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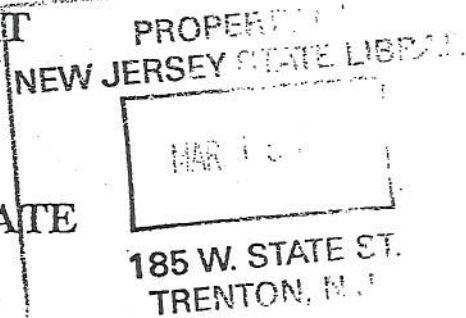
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1993 ANNUAL REPORT
OF THE
NEW JERSEY CORPORATE
AND



BUSINESS LAW STUDY COMMISSION
TO THE
GOVERNOR AND THE LEGISLATURE
OF THE
STATE OF NEW JERSEY

January 6, 1994

To: The Honorable James J. Florio, Governor,
the Honorable Donald T. DiFrancesco, President of the Senate,
and the Honorable Garabed Haytaian, Speaker of the Assembly.

The New Jersey Corporate and Business Law Study commission ("Commission") respectfully submits this Annual Report about its activities. The Commission was established in 1989 as a permanent part of the Legislative Branch by New Jersey Statutes Annotated 1:14-12. The Commission is charged with studying and reviewing statutes, legislation and decisions of the courts of New Jersey and other states relating to business entities, including business corporations, nonprofit corporations, partnerships and the issuance of ownership interests and securities and then with reporting annually to the Governor and the Legislature concerning its findings.

In accordance with that charge, we recommend that legislation be introduced in the next Session of the Legislature to address the following:

Revisions to NJSA 14A

A number of revisions to Title 14A should be made as follows:

1. 14A:1-2.1. Add a definition of "votes cast" to make sure that the total votes cast do not include abstentions, either where a ballot is submitted indicating "abstain" or where no ballot is submitted. In other words, votes cast include only votes cast in favor of or against a particular proposition. This is consistent with the case law. See Bank of New York Co. v. Irving Bank Corp., 531 N.Y.S. 2d 730 (Sup. Ct. 1988).

2. 14A:1-6(1)(b). Correct the cross-reference from subsection (1) to subsection (7).

3. 14A:1-10. Authorize the Secretary of State to accept all filings by telecopy. This can be done by deleting the words "except those requiring an original signature" at the end of subsection (1). Many states currently authorize filing documents by telecopy.

4. 14A:5-6(2); 14A:5-7. Amend the sections to make it clear that shareholders may act by a non-unanimous consent without prior board action to fix a record date and a "meeting" date if the nature of the action does not require prior board action (e.g., election of a director to fill a vacancy, removal of a director, or amendment of the by-laws). Compare the Delaware statutory provisions (Del. G.C.L. §§ 213(b), 228) and see Midway Airlines, Inc. v. Carlson, 628 F. Supp. 244 (D. Del. 1985), construing the Delaware statute.

5. 14A:5-29(1). Change the second sentence to read as follows: "The shareholders of corporations organized prior to January 1, 1969 shall have preemptive rights unless a by-law duly adopted by the shareholders prior to that date or the certificate of incorporation provides otherwise."

6. 14A:5-29(3)(ii). Delete reference to subsection 14A:7-7(2). That subsection was deleted by the 1988 amendments.

7. 14A:5-30. Add a new subsection (2) and renumber subsections (2) through (4) as (3) through (5), new subsection (2) to state:

"Unless otherwise provided in the articles of incorporation, a shareholder of a corporation is not personally liable for the acts of the corporation, except that he may become personally liable by the reason of his own acts or conduct."

This language would codify existing New Jersey case law dating from the Supreme Court decision in Salt Lake City National Bank v. Hendrickson 40 N.J.L. 52 (1878). The language is also consistent with the Revised Model Business Corporation Act developed by the American Bar Association.

8. 14A:6-14(3). Change the reference in the last line from "subsection (2) of N.J.S. 14A:2-7" to "subsection (3)."

9. 14A:7-15.1(2). This section should be clarified to prevent a misreading that would permit splits that adversely affect the shares of another class if the split is not accompanied by an amendment. (This problem did not exist before the 1988 amendments.)

10. 14A:7-16(1). Change the reference from "section 14A:7-14" to "section 14A7-14.1."

11. 14A:7-18(1). Change the date from January 1, 1987 to December 1, 1988. The date used in this section was supposed to be the effective date of the 1988 amendments. The January 1, 1987 date was an error.

12. 14A9-2(2). Delete the reference to subsection 14A7-6(4). That subsection was deleted by the 1988 amendments.

13. Add to Chapter 10 a provision allowing merger or consolidation with any New Jersey general partnership, limited

partnership or limited liability company and any similar entities formed under the laws of other jurisdictions if those other entities are empowered under their respective organizational statutes to engage in inter-entity mergers or consolidations.

This will facilitate inter-entity reformation. Although not dispositive of tax treatment it will simplify the mechanics of changing form.

14. 14A:10-5.1(3)(f). Correct the cross-references from "14A:10-4.1(1)(b) and 14A:10-4.1(1)(c)" to "14A:10-4.1(1)(d) and 14A:10-4.1(1)(e)."

15. 14A:11-11. This section should be amended to eliminate all references to stated capital, treasury shares, and surplus by making the following changes:

(a) Amend 14A:11-11(1) to read as follows:

"(1) The shares of a dissenting shareholder in a transaction described in ~~paragraph~~ 14A:11-1(1) shall become reacquired by the corporation which issued them or by the surviving corporation, as the case may be, upon the payment of the fair value of shares."

(b) Delete all of 14A:11-11(2).

(c) Amend 14A:11-11(3) by inserting "or section 14A:10-13" after "14A:10-9".

16. 14A:12-4(4). Change the words "the effective date of this act" to read "January 1, 1969". The same change was made to similar sections in the 1988 amendments. See, e.g., 14A:10-3(2).

17. 14A:12-8(c). Change 30 days to 90 days. Similar changes were made to other sections in the 1988 amendments. See, e.g., 14A:1-6(c), 14A:10-4.1(2).

18. Chapter 12. Amend all sections that involve a shareholder vote for dissolution to require all shareholders, including non-voting shareholders, to be notified. This requirement would parallel the shareholder notice requirements for mergers and sales of assets.

Revisions to N.S.J.S. 42:1 and 2A

We also recommend that legislation be enacted to amend both the Uniform Partnership Act and the Revised Uniform Limited Partnership Act to permit merger or consolidation with any New Jersey general partnership, limited partnership, limited liability company or business (Title 14A) corporation and any similar entities formed under the laws of other jurisdictions if those other entities are empowered under their respective organizational statutes to engage in cross-entity mergers or consolidations.

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We also recommend that legislation be enacted to amend Section 20 New Jersey's Limited Liability Company Act to clarify that the authority to merge or consolidate with other entities is dependent upon the existence of authority under the laws under which the other entity is organized.

This revision is consistent with the changes proposed for Titles 14A and 42:1 and 2A and also serves to prevent any effort


to rely on Section 20 to authorize a transaction involving a New Jersey non profit corporation organized under Title 15A, where the trustees are vested with particular statutory duties making such a transaction irresponsible.


Our Commission is now studying Title 15A to determine whether some inter-entity transactions are appropriate.

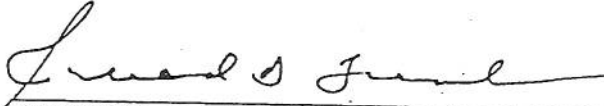
Conclusion

We appreciate the opportunities to serve our State and to address the laws relating to business entities and non-profit corporations. We hope this report is helpful to you and we look forward to assisting the Legislature as it may request in addressing the legislation we propose.

Respectfully submitted,


PETER D. HUTCHEON, Commissioner


WALTER J. FESSLER, Commissioner


RICHARD D. TRENK, Commissioner