been held continuously by a natural person since January 1, 1983, and which are then held by such natural person; or~~

~~(II) shares which are then held by any natural person or trust, estate, foundation or other similar entity to the extent such shares were acquired solely by gift, inheritance, bequest, devise or other testamentary distribution or series of such transactions, directly or indirectly, from a natural person who~~

~~had acquired such shares prior to January 1, 1983; or~~
~~(III) shares which were acquired pursuant to a stock split,~~
~~stock dividend or similar recapitalization with respect to~~
~~shares described under paragraph (b) that have been held~~
~~continuously since their issuance by the corporation by the~~
~~natural person or entity that acquired them from the~~
~~corporation, or that were acquired, directly or indirectly, from~~
~~such natural person or entity, solely pursuant to a transaction~~
~~or series of transactions described in subparagraph (II) of~~
~~paragraph (b), and that are then held by a natural person or~~
~~entity described in subparagraph (II).~~

~~(12) "Market Value" when used in reference to shares or~~
~~property of any business corporation, means:~~

~~(i) in the case of shares, the highest closing sale price~~
~~during the thirty day period immediately preceding the date in~~
~~question of such a share on the composite tape for New York~~
~~Stock Exchange listed shares, or, if such shares are not quoted~~
~~on such composite tape or if such shares are not listed on such~~
~~exchange, on the principal United States securities exchange~~
~~registered under the Exchange Act on which such shares are~~
~~listed, or, if such shares are not listed on any such exchange,~~
~~the highest closing bid quotation with respect to such a share~~
~~during the thirty day period preceding the date in question on~~
~~the National Association of Securities Dealers, Inc. Automated~~
~~Quotations System or any system then in use, or if no such~~
~~quotations are available, the fair market value on the date in~~
~~question of such a share as determined by the board of directors~~
~~of such business corporation in good faith; and~~

~~(ii) in the case of property other than cash or shares, the~~
~~fair market value of such property on the date in question as~~

~~determined by the board of directors of such business corporation in good faith.~~

~~(13) "Preferred Shares" means any class or series of shares of a business corporation which, under the bylaws or certificate of incorporation of such business corporation, is entitled to receive payment of dividends prior to any payment of dividends on some other class or series of shares, or is entitled in the event of any voluntary liquidation, dissolution or winding up of the business corporation to receive payment or distribution of a preferential amount before any payments or distributions are received by some other class or series of shares.~~

~~(14) "Shares" means:~~

~~(i) any shares or similar security, any certificate of interest, any participation in any profit sharing agreement, any voting trust certificate, or any certificate of deposit for shares; and~~

~~(ii) any security convertible, with or without consideration, into shares, or any option right, conversion right or privilege of buying shares without being bound to do so, or any other security carrying any right to acquire, subscribe to or purchase shares.~~

~~(15) "Share Acquisition Date" with respect to any person and any business corporation, means the date that such person first becomes an interested shareholder of such business corporation.~~

~~(16) "Subsidiary" means any corporation as to which any other corporation is the beneficial owner, directly or indirectly, of shares of such first corporation that would entitle such other corporation to cast in excess of fifty per cent of the votes that all shareholders would be entitled to cast in the election of directors of such first corporation.~~

~~(17) "Voting Shares" means shares of a corporation entitled to vote generally in the election of directors.~~

~~B. Notwithstanding anything to the contrary contained in this act (except the provisions of subsection C of this section), no business corporation shall engage at any time in any business combination with any interested shareholder of such business corporation other than a business combination specified in any one of clauses (1), (2), (3) or (4) of this subsection:~~

~~(1) A business combination approved by the board of directors of such business corporation prior to such interested shareholder's share acquisition date, or where the purchase of shares made by such interested shareholder on such interested shareholder's share acquisition date had been approved by the board of directors of such business corporation prior to such interested shareholder's share acquisition date.~~

~~(2) A business combination approved (i) by the affirmative vote of the holders of shares entitling such holders to cast a majority of the votes that all shareholders would be entitled to cast in an election of directors of such business corporation, not including any voting shares beneficially owned by such interested shareholder or any affiliate or associate of such interested shareholder, at a meeting called for such purpose no earlier than three months after such interested shareholder became, and provided that at the time of such meeting such interested shareholder is, the beneficial owner, directly or indirectly, of shares entitling such interested shareholder to cast at least eighty per cent of the votes that all shareholders would be entitled to cast in an election of directors of the corporation, and provided that such business combination satisfies all the conditions of subclauses (i) through (v) of~~

~~clause (4) of subsection B or (ii) by the affirmative vote of all of the holders of all of the outstanding common shares.~~

~~(3) A business combination approved by the affirmative vote of the holders of shares entitling such holders to cast a majority of the votes that all shareholders would be entitled to cast in an election of directors of such business corporation, not including any voting shares beneficially owned by such interested shareholder or any affiliate or associate of such interested shareholder, at a meeting called for such purpose no earlier than five years after such interested shareholder's share acquisition date.~~

~~(4) A business combination approved at a shareholders' meeting called for such purpose no earlier than five years after such interested shareholder's share acquisition date that meets all of the following conditions:~~

~~(i) The aggregate amount of the cash and the market value as of the consummation date of consideration other than cash to be received per share by holders of outstanding common shares of such business corporation in such business combination is at least equal to the higher of the following:~~

~~(a) the highest per share price paid by such interested shareholder at a time when he was the beneficial owner, directly or indirectly, of shares entitling that person to cast at least five per cent of the votes that all shareholders would be entitled to cast in an election of directors of such business corporation, for any common shares of the same class or series acquired by it (I) within the five year period immediately prior to the announcement date with respect to such business combination, or (II) within the five year period immediately prior to, or in, the transaction in which such interested~~

~~shareholder became an interested shareholder, whichever is higher; plus, in either case, interest compounded annually from the earliest date on which such highest per share acquisition price was paid through the consummation date at the rate for one year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per common share since such earliest date, up to the amount of such interest; and~~

~~(b) the market value per common share on the announcement date with respect to such business combination or on such interested shareholder's share acquisition date, whichever is higher; plus interest compounded annually from such date through the consummation date at the rate for one year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per common share since such date, up to the amount of such interest.~~

~~(ii) The aggregate amount of the cash and the market value as of the consummation date of consideration other than cash to be received per share by holders of outstanding shares of any class or series of shares, other than common shares, of such business corporation is at least equal to the highest of the following (whether or not such interested shareholder has previously acquired any shares of such class or series of shares):~~

~~(a) the highest per share price paid by such interested shareholder at a time when he was the beneficial owner, directly or indirectly, of shares entitling such person to cast at least five per cent of the votes that all shareholders would be~~

~~entitled to cast in an election of directors of such business corporation, for any shares of such class or series of shares acquired by it (I) within the five year period immediately prior to the announcement date with respect to such business combination, or (II) within the five year period immediately prior to, or in, the transaction in which such interested shareholder became an interested shareholder, whichever is higher; plus, in either case, interest compounded annually from the earliest date on which such highest per share acquisition price was paid through the consummation date at the rate for one year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of such class or series of shares since such earliest date, up to the amount of such interest;~~

~~(b) the highest preferential amount per share to which the holders of shares of such class or series of shares are entitled in the event of any voluntary liquidation, dissolution or winding up of such business corporation, plus the aggregate amount of any dividends declared or due as to which such holders are entitled prior to payment of dividends on some other class or series of shares (unless the aggregate amount of such dividends is included in such preferential amount); and~~

~~(c) the market value per share of such class or series of shares on the announcement date with respect to such business combination or on such interested shareholder's share acquisition date, whichever is higher; plus interest compounded annually from such date through the consummation date at the rate for one year United States treasury obligations from time to time in effect; less the aggregate amount of any cash~~

~~dividends paid and the market value of any dividends paid other than in cash, per share of such class or series of shares since such date, up to the amount of such interest.~~

~~(iii) The consideration to be received by holders of a particular class or series of outstanding shares (including common shares) of such business corporation in such business combination is in cash or in the same form as the interested shareholder has used to acquire the largest number of shares of such class or series of shares previously acquired by it, and such consideration shall be distributed promptly.~~

~~(iv) The holders of all outstanding shares of such business corporation not beneficially owned by such interested shareholder immediately prior to the consummation of such business combination are entitled to receive in such business combination cash or other consideration for such shares in compliance with subclauses (i), (ii) and (iii) of clause (4) of subsection B.~~

~~(v) After such interested shareholder's share acquisition date and prior to the consummation date with respect to such business combination, such interested shareholder has not become the beneficial owner of any additional voting shares of such business corporation except:~~

~~(a) as part of the transaction which resulted in such interested shareholder becoming an interested shareholder;~~

~~(b) by virtue of proportionate splits of shares, share dividends or other distributions of shares in respect of shares not constituting a business combination under subclause (v) of clause (5) of subsection A;~~

~~(c) through a business combination meeting all of the conditions of clauses (1), (2), (3) or (4) of subsection B;~~

~~(d) through purchase by such interested shareholder at any price which, if such price had been paid in an otherwise permissible business combination the announcement date and consummation date of which were the date of such purchase, would have satisfied the requirements of subclauses (i), (ii) and (iii) of clause (4) of subsection B; or~~

~~(e) through purchase required by and pursuant to the provisions of, and at no less than the fair value (including interest to the date of payment) as determined by a court appointed appraiser under clause (2) of subsection E of section 910 of this act (or if such fair value was not then so determined, then at a price that would satisfy the conditions in the preceding paragraph (d)).~~

~~C. The provisions of this section shall not apply:~~

~~(1) to any business combination of a business corporation that does not have a class of voting shares registered under the Exchange Act; or~~

~~(2) to any business combination of a business corporation whose articles have been amended to provide that such business corporation shall be subject to the provisions of this section, which did not have a class of voting shares registered under the Exchange Act on the effective date of such amendment, and which is a business combination with an interested shareholder whose share acquisition date is prior to the effective date of such amendment; or~~

~~(3) to any business combination of a business corporation (i) the bylaws of which, by amendment adopted within ninety days of the date of enactment of this section, and not subsequently rescinded either by an article amendment or by a bylaw amendment approved by at least eighty five per cent of the whole board of~~

~~1 directors, explicitly provide that this section shall not be~~
~~2 applicable to the corporation or (ii) the articles of which~~
~~3 explicitly provide that this section shall not be applicable to~~
~~4 the corporation by a provision included in the original~~
~~5 articles, or by an article amendment adopted pursuant to both~~
~~6 (a) the procedures then applicable to the corporation and (b)~~
~~7 the affirmative vote of the holders, other than interested~~
~~8 shareholders and their affiliates and associates, of shares~~
~~9 entitling such holders to cast a majority of the votes that all~~
~~10 shareholders would be entitled to cast in an election of~~
~~11 directors of such business corporation, excluding the voting~~
~~12 shares of interested shareholders and their affiliates and~~
~~13 associates, expressly electing not to be governed by this~~
~~14 section, provided that such amendment to the articles shall not~~
~~15 be effective until eighteen months after such vote of such~~
~~16 business corporation's shareholders and shall not apply to any~~
~~17 business combination of such business corporation with an~~
~~18 interested shareholder whose share acquisition date is on or~~
~~19 prior to the effective date of such amendment; or~~
~~20 (4) to any business combination of a business corporation~~
~~21 with an interested shareholder of such business corporation~~
~~22 which became an interested shareholder inadvertently, if such~~
~~23 interested shareholder (i) as soon as practicable, divests~~
~~24 itself of a sufficient amount of the voting shares of such~~
~~25 business corporation so that it no longer is the beneficial~~
~~26 owner, directly or indirectly, of shares entitling such person~~
~~27 to cast at least twenty per cent of the votes that all~~
~~28 shareholders would be entitled to cast in an election of~~
~~29 directors of such business corporation, and (ii) would not at~~
~~30 any time within the five year period preceding the announcement~~

~~date with respect to such business combination have been an interested shareholder but for such inadvertent acquisition; (5) to any business combination with an interested shareholder who was the beneficial owner, directly or indirectly, of shares entitling such person to cast at least fifteen per cent of the votes that all shareholders would be entitled to cast in an election of directors of such business corporation on the effective date of this act and remain so to such interested shareholder's share acquisition date; or~~

~~(6) to any business corporation that on the effective date of this act is a subsidiary of any other corporation; provided, however, that a corporation that is a subsidiary on the effective date of this act will not be deemed to cease being a subsidiary so long as such other corporation remains a controlling person or group of such subsidiary within the meaning of subsection B of section 910 of this act.~~

~~D. The rights and remedies herein provided shall be in addition to, and not in lieu of, any other rights or remedies provided by this act, the articles of the corporation, the bylaws of the corporation, any securities, option rights or obligations of the corporation or otherwise.~~

~~Section 4. This act shall take effect in 60 days.~~

SECTION 1. SECTION 611 OF THE ACT OF MAY 5, 1933 (P.L.364, NO.106), KNOWN AS THE BUSINESS CORPORATION LAW, AMENDED JULY 20, 1968 (P.L.459, NO.216), IS AMENDED TO READ:

SECTION 611. OPTION RIGHTS AND CONVERSION RIGHTS; PREEMPTIVE RIGHTS OF SHAREHOLDERS.--A. EXCEPT AS OTHERWISE PROVIDED [IN SUBSECTION B OF THIS SECTION OR] IN ITS ARTICLES[, A BUSINESS CORPORATION MAY ISSUE SHARES, OPTION RIGHTS OR SECURITIES HAVING CONVERSION OR OPTION RIGHTS, WITHOUT FIRST OFFERING THEM TO

1 SHAREHOLDERS OF ANY CLASS OR CLASSES.] PRIOR TO THE CREATION AND
2 ISSUANCE THEREOF, A BUSINESS CORPORATION MAY CREATE AND ISSUE
3 (WHETHER OR NOT IN CONNECTION WITH THE ISSUANCE OF ANY OF ITS
4 SHARES OR OTHER SECURITIES) OPTION RIGHTS OR SECURITIES HAVING
5 CONVERSION OR OPTION RIGHTS ENTITLING THE HOLDERS THEREOF TO
6 PURCHASE OR ACQUIRE SHARES, OPTION RIGHTS, SECURITIES HAVING
7 CONVERSION OR OPTION RIGHTS, OR OBLIGATIONS, OF ANY CLASS OR
8 SERIES, OR ASSETS, OF THE CORPORATION, OR TO PURCHASE OR ACQUIRE
9 FROM THE CORPORATION, SHARES, OPTION RIGHTS, SECURITIES HAVING
10 CONVERSION OR OPTION RIGHTS, OR OBLIGATIONS, OF ANY CLASS OR
11 SERIES, OWNED BY THE CORPORATION AND ISSUED BY ANY OTHER PERSON.
12 EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION B OF THIS SECTION OR
13 IN ITS ARTICLES:

14 (1) THE SHARES, OPTION RIGHTS, SECURITIES HAVING CONVERSION
15 OR OPTION RIGHTS, OR OBLIGATIONS SHALL BE EVIDENCED IN SUCH
16 MANNER AS THE CORPORATION MAY DETERMINE AND MAY BE OFFERED
17 WITHOUT FIRST OFFERING THEM TO SHAREHOLDERS OF ANY CLASS OR
18 CLASSES; AND

19 (2) A BUSINESS CORPORATION MAY ISSUE SHARES, OPTION RIGHTS
20 OR SECURITIES HAVING CONVERSION OR OPTION RIGHTS, WITHOUT FIRST
21 OFFERING THEM TO SHAREHOLDERS OF ANY CLASS OR CLASSES.

22 B. UNLESS OTHERWISE PROVIDED IN ITS ARTICLES, THE
23 SHAREHOLDERS OF AN UNLISTED CORPORATION SHALL HAVE A PREEMPTIVE
24 RIGHT TO SUBSCRIBE FOR SHARES, OPTION RIGHTS, OR SECURITIES
25 HAVING OPTION RIGHTS, ISSUED FOR CASH BY THE CORPORATION, IF THE
26 CORPORATION WAS NOT INCORPORATED HEREUNDER AND ITS SHAREHOLDERS
27 WERE OR ARE ENTITLED TO PREEMPTIVE RIGHTS AT THE DATE THE
28 CORPORATION BECAME OR BECOMES SUBJECT TO THIS ACT, BUT THIS
29 SUBSECTION SHALL APPLY NEITHER TO THE HOLDERS OF SHARES OF A
30 CLASS ISSUED AFTER THE DATE SUCH CORPORATION BECAME OR BECOMES

1 SUBJECT TO THIS ACT NOR TO THE ISSUE OF SECURITIES HAVING
2 CONVERSION RIGHTS.

3 C. EXCEPT AS OTHERWISE PROVIDED IN THE ARTICLES, SHARES (OR
4 ANY OPTION RIGHTS OR SECURITIES HAVING CONVERSION OR OPTION
5 RIGHTS WITH RESPECT TO SUCH SHARES) WHICH HAVE BEEN OFFERED TO
6 SHAREHOLDERS HAVING A PREEMPTIVE RIGHT THERETO, AT A PRICE AND
7 UPON TERMS DULY FIXED, AND WHICH HAVE NOT BEEN SUBSCRIBED FOR BY
8 THEM WITHIN THE TIME DULY FIXED BY THE ARTICLES OR THE BOARD OF
9 DIRECTORS, MAY BE THEREAFTER OFFERED FOR SUBSCRIPTION TO ANY
10 PERSON OR PERSONS AT A PRICE AND UPON TERMS NOT MORE FAVORABLE
11 THAN THOSE AT WHICH THEY WERE OFFERED TO SUCH SHAREHOLDERS.

12 D. THE SECURITIES, CONTRACTS, WARRANTS, OR OTHER INSTRUMENTS
13 EVIDENCING ANY SHARES, OPTION RIGHTS, SECURITIES HAVING
14 CONVERSION OR OPTION RIGHTS, OR OBLIGATIONS OF A CORPORATION MAY
15 CONTAIN SUCH TERMS AS ARE FIXED BY THE BOARD OF DIRECTORS,
16 INCLUDING, WITHOUT LIMITING THE GENERALITY OF SUCH AUTHORITY:
17 RESTRICTIONS UPON THE AUTHORIZATION OR ISSUANCE OF ADDITIONAL
18 SHARES, OPTION RIGHTS, SECURITIES HAVING CONVERSION OR OPTION
19 RIGHTS, OR OBLIGATIONS; PROVISIONS FOR THE ADJUSTMENT OF THE
20 CONVERSION OR OPTION RIGHTS PRICE; PROVISIONS CONCERNING RIGHTS
21 OR ADJUSTMENTS IN THE EVENT OF REORGANIZATION, MERGER,
22 CONSOLIDATION, SALE OF ASSETS OR OTHER FUNDAMENTAL CHANGES;
23 PROVISIONS FOR THE RESERVATION OF AUTHORIZED BUT UNISSUED SHARES
24 OR OTHER SECURITIES; RESTRICTIONS UPON THE DECLARATION OR
25 PAYMENT OF DIVIDENDS OR DISTRIBUTIONS OR RELATED PARTY
26 TRANSACTIONS; AND CONDITIONS RELATING TO THE EXERCISE,
27 CONVERSION, TRANSFER OR RECEIPT OF SUCH SHARES, OPTION RIGHTS,
28 SECURITIES HAVING CONVERSION OR OPTION RIGHTS, OR OBLIGATIONS;
29 AND, IN THE CASE OF A CORPORATION REGISTERED UNDER THE
30 SECURITIES EXCHANGE ACT OF 1934 (15 U.S.C. § 78A ET SEQ.) ONLY,

CONDITIONS INCLUDING, BUT NOT LIMITED TO, CONDITIONS THAT PRECLUDE OR LIMIT ANY PERSON OR PERSONS OWNING OR OFFERING TO ACQUIRE A SPECIFIED NUMBER OR PERCENTAGE OF THE OUTSTANDING COMMON SHARES, OTHER SHARES, OPTION RIGHTS, SECURITIES HAVING CONVERSION OR OPTION RIGHTS, OR OBLIGATIONS OF SUCH A CORPORATION OR TRANSFEREE OR TRANSFEREES OF ANY SUCH PERSON OR PERSONS FROM EXERCISING, CONVERTING, TRANSFERRING OR RECEIVING SUCH SHARES, OPTION RIGHTS, SECURITIES HAVING CONVERSION OR OPTION RIGHTS, OR OBLIGATIONS.

E. NOTHING CONTAINED IN THIS SECTION SHALL BE CONSTRUED TO EFFECT A CHANGE IN THE FIDUCIARY RELATIONSHIP BETWEEN A DIRECTOR AND A BUSINESS CORPORATION OR TO CHANGE THE STANDARD OF CARE OF A DIRECTOR PROVIDED FOR IN 42 PA.C.S. CH. 83 SUBCH. F (RELATING TO CORPORATE DIRECTORS' LIABILITY).

SECTION 2. SECTION 910 OF THE ACT, ADDED DECEMBER 23, 1983 (P.L.395, NO.92), IS AMENDED TO READ:

SECTION 910. RIGHT OF SHAREHOLDERS TO RECEIVE PAYMENT FOR SHARES FOLLOWING A CONTROL TRANSACTION.--[A. UNLESS (1) THE BYLAWS, BY AMENDMENT ADOPTED WITHIN NINETY DAYS OF THE DATE OF ENACTMENT OF THIS SECTION AND NOT SUBSEQUENTLY RESCINDED BY AN ARTICLE AMENDMENT, OR (2) THE ARTICLES EXPLICITLY PROVIDE THAT THIS SECTION SHALL NOT BE APPLICABLE TO THE CORPORATION, ANY HOLDER OF VOTING SHARES OF A BUSINESS CORPORATION THAT BECOMES THE SUBJECT OF A CONTROL TRANSACTION DESCRIBED IN SUBSECTION B WHO SHALL OBJECT TO THE TRANSACTION SHALL BE ENTITLED TO THE RIGHTS AND REMEDIES HEREIN PROVIDED.]

A. ANY HOLDER OF VOTING SHARES OF A BUSINESS CORPORATION THAT BECOMES THE SUBJECT OF A CONTROL TRANSACTION DESCRIBED IN SUBSECTION B WHO SHALL OBJECT TO THE TRANSACTION SHALL BE ENTITLED TO THE RIGHTS AND REMEDIES HEREIN PROVIDED, UNLESS (1)

1 THE BYLAWS, BY AMENDMENT ADOPTED EITHER (I) BY MARCH 23, 1984,
2 OR (II) WITHIN NINETY DAYS AFTER THE EFFECTIVE DATE OF THIS
3 AMENDATORY ACT, AND, IN EITHER EVENT, NOT SUBSEQUENTLY RESCINDED
4 BY AN ARTICLE AMENDMENT, EXPLICITLY PROVIDE THAT THIS SECTION
5 SHALL NOT BE APPLICABLE TO THE CORPORATION OR (2) THE ARTICLES
6 EXPLICITLY PROVIDE THAT THIS SECTION SHALL NOT BE APPLICABLE TO
7 THE CORPORATION BY A PROVISION INCLUDED IN THE ORIGINAL
8 ARTICLES, BY AN ARTICLE AMENDMENT ADOPTED PRIOR TO THE DATE OF
9 SUCH CONTROL TRANSACTION AND PRIOR TO OR ON THE EFFECTIVE DATE
10 OF THIS AMENDATORY ACT PURSUANT TO THE PROCEDURES THEN
11 APPLICABLE TO THE CORPORATION, OR BY AN ARTICLE AMENDMENT
12 ADOPTED PRIOR TO THE DATE OF SUCH CONTROL TRANSACTION AND
13 SUBSEQUENT TO THE EFFECTIVE DATE OF THIS AMENDATORY ACT PURSUANT
14 TO BOTH (I) THE PROCEDURES THEN APPLICABLE TO THE CORPORATION
15 AND (II) UNLESS SUCH PROPOSED AMENDMENT HAS BEEN APPROVED BY THE
16 BOARD OF DIRECTORS OF THE CORPORATION, IN WHICH EVENT THIS
17 CLAUSE (II) SHALL NOT BE APPLICABLE, THE AFFIRMATIVE VOTE OF THE
18 SHAREHOLDERS ENTITLED TO CAST AT LEAST EIGHTY PER CENT OF THE
19 VOTES WHICH ALL SHAREHOLDERS ARE ENTITLED TO CAST THEREON. THE
20 RIGHTS AND REMEDIES HEREIN PROVIDED SHALL BE IN ADDITION TO, AND
21 NOT IN LIEU OF, ANY OTHER RIGHTS OR REMEDIES PROVIDED BY THIS
22 ACT, THE ARTICLES OF THE CORPORATION, THE BYLAWS OF THE
23 CORPORATION, ANY SECURITIES, OPTION RIGHTS OR OBLIGATIONS OF THE
24 CORPORATION OR OTHERWISE.

25 B. (1) A CONTROLLING PERSON OR GROUP SHALL MEAN FOR THE
26 PURPOSE OF THIS SECTION A PERSON WHO HAS, OR A GROUP OF PERSONS
27 ACTING IN CONCERT THAT HAS, VOTING POWER OVER VOTING SHARES OF
28 THE CORPORATION THAT WOULD ENTITLE THE HOLDERS THEREOF TO CAST
29 AT LEAST [THIRTY] TWENTY PER CENT OF THE VOTES THAT ALL
30 SHAREHOLDERS WOULD BE ENTITLED TO CAST IN AN ELECTION OF

1 DIRECTORS OF THE CORPORATION.

2 (2) NOTWITHSTANDING THE ABOVE, (I) A PERSON OR GROUP WHICH
3 WOULD OTHERWISE BE A CONTROLLING PERSON OR GROUP WITHIN THE
4 MEANING OF THIS SECTION SHALL NOT BE DEEMED SUCH A CONTROLLING
5 PERSON OR GROUP UNLESS, SUBSEQUENT TO THE [ENACTMENT OF THIS
6 SECTION] LATER OF THE EFFECTIVE DATE OF THIS AMENDATORY ACT OR
7 THE DATE THIS SECTION BECOMES APPLICABLE TO A CORPORATION BY
8 BYLAW OR ARTICLE AMENDMENT OR OTHERWISE, THAT PERSON OR GROUP
9 INCREASES THE PERCENTAGE OF OUTSTANDING VOTING SHARES OF THE
10 CORPORATION OVER WHICH IT HAS VOTING POWER TO IN EXCESS OF THE
11 PERCENTAGE OF OUTSTANDING VOTING SHARES OF THE CORPORATION OVER
12 WHICH THAT PERSON OR GROUP HAD VOTING POWER ON [THE DATE OF
13 ENACTMENT OF THIS SECTION] SUCH LATER DATE, AND TO AT LEAST THE
14 AMOUNT SPECIFIED IN CLAUSE (1), AS THE RESULT OF FORMING OR
15 ENLARGING A GROUP, OR ACQUIRING, BY PURCHASE, VOTING POWER OVER
16 VOTING SHARES OF THE CORPORATION AND (II) NO PERSON OR GROUP
17 SHALL BE DEEMED TO BE A CONTROLLING PERSON OR GROUP AT ANY
18 PARTICULAR TIME IF VOTING POWER OVER ANY OF THE FOLLOWING VOTING
19 SHARES IS REQUIRED TO BE COUNTED AT SUCH TIME IN ORDER TO MEET
20 THE TWENTY PERCENT MINIMUM:

21 (A) SHARES WHICH HAVE BEEN HELD CONTINUOUSLY BY A NATURAL
22 PERSON SINCE JANUARY 1, 1983, AND WHICH ARE HELD BY SUCH NATURAL
23 PERSON AT SUCH TIME; OR

24 (B) SHARES WHICH ARE HELD AT SUCH TIME BY ANY NATURAL PERSON
25 OR TRUST, ESTATE, FOUNDATION OR OTHER SIMILAR ENTITY TO THE
26 EXTENT SUCH SHARES WERE ACQUIRED SOLELY BY GIFT, INHERITANCE,
27 BEQUEST, DEVISE OR OTHER TESTAMENTARY DISTRIBUTION OR SERIES OF
28 SUCH TRANSACTIONS, DIRECTLY OR INDIRECTLY, FROM A NATURAL PERSON
29 WHO HAD ACQUIRED SUCH SHARES PRIOR TO JANUARY 1, 1983; OR

30 (C) SHARES WHICH WERE ACQUIRED PURSUANT TO A STOCK SPLIT,

STOCK DIVIDEND, RECLASSIFICATION OR SIMILAR RECAPITALIZATION
WITH RESPECT TO SHARES DESCRIBED UNDER CLAUSE (II) THAT HAVE
BEEN HELD CONTINUOUSLY SINCE THEIR ISSUANCE BY THE CORPORATION
BY THE NATURAL PERSON OR ENTITY THAT ACQUIRED THEM FROM THE
CORPORATION, OR THAT WERE ACQUIRED, DIRECTLY OR INDIRECTLY, FROM
SUCH NATURAL PERSON OR ENTITY, SOLELY PURSUANT TO A TRANSACTION
OR SERIES OF TRANSACTIONS DESCRIBED IN PARAGRAPH (B) OF CLAUSE
(II), AND THAT ARE HELD AT SUCH TIME BY A NATURAL PERSON OR
ENTITY DESCRIBED IN SUCH PARAGRAPH (B).

(3) (I) A PERSON SHALL NOT BE A CONTROLLING PERSON UNDER
CLAUSE (1) IF SUCH PERSON HOLDS VOTING POWER, IN GOOD FAITH AND
NOT FOR THE PURPOSE OF CIRCUMVENTING THIS SECTION, AS AN AGENT,
BANK, BROKER, NOMINEE OR TRUSTEE FOR ONE OR MORE BENEFICIAL
OWNERS WHO DO NOT INDIVIDUALLY OR, IF THEY ARE A GROUP ACTING IN
CONCERT, AS A GROUP HAVE THE VOTING POWER SPECIFIED IN CLAUSE
(1) OR WHO ARE NOT DEEMED A CONTROLLING PERSON OR GROUP UNDER
CLAUSE (2).

(II) FOR THE PURPOSES OF THIS SECTION, A PERSON HAS VOTING
POWER OVER A VOTING SHARE IF SUCH PERSON HAS OR SHARES, DIRECTLY
OR INDIRECTLY, THROUGH ANY OPTION, CONTRACT, ARRANGEMENT,
UNDERSTANDING, CONVERSION RIGHT OR RELATIONSHIP, OR BY ACTING
JOINTLY OR IN CONCERT OR OTHERWISE, THE POWER TO VOTE, OR TO
DIRECT THE VOTING OF, SUCH VOTING SHARE.

(4) A CONTROL TRANSACTION SHALL MEAN, FOR THE PURPOSES OF
THIS SECTION, THE ACQUISITION BY A PERSON OR GROUP OF THE STATUS
OF A CONTROLLING PERSON OR GROUP.

C. PROMPT NOTICE THAT A CONTROL TRANSACTION HAS OCCURRED
SHALL BE GIVEN BY THE CONTROLLING PERSON OR GROUP TO (1) EACH
SHAREHOLDER OF RECORD OF THE CORPORATION HOLDING VOTING SHARES
AND (2) TO THE COURT OF COMMON PLEAS IN THE COUNTY IN THIS

1 COMMONWEALTH WHERE THE REGISTERED OFFICE OF THE CORPORATION IS
2 LOCATED, ACCOMPANIED BY A PETITION TO SUCH COURT PRAYING THAT
3 THE FAIR VALUE (AS DEFINED IN SUBSECTION E) OF THE VOTING SHARES
4 OF THE CORPORATION BE DETERMINED PURSUANT TO SUBSECTION E IF THE
5 COURT SHOULD RECEIVE PURSUANT TO SUCH SUBSECTION CERTIFICATES
6 FROM SHAREHOLDERS OF SUCH CORPORATION. IF THE CONTROLLING PERSON
7 OR GROUP SO REQUESTS, THE CORPORATION SHALL, AT THE OPTION OF
8 THE CORPORATION AND AT THE EXPENSE OF THE PERSON OR GROUP,
9 EITHER FURNISH A LIST OF ALL SUCH SHAREHOLDERS TO THE PERSON OR
10 GROUP OR MAIL THE NOTICE TO ALL SUCH SHAREHOLDERS. THE NOTICE
11 MUST STATE THAT (I) ALL SHAREHOLDERS ARE ENTITLED TO DEMAND THAT
12 THEY BE PAID THE FAIR VALUE OF THEIR SHARES; (II) THE MINIMUM
13 VALUE THE SHAREHOLDER CAN RECEIVE UNDER THIS SECTION IS THE
14 HIGHEST PRICE PAID PER SHARE BY THE CONTROLLING PERSON OR GROUP
15 WITHIN THE NINETY-DAY PERIOD ENDING ON AND INCLUDING THE DATE OF
16 THE CONTROL TRANSACTION, AND STATING THAT VALUE; AND (III) IF
17 THE SHAREHOLDER BELIEVES THE FAIR VALUE OF HIS SHARES IS HIGHER,
18 THAT THIS SECTION PROVIDES AN APPRAISAL PROCEDURE FOR
19 DETERMINING THE FAIR VALUE OF SUCH SHARES, SPECIFYING THE NAME
20 OF THE COURT REFERENCED ABOVE AND ITS ADDRESS AND THE CAPTION OF
21 THE PETITION REFERENCED ABOVE, AND STATING THAT SUCH INFORMATION
22 IS PROVIDED FOR THE POSSIBLE USE BY SUCH SHAREHOLDER IN ELECTING
23 TO PROCEED WITH A COURT-APPOINTED APPRAISER UNDER SUBSECTION E.
24 THE CONTROLLING PERSON OR GROUP MAY, AT ITS OPTION, SUPPLY WITH
25 THE NOTICE REFERENCED IN SUBCLAUSE (I) A FORM FOR THE
26 SHAREHOLDER TO DEMAND PAYMENT OF THE MINIMUM VALUE REFERRED TO
27 IN SUBCLAUSE (II) DIRECTLY FROM THE CONTROLLING PERSON OR GROUP
28 WITHOUT UTILIZING THE COURT APPOINTED APPRAISER PROCEDURE OF
29 SUBSECTION E, REQUIRING THE SHAREHOLDER TO STATE THE NUMBER AND
30 CLASS OR SERIES, IF ANY, OF THE SHARES OWNED BY HIM, AND STATING

1 WHERE THE PAYMENT DEMAND MUST BE SENT AND THE PROCEDURES TO BE
2 FOLLOWED. THERE SHALL BE INCLUDED IN, OR ENCLOSED WITH, THE
3 NOTICE A COPY OF THIS SECTION [AND SUBSECTIONS F THROUGH I OF
4 SECTION 515 OF THIS ACT].

5 D. AFTER THE OCCURRENCE OF THE CONTROL TRANSACTION, ANY
6 HOLDER OF VOTING SHARES OF THE CORPORATION MAY, PRIOR TO OR
7 WITHIN A REASONABLE TIME AFTER THE NOTICE REQUIRED BY SUBSECTION
8 C IS GIVEN, WHICH TIME PERIOD MAY BE SPECIFIED IN THE NOTICE,
9 MAKE WRITTEN DEMAND ON THE CONTROLLING PERSON OR GROUP FOR
10 PAYMENT OF THE AMOUNT PROVIDED IN SUBSECTION E WITH RESPECT TO
11 THE VOTING SHARES OF THE CORPORATION HELD BY THE SHAREHOLDER,
12 AND THE CONTROLLING PERSON OR GROUP SHALL [AGREE] BE REQUIRED TO
13 PAY THAT AMOUNT TO THE SHAREHOLDER PURSUANT TO THE PROCEDURES
14 SPECIFIED IN SUBSECTION E [UPON SURRENDER OF THE SHARE
15 CERTIFICATE OR CERTIFICATES REPRESENTING SUCH SHARES]. THE
16 DEMAND OF THE SHAREHOLDER SHALL STATE THE NUMBER AND CLASS OR
17 SERIES, IF ANY, OF THE SHARES OWNED BY HIM WITH RESPECT TO WHICH
18 THE DEMAND IS MADE.

19 NOTHING CONTAINED IN THIS SECTION SHALL PRECLUDE A
20 CONTROLLING PERSON OR GROUP SUBJECT TO THIS SECTION FROM
21 OFFERING, WHETHER IN SUCH NOTICE OR OTHERWISE, TO PURCHASE
22 VOTING SHARES OF THE CORPORATION AT A PRICE OTHER THAN THAT
23 PROVIDED IN SUBSECTION E, AND NOTHING CONTAINED IN THIS SECTION
24 SHALL PRECLUDE ANY SHAREHOLDER FROM AGREEING TO SELL HIS VOTING
25 SHARES AT THAT OR ANY OTHER PRICE TO ANY PERSON.

26 E. (1) A SHAREHOLDER MAKING WRITTEN DEMAND UNDER SUBSECTION
27 D SHALL BE ENTITLED TO RECEIVE CASH FOR EACH OF HIS SHARES IN AN
28 AMOUNT EQUAL TO THE FAIR VALUE OF EACH VOTING SHARE AS OF THE
29 [DAY PRIOR TO THE] DATE ON WHICH THE CONTROL TRANSACTION OCCURS,
30 TAKING INTO ACCOUNT ALL RELEVANT FACTORS, INCLUDING AN INCREMENT

1 REPRESENTING A PROPORTION OF ANY VALUE PAYABLE FOR ACQUISITION
2 OF CONTROL OF THE CORPORATION. [EITHER THE CONTROLLING PERSON OR
3 GROUP OR THE SHAREHOLDER MAY PROCEED UNDER SUBSECTIONS F THROUGH
4 I OF SECTION 515 FOR A DETERMINATION OF THE FAIR VALUE OF SUCH
5 SHARE AS DEFINED IN THIS SUBSECTION. THE DATE OF NOTICE OF THE
6 OCCURRENCE OF THE CONTROL TRANSACTION, OR IF NO NOTICE IS GIVEN,
7 THE DATE OF WRITTEN DEMAND MADE BY THE SHAREHOLDER, SHALL BE
8 DEEMED TO BE THE EFFECTIVE DATE OF THE PLAN, THE SHAREHOLDERS
9 WHO MAKE WRITTEN DEMAND SHALL BE DEEMED TO BE THE DISSENTING
10 SHAREHOLDERS, AND THE CONTROLLING PERSON OR GROUP SHALL BE
11 DEEMED TO BE THE CORPORATION FOR THE PURPOSES OF THOSE
12 SUBSECTIONS.] FOR THE PURPOSES OF THIS SUBSECTION, FAIR VALUE
13 MEANS A VALUE NOT LESS THAN THE HIGHEST PRICE PAID PER SHARE BY
14 THE CONTROLLING PERSON OR GROUP AT ANY TIME DURING THE NINETY-
15 DAY PERIOD ENDING ON AND INCLUDING THE DATE OF THE CONTROL
16 TRANSACTION PLUS AN INCREMENT REPRESENTING ANY VALUE, INCLUDING
17 WITHOUT LIMITATION ANY PROPORTION OF ANY VALUE PAYABLE FOR
18 ACQUISITION OF CONTROL OF THE CORPORATION, THAT MAY NOT BE
19 REFLECTED IN SUCH PRICE.

20 (2) IF, (I) WITHIN FORTY-FIVE DAYS (OR SUCH OTHER TIME
21 PERIOD, IF ANY, AS REQUIRED BY APPLICABLE LAW) AFTER THE DATE OF
22 THE NOTICE REQUIRED BY SUBSECTION C, OR (II) IF SUCH NOTICE WAS
23 NOT PROVIDED PRIOR TO THE DATE OF THE WRITTEN DEMAND BY THE
24 SHAREHOLDER UNDER SUBSECTION D, THEN WITHIN FORTY-FIVE DAYS (OR
25 SUCH OTHER TIME PERIOD, IF ANY, AS REQUIRED BY APPLICABLE LAW)
26 OF THE DATE OF SUCH WRITTEN DEMAND, THE CONTROLLING PERSON OR
27 GROUP AND THE SHAREHOLDER ARE UNABLE TO AGREE ON THE FAIR VALUE
28 OF THE SHARES OR ON A BINDING PROCEDURE TO DETERMINE THE FAIR
29 VALUE OF THE SHARES, THEN EACH SHAREHOLDER WHO IS UNABLE TO
30 AGREE ON BOTH THE FAIR VALUE AND ON SUCH A PROCEDURE WITH THE

1 CONTROLLING PERSON OR GROUP AND WHO SO DESIRES TO OBTAIN THE
2 RIGHTS AND REMEDIES HEREIN PROVIDED SHALL, NO LATER THAN THIRTY
3 DAYS AFTER THE EXPIRATION OF THE APPLICABLE FORTY-FIVE (OR
4 OTHER) DAY PERIOD, SURRENDER TO THE COURT OF COMMON PLEAS
5 REFERENCED IN SUBSECTION C CERTIFICATES REPRESENTING SUCH SHARES
6 DULY ENDORSED FOR TRANSFER TO THE CONTROLLING PERSON OR GROUP,
7 WITH A NOTICE STATING THAT SUCH CERTIFICATES ARE BEING
8 SURRENDERED IN CONNECTION WITH THE PETITION REFERENCED IN
9 SUBSECTION C, OR, IF NO SUCH PETITION HAS THERETOFORE BEEN
10 FILED, SUCH SHAREHOLDER MAY FILE A PETITION WITHIN SUCH THIRTY-
11 DAY PERIOD IN SUCH COURT PRAYING THAT THE FAIR VALUE (AS DEFINED
12 HEREIN) OF SUCH SHARES BE DETERMINED. ANY SUCH SHAREHOLDER WHO
13 DOES NOT SO SURRENDER SUCH CERTIFICATES WITHIN SUCH TIME PERIOD
14 SHALL HAVE NO FURTHER RIGHT TO RECEIVE, WITH RESPECT TO SHARES
15 THE CERTIFICATES OF WHICH WERE NOT SO SURRENDERED UNDER THIS
16 CLAUSE, PAYMENT UNDER THIS CLAUSE FROM THE CONTROLLING PERSON OR
17 GROUP WITH RESPECT TO THE CONTROL TRANSACTION GIVING RISE TO THE
18 SHAREHOLDER'S RIGHTS HEREUNDER. SUCH COURT SHALL HOLD SUCH
19 CERTIFICATES SURRENDERED TO IT IN ESCROW FOR, AND SHALL
20 PROMPTLY, FOLLOWING THE EXPIRATION OF THE TIME PERIOD DURING
21 WHICH SUCH CERTIFICATES MAY BE SURRENDERED, PROVIDE A NOTICE TO
22 THE CONTROLLING PERSON OR GROUP OF THE NUMBER OF SHARES SO
23 SURRENDERED. THE CONTROLLING PERSON OR GROUP SHALL THEN MAKE A
24 PARTIAL PAYMENT FOR THE SHARES SO SURRENDERED TO SUCH COURT,
25 WITHIN TEN BUSINESS DAYS OF RECEIPT OF THE NOTICE FROM SUCH
26 COURT, AT A PER-SHARE PRICE EQUAL TO THE HIGHEST PRICE PAID PER
27 SHARE BY THE CONTROLLING PERSON OR GROUP WITHIN THE NINETY-DAY
28 PERIOD ENDING ON AND INCLUDING THE DATE OF THE CONTROL
29 TRANSACTION. SUCH COURT SHALL THEN MAKE PAYMENT, AS SOON AS
30 PRACTICABLE BUT IN ANY EVENT WITHIN TEN BUSINESS DAYS, TO THE

1 SHAREHOLDERS WHO SO SURRENDERED THEIR SHARES TO THE COURT OF THE
2 APPROPRIATE PER SHARE AMOUNT RECEIVED FROM THE CONTROLLING
3 PERSON OR GROUP.

4 UPON RECEIPT OF ANY SHARE CERTIFICATE SURRENDERED PURSUANT TO
5 THIS SECTION, SUCH COURT SHALL, AS SOON AS PRACTICABLE BUT IN
6 ANY EVENT WITHIN THIRTY DAYS, APPOINT AN APPRAISER WITH
7 EXPERIENCE IN APPRAISING SHARE VALUES OF COMPANIES OF LIKE
8 NATURE TO THE CORPORATION TO DETERMINE THE FAIR VALUE OF SUCH
9 SHARES. THE APPRAISER SO APPOINTED BY THE COURT SHALL, AS SOON
10 AS REASONABLY PRACTICABLE, DETERMINE THE FAIR VALUE OF THE
11 SHARES SUBJECT TO ITS APPRAISAL AND THE APPROPRIATE MARKET RATE
12 OF INTEREST ON THE AMOUNT THEN OWED BY THE CONTROLLING PERSON OR
13 GROUP TO THE HOLDERS OF SUCH SHARES. THE DETERMINATION OF ANY
14 APPRAISER SO APPOINTED BY THE COURT SHALL BE FINAL AND BINDING
15 ON BOTH THE CONTROLLING PERSON OR GROUP AND ALL SHAREHOLDERS WHO
16 SO SURRENDERED THEIR SHARE CERTIFICATES TO SUCH COURT, EXCEPT
17 THAT THE DETERMINATION OF THE APPRAISER SHALL BE SUBJECT TO
18 REVIEW TO THE EXTENT AND WITHIN THE TIME PROVIDED OR PRESCRIBED
19 BY LAW IN THE CASE OF OTHER APPOINTED JUDICIAL OFFICERS.

20 (3) ANY AMOUNT AGREED UPON BETWEEN THE PARTIES OR DETERMINED
21 PURSUANT TO THE PROCEDURE AGREED UPON BETWEEN THE PARTIES SHALL
22 BE PAYABLE BY THE CONTROLLING PERSON OR GROUP AFTER IT IS SO
23 AGREED UPON OR SO DETERMINED AND UPON AND CONCURRENTLY WITH THE
24 DELIVERY OF THE CERTIFICATE OR CERTIFICATES REPRESENTING SUCH
25 SHARES TO THE CONTROLLING PERSON OR GROUP BY THE SHAREHOLDER.

26 ANY AMOUNT OWED, TOGETHER WITH INTEREST, AS DETERMINED
27 PURSUANT TO CLAUSE (2) SHALL BE PAYABLE BY THE CONTROLLING
28 PERSON OR GROUP AFTER IT IS SO DETERMINED AND UPON AND
29 CONCURRENTLY WITH THE DELIVERY OF THE CERTIFICATE OR
30 CERTIFICATES REPRESENTING SHARES SURRENDERED TO THE COURT

1 REFERENCED IN SUBSECTION C TO THE CONTROLLING PERSON OR GROUP BY
2 SUCH COURT (WHICH SHALL MAKE SUCH DELIVERY OF THE CERTIFICATE OR
3 CERTIFICATES SURRENDERED TO IT TO THE CONTROLLING PERSON OR
4 GROUP AS SOON AS PRACTICABLE BUT IN ANY EVENT WITHIN TEN
5 BUSINESS DAYS AFTER THE FINAL DETERMINATION OF THE AMOUNT OWED),
6 AND SUCH COURT SHALL THEN MAKE PAYMENT, AS SOON AS PRACTICABLE
7 BUT IN ANY EVENT WITHIN TEN BUSINESS DAYS AFTER RECEIPT OF
8 PAYMENT FROM THE CONTROLLING PERSON OR GROUP, TO THE
9 SHAREHOLDERS WHO SO SURRENDERED THEIR SHARES TO SUCH COURT OF
10 THE APPROPRIATE PER SHARE AMOUNT RECEIVED FROM THE CONTROLLING
11 PERSON OR GROUP.

12 UPON FULL PAYMENT BY THE CONTROLLING PERSON OR GROUP OF THE
13 AMOUNT OWED TO THE SHAREHOLDER OR TO THE COURT, AS APPROPRIATE,
14 THE SHAREHOLDER SHALL CEASE TO HAVE ANY INTEREST IN SUCH SHARES.

15 (4) SHAREHOLDERS WHO SURRENDER THEIR SHARES TO THE COURT
16 PURSUANT TO CLAUSE (2) SHALL RETAIN THE RIGHT TO VOTE THEIR
17 SHARES AND RECEIVE DIVIDENDS OR OTHER DISTRIBUTIONS THEREON
18 UNTIL THE COURT RECEIVES PAYMENT IN FULL FOR EACH OF THE SHARES
19 SO SURRENDERED OF THE HIGHEST PRICE PAID PER SHARE BY THE
20 CONTROLLING PERSON OR GROUP WITHIN THE NINETY-DAY PERIOD ENDING
21 ON AND INCLUDING THE DATE OF THE CONTROL TRANSACTION (AND,
22 THEREAFTER, THE CONTROLLING PERSON OR GROUP SHALL BE ENTITLED TO
23 VOTE SUCH SHARES AND RECEIVE DIVIDENDS OR OTHER DISTRIBUTIONS
24 THEREON). THE FAIR VALUE (AS DETERMINED BY THE APPRAISER) OF ANY
25 DIVIDENDS OR OTHER DISTRIBUTIONS SO RECEIVED BY SUCH
26 SHAREHOLDERS SHALL BE SUBTRACTED FROM ANY AMOUNT OWING TO SUCH
27 SHAREHOLDERS HEREUNDER.

28 (5) THE COURT REFERENCED IN SUBSECTION C MAY APPOINT SUCH
29 AGENTS, INCLUDING THE TRANSFER AGENT OF THE CORPORATION, OR ANY
30 OTHER INSTITUTION, TO HOLD THE SHARES SO SURRENDERED, TO EFFECT

1 ANY NECESSARY CHANGE IN RECORD OWNERSHIP OF SUCH SHARES AFTER
2 THE PAYMENT BY THE CONTROLLING PERSON OR GROUP TO THE COURT OF
3 THE AMOUNT SPECIFIED IN CLAUSE (4), TO RECEIVE AND DISBURSE
4 DIVIDENDS OR OTHER DISTRIBUTIONS, TO PROVIDE NOTICES TO
5 SHAREHOLDERS AND TO TAKE SUCH OTHER ACTIONS AS THE COURT SHALL
6 DETERMINE ARE APPROPRIATE TO EFFECT THE PURPOSES OF THIS
7 SECTION.

8 (6) THE COSTS AND EXPENSES OF ANY APPRAISER OR OTHER AGENTS
9 SO APPOINTED BY THE COURT SHALL BE ASSESSED AGAINST THE
10 CONTROLLING PERSON OR GROUP. THE COSTS AND EXPENSES OF ANY OTHER
11 PROCEDURE TO DETERMINE FAIR VALUE SHALL BE PAID AS AGREED TO BY
12 THE PARTIES AGREEING TO SUCH PROCEDURE.

13 (7) THE JURISDICTION OF THE COURT REFERENCED UNDER
14 SUBSECTION C IN WHICH THE PROCEEDING IS COMMENCED IS PLENARY AND
15 EXCLUSIVE AND THE CONTROLLING PERSON OR GROUP AND ALL
16 SHAREHOLDERS WHO SO SURRENDERED THEIR SHARES TO SUCH COURT SHALL
17 BE MADE A PARTY TO THE PROCEEDING AS IN AN ACTION AGAINST THEIR
18 SHARES.

19 (8) THE CORPORATION SHALL COMPLY WITH REQUESTS FOR
20 INFORMATION, WHICH MAY BE SUBMITTED PURSUANT TO PROCEDURES
21 MAINTAINING THE CONFIDENTIALITY OF SUCH INFORMATION, MADE BY THE
22 COURT OR THE APPRAISER SO SELECTED BY THE COURT.

23 F. A PERSON OR GROUP THAT PROPOSES TO ENGAGE IN A CONTROL
24 TRANSACTION MAY COMPLY WITH THE REQUIREMENTS OF THIS SECTION IN
25 CONNECTION WITH THE CONTROL TRANSACTION, AND THE EFFECTIVENESS
26 OF THE RIGHTS AFFORDED HEREIN TO SHAREHOLDERS MAY BE CONDITIONED
27 UPON THE CONSUMMATION OF THE CONTROL TRANSACTION.

28 THE PERSON OR GROUP SHALL GIVE PROMPT WRITTEN NOTICE OF THE
29 SATISFACTION OF ANY SUCH CONDITION TO EACH SHAREHOLDER WHO HAS
30 MADE DEMAND AS HEREIN PROVIDED.

1 G. SUBSECTIONS A THROUGH F SHALL NOT APPLY TO ANY
2 CORPORATION THAT DOES NOT HAVE A CLASS OF VOTING SHARES
3 REGISTERED UNDER THE SECURITIES EXCHANGE ACT OF 1934 (15 U.S.C.
4 § 78A ET SEQ.) OR TO ANY PERSON OR GROUP THAT INADVERTENTLY
5 BECOMES A CONTROLLING PERSON OR GROUP IF THAT CONTROLLING PERSON
6 OR GROUP, AS SOON AS PRACTICABLE, DIVESTS ITSELF OF A SUFFICIENT
7 AMOUNT OF ITS VOTING SHARES SO THAT IT IS NO LONGER A
8 CONTROLLING PERSON OR GROUP, OR TO ANY CORPORATION THAT ON THE
9 EFFECTIVE DATE OF THIS SECTION IS A SUBSIDIARY OF ANY OTHER
10 CORPORATION.

11 FOR PURPOSES OF THIS SUBSECTION, SUBSIDIARY SHALL MEAN ANY
12 CORPORATION AS TO WHICH ANY OTHER CORPORATION HAS OR HAS THE
13 RIGHT TO ACQUIRE, DIRECTLY OR INDIRECTLY, THROUGH THE EXERCISE
14 OF ALL WARRANTS, OPTIONS AND RIGHTS AND THE CONVERSION OF ALL
15 CONVERTIBLE SECURITIES, WHETHER ISSUED OR GRANTED BY THE
16 SUBSIDIARY OR OTHERWISE, VOTING POWER OVER VOTING SHARES OF THE
17 SUBSIDIARY THAT WOULD ENTITLE THE HOLDERS THEREOF TO CAST IN
18 EXCESS OF FIFTY PER CENT OF THE VOTES THAT ALL SHAREHOLDERS
19 WOULD BE ENTITLED TO CAST IN THE ELECTION OF DIRECTORS OF SUCH
20 SUBSIDIARY: PROVIDED, HOWEVER, THAT A SUBSIDIARY WILL NOT BE
21 DEEMED TO CEASE BEING A SUBSIDIARY SO LONG AS SUCH CORPORATION
22 REMAINS A CONTROLLING PERSON OR GROUP WITHIN THE MEANING OF
23 SUBSECTION B.

24 SECTION 3. THE ACT IS AMENDED BY ADDING A SECTION TO READ:

25 SECTION 911. REQUIREMENTS RELATING TO CERTAIN BUSINESS

26 COMBINATIONS.--A. FOR THE PURPOSES OF THIS SECTION:

27 (1) "AFFILIATE" MEANS A PERSON THAT DIRECTLY, OR INDIRECTLY
28 THROUGH ONE OR MORE INTERMEDIARIES, CONTROLS, OR IS CONTROLLED
29 BY, OR IS UNDER COMMON CONTROL WITH, A SPECIFIED PERSON.

30 (2) "ANNOUNCEMENT DATE" WHEN USED IN REFERENCE TO ANY

BUSINESS COMBINATION, MEANS THE DATE OF THE FIRST PUBLIC
ANNOUNCEMENT OF THE FINAL, DEFINITIVE PROPOSAL FOR SUCH BUSINESS
COMBINATION.

(3) "ASSOCIATE" WHEN USED TO INDICATE A RELATIONSHIP WITH
ANY PERSON, MEANS (A) ANY CORPORATION OR ORGANIZATION OF WHICH
SUCH PERSON IS AN OFFICER, DIRECTOR OR PARTNER OR IS, DIRECTLY
OR INDIRECTLY, THE BENEFICIAL OWNER OF SHARES ENTITLING THAT
PERSON TO CAST AT LEAST TEN PERCENT OF THE VOTES THAT ALL
SHAREHOLDERS WOULD BE ENTITLED TO CAST IN AN ELECTION OF
DIRECTORS OF THE CORPORATION OR ORGANIZATION, (B) ANY TRUST OR
OTHER ESTATE IN WHICH SUCH PERSON HAS A SUBSTANTIAL BENEFICIAL
INTEREST OR AS TO WHICH SUCH PERSON SERVES AS TRUSTEE OR IN A
SIMILAR FIDUCIARY CAPACITY, AND (C) ANY RELATIVE OR SPOUSE OF
SUCH PERSON, OR ANY RELATIVE OF SUCH SPOUSE, WHO HAS THE SAME
HOME AS SUCH PERSON.

(4) "BENEFICIAL OWNER" WHEN USED WITH RESPECT TO ANY SHARES,
MEANS A PERSON:

(I) THAT, INDIVIDUALLY OR WITH OR THROUGH ANY OF ITS
AFFILIATES OR ASSOCIATES, BENEFICIALLY OWNS SUCH SHARES,
DIRECTLY OR INDIRECTLY; OR

(II) THAT, INDIVIDUALLY OR WITH OR THROUGH ANY OF ITS
AFFILIATES OR ASSOCIATES, HAS (A) THE RIGHT TO ACQUIRE SUCH
SHARES (WHETHER SUCH RIGHT IS EXERCISABLE IMMEDIATELY OR ONLY
AFTER THE PASSAGE OF TIME), PURSUANT TO ANY AGREEMENT,
ARRANGEMENT OR UNDERSTANDING (WHETHER OR NOT IN WRITING), OR
UPON THE EXERCISE OF CONVERSION RIGHTS, EXCHANGE RIGHTS,
WARRANTS OR OPTIONS, OR OTHERWISE: PROVIDED, HOWEVER, THAT A
PERSON SHALL NOT BE DEEMED THE BENEFICIAL OWNER OF SHARES
TENDERED PURSUANT TO A TENDER OR EXCHANGE OFFER MADE BY SUCH
PERSON OR ANY OF SUCH PERSON'S AFFILIATES OR ASSOCIATES UNTIL

1 SUCH TENDERED SHARES ARE ACCEPTED FOR PURCHASE OR EXCHANGE; OR
2 (B) THE RIGHT TO VOTE SUCH SHARES PURSUANT TO ANY AGREEMENT,
3 ARRANGEMENT OR UNDERSTANDING (WHETHER OR NOT IN WRITING):
4 PROVIDED, HOWEVER, THAT A PERSON SHALL NOT BE DEEMED THE
5 BENEFICIAL OWNER OF ANY SHARES UNDER THIS ITEM IF THE AGREEMENT,
6 ARRANGEMENT OR UNDERSTANDING TO VOTE SUCH SHARES (I) ARISES
7 SOLELY FROM A REVOCABLE PROXY OR CONSENT GIVEN IN RESPONSE TO A
8 PROXY OR CONSENT SOLICITATION MADE IN ACCORDANCE WITH THE
9 APPLICABLE RULES AND REGULATIONS UNDER THE EXCHANGE ACT AND (II)
10 IS NOT THEN REPORTABLE ON A SCHEDULE 13D UNDER THE EXCHANGE ACT
11 (OR ANY COMPARABLE OR SUCCESSOR REPORT); OR

12 (III) THAT HAS ANY AGREEMENT, ARRANGEMENT OR UNDERSTANDING
13 (WHETHER OR NOT IN WRITING), FOR THE PURPOSE OF ACQUIRING,
14 HOLDING, VOTING (EXCEPT VOTING PURSUANT TO A REVOCABLE PROXY OR
15 CONSENT AS DESCRIBED IN PARAGRAPH (B) OF CLAUSE (4)(II) OF
16 SUBSECTION A), OR DISPOSING OF SUCH SHARES WITH ANY OTHER PERSON
17 THAT BENEFICIALLY OWNS, OR WHOSE AFFILIATES OR ASSOCIATES
18 BENEFICIALLY OWN, DIRECTLY OR INDIRECTLY, SUCH SHARES.

19 (5) "BUSINESS COMBINATION" WHEN USED IN REFERENCE TO ANY
20 BUSINESS CORPORATION AND ANY INTERESTED SHAREHOLDER OF SUCH
21 BUSINESS CORPORATION, MEANS:

22 (I) ANY MERGER OR CONSOLIDATION OF SUCH BUSINESS CORPORATION
23 OR ANY SUBSIDIARY OF SUCH BUSINESS CORPORATION WITH (A) SUCH
24 INTERESTED SHAREHOLDER OR (B) ANY OTHER CORPORATION (WHETHER OR
25 NOT ITSELF AN INTERESTED SHAREHOLDER OF SUCH BUSINESS
26 CORPORATION) WHICH IS, OR AFTER SUCH MERGER OR CONSOLIDATION
27 WOULD BE, AN AFFILIATE OR ASSOCIATE OF SUCH INTERESTED
28 SHAREHOLDER;

29 (II) ANY SALE, LEASE, EXCHANGE, MORTGAGE, PLEDGE, TRANSFER
30 OR OTHER DISPOSITION (IN ONE TRANSACTION OR A SERIES OF

1 TRANSACTIONS) TO OR WITH SUCH INTERESTED SHAREHOLDER OR ANY
2 AFFILIATE OR ASSOCIATE OF SUCH INTERESTED SHAREHOLDER OF ASSETS
3 OF SUCH BUSINESS CORPORATION OR ANY SUBSIDIARY OF SUCH BUSINESS
4 CORPORATION (A) HAVING AN AGGREGATE MARKET VALUE EQUAL TO TEN
5 PER CENT OR MORE OF THE AGGREGATE MARKET VALUE OF ALL THE
6 ASSETS, DETERMINED ON A CONSOLIDATED BASIS, OF SUCH BUSINESS
7 CORPORATION, (B) HAVING AN AGGREGATE MARKET VALUE EQUAL TO TEN
8 PER CENT OR MORE OF THE AGGREGATE MARKET VALUE OF ALL THE
9 OUTSTANDING SHARES OF SUCH BUSINESS CORPORATION, OR (C)
10 REPRESENTING TEN PER CENT OR MORE OF THE EARNING POWER OR NET
11 INCOME, DETERMINED ON A CONSOLIDATED BASIS, OF SUCH BUSINESS
12 CORPORATION;

13 (III) THE ISSUANCE OR TRANSFER BY SUCH BUSINESS CORPORATION
14 OR ANY SUBSIDIARY OF SUCH BUSINESS CORPORATION (IN ONE
15 TRANSACTION OR A SERIES OF TRANSACTIONS) OF ANY SHARES OF SUCH
16 BUSINESS CORPORATION OR ANY SUBSIDIARY OF SUCH BUSINESS
17 CORPORATION WHICH HAS AN AGGREGATE MARKET VALUE EQUAL TO FIVE
18 PER CENT OR MORE OF THE AGGREGATE MARKET VALUE OF ALL THE
19 OUTSTANDING SHARES OF SUCH BUSINESS CORPORATION TO SUCH
20 INTERESTED SHAREHOLDER OR ANY AFFILIATE OR ASSOCIATE OF SUCH
21 INTERESTED SHAREHOLDER EXCEPT PURSUANT TO THE EXERCISE OF OPTION
22 RIGHTS TO PURCHASE SHARES, OR PURSUANT TO THE CONVERSION OF
23 SECURITIES HAVING CONVERSION RIGHTS, OFFERED, OR A DIVIDEND OR
24 DISTRIBUTION PAID OR MADE, PRO RATA TO ALL SHAREHOLDERS OF SUCH
25 BUSINESS CORPORATION;

26 (IV) THE ADOPTION OF ANY PLAN OR PROPOSAL FOR THE
27 LIQUIDATION OR DISSOLUTION OF SUCH BUSINESS CORPORATION PROPOSED
28 BY, OR PURSUANT TO ANY AGREEMENT, ARRANGEMENT OR UNDERSTANDING
29 (WHETHER OR NOT IN WRITING) WITH, SUCH INTERESTED SHAREHOLDER OR
30 ANY AFFILIATE OR ASSOCIATE OF SUCH INTERESTED SHAREHOLDER;

1 (V) ANY RECLASSIFICATION OF SECURITIES (INCLUDING, WITHOUT
2 LIMITATION, ANY SPLIT OF SHARES, DIVIDEND OF SHARES, OR OTHER
3 DISTRIBUTION OF SHARES IN RESPECT OF SHARES, OR ANY REVERSE
4 SPLIT OF SHARES), OR RECAPITALIZATION OF SUCH BUSINESS
5 CORPORATION, OR ANY MERGER OR CONSOLIDATION OF SUCH BUSINESS
6 CORPORATION WITH ANY SUBSIDIARY OF SUCH BUSINESS CORPORATION, OR
7 ANY OTHER TRANSACTION (WHETHER OR NOT WITH OR INTO OR OTHERWISE
8 INVOLVING SUCH INTERESTED SHAREHOLDER), PROPOSED BY, OR PURSUANT
9 TO ANY AGREEMENT, ARRANGEMENT OR UNDERSTANDING (WHETHER OR NOT
10 IN WRITING) WITH, SUCH INTERESTED SHAREHOLDER OR ANY AFFILIATE
11 OR ASSOCIATE OF SUCH INTERESTED SHAREHOLDER, WHICH HAS THE
12 EFFECT, DIRECTLY OR INDIRECTLY, OF INCREASING THE PROPORTIONATE
13 SHARE OF THE OUTSTANDING SHARES OF ANY CLASS OR SERIES OF VOTING
14 SHARES OR SECURITIES CONVERTIBLE INTO VOTING SHARES OF SUCH
15 BUSINESS CORPORATION OR ANY SUBSIDIARY OF SUCH BUSINESS
16 CORPORATION WHICH IS, DIRECTLY OR INDIRECTLY, OWNED BY SUCH
17 INTERESTED SHAREHOLDER OR ANY AFFILIATE OR ASSOCIATE OF SUCH
18 INTERESTED SHAREHOLDER, EXCEPT AS A RESULT OF IMMATERIAL CHANGES
19 DUE TO FRACTIONAL SHARE ADJUSTMENTS; OR

20 (VI) ANY RECEIPT BY SUCH INTERESTED SHAREHOLDER OR ANY
21 AFFILIATE OR ASSOCIATE OF SUCH INTERESTED SHAREHOLDER OF THE
22 BENEFIT, DIRECTLY OR INDIRECTLY (EXCEPT PROPORTIONATELY AS A
23 SHAREHOLDER OF SUCH BUSINESS CORPORATION) OF ANY LOANS,
24 ADVANCES, GUARANTEES, PLEDGES OR OTHER FINANCIAL ASSISTANCE OR
25 ANY TAX CREDITS OR OTHER TAX ADVANTAGES PROVIDED BY OR THROUGH
26 SUCH BUSINESS CORPORATION.

27 (6) "BUSINESS CORPORATION" MEANS A BUSINESS CORPORATION AS
28 DEFINED IN CLAUSE (6) OF SECTION 2. NO BUSINESS CORPORATION,
29 WHICH IS ORGANIZED UNDER THE LAWS OF THIS COMMONWEALTH, SHALL
30 CEASE TO BE A BUSINESS CORPORATION AS DEFINED HEREIN BY REASON

1 OF EVENTS OCCURRING OR ACTIONS TAKEN WHILE SUCH BUSINESS
2 CORPORATION IS SUBJECT TO THE PROVISIONS OF THIS SECTION.

3 (7) "COMMON SHARES" MEANS ANY SHARES OTHER THAN PREFERRED
4 SHARES.

5 (8) "CONSUMMATION DATE" WITH RESPECT TO ANY BUSINESS
6 COMBINATION, MEANS THE DATE OF CONSUMMATION OF SUCH BUSINESS
7 COMBINATION, OR, IN THE CASE OF A BUSINESS COMBINATION AS TO
8 WHICH A SHAREHOLDER VOTE IS TAKEN, THE LATER OF THE BUSINESS DAY
9 PRIOR TO THE VOTE OR TWENTY DAYS PRIOR TO THE DATE OF
10 CONSUMMATION OF SUCH BUSINESS COMBINATION.

11 (9) "CONTROL" INCLUDING THE TERMS "CONTROLLING," "CONTROLLED
12 BY," AND "UNDER COMMON CONTROL WITH," MEANS THE POSSESSION,
13 DIRECTLY OR INDIRECTLY, OF THE POWER TO DIRECT OR CAUSE THE
14 DIRECTION OF THE MANAGEMENT AND POLICIES OF A PERSON, WHETHER
15 THROUGH THE OWNERSHIP OF VOTING SHARES, BY CONTRACT, OR
16 OTHERWISE. A PERSON'S BENEFICIAL OWNERSHIP OF SHARES ENTITLING
17 THAT PERSON TO CAST AT LEAST TEN PER CENT OF THE VOTES THAT ALL
18 SHAREHOLDERS WOULD BE ENTITLED TO CAST IN AN ELECTION OF
19 DIRECTORS OF THE CORPORATION SHALL CREATE A PRESUMPTION THAT
20 SUCH PERSON HAS CONTROL OF SUCH CORPORATION. NOTWITHSTANDING THE
21 FOREGOING, A PERSON SHALL NOT BE DEEMED TO HAVE CONTROL OF A
22 CORPORATION IF SUCH PERSON HOLDS VOTING SHARES, IN GOOD FAITH
23 AND NOT FOR THE PURPOSE OF CIRCUMVENTING THIS SECTION, AS AN
24 AGENT, BANK, BROKER, NOMINEE, CUSTODIAN OR TRUSTEE FOR ONE OR
25 MORE BENEFICIAL OWNERS WHO DO NOT INDIVIDUALLY OR AS A GROUP
26 HAVE CONTROL OF SUCH CORPORATION.

27 (10) "EXCHANGE ACT" MEANS THE SECURITIES EXCHANGE ACT OF
28 1934 (48 STAT. 881, 15 U.S.C. § 78A ET SEQ.), AS THE SAME HAS
29 BEEN OR HEREAFTER MAY BE AMENDED FROM TIME TO TIME.

30 (11) "INTERESTED SHAREHOLDER," WHEN USED IN REFERENCE TO ANY

BUSINESS CORPORATION, MEANS ANY PERSON (OTHER THAN SUCH BUSINESS CORPORATION OR ANY SUBSIDIARY OF SUCH BUSINESS CORPORATION) THAT:

(I) (A) IS THE BENEFICIAL OWNER, DIRECTLY OR INDIRECTLY, OF SHARES ENTITLING THAT PERSON TO CAST AT LEAST TWENTY PER CENT OF THE VOTES THAT ALL SHAREHOLDERS WOULD BE ENTITLED TO CAST IN AN ELECTION OF DIRECTORS OF THE CORPORATION; OR

(B) IS AN AFFILIATE OR ASSOCIATE OF SUCH BUSINESS CORPORATION AND AT ANY TIME WITHIN THE FIVE-YEAR PERIOD IMMEDIATELY PRIOR TO THE DATE IN QUESTION WAS THE BENEFICIAL OWNER, DIRECTLY OR INDIRECTLY, OF SHARES ENTITLING THAT PERSON TO CAST AT LEAST TWENTY PER CENT OF THE VOTES THAT ALL SHAREHOLDERS WOULD BE ENTITLED TO CAST IN AN ELECTION OF DIRECTORS OF THE CORPORATION;

(II) PROVIDED THAT, FOR THE PURPOSE OF DETERMINING WHETHER A PERSON IS AN INTERESTED SHAREHOLDER, (A) THE NUMBER OF VOTES THAT WOULD BE ENTITLED TO BE CAST IN AN ELECTION OF DIRECTORS OF SUCH BUSINESS CORPORATION SHALL BE CALCULATED BY INCLUDING SHARES DEEMED TO BE BENEFICIALLY OWNED BY THE PERSON THROUGH APPLICATION OF CLAUSE 4 OF SUBSECTION A OF THIS SECTION BUT EXCLUDING ANY OTHER UNISSUED SHARES OF SUCH BUSINESS CORPORATION WHICH MAY BE ISSUABLE PURSUANT TO ANY AGREEMENT, ARRANGEMENT OR UNDERSTANDING, OR UPON EXERCISE OF CONVERSION OR OPTION RIGHTS, OR OTHERWISE; AND (B) THERE SHALL BE EXCLUDED FROM THE BENEFICIAL OWNERSHIP OF SUCH INTERESTED SHAREHOLDER ANY:

(I) SHARES WHICH HAVE BEEN HELD CONTINUOUSLY BY A NATURAL PERSON SINCE JANUARY 1, 1983, AND WHICH ARE THEN HELD BY SUCH NATURAL PERSON; OR

(II) SHARES WHICH ARE THEN HELD BY ANY NATURAL PERSON OR TRUST, ESTATE, FOUNDATION OR OTHER SIMILAR ENTITY TO THE EXTENT

1 SUCH SHARES WERE ACQUIRED SOLELY BY GIFT, INHERITANCE, BEQUEST,
2 DEVISE OR OTHER TESTAMENTARY DISTRIBUTION OR SERIES OF SUCH
3 TRANSACTIONS, DIRECTLY OR INDIRECTLY, FROM A NATURAL PERSON WHO
4 HAD ACQUIRED SUCH SHARES PRIOR TO JANUARY 1, 1983; OR

5 (III) SHARES WHICH WERE ACQUIRED PURSUANT TO A STOCK SPLIT,
6 STOCK DIVIDEND, RECLASSIFICATION OR SIMILAR RECAPITALIZATION
7 WITH RESPECT TO SHARES DESCRIBED UNDER PARAGRAPH (B) THAT HAVE
8 BEEN HELD CONTINUOUSLY SINCE THEIR ISSUANCE BY THE CORPORATION
9 BY THE NATURAL PERSON OR ENTITY THAT ACQUIRED THEM FROM THE
10 CORPORATION, OR THAT WERE ACQUIRED, DIRECTLY OR INDIRECTLY, FROM
11 SUCH NATURAL PERSON OR ENTITY, SOLELY PURSUANT TO A TRANSACTION
12 OR SERIES OF TRANSACTIONS DESCRIBED IN SUBPARAGRAPH (II) OF
13 PARAGRAPH (B), AND THAT ARE THEN HELD BY A NATURAL PERSON OR
14 ENTITY DESCRIBED IN SUBPARAGRAPH (II).

15 (12) "MARKET VALUE" WHEN USED IN REFERENCE TO SHARES OR
16 PROPERTY OF ANY BUSINESS CORPORATION, MEANS:

17 (I) IN THE CASE OF SHARES, THE HIGHEST CLOSING SALE PRICE
18 DURING THE THIRTY-DAY PERIOD IMMEDIATELY PRECEDING THE DATE IN
19 QUESTION OF SUCH A SHARE ON THE COMPOSITE TAPE FOR NEW YORK
20 STOCK EXCHANGE-LISTED SHARES, OR, IF SUCH SHARES ARE NOT QUOTED
21 ON SUCH COMPOSITE TAPE OR IF SUCH SHARES ARE NOT LISTED ON SUCH
22 EXCHANGE, ON THE PRINCIPAL UNITED STATES SECURITIES EXCHANGE
23 REGISTERED UNDER THE EXCHANGE ACT ON WHICH SUCH SHARES ARE
24 LISTED, OR, IF SUCH SHARES ARE NOT LISTED ON ANY SUCH EXCHANGE,
25 THE HIGHEST CLOSING BID QUOTATION WITH RESPECT TO SUCH A SHARE
26 DURING THE THIRTY-DAY PERIOD PRECEDING THE DATE IN QUESTION ON
27 THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC. AUTOMATED
28 QUOTATIONS SYSTEM OR ANY SYSTEM THEN IN USE, OR IF NO SUCH
29 QUOTATIONS ARE AVAILABLE, THE FAIR MARKET VALUE ON THE DATE IN
30 QUESTION OF SUCH A SHARE AS DETERMINED BY THE BOARD OF DIRECTORS

OF SUCH BUSINESS CORPORATION IN GOOD FAITH; AND

(II) IN THE CASE OF PROPERTY OTHER THAN CASH OR SHARES, THE
FAIR MARKET VALUE OF SUCH PROPERTY ON THE DATE IN QUESTION AS
DETERMINED BY THE BOARD OF DIRECTORS OF SUCH BUSINESS
CORPORATION IN GOOD FAITH.

(13) "PREFERRED SHARES" MEANS ANY CLASS OR SERIES OF SHARES
OF A BUSINESS CORPORATION WHICH, UNDER THE BYLAWS OR ARTICLES OF
SUCH BUSINESS CORPORATION, IS ENTITLED TO RECEIVE PAYMENT OF
DIVIDENDS PRIOR TO ANY PAYMENT OF DIVIDENDS ON SOME OTHER CLASS
OR SERIES OF SHARES, OR IS ENTITLED IN THE EVENT OF ANY
VOLUNTARY LIQUIDATION, DISSOLUTION OR WINDING UP OF THE BUSINESS
CORPORATION TO RECEIVE PAYMENT OR DISTRIBUTION OF A PREFERENTIAL
AMOUNT BEFORE ANY PAYMENTS OR DISTRIBUTIONS ARE RECEIVED BY SOME
OTHER CLASS OR SERIES OF SHARES.

(14) "SHARES" MEANS:

(I) ANY SHARES OR SIMILAR SECURITY, ANY CERTIFICATE OF
INTEREST, ANY PARTICIPATION IN ANY PROFIT-SHARING AGREEMENT, ANY
VOTING TRUST CERTIFICATE, OR ANY CERTIFICATE OF DEPOSIT FOR
SHARES; AND

(II) ANY SECURITY CONVERTIBLE, WITH OR WITHOUT
CONSIDERATION, INTO SHARES, OR ANY OPTION RIGHT, CONVERSION
RIGHT OR PRIVILEGE OF BUYING SHARES WITHOUT BEING BOUND TO DO
SO, OR ANY OTHER SECURITY CARRYING ANY RIGHT TO ACQUIRE,
SUBSCRIBE TO OR PURCHASE SHARES.

(15) "SHARE ACQUISITION DATE" WITH RESPECT TO ANY PERSON AND
ANY BUSINESS CORPORATION, MEANS THE DATE THAT SUCH PERSON FIRST
BECOMES AN INTERESTED SHAREHOLDER OF SUCH BUSINESS CORPORATION.

(16) "SUBSIDIARY" MEANS ANY CORPORATION AS TO WHICH ANY
OTHER CORPORATION IS THE BENEFICIAL OWNER, DIRECTLY OR
INDIRECTLY, OF SHARES OF SUCH FIRST CORPORATION THAT WOULD

1 ENTITLED SUCH OTHER CORPORATION TO CAST IN EXCESS OF FIFTY PER
2 CENT OF THE VOTES THAT ALL SHAREHOLDERS WOULD BE ENTITLED TO
3 CAST IN THE ELECTION OF DIRECTORS OF SUCH FIRST CORPORATION.

4 (17) "VOTING SHARES" MEANS SHARES OF A CORPORATION ENTITLED
5 TO VOTE GENERALLY IN THE ELECTION OF DIRECTORS.

6 B. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN
7 THIS ACT (EXCEPT THE PROVISIONS OF SUBSECTION C OF THIS
8 SECTION), NO BUSINESS CORPORATION SHALL ENGAGE AT ANY TIME IN
9 ANY BUSINESS COMBINATION WITH ANY INTERESTED SHAREHOLDER OF SUCH
10 BUSINESS CORPORATION OTHER THAN A BUSINESS COMBINATION SPECIFIED
11 IN ANY ONE OF CLAUSES (1), (2), (3) OR (4) OF THIS SUBSECTION:

12 (1) A BUSINESS COMBINATION APPROVED BY THE BOARD OF
13 DIRECTORS OF SUCH BUSINESS CORPORATION PRIOR TO SUCH INTERESTED
14 SHAREHOLDER'S SHARE ACQUISITION DATE, OR WHERE THE PURCHASE OF
15 SHARES MADE BY SUCH INTERESTED SHAREHOLDER ON SUCH INTERESTED
16 SHAREHOLDER'S SHARE ACQUISITION DATE HAD BEEN APPROVED BY THE
17 BOARD OF DIRECTORS OF SUCH BUSINESS CORPORATION PRIOR TO SUCH
18 INTERESTED SHAREHOLDER'S SHARE ACQUISITION DATE.

19 (2) A BUSINESS COMBINATION APPROVED (I) BY THE AFFIRMATIVE
20 VOTE OF THE HOLDERS OF SHARES ENTITLING SUCH HOLDERS TO CAST A
21 MAJORITY OF THE VOTES THAT ALL SHAREHOLDERS WOULD BE ENTITLED TO
22 CAST IN AN ELECTION OF DIRECTORS OF SUCH BUSINESS CORPORATION,
23 NOT INCLUDING ANY VOTING SHARES BENEFICIALLY OWNED BY SUCH
24 INTERESTED SHAREHOLDER OR ANY AFFILIATE OR ASSOCIATE OF SUCH
25 INTERESTED SHAREHOLDER, AT A MEETING CALLED FOR SUCH PURPOSE NO
26 EARLIER THAN THREE MONTHS AFTER SUCH INTERESTED SHAREHOLDER
27 BECAME, AND PROVIDED THAT AT THE TIME OF SUCH MEETING SUCH
28 INTERESTED SHAREHOLDER IS, THE BENEFICIAL OWNER, DIRECTLY OR
29 INDIRECTLY, OF SHARES ENTITLING SUCH INTERESTED SHAREHOLDER TO
30 CAST AT LEAST EIGHTY PER CENT OF THE VOTES THAT ALL SHAREHOLDERS

1 WOULD BE ENTITLED TO CAST IN AN ELECTION OF DIRECTORS OF THE
2 CORPORATION, AND PROVIDED THAT SUCH BUSINESS COMBINATION
3 SATISFIES ALL THE CONDITIONS OF SUBCLAUSES (I) THROUGH (V) OF
4 CLAUSE (4) OF SUBSECTION B OR (II) BY THE AFFIRMATIVE VOTE OF
5 ALL OF THE HOLDERS OF ALL OF THE OUTSTANDING COMMON SHARES.

6 (3) A BUSINESS COMBINATION APPROVED BY THE AFFIRMATIVE VOTE
7 OF THE HOLDERS OF SHARES ENTITLING SUCH HOLDERS TO CAST A
8 MAJORITY OF THE VOTES THAT ALL SHAREHOLDERS WOULD BE ENTITLED TO
9 CAST IN AN ELECTION OF DIRECTORS OF SUCH BUSINESS CORPORATION,
10 NOT INCLUDING ANY VOTING SHARES BENEFICIALLY OWNED BY SUCH
11 INTERESTED SHAREHOLDER OR ANY AFFILIATE OR ASSOCIATE OF SUCH
12 INTERESTED SHAREHOLDER, AT A MEETING CALLED FOR SUCH PURPOSE NO
13 EARLIER THAN FIVE YEARS AFTER SUCH INTERESTED SHAREHOLDER'S
14 SHARE ACQUISITION DATE.

15 (4) A BUSINESS COMBINATION APPROVED AT A SHAREHOLDERS'
16 MEETING CALLED FOR SUCH PURPOSE NO EARLIER THAN FIVE YEARS AFTER
17 SUCH INTERESTED SHAREHOLDER'S SHARE ACQUISITION DATE THAT MEETS
18 ALL OF THE FOLLOWING CONDITIONS:

19 (I) THE AGGREGATE AMOUNT OF THE CASH AND THE MARKET VALUE AS
20 OF THE CONSUMMATION DATE OF CONSIDERATION OTHER THAN CASH TO BE
21 RECEIVED PER SHARE BY HOLDERS OF OUTSTANDING COMMON SHARES OF
22 SUCH BUSINESS CORPORATION IN SUCH BUSINESS COMBINATION IS AT
23 LEAST EQUAL TO THE HIGHER OF THE FOLLOWING:

24 (A) THE HIGHEST PER SHARE PRICE PAID BY SUCH INTERESTED
25 SHAREHOLDER AT A TIME WHEN HE WAS THE BENEFICIAL OWNER, DIRECTLY
26 OR INDIRECTLY, OF SHARES ENTITLING THAT PERSON TO CAST AT LEAST
27 FIVE PER CENT OF THE VOTES THAT ALL SHAREHOLDERS WOULD BE
28 ENTITLED TO CAST IN AN ELECTION OF DIRECTORS OF SUCH BUSINESS
29 CORPORATION, FOR ANY COMMON SHARES OF THE SAME CLASS OR SERIES
30 ACQUIRED BY IT (I) WITHIN THE FIVE-YEAR PERIOD IMMEDIATELY PRIOR

1 TO THE ANNOUNCEMENT DATE WITH RESPECT TO SUCH BUSINESS
2 COMBINATION, OR (II) WITHIN THE FIVE-YEAR PERIOD IMMEDIATELY
3 PRIOR TO, OR IN, THE TRANSACTION IN WHICH SUCH INTERESTED
4 SHAREHOLDER BECAME AN INTERESTED SHAREHOLDER, WHICHEVER IS
5 HIGHER; PLUS, IN EITHER CASE, INTEREST COMPOUNDED ANNUALLY FROM
6 THE EARLIEST DATE ON WHICH SUCH HIGHEST PER SHARE ACQUISITION
7 PRICE WAS PAID THROUGH THE CONSUMMATION DATE AT THE RATE FOR ONE
8 YEAR UNITED STATES TREASURY OBLIGATIONS FROM TIME TO TIME IN
9 EFFECT; LESS THE AGGREGATE AMOUNT OF ANY CASH DIVIDENDS PAID,
10 AND THE MARKET VALUE OF ANY DIVIDENDS PAID OTHER THAN IN CASH,
11 PER COMMON SHARE SINCE SUCH EARLIEST DATE, UP TO THE AMOUNT OF
12 SUCH INTEREST; AND

13 (B) THE MARKET VALUE PER COMMON SHARE ON THE ANNOUNCEMENT
14 DATE WITH RESPECT TO SUCH BUSINESS COMBINATION OR ON SUCH
15 INTERESTED SHAREHOLDER'S SHARE ACQUISITION DATE, WHICHEVER IS
16 HIGHER; PLUS INTEREST COMPOUNDED ANNUALLY FROM SUCH DATE THROUGH
17 THE CONSUMMATION DATE AT THE RATE FOR ONE-YEAR UNITED STATES
18 TREASURY OBLIGATIONS FROM TIME TO TIME IN EFFECT; LESS THE
19 AGGREGATE AMOUNT OF ANY CASH DIVIDENDS PAID, AND THE MARKET
20 VALUE OF ANY DIVIDENDS PAID OTHER THAN IN CASH, PER COMMON SHARE
21 SINCE SUCH DATE, UP TO THE AMOUNT OF SUCH INTEREST.

22 (II) THE AGGREGATE AMOUNT OF THE CASH AND THE MARKET VALUE
23 AS OF THE CONSUMMATION DATE OF CONSIDERATION OTHER THAN CASH TO
24 BE RECEIVED PER SHARE BY HOLDERS OF OUTSTANDING SHARES OF ANY
25 CLASS OR SERIES OF SHARES, OTHER THAN COMMON SHARES, OF SUCH
26 BUSINESS CORPORATION IS AT LEAST EQUAL TO THE HIGHEST OF THE
27 FOLLOWING (WHETHER OR NOT SUCH INTERESTED SHAREHOLDER HAS
28 PREVIOUSLY ACQUIRED ANY SHARES OF SUCH CLASS OR SERIES OF
29 SHARES):

30 (A) THE HIGHEST PER SHARE PRICE PAID BY SUCH INTERESTED

1 SHAREHOLDER AT A TIME WHEN HE WAS THE BENEFICIAL OWNER, DIRECTLY
2 OR INDIRECTLY, OF SHARES ENTITLING SUCH PERSON TO CAST AT LEAST
3 FIVE PER CENT OF THE VOTES THAT ALL SHAREHOLDERS WOULD BE
4 ENTITLED TO CAST IN AN ELECTION OF DIRECTORS OF SUCH BUSINESS
5 CORPORATION, FOR ANY SHARES OF SUCH CLASS OR SERIES OF SHARES
6 ACQUIRED BY IT (I) WITHIN THE FIVE-YEAR PERIOD IMMEDIATELY PRIOR
7 TO THE ANNOUNCEMENT DATE WITH RESPECT TO SUCH BUSINESS
8 COMBINATION, OR (II) WITHIN THE FIVE-YEAR PERIOD IMMEDIATELY
9 PRIOR TO, OR IN, THE TRANSACTION IN WHICH SUCH INTERESTED
10 SHAREHOLDER BECAME AN INTERESTED SHAREHOLDER, WHICHEVER IS
11 HIGHER; PLUS, IN EITHER CASE, INTEREST COMPOUNDED ANNUALLY FROM
12 THE EARLIEST DATE ON WHICH SUCH HIGHEST PER SHARE ACQUISITION
13 PRICE WAS PAID THROUGH THE CONSUMMATION DATE AT THE RATE FOR ONE
14 YEAR UNITED STATES TREASURY OBLIGATIONS FROM TIME TO TIME IN
15 EFFECT; LESS THE AGGREGATE AMOUNT OF ANY CASH DIVIDENDS PAID,
16 AND THE MARKET VALUE OF ANY DIVIDENDS PAID OTHER THAN IN CASH,
17 PER SHARE OF SUCH CLASS OR SERIES OF SHARES SINCE SUCH EARLIEST
18 DATE, UP TO THE AMOUNT OF SUCH INTEREST;

19 (B) THE HIGHEST PREFERENTIAL AMOUNT PER SHARE TO WHICH THE
20 HOLDERS OF SHARES OF SUCH CLASS OR SERIES OF SHARES ARE ENTITLED
21 IN THE EVENT OF ANY VOLUNTARY LIQUIDATION, DISSOLUTION OR
22 WINDING UP OF SUCH BUSINESS CORPORATION, PLUS THE AGGREGATE
23 AMOUNT OF ANY DIVIDENDS DECLARED OR DUE AS TO WHICH SUCH HOLDERS
24 ARE ENTITLED PRIOR TO PAYMENT OF DIVIDENDS ON SOME OTHER CLASS
25 OR SERIES OF SHARES (UNLESS THE AGGREGATE AMOUNT OF SUCH
26 DIVIDENDS IS INCLUDED IN SUCH PREFERENTIAL AMOUNT); AND

27 (C) THE MARKET VALUE PER SHARE OF SUCH CLASS OR SERIES OF
28 SHARES ON THE ANNOUNCEMENT DATE WITH RESPECT TO SUCH BUSINESS
29 COMBINATION OR ON SUCH INTERESTED SHAREHOLDER'S SHARE
30 ACQUISITION DATE, WHICHEVER IS HIGHER; PLUS INTEREST COMPOUNDED

1 ANNUALLY FROM SUCH DATE THROUGH THE CONSUMMATION DATE AT THE
2 RATE FOR ONE YEAR UNITED STATES TREASURY OBLIGATIONS FROM TIME
3 TO TIME IN EFFECT; LESS THE AGGREGATE AMOUNT OF ANY CASH
4 DIVIDENDS PAID AND THE MARKET VALUE OF ANY DIVIDENDS PAID OTHER
5 THAN IN CASH, PER SHARE OF SUCH CLASS OR SERIES OF SHARES SINCE
6 SUCH DATE, UP TO THE AMOUNT OF SUCH INTEREST.

7 (III) THE CONSIDERATION TO BE RECEIVED BY HOLDERS OF A
8 PARTICULAR CLASS OR SERIES OF OUTSTANDING SHARES (INCLUDING
9 COMMON SHARES) OF SUCH BUSINESS CORPORATION IN SUCH BUSINESS
10 COMBINATION IS IN CASH OR IN THE SAME FORM AS THE INTERESTED
11 SHAREHOLDER HAS USED TO ACQUIRE THE LARGEST NUMBER OF SHARES OF
12 SUCH CLASS OR SERIES OF SHARES PREVIOUSLY ACQUIRED BY IT, AND
13 SUCH CONSIDERATION SHALL BE DISTRIBUTED PROMPTLY.

14 (IV) THE HOLDERS OF ALL OUTSTANDING SHARES OF SUCH BUSINESS
15 CORPORATION NOT BENEFICIALLY OWNED BY SUCH INTERESTED
16 SHAREHOLDER IMMEDIATELY PRIOR TO THE CONSUMMATION OF SUCH
17 BUSINESS COMBINATION ARE ENTITLED TO RECEIVE IN SUCH BUSINESS
18 COMBINATION CASH OR OTHER CONSIDERATION FOR SUCH SHARES IN
19 COMPLIANCE WITH SUBCLAUSES (I), (II) AND (III) OF CLAUSE (4) OF
20 SUBSECTION B.

21 (V) AFTER SUCH INTERESTED SHAREHOLDER'S SHARE ACQUISITION
22 DATE AND PRIOR TO THE CONSUMMATION DATE WITH RESPECT TO SUCH
23 BUSINESS COMBINATION, SUCH INTERESTED SHAREHOLDER HAS NOT BECOME
24 THE BENEFICIAL OWNER OF ANY ADDITIONAL VOTING SHARES OF SUCH
25 BUSINESS CORPORATION EXCEPT:

26 (A) AS PART OF THE TRANSACTION WHICH RESULTED IN SUCH
27 INTERESTED SHAREHOLDER BECOMING AN INTERESTED SHAREHOLDER;

28 (B) BY VIRTUE OF PROPORTIONATE SPLITS OF SHARES, SHARE
29 DIVIDENDS OR OTHER DISTRIBUTIONS OF SHARES IN RESPECT OF SHARES
30 NOT CONSTITUTING A BUSINESS COMBINATION UNDER SUBCLAUSE (V) OF

1 CLAUSE (5) OF SUBSECTION A;

2 (C) THROUGH A BUSINESS COMBINATION MEETING ALL OF THE
3 CONDITIONS OF CLAUSES (1), (2), (3) OR (4) OF SUBSECTION B;

4 (D) THROUGH PURCHASE BY SUCH INTERESTED SHAREHOLDER AT ANY
5 PRICE WHICH, IF SUCH PRICE HAD BEEN PAID IN AN OTHERWISE
6 PERMISSIBLE BUSINESS COMBINATION THE ANNOUNCEMENT DATE AND
7 CONSUMMATION DATE OF WHICH WERE THE DATE OF SUCH PURCHASE, WOULD
8 HAVE SATISFIED THE REQUIREMENTS OF SUBCLAUSES (I), (II) AND
9 (III) OF CLAUSE (4) OF SUBSECTION B; OR

10 (E) THROUGH PURCHASE REQUIRED BY AND PURSUANT TO THE
11 PROVISIONS OF, AND AT NO LESS THAN THE FAIR VALUE (INCLUDING
12 INTEREST TO THE DATE OF PAYMENT) AS DETERMINED BY A COURT-
13 APPOINTED APPRAISER UNDER CLAUSE (2) OF SUBSECTION E OF SECTION
14 910 OF THIS ACT (OR IF SUCH FAIR VALUE WAS NOT THEN SO
15 DETERMINED, THEN AT A PRICE THAT WOULD SATISFY THE CONDITIONS IN
16 THE PRECEDING PARAGRAPH (D)).

17 C. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY:

18 (1) TO ANY BUSINESS COMBINATION OF A BUSINESS CORPORATION
19 THAT DOES NOT HAVE A CLASS OF VOTING SHARES REGISTERED UNDER THE
20 EXCHANGE ACT; OR

21 (2) TO ANY BUSINESS COMBINATION OF A BUSINESS CORPORATION
22 WHOSE ARTICLES HAVE BEEN AMENDED TO PROVIDE THAT SUCH BUSINESS
23 CORPORATION SHALL BE SUBJECT TO THE PROVISIONS OF THIS SECTION,
24 WHICH DID NOT HAVE A CLASS OF VOTING SHARES REGISTERED UNDER THE
25 EXCHANGE ACT ON THE EFFECTIVE DATE OF SUCH AMENDMENT, AND WHICH
26 IS A BUSINESS COMBINATION WITH AN INTERESTED SHAREHOLDER WHOSE
27 SHARE ACQUISITION DATE IS PRIOR TO THE EFFECTIVE DATE OF SUCH
28 AMENDMENT; OR

29 (3) TO ANY BUSINESS COMBINATION OF A BUSINESS CORPORATION
30 (I) THE BYLAWS OF WHICH, BY AMENDMENT ADOPTED WITHIN NINETY DAYS

1 OF THE DATE OF ENACTMENT OF THIS SECTION, AND NOT SUBSEQUENTLY
2 RESCINDED EITHER BY AN ARTICLE AMENDMENT OR BY A BYLAW AMENDMENT
3 APPROVED BY AT LEAST EIGHTY-FIVE PER CENT OF THE WHOLE BOARD OF
4 DIRECTORS, EXPLICITLY PROVIDE THAT THIS SECTION SHALL NOT BE
5 APPLICABLE TO THE CORPORATION OR (II) THE ARTICLES OF WHICH
6 EXPLICITLY PROVIDE THAT THIS SECTION SHALL NOT BE APPLICABLE TO
7 THE CORPORATION BY A PROVISION INCLUDED IN THE ORIGINAL
8 ARTICLES, OR BY AN ARTICLE AMENDMENT ADOPTED PURSUANT TO BOTH
9 (A) THE PROCEDURES THEN APPLICABLE TO THE CORPORATION AND (B)
10 THE AFFIRMATIVE VOTE OF THE HOLDERS, OTHER THAN INTERESTED
11 SHAREHOLDERS AND THEIR AFFILIATES AND ASSOCIATES, OF SHARES
12 ENTITLING SUCH HOLDERS TO CAST A MAJORITY OF THE VOTES THAT ALL
13 SHAREHOLDERS WOULD BE ENTITLED TO CAST IN AN ELECTION OF
14 DIRECTORS OF SUCH BUSINESS CORPORATION, EXCLUDING THE VOTING
15 SHARES OF INTERESTED SHAREHOLDERS AND THEIR AFFILIATES AND
16 ASSOCIATES, EXPRESSLY ELECTING NOT TO BE GOVERNED BY THIS
17 SECTION, PROVIDED THAT SUCH AMENDMENT TO THE ARTICLES SHALL NOT
18 BE EFFECTIVE UNTIL EIGHTEEN MONTHS AFTER SUCH VOTE OF SUCH
19 BUSINESS CORPORATION'S SHAREHOLDERS AND SHALL NOT APPLY TO ANY
20 BUSINESS COMBINATION OF SUCH BUSINESS CORPORATION WITH AN
21 INTERESTED SHAREHOLDER WHOSE SHARE ACQUISITION DATE IS ON OR
22 PRIOR TO THE EFFECTIVE DATE OF SUCH AMENDMENT; OR
23 (4) TO ANY BUSINESS COMBINATION OF A BUSINESS CORPORATION
24 WITH AN INTERESTED SHAREHOLDER OF SUCH BUSINESS CORPORATION
25 WHICH BECAME AN INTERESTED SHAREHOLDER INADVERTENTLY, IF SUCH
26 INTERESTED SHAREHOLDER (I) AS SOON AS PRACTICABLE, DIVESTS
27 ITSELF OF A SUFFICIENT AMOUNT OF THE VOTING SHARES OF SUCH
28 BUSINESS CORPORATION SO THAT IT NO LONGER IS THE BENEFICIAL
29 OWNER, DIRECTLY OR INDIRECTLY, OF SHARES ENTITLING SUCH PERSON
30 TO CAST AT LEAST TWENTY PER CENT OF THE VOTES THAT ALL

1 SHAREHOLDERS WOULD BE ENTITLED TO CAST IN AN ELECTION OF
2 DIRECTORS OF SUCH BUSINESS CORPORATION, AND (II) WOULD NOT AT
3 ANY TIME WITHIN THE FIVE-YEAR PERIOD PRECEDING THE ANNOUNCEMENT
4 DATE WITH RESPECT TO SUCH BUSINESS COMBINATION HAVE BEEN AN
5 INTERESTED SHAREHOLDER BUT FOR SUCH INADVERTENT ACQUISITION;

6 (5) TO ANY BUSINESS COMBINATION WITH AN INTERESTED
7 SHAREHOLDER WHO WAS THE BENEFICIAL OWNER, DIRECTLY OR
8 INDIRECTLY, OF SHARES ENTITLING SUCH PERSON TO CAST AT LEAST
9 FIFTEEN PER CENT OF THE VOTES THAT ALL SHAREHOLDERS WOULD BE
10 ENTITLED TO CAST IN AN ELECTION OF DIRECTORS OF SUCH BUSINESS
11 CORPORATION ON THE EFFECTIVE DATE OF THIS SECTION AND REMAIN SO
12 TO SUCH INTERESTED SHAREHOLDER'S SHARE ACQUISITION DATE; OR

13 (6) TO ANY BUSINESS CORPORATION THAT ON THE EFFECTIVE DATE
14 OF THIS SECTION IS A SUBSIDIARY OF ANY OTHER CORPORATION;
15 PROVIDED, HOWEVER, THAT A CORPORATION THAT IS A SUBSIDIARY ON
16 THE EFFECTIVE DATE OF THIS SECTION WILL NOT BE DEEMED TO CEASE
17 BEING A SUBSIDIARY SO LONG AS SUCH OTHER CORPORATION REMAINS A
18 CONTROLLING PERSON OR GROUP OF SUCH SUBSIDIARY WITHIN THE
19 MEANING OF SUBSECTION B OF SECTION 910 OF THIS ACT.

20 D. THE RIGHTS AND REMEDIES HEREIN PROVIDED SHALL BE IN
21 ADDITION TO, AND NOT IN LIEU OF, ANY OTHER RIGHTS OR REMEDIES
22 PROVIDED BY THIS ACT, THE ARTICLES OF THE CORPORATION, THE
23 BYLAWS OF THE CORPORATION, ANY SECURITIES, OPTION RIGHTS OR
24 OBLIGATIONS OF THE CORPORATION OR OTHERWISE.

25 SECTION 4. THIS ACT SHALL TAKE EFFECT IMMEDIATELY.