§ 102. Contents of certificate of incorporation.
(a) The certificate of incorporation shall set forth:
(1) The name of the corporation, which (i) shall contain 1 of the words "association," "company," "corporation," "club," "foundation," "fund," "incorporated," "institute," "society," "union," "syndicate," or "limited," (or abbreviations thereof, with or without punctuation), or words (or abbreviations thereof, with or without punctuation) of like import of foreign countries or jurisdictions (provided they are written in roman characters or letters); provided, however, that the Division of Corporations in the Department of State may waive such requirement (unless it determines that such name is, or might otherwise appear to be, that of a natural person) if such corporation executes, acknowledges and files with the Secretary of State in accordance with § 103 of this title a certificate stating that its total assets, as defined in subsection (i) of § 503 of this title, are not less than $10,000,000, (ii) shall be such as to distinguish it upon the records in the office of the Division of Corporations in the Department of State from the names on such records of other corporations, partnerships, limited partnerships, limited liability companies or statutory trusts organized, reserved or registered as a foreign corporation, partnership, limited partnership, limited liability company or statutory trust under the laws of this State, except with the written consent of such other foreign corporation or domestic or foreign partnership, limited partnership, limited liability company or statutory trust executed, acknowledged and filed with the Secretary of State in accordance with § 103 of this title and (iii) shall not contain the word "bank," or any variation thereof, except for the name of a bank reporting to and under the supervision of the State Bank Commissioner of this State or a subsidiary of a bank or savings association (as those terms are defined in the Federal Deposit Insurance Act, as amended, at 12 U.S.C. § 1813), or a corporation regulated under the Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1841 et seq., or the Home Owners’ Loan Act, as amended, 12 U.S.C. § 1461 et seq.; provided, however, that this section shall not be construed to prevent the use of the word "bank," or any variation thereof, in a context clearly not purporting to refer to a banking business or otherwise likely to mislead the public about the nature of the business of the corporation or to lead to a pattern and practice of abuse that might cause harm to the interests of the public or the State as determined by the Division of Corporations in the Department of State;
(2) The address (which shall include the street, number, city and county) of the corporation's registered office in this State, and the name of its registered agent at such address;
(3) The nature of the business or purposes to be conducted or promoted. It shall be sufficient to state, either alone or with other businesses or purposes, that the purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware, and by such statement all lawful acts and activities shall be within the purposes of the corporation, except for express limitations, if any;
(4) If the corporation is to be authorized to issue only 1 class of stock, the total number of shares of stock which the corporation shall have authority to issue and the par value of each of such shares, or a statement that all such shares are to be without par value. If the corporation is to be authorized to issue more than 1 class of stock, the certificate of incorporation shall set forth the total number of shares of all classes of stock which the corporation shall have authority to issue and the number of shares of each class and shall specify each class the
shares of which are to be without par value and each class the shares of which are to have par value and the par value of the shares of each such class. The certificate of incorporation shall also set forth a statement of the designations and the powers, preferences and rights, and the qualifications, limitations or restrictions thereof, which are permitted by § 151 of this title in respect of any class or classes of stock or any series of any class of stock of the corporation and the fixing of which by the certificate of incorporation is desired, and an express grant of such authority as it may then be desired to grant to the board of directors to fix by resolution or resolutions any thereof that may be desired but which shall not be fixed by the certificate of incorporation. The foregoing provisions of this paragraph shall not apply to corporations which are not to have authority to issue capital stock. In the case of such corporations, the fact that they are not to have authority to issue capital stock shall be stated in the certificate of incorporation. The conditions of membership of such corporations shall likewise be stated in the certificate of incorporation or the certificate may provide that the conditions of membership shall be stated in the bylaws;

(5) The name and mailing address of the incorporator or incorporators;

(6) If the powers of the incorporator or incorporators are to terminate upon the filing of the certificate of incorporation, the names and mailing addresses of the persons who are to serve as directors until the first annual meeting of stockholders or until their successors are elected and qualify.

(b) In addition to the matters required to be set forth in the certificate of incorporation by subsection (a) of this section, the certificate of incorporation may also contain any or all of the following matters:

(1) Any provision for the management of the business and for the conduct of the affairs of the corporation, and any provision creating, defining, limiting and regulating the powers of the corporation, the directors, and the stockholders, or any class of the stockholders, or the members of a nonstock corporation; if such provisions are not contrary to the laws of this State. Any provision which is required or permitted by any section of this chapter to be stated in the bylaws may instead be stated in the certificate of incorporation;

(2) The following provisions, in haec verba, viz:

"Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them and/or between this corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this corporation under § 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this corporation under § 279 of Title 8 of the Delaware Code order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this corporation, as the case may be, and also on this corporation";

(3) Such provisions as may be desired granting to the holders of the stock of the corporation, or the holders of any class or series of a class thereof, the preemptive right to subscribe to any or all additional issues of stock of the corporation of any or all classes or series thereof, or to any securities of the corporation convertible into such stock. No stockholder shall have any preemptive right to subscribe to an additional issue of stock or to any security convertible into such stock unless, and except to the extent that, such right is expressly granted to such stockholder in the certificate of incorporation. All such rights in existence on July 3, 1967, shall remain in existence unaffected by this paragraph unless and until changed or terminated by appropriate action which expressly provides for the change or termination;
(4) Provisions requiring for any corporate action, the vote of a larger portion of the stock or of any class or series thereof, or of any other securities having voting power, or a larger number of the directors, than is required by this chapter;
(5) A provision limiting the duration of the corporation's existence to a specified date; otherwise, the corporation shall have perpetual existence;
(6) A provision imposing personal liability for the debts of the corporation on its stockholders or members to a specified extent and upon specified conditions; otherwise, the stockholders or members of a corporation shall not be personally liable for the payment of the corporation's debts except as they may be liable by reason of their own conduct or acts;
(7) A provision eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided that such provision shall not eliminate or limit the liability of a director: (i) For any breach of the director's duty of loyalty to the corporation or its stockholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (iii) under § 174 of this title; or (iv) for any transaction from which the director derived an improper personal benefit. No such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provision becomes effective. All references in this paragraph to a director shall also be deemed to refer (x) to a member of the governing body of a corporation which is not authorized to issue capital stock, and (y) to such other person or persons, if any, who, pursuant to a provision of the certificate of incorporation in accordance with § 141(a) of this title, exercise or perform any of the powers or duties otherwise conferred or imposed upon the board of directors by this title.
(c) It shall not be necessary to set forth in the certificate of incorporation any of the powers conferred on corporations by this chapter.
(d) Except for provisions included pursuant to subdivisions (a)(1), (a)(2), (a)(5), (a)(6), (b)(2), (b)(5), (b)(7) of this section, and provisions included pursuant to subdivision (a)(4) of this section specifying the classes, number of shares, and par value of shares the corporation is authorized to issue, any provision of the certificate of incorporation may be made dependent upon facts ascertainable outside such instrument, provided that the manner in which such facts shall operate upon the provision is clearly and explicitly set forth therein. The term "facts," as used in this subsection, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation. (8 Del. C. 1953, § 102; 56 Del. Laws, c. 50; 57 Del. Laws, c. 148, § 1; 65 Del. Laws, c. 127, § 1; 65 Del. Laws, c. 289, §§ 1, 2; 66 Del. Laws, c. 136, § 1; 66 Del. Laws, c. 352, § 1; 67 Del. Laws, c. 376, § 1; 69 Del. Laws, c. 61, § 1; 70 Del. Laws, c. 79, §§ 1-3; 71 Del. Laws, c. 120, § 1; 71 Del. Laws, c. 339, § 2; 72 Del. Laws, c. 123, § 1; 72 Del. Laws, c. 343, § 1; 73 Del. Laws, c. 82, § 1; 73 Del. Laws, c. 329, § 43; 74 Del. Laws, c. 326, § 1.)

§ 103. Execution, acknowledgment, filing, recording and effective date of original certificate of incorporation and other instruments; exceptions.
(a) Whenever any instrument is to be filed with the Secretary of State or in accordance with this section or chapter, such instrument shall be executed as follows:
(1) The certificate of incorporation, and any other instrument to be filed before the election of the initial board of directors if the initial directors were not named in the certificate of incorporation, shall be signed by the incorporator or incorporators (or, in the case of any such other instrument, such incorporator's or incorporators' successors and assigns). If any incorporator is not available by reason of death, incapacity, unknown address, or refusal or neglect to act, then any such other instrument may be signed, with the same effect as if such incorporator had signed it, by any person for whom or on whose behalf such incorporator, in executing the certificate of incorporation, was acting directly or indirectly as employee or agent, provided that such other instrument shall state that such incorporator is not available and the reason therefor, that such incorporator in executing the certificate of incorporation was acting directly or indirectly as employee or agent for or on behalf of such person, and that such person's signature on such instrument is otherwise authorized and not wrongful.
(2) All other instruments shall be signed:
a. By any authorized officer of the corporation; or
b. If it shall appear from the instrument that there are no such officers, then by a majority of
the directors or by such directors as may be designated by the board; or
c. If it shall appear from the instrument that there are no such officers or directors, then by the
holders of record, or such of them as may be designated by the holders of record, of a
majority of all outstanding shares of stock; or
d. By the holders of record of all outstanding shares of stock.

(b) Whenever this chapter requires any instrument to be acknowledged, such requirement is
satisfied by either:

(1) The formal acknowledgment by the person or 1 of the persons signing the instrument that
it is such person's act and deed or the act and deed of the corporation, and that the facts stated
therein are true. Such acknowledgment shall be made before a person who is authorized by
the law of the place of execution to take acknowledgments of deeds. If such person has a seal
of office such person shall affix it to the instrument.

(2) The signature, without more, of the person or persons signing the instrument, in which
case such signature or signatures shall constitute the affirmation or acknowledgment of the
signatory, under penalties of perjury, that the instrument is such person's act and deed or the
act and deed of the corporation, and that the facts stated therein are true.

c) Whenever any instrument is to be filed with the Secretary of State or in accordance with
this section or chapter, such requirement means that:

(1) The signed instrument shall be delivered to the office of the Secretary of State;

(2) All taxes and fees authorized by law to be collected by the Secretary of State in
connection with the filing of the instrument shall be tendered to the Secretary of State; and

(3) Upon delivery of the instrument, the Secretary of State shall record the date and time of its
delivery. Upon such delivery and tender of the required taxes and fees, the Secretary of State
shall certify that the instrument has been filed in the Secretary of State's office by endorsing
upon the signed instrument the word "Filed", and the date and time of its filing. This
endorsement is the "filing date" of the instrument, and is conclusive of the date and time of its
filing in the absence of actual fraud. The Secretary of State shall file and index the endorsed
instrument. Except as provided in paragraph (4) of this subsection and in subsection (i) of this
section, such filing date of an instrument shall be the date and time of delivery of the
instrument.

(4) Upon request made upon or prior to delivery, the Secretary of State may, to the extent
deemed practicable, establish as the filing date of an instrument a date and time after its
delivery. If the Secretary of State refuses to file any instrument due to an error, omission or
other imperfection, the Secretary of State may hold such instrument in suspension, and in
such event, upon delivery of a replacement instrument in proper form for filing and tender of
the required taxes and fees within 5 business days after notice of such suspension is given to
the filer, the Secretary of State shall establish as the filing date of such instrument the date and
time that would have been the filing date of the rejected instrument had it been accepted for
filing. The Secretary of State shall not issue a certificate of good standing with respect to any
corporation with an instrument held in suspension pursuant to this subsection. The Secretary
of State may establish as the filing date of an instrument the date and time at which
information from such instrument is entered pursuant to subdivision (c)(7) of this section if
such instrument is delivered on the same date and within 4 hours after such information is
entered.

(5) The Secretary of State, acting as agent for the recorders of each of the counties, shall
collect and deposit in a separate account established exclusively for that purpose a county
assessment fee with respect to each filed instrument and shall thereafter weekly remit from
such account to the recorder of each of the said counties the amount or amounts of such fees
as provided for in subdivision (c)(5) of this section or as elsewhere provided by law. Said fees
shall be for the purposes of defraying certain costs incurred by the counties in merging the
information and images of such filed documents with the document information systems of
each of the recorder’s offices in the counties and in retrieving, maintaining and displaying
such information and images in the offices of the recorders and at remote locations in each of
such counties. In consideration for its acting as the agent for the recorders with respect to the
collection and payment of the county assessment fees, the Secretary of State shall retain and
pay over to the General Fund of the State an administrative charge of 1 percent of the total
fees collected.

(6) The assessment fee to the counties shall be $24 for each 1-page instrument filed with the
Secretary of State in accordance with this section and $9 for each additional page for
instruments with more than 1 page. The recorder's office to receive the assessment fee shall
be the recorder's office in the county in which the corporation's registered office in this State
is, or is to be, located, except that an assessment fee shall not be charged for either a
certificate of dissolution qualifying for treatment under § 391(a)(5)b. of this title or a
document filed in accordance with Subchapter XV of this chapter.

(7) The Secretary of State, acting as agent, shall collect and deposit in a separate account
established exclusively for that purpose a courthouse municipality fee with respect to each
filed instrument and shall thereafter monthly remit funds from such account to the treasuries
of the municipalities designated in § 301 of Title 10. Said fees shall be for the purposes of
defraying certain costs incurred by such municipalities in hosting the primary locations for the
Delaware Courts. The fee to such municipalities shall be $20 for each instrument filed with
the Secretary of State in accordance with this section. The municipality to receive the fee
shall be the municipality designated in § 301 of Title 10 in the county in which the corporation's
registered office in this State is, or is to be, located, except that a fee shall not be charged for a
certificate of dissolution qualifying for treatment under § 391(a)(5)b. of this title, a
resignation of agent without appointment of a successor under § 136 of this title, or a
document filed in accordance with Subchapter XV of this chapter.

(8) The Secretary of State shall cause to be entered such information from each instrument as
the Secretary of State deems appropriate into the Delaware Corporation Information System
or any system which is a successor thereto in the office of the Secretary of State, and such
information and a copy of each such instrument shall be permanently maintained as a public
record on a suitable medium. The Secretary of State is authorized to grant direct access to
such system to registered agents subject to the execution of an operating agreement between
the Secretary of State and such registered agent. Any registered agent granted such access
shall demonstrate the existence of policies to ensure that information entered into the system
accurately reflects the content of instruments in the possession of the registered agent at the
time of entry.

(d) Any instrument filed in accordance with subsection (c) of this section shall be effective
upon its filing date. Any instrument may provide that it is not to become effective until a
specified time subsequent to the time it is filed, but such time shall not be later than a time on
the 90th day after the date of its filing. If any instrument filed in accordance with subsection
(c) of this section provides for a future effective date or time and if the transaction is
terminated or its terms are amended to change the future effective date or time prior to the
future effective date or time, the instrument shall be terminated or amended by the filing,
prior to the future effective date or time set forth in such instrument, of a certificate of
termination or amendment of the original instrument, executed in accordance with subsection
(a) of this section, which shall identify the instrument which has been terminated or amended
and shall state that the instrument has been terminated or the manner in which it has been
amended.

(e) If another section of this chapter specifically prescribes a manner of executing,
acknowledging or filing a specified instrument or a time when such instrument shall become
effective which differs from the corresponding provisions of this section, then such other
section shall govern.

(f) Whenever any instrument authorized to be filed with the Secretary of State under any
provision of this title, has been so filed and is an inaccurate record of the corporate action
therein referred to, or was defectively or erroneously executed, sealed or acknowledged, the
instrument may be corrected by filing with the Secretary of State a certificate of correction of
the instrument which shall be executed, acknowledged and filed in accordance with this
section. The certificate of correction shall specify the inaccuracy or defect to be corrected and
shall set forth the portion of the instrument in corrected form. In lieu of filing a certificate of correction the instrument may be corrected by filing with the Secretary of State a corrected instrument which shall be executed, acknowledged and filed in accordance with this section. The corrected instrument shall be specifically designated as such in its heading, shall specify the inaccuracy or defect to be corrected, and shall set forth the entire instrument in corrected form. An instrument corrected in accordance with this section shall be effective as of the date the original instrument was filed, except as to those persons who are substantially and adversely affected by the correction and as to those persons the instrument as corrected shall be effective from the filing date.

(g) Notwithstanding that any instrument authorized to be filed with the Secretary of State under this title is when filed inaccurately, defectively or erroneously executed, sealed or acknowledged, or otherwise defective in any respect, the Secretary of State shall have no liability to any person for the preclearance for filing, the acceptance for filing or the filing and indexing of such instrument by the Secretary of State.

(h) Any signature on any instrument authorized to be filed with the Secretary of State under this title may be a facsimile, a conformed signature or an electronically transmitted signature.

(i)(1) If:
   a. Together with the actual delivery of an instrument and tender of the required taxes and fees, there is delivered to the Secretary of State a separate affidavit (which in its heading shall be designated as an "affidavit of extraordinary condition") attesting, on the basis of personal knowledge of the affiant or a reliable source of knowledge identified in the affidavit, that an earlier effort to deliver such instrument and tender such taxes and fees was made in good faith, specifying the nature, date and time of such good faith effort and requesting that the Secretary of State establish such date and time as the filing date of such instrument; or
   b. Upon the actual delivery of an instrument and tender of the required taxes and fees, the Secretary of State in the Secretary’s discretion provides a written waiver of the requirement for such an affidavit stating that it appears to the Secretary of State that an earlier effort to deliver such instrument and tender such taxes and fees was made in good faith and specifying the date and time of such effort; and
   c. The Secretary of State determines that an extraordinary condition existed at such date and time, that such earlier effort was unsuccessful as a result of the existence of such extraordinary condition, and that such actual delivery and tender were made within a reasonable period (not to exceed 2 business days) after the cessation of such extraordinary condition,

then the Secretary of State may establish such date and time as the filing date of such instrument. No fee shall be paid to the Secretary of State for receiving an affidavit of extraordinary condition.

(2) For purposes of this subsection, an "extraordinary condition" means: any emergency resulting from an attack on, invasion or occupation by foreign military forces of, or disaster, catastrophe, war or other armed conflict, revolution or insurrection, or rioting or civil commotion in, the United States or a locality in which the Secretary of State conducts its business or in which the good faith effort to deliver the instrument and tender the required taxes and fees is made, or the immediate threat of any of the foregoing; or any malfunction or outage of the electrical or telephone service to the Secretary of State's office, or weather or other condition in or about a locality in which the Secretary of State conducts its business, as a result of which the Secretary of State's office is not open for the purpose of the filing of instruments under this chapter or such filing cannot be effected without extraordinary effort. The Secretary of State may require such proof as it deems necessary to make the determination required under paragraph (1) c. of this subsection, and any such determination shall be conclusive in the absence of actual fraud.

(3) If the Secretary of State establishes the filing date of an instrument pursuant to this subsection, the date and time of delivery of the affidavit of extraordinary condition or the date and time of the Secretary of State’s written waiver of such affidavit shall be endorsed on such affidavit or waiver and such affidavit or waiver, so endorsed, shall be attached to the filed instrument to which it relates. Such filed instrument shall be effective as of the date and time
§ 103. Affidavit of extraordinary condition; waiver; effective date.

established as the filing date by the Secretary of State pursuant to this subsection, except as to those persons who are substantially and adversely affected by such establishment and, as to those persons, the instrument shall be effective from the date and time endorsed on the affidavit of extraordinary condition or written waiver attached thereto. (8 Del. C. 1953, § 103; 56 Del. Laws, c. 50; 56 Del. Laws, c. 186, § 1; 57 Del. Laws, c. 148, § 2; 58 Del. Laws, c. 235, § 1; 64 Del. Laws, c. 112, § 2; 66 Del. Laws, c. 352, §§ 1, 2; 67 Del. Laws, c. 190, §§ 1-3; 68 Del. Laws, c. 211, §§ 1-4; 69 Del. Laws, c. 221, § 1; 69 Del. Laws, c. 235, §§ 1-3; 70 Del. Laws, c. 79, § 4; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 349, § 1; 70 Del. Laws, c. 587, §§ 2-6; 71 Del. Laws, c. 339, §§ 3-5; 72 Del. Laws, c. 343, § 2; 73 Del. Laws, c. 298, § 1; 74 Del. Laws, c. 9, §§ 1-7; 74 Del. Laws, c. 118, § 1.)

§ 104. Certificate of incorporation; definition.

The term “certificate of incorporation,” as used in this chapter, unless the context requires otherwise, includes not only the original certificate of incorporation filed to create a corporation but also all other certificates, agreements of merger or consolidation, plans of reorganization, or other instruments, however designated, which are filed pursuant to §§ 102, 133-136, 151, 241-243, 245, 251-258, 263-264, 303, or any other section of this title, and which have the effect of amending or supplementing in some respect a corporation’s original certificate of incorporation. (8 Del. C. 1953, § 104; 56 Del. Laws, c. 50; 67 Del. Laws, c. 376, § 2; 69 Del. Laws, c. 61, § 2.)

Subchapter V. Stock and Dividends

§ 151. Classes and series of stock; redemption; rights.

(a) Every corporation may issue 1 or more classes of stock or 1 or more series of stock within any class thereof, any or all of which classes may be of stock with par value or stock without par value and which classes or series may have such voting powers, full or limited, or no voting powers, and such designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, as shall be stated and expressed in the certificate of incorporation or of any amendment thereto, or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors pursuant to authority expressly vested in it by the provisions of its certificate of incorporation. Any of the voting powers, designations, preferences, rights and qualifications, limitations or restrictions of any such class or series of stock may be made dependent upon facts ascertainable outside the certificate of incorporation or of any amendment thereto, or outside the resolution or resolutions providing for the issue of such stock adopted by the board of directors pursuant to authority expressly vested in it by its certificate of incorporation, provided that the manner in which such facts shall operate upon the voting powers, designations, preferences, rights and qualifications, limitations or restrictions of such class or series of stock is clearly and expressly set forth in the certificate of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors. The term “facts,” as used in this subsection, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation. The power to increase or decrease or otherwise adjust the capital stock as provided in this chapter shall apply to all or any such classes of stock.

(b) Any stock of any class or series may be made subject to redemption by the corporation at its option or at the option of the holders of such stock or upon the happening of a specified event; provided however, that immediately following any such redemption the corporation shall have outstanding 1 or more shares of 1 or more classes or series of stock, which share, or shares together, shall have full voting powers. Notwithstanding the limitation stated in the foregoing proviso:

(1) Any stock of a regulated investment company registered under the Investment Company Act of 1940 ›15 U.S.C. § 80 a-1 et seq.|, as heretofore or hereafter amended, may be made
subject to redemption by the corporation at its option or at the option of the holders of such stock.

(2) Any stock of a corporation which holds (directly or indirectly) a license or franchise from a governmental agency to conduct its business or is a member of a national securities exchange, which license, franchise or membership is conditioned upon some or all of the holders of its stock possessing prescribed qualifications, may be made subject to redemption by the corporation to the extent necessary to prevent the loss of such license, franchise or membership or to reinstate it.

Any stock which may be made redeemable under this section may be redeemed for cash, property or rights, including securities of the same or another corporation, at such time or times, price or prices, or rate or rates, and with such adjustments, as shall be stated in the certificate of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors pursuant to subsection (a) of this section.

(c) The holders of preferred or special stock of any class or of any series thereof shall be entitled to receive dividends at such rates, on such conditions and at such times as shall be stated in the certificate of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as hereinabove provided, payable in preference to, or in such relation to, the dividends payable on any other class or classes or of any other series of stock, and cumulative or noncumulative as shall be so stated and expressed. When dividends upon the preferred and special stocks, if any, to the extent of the preference to which such stocks are entitled, shall have been paid or declared and set apart for payment, a dividend on the remaining class or classes or series of stock may then be paid out of the remaining assets of the corporation available for dividends as elsewhere in this chapter provided.

(d) The holders of the preferred or special stock of any class or of any series thereof shall be entitled to such rights upon the dissolution of, or upon any distribution of the assets of, the corporation as shall be stated in the certificate of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as hereinabove provided.

(e) Any stock of any class or of any series thereof may be made convertible into, or exchangeable for, at the option of either the holder or the corporation or upon the happening of a specified event, shares of any other class or classes or any other series of the same or any other class or classes of stock of the corporation, at such price or prices or at such rate or rates of exchange and with such adjustments as shall be stated in the certificate of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as hereinabove provided.

(f) If any corporation shall be authorized to issue more than 1 class of stock or more than 1 series of any class, the powers, designations, preferences and relative, participating, optional, or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the corporation shall issue to represent such class or series of stock, provided that, except as otherwise provided in § 202 of this title, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the corporation shall issue to represent such class or series of stock, a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional, or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to this section or § 156, 202(a) or 218(a) of this title or with respect to this section a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Except as otherwise expressly provided by law, the rights and
obligations of the holders of uncertificated stock and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

(g) When any corporation desires to issue any shares of stock of any class or of any series of any class of which the powers, designations, preferences and relative, participating, optional or other rights, if any, or the qualifications, limitations or restrictions thereof, if any, shall not have been set forth in the certificate of incorporation or in any amendment thereto but shall be provided for in a resolution or resolutions adopted by the board of directors pursuant to authority expressly vested in it by the certificate of incorporation or any amendment thereto, a certificate of designations setting forth a copy of such resolution or resolutions and the number of shares of stock of such class or series as to which the resolution or resolutions apply shall be executed, acknowledged, filed and shall become effective, in accordance with § 103 of this title. Unless otherwise provided in any such resolution or resolutions, the number of shares of stock of any such series to which such resolution or resolutions apply may be increased (but not above the total number of authorized shares of the class) or decreased (but not below the number of shares thereof then outstanding) by a certificate likewise executed, acknowledged and filed setting forth a statement that a specified increase or decrease therein had been authorized and directed by a resolution or resolutions likewise adopted by the board of directors. In case the number of such shares shall be decreased the number of shares so specified in the certificate shall resume the status which they had prior to the adoption of the first resolution or resolutions. When no shares of any such class or series are outstanding, either because none were issued or because no issued shares of any such class or series remain outstanding, a certificate setting forth a resolution or resolutions adopted by the board of directors that none of the authorized shares of such class or series are outstanding, and that none will be issued subject to the certificate of designations previously filed with respect to such class or series, may be executed, acknowledged and filed in accordance with § 103 of this title and, when such certificate becomes effective, it shall have the effect of eliminating from the certificate of incorporation all matters set forth in the certificate of designations with respect to such class or series of stock. Unless otherwise provided in the certificate of incorporation, if no shares of stock have been issued of a class or series of stock established by a resolution of the board of directors, the voting powers, designations, preferences and relative, participating, optional or other rights, if any, or the qualifications, limitations or restrictions thereof, may be amended by a resolution or resolutions adopted by the board of directors. A certificate which (1) states that no shares of the class or series have been issued, (2) sets forth a copy of the resolution or resolutions and (3) if the designation of the class or series is being changed, indicates the original designation and the new designation, shall be executed, acknowledged and filed and shall become effective, in accordance with § 103 of this title. When any certificate filed under this subsection becomes effective, it shall have the effect of amending the certificate of incorporation; except that neither the filing of such certificate nor the filing of a restated certificate of incorporation pursuant to § 245 of this title shall prohibit the board of directors from subsequently adopting such resolutions as authorized by this subsection. (8 Del. C. 1953, § 151; 56 Del. Laws, c. 50; 57 Del. Laws, c. 148, §§ 8, 9; 57 Del. Laws, c. 421, §§ 3, 4; 59 Del. Laws, c. 106, § 1; 64 Del. Laws, c. 112, §§ 8-10; 65 Del. Laws, c. 127, § 4; 66 Del. Laws, c. 136, § 4; 67 Del. Laws, c. 376, § 4; 69 Del. Laws, c. 264, § 1; 70 Del. Laws, c. 587, § 12; 71 Del. Laws, c. 339, § 18.)

§ 153. Consideration for stock.
(a) Shares of stock with par value may be issued for such consideration, having a value not less than the par value thereof, as determined from time to time by the board of directors, or by the stockholders if the certificate of incorporation so provides.
(b) Shares of stock without par value may be issued for such consideration as is determined from time to time by the board of directors, or by the stockholders if the certificate of incorporation so provides.
(c) Treasury shares may be disposed of by the corporation for such consideration as may be determined from time to time by the board of directors, or by the stockholders if the certificate of incorporation so provides.
(d) If the certificate of incorporation reserves to the stockholders the right to determine the consideration for the issue of any shares, the stockholders shall, unless the certificate requires a greater vote, do so by a vote of a majority of the outstanding stock entitled to vote thereon. (8 Del. C. 1953, § 153; 56 Del. Laws, c. 50; 57 Del. Laws, c. 148, § 10.)

§ 154. Determination of amount of capital; capital, surplus and net assets defined.
Any corporation may, by resolution of its board of directors, determine that only a part of the consideration which shall be received by the corporation for any of the shares of its capital stock which it shall issue from time to time shall be capital; but, in case any of the shares issued shall be shares having a par value, the amount of the part of such consideration so determined to be capital shall be in excess of the aggregate par value of the shares issued for such consideration having a par value, unless all the shares issued shall be shares having a par value, in which case the amount of the part of such consideration so determined to be capital need be only equal to the aggregate par value of such shares. In each such case the board of directors shall specify in dollars the part of such consideration which shall be capital. If the board of directors shall not have determined (1) at the time of issue of any shares of the capital stock of the corporation issued for cash or (2) within 60 days after the issue of any shares of the capital stock of the corporation issued for consideration other than cash what part of the consideration for such shares shall be capital, the capital of the corporation in respect of such shares shall be capital, the capital of the corporation in respect of such shares shall be an amount equal to the aggregate par value of such shares having a par value, plus the amount of the consideration for such shares without par value. The amount of the consideration so determined to be capital in respect of any shares without par value shall be the stated capital of such shares. The capital of the corporation may be increased from time to time by resolution of the board of directors directing that a portion of the net assets of the corporation in excess of the amount so determined to be capital be transferred to the capital account. The board of directors may direct that the portion of such net assets so transferred shall be treated as capital in respect of any shares of the corporation of any designated class or classes. The excess, if any, at any given time, of the net assets of the corporation over the amount so determined to be capital shall be surplus. Net assets means the amount by which total assets exceed total liabilities. Capital and surplus are not liabilities for this purpose. (8 Del. C. 1953, § 154; 56 Del. Laws, c. 50; 59 Del. Laws, c. 106, § 2; 74 Del. Laws, c. 326, § 4.)

§ 156. Partly paid shares.
Any corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly paid shares, or upon the books and records of the corporation in the case of uncertificated partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully paid shares, the corporation shall declare a dividend upon partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon. (8 Del. C. 1953, § 156; 56 Del. Laws, c. 50; 64 Del. Laws, c. 112, § 12.)

§ 158. Stock certificates; uncertificated shares.
The shares of a corporation shall be represented by certificates, provided that the board of directors of the corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Notwithstanding the adoption of such a resolution by the board of directors, every holder of stock represented by certificates and upon request every holder of uncertificated shares shall be entitled to have a certificate signed by, or in the name of the corporation by the chairperson or vice-chairperson of the board of directors, or the president or vice-president, and by the treasurer or an assistant treasurer, or the secretary or an assistant secretary of such corporation representing the number of shares registered in certificate form.
Any or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue. A corporation shall not have power to issue a certificate in bearer form. (8 Del. C. 1953, § 158; 56 Del. Laws, c. 50; 56 Del. Laws, c. 186, § 8; 58 Del. Laws, c. 235, § 2; 64 Del. Laws, c. 112, § 13; 71 Del. Laws, c. 339, § 19; 73 Del. Laws, c. 298, § 3.)

§ 160. Corporation’s powers respecting ownership, voting, etc., of its own stock; rights of stock called for redemption.
(a) Every corporation may purchase, redeem, receive, take or otherwise acquire, own and hold, sell, lend, exchange, transfer or otherwise dispose of, pledge, use and otherwise deal in and with its own shares; provided, however, that no corporation shall:
(1) Purchase or redeem its own shares of capital stock for cash or other property when the capital of the corporation is impaired or when such purchase or redemption would cause any impairment of the capital of the corporation, except that a corporation may purchase or redeem out of capital any of its own shares which are entitled upon any distribution of its assets, whether by dividend or in liquidation, to a preference over another class or series of its stock, or, if no shares entitled to such a preference are outstanding, any of its own shares, if such shares will be retired upon their acquisition and the capital of the corporation reduced in accordance with §§ 243 and 244 of this title. Nothing in this subsection shall invalidate or otherwise affect a note, debenture or other obligation of a corporation given by it as consideration for its acquisition by purchase, redemption or exchange of its shares of stock if at the time such note, debenture or obligation was delivered by the corporation its capital was not then impaired or did not thereby become impaired;
(2) Purchase, for more than the price at which they may then be redeemed, any of its shares which are redeemable at the option of the corporation; or
(3) Redeem any of its shares unless their redemption is authorized by subsection (b) of § 151 of this title and then only in accordance with such section and the certificate of incorporation.
(b) Nothing in this section limits or affects a corporation's right to resell any of its shares theretofore purchased or redeemed out of surplus and which have not been retired, for such consideration as shall be fixed by the board of directors.
(c) Shares of its own capital stock belonging to the corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the corporation, shall neither be entitled to vote nor be counted for quorum purposes. Nothing in this section shall be construed as limiting the right of any corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity.
(d) Shares which have been called for redemption shall not be deemed to be outstanding shares for the purpose of voting or determining the total number of shares entitled to vote on any matter on and after the date on which written notice of redemption has been sent to holders thereof and a sum sufficient to redeem such shares has been irrevocably deposited or set aside to pay the redemption price to the holders of the shares upon surrender of certificates therefor. (8 Del. C. 1953, § 160; 56 Del. Laws, c. 50; 57 Del. Laws, c. 649, § 1; 59 Del. Laws, c. 106, § 3; 59 Del. Laws, c. 437, § 9; 70 Del. Laws, c. 349, § 3.)

§ 161. Issuance of additional stock; when and by whom.
The directors may, at any time and from time to time, if all of the shares of capital stock which the corporation is authorized by its certificate of incorporation to issue have not been issued, subscribed for, or otherwise committed to be issued, issue or take subscriptions for additional shares of its capital stock up to the amount authorized in its certificate of incorporation. (8 Del. C. 1953, § 161; 56 Del. Laws, c. 50.)

§ 162. Liability of stockholder or subscriber for stock not paid in full.
(a) When the whole of the consideration payable for shares of a corporation has not been paid in, and the assets shall be insufficient to satisfy the claims of its creditors, each holder of or subscriber for such shares shall be bound to pay on each share held or subscribed for by such holder or subscriber the sum necessary to complete the amount of the unpaid balance of the consideration for which such shares were issued or are to be issued by the corporation.

(b) The amounts which shall be payable as provided in subsection (a) of this section may be recovered as provided in § 325 of this title, after a writ of execution against the corporation has been returned unsatisfied as provided in said § 325.

(c) Any person becoming an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid shall not be personally liable for any unpaid portion of such consideration, but the transferor shall remain liable therefor.

(d) No person holding shares in any corporation as collateral security shall be personally liable as a stockholder but the person pledging such shares shall be considered the holder thereof and shall be so liable. No executor, administrator, guardian, trustee or other fiduciary shall be personally liable as a stockholder, but the estate or funds held by such executor, administrator, guardian, trustee or other fiduciary in such fiduciary capacity shall be liable.

(e) No liability under this section or under § 325 of this title shall be asserted more than 6 years after the issuance of the stock or the date of the subscription upon which the assessment is sought.

(f) In any action by a receiver or trustee of an insolvent corporation or by a judgment creditor to obtain an assessment under this section, any stockholder or subscriber for stock of the insolvent corporation may appear and contest the claim or claims of such receiver or trustee.

(8 Del. C. 1953, § 162; 56 Del. Laws, c. 50; 71 Del. Laws, c. 339, § 20.)

§ 163. Payment for stock not paid in full.
The capital stock of a corporation shall be paid for in such amounts and at such times as the directors may require. The directors may, from time to time, demand payment, in respect of each share of stock not fully paid, of such sum of money as the necessities of the business may, in the judgment of the board of directors, require, not exceeding in the whole the balance remaining unpaid on said stock, and such sum so demanded shall be paid to the corporation at such times and by such installments as the directors shall direct. The directors shall give written notice of the time and place of such payments, which notice shall be mailed at least 30 days before the time when such payments are due, to each holder of or subscriber for stock which is not fully paid at such holder's or subscriber's last known post-office address. (8 Del. C. 1953, § 163; 56 Del. Laws, c. 50; 71 Del. Laws, c. 339, § 21.)

§ 164. Failure to pay for stock; remedies.
When any stockholder fails to pay any installment or call upon such stockholder's stock which may have been properly demanded by the directors, at the time when such payment is due, the directors may collect the amount of any such installment or call or any balance thereof remaining unpaid, from the said stockholder by an action at law, or they shall sell at public sale such part of the shares of such delinquent stockholder as will pay all demands then due from such stockholder with interest and all incidental expenses, and shall transfer the shares so sold to the purchaser, who shall be entitled to a certificate therefor. Notice of the time and place of such sale and of the sum due on each share shall be given by advertisement at least 1 week before the sale, in a newspaper of the county in this State where such corporation's registered office is located, and such notice shall be mailed by the corporation to such delinquent stockholder at such stockholder's last known post-office address, at least 20 days before such sale. If no bidder can be had to pay the amount due on the stock, and if the amount is not collected by an action at law, which may be brought within the county where the corporation has its registered office, within 1 year from the date of the bringing of such action at law, the said stock and the amount previously paid in by the delinquent stockholder on the stock shall be

§ 170. Dividends; payment; wasting asset corporations.
(a) The directors of every corporation, subject to any restrictions contained in its certificate of incorporation, may declare and pay dividends upon the shares of its capital stock, or to its members if the corporation is a nonstock corporation, either (1) out of its surplus, as defined in and computed in accordance with §§ 154 and 244 of this title, or (2) in case there shall be no such surplus, out of its net profits for the fiscal year in which the dividend is declared and/or the preceding fiscal year. If the capital of the corporation, computed in accordance with §§ 154 and 244 of this title, shall have been diminished by depreciation in the value of its property, or by losses, or otherwise, to an amount less than the aggregate amount of the capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets, the directors of such corporation shall not declare and pay out of such net profits any dividends upon any shares of any classes of its capital stock until the deficiency in the amount of capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets shall have been repaired. Nothing in this subsection shall invalidate or otherwise affect a note, debenture or other obligation of the corporation paid by it as a dividend on shares of its stock, or any payment made thereon, if at the time such note, debenture or obligation was delivered by the corporation, the corporation had either surplus or net profits as provided in clause (1) or (2) of this subsection from which the dividend could lawfully have been paid.
(b) Subject to any restrictions contained in its certificate of incorporation, the directors of any corporation engaged in the exploitation of wasting assets (including but not limited to a corporation engaged in the exploitation of natural resources or other wasting assets, including patents, or engaged primarily in the liquidation of specific assets) may determine the net profits derived from the exploitation of such wasting assets or the net proceeds derived from such liquidation without taking into consideration the depletion of such assets resulting from lapse of time, consumption, liquidation or exploitation of such assets. (8 Del. C. 1953, § 170; 56 Del. Laws, c. 50; 56 Del. Laws, c. 186, § 9; 59 Del. Laws, c. 106, § 5; 64 Del. Laws, c. 112, § 17; 67 Del. Laws, c. 376, § 5; 69 Del. Laws, c. 61, § 3; 72 Del. Laws, c. 123, § 3.)

§ 171. Special purpose reserves.
The directors of a corporation may set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve. (8 Del. C. 1953, § 171; 56 Del. Laws, c. 50.)

§ 172. Liability of directors and committee members as to dividends or stock redemption.
A member of the board of directors, or a member of any committee designated by the board of directors, shall be fully protected in relying in good faith upon the records of the corporation and upon such information, opinions, reports or statements presented to the corporation by any of its officers or employees, or committees of the board of directors, or by any other person as to matters the director reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the corporation, as to the value and amount of the assets, liabilities and/or net profits of the corporation or any other facts pertinent to the existence and amount of surplus or other funds from which dividends might properly be declared and paid, or with which the corporation's stock might properly be purchased or redeemed. (8 Del. C. 1953, § 172; 56 Del. Laws, c. 50; 56 Del. Laws, c. 186, § 10; 66 Del. Laws, c. 136, § 5.)

§ 173. Declaration and payment of dividends.
No corporation shall pay dividends except in accordance with this chapter. Dividends may be paid in cash, in property, or in shares of the corporation's capital stock. If the dividend is to be
paid in shares of the corporation's theretofore unissued capital stock the board of directors shall, by resolution, direct that there be designated as capital in respect of such shares an amount which is not less than the aggregate par value of par value being declared as a dividend and, in the case of shares without par value being declared as a dividend, such amount as shall be determined by the board of directors. No such designation as capital shall be necessary if shares are being distributed by a corporation pursuant to a split-up or division of its stock rather than as payment of a dividend declared payable in stock of the corporation.


§ 174. Liability of directors for unlawful payment of dividend or unlawful stock purchase or redemption; exoneration from liability; contribution among directors; subrogation.

(a) In case of any wilful or negligent violation of § 160 or 173 of this title, the directors under whose administration the same may happen shall be jointly and severally liable, at any time within 6 years after paying such unlawful dividend or after such unlawful stock purchase or redemption, to the corporation, and to its creditors in the event of its dissolution or insolvency, to the full amount of the dividend unlawfully paid, or to the full amount unlawfully paid for the purchase or redemption of the corporation's stock, with interest from the time such liability accrued. Any director who may have been absent when the same was done, or who may have dissented from the act or resolution by which the same was done, may be exonerated from such liability by causing his or her dissent to be entered on the books containing the minutes of the proceedings of the directors at the time the same was done, or immediately after such director has notice of the same.

(b) Any director against whom a claim is successfully asserted under this section shall be entitled to contribution from the other directors who voted for or concurred in the unlawful dividend, stock purchase or stock redemption.

(c) Any director against whom a claim is successfully asserted under this section shall be entitled, to the extent of the amount paid by such director as a result of such claim, to be subrogated to the rights of the corporation against stockholders who received the dividend on, or assets for the sale or redemption of, their stock with knowledge of facts indicating that such dividend, stock purchase or redemption was unlawful under this chapter, in proportion to the amounts received by such stockholders respectively. (8 Del. C. 1953, § 174; 56 Del. Laws, c. 50; 59 Del. Laws, c. 106, § 6; 71 Del. Laws, c. 339, §§ 26, 27.)

Subchapter VII. Meetings, Elections, Voting and Notice

§ 212. Voting rights of stockholders; proxies; limitations.

(a) Unless otherwise provided in the certificate of incorporation and subject to § 213 of this title, each stockholder shall be entitled to 1 vote for each share of capital stock held by such stockholder. If the certificate of incorporation provides for more or less than 1 vote for any share, on any matter, every reference in this chapter to a majority or other proportion of stock, voting stock or shares shall refer to such majority or other proportion of the votes of such stock, voting stock or shares.

(b) Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after 3 years from its date, unless the proxy provides for a longer period.

(c) Without limiting the manner in which a stockholder may authorize another person or persons to act for such stockholder as proxy pursuant to subsection (b) of this section, the following shall constitute a valid means by which a stockholder may grant such authority:

1. A stockholder may execute a writing authorizing another person or persons to act for such stockholder as proxy. Execution may be accomplished by the stockholder or such stockholder's authorized officer, director, employee or agent signing such writing or causing
such person's signature to be affixed to such writing by any reasonable means including, but not limited to, by facsimile signature.

(2) A stockholder may authorize another person or persons to act for such stockholder as proxy by transmitting or authorizing the transmission of a telegram, cablegram, or other means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such telegram, cablegram or other means of electronic transmission must either set forth or be submitted with information from which it can be determined that the telegram, cablegram or other electronic transmission was authorized by the stockholder. If it is determined that such telegrams, cablegrams or other electronic transmissions are valid, the inspectors or, if there are no inspectors, such other persons making that determination shall specify the information upon which they relied.

(d) Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to subsection (c) of this section may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

(e) A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the corporation generally. (8 Del. C. 1953, § 212; 56 Del. Laws, c. 50; 57 Del. Laws, c. 148, § 12; 67 Del. Laws, c. 376, § 6; 71 Del. Laws, c. 339, §§ 28-31; 73 Del. Laws, c. 298, § 7.)

§ 214. Cumulative voting.
The certificate of incorporation of any corporation may provide that at all elections of directors of the corporation, or at elections held under specified circumstances, each holder of stock or of any class or classes or of a series or series thereof shall be entitled to as many votes as shall equal the number of votes which (except for such provision as to cumulative voting) such holder would be entitled to cast for the election of directors with respect to such holder's shares of stock multiplied by the number of directors to be elected by such holder, and that such holder may cast all of such votes for a single director or may distribute them among the number to be voted for, or for any 2 or more of them as such holder may see fit. (8 Del. C. 1953, § 214; 56 Del. Laws, c. 50; 57 Del. Laws, c. 148, § 37; 57 Del. Laws, c. 421, § 5; 71 Del. Laws, c. 339, § 32.)

§ 216. Quorum and required vote for stock corporations.
Subject to this chapter in respect of the vote that shall be required for a specified action, the certificate of incorporation or bylaws of any corporation authorized to issue stock may specify the number of shares and/or the amount of other securities having voting power the holders of which shall be present or represented by proxy at any meeting in order to constitute a quorum for, and the votes that shall be necessary for, the transaction of any business, but in no event shall a quorum consist of less than one-third of the shares entitled to vote at the meeting, except that, where a separate vote by a class or series or classes or series is required, a quorum shall consist of no less than one-third of the shares of such class or series or classes or series. In the absence of such specification in the certificate of incorporation or bylaws of the corporation:
(1) A majority of the shares entitled to vote, present in person or represented by proxy, shall constitute a quorum at a meeting of stockholders;
(2) In all matters other than the election of directors, the affirmative vote of the majority of shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders;
(3) Directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors; and
(4) Where a separate vote by a class or series or classes or series is required, a majority of the outstanding shares of such class or series or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter and the affirmative vote of the majority of shares of such class or series or classes or series present in person or represented by proxy at the meeting shall be the act of such class or series or classes or series. (8 Del. C. 1953, § 216; 56 Del. Laws, c. 50; 63 Del. Laws, c. 25, § 7; 64 Del. Laws, c. 112, § 21; 66 Del. Laws, c. 136, §§ 10, 11; 71 Del. Laws, c. 339, §§ 34, 35.)

§ 220. Inspection of books and records.
(a) As used in this section:
(1) "List of stockholders" includes lists of members in a nonstock corporation.
(2) "Stockholder" means a holder of record of stock in a stock corporation, or a person who is the beneficial owner of shares of such stock held either in a voting trust or by a nominee on behalf of such person, and also a member of a nonstock corporation as reflected on the records of the nonstock corporation.
(3) "Subsidiary" means any entity directly or indirectly owned, in whole or in part, by the corporation of which the stockholder is a stockholder and over the affairs of which the corporation directly or indirectly exercises control, and includes, without limitation, corporations, partnerships, limited partnerships, limited liability partnerships, limited liability companies, statutory trusts and/or joint ventures.
(4) "Under oath" includes statements the declarant affirms to be true under penalty of perjury under the laws of the United States or any state.
(b) Any stockholder, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose, and to make copies and extracts from:
(1) The corporation's stock ledger, a list of its stockholders, and its other books and records; and
(2) A subsidiary's books and records, to the extent that:
a. The corporation has actual possession and control of such records of such subsidiary; or
b. The corporation could obtain such records through the exercise of control over such subsidiary, provided that as of the date of the making of the demand:
1. The stockholder inspection of such books and records of the subsidiary would not constitute a breach of an agreement between the corporation or the subsidiary and a person or persons not affiliated with the corporation; and
2. The subsidiary would not have the right under the law applicable to it to deny the corporation access to such books and records upon demand by the corporation.
In every instance where the stockholder is other than a record holder of stock in a stock corporation or a member of a nonstock corporation, the demand under oath shall state the person's status as a stockholder, be accompanied by documentary evidence of beneficial ownership of the stock, and state that such documentary evidence is a true and correct copy of what it purports to be. A proper purpose shall mean a purpose reasonably related to such person's interest as a stockholder. In every instance where an attorney or other agent shall be the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing which authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the corporation at its registered office in this State or at its principal place of business.
(c) If the corporation, or an officer or agent thereof, refuses to permit an inspection sought by a stockholder or attorney or other agent acting for the stockholder pursuant to subsection (b) of this section or does not reply to the demand within 5 business days after the demand has been made, the stockholder may apply to the Court of Chancery for an order to compel such inspection. The Court of Chancery is hereby vested with exclusive jurisdiction to determine whether or not the person seeking inspection is entitled to the inspection sought. The Court
may summarily order the corporation to permit the stockholder to inspect the corporation's stock ledger, an existing list of stockholders, and its other books and records, and to make copies or extracts therefrom; or the Court may order the corporation to furnish to the stockholder a list of its stockholders as of a specific date on condition that the stockholder first pay to the corporation the reasonable cost of obtaining and furnishing such list and on such other conditions as the Court deems appropriate. Where the stockholder seeks to inspect the corporation's books and records, other than its stock ledger or list of stockholders, such stockholder shall first establish that:

(1) Such stockholder is a stockholder;
(2) Such stockholder has complied with this section respecting the form and manner of making demand for inspection of such documents; and
(3) The inspection such stockholder seeks is for a proper purpose.

Where the stockholder seeks to inspect the corporation's stock ledger or list of stockholders and establishes that such stockholder is a stockholder and has complied with this section respecting the form and manner of making demand for inspection of such documents, the burden of proof shall be upon the corporation to establish that the inspection such stockholder seeks is for an improper purpose. The Court may, in its discretion, prescribe any limitations or conditions with reference to the inspection, or award such other or further relief as the Court may deem just and proper. The Court may order books, documents and records, pertinent extracts therefrom, or duly authenticated copies thereof, to be brought within this State and kept in this State upon such terms and conditions as the order may prescribe.

(d) Any director (including a member of the governing body of a nonstock corporation) shall have the right to examine the corporation's stock ledger, a list of its stockholders and its other books and records for a purpose reasonably related to the director's position as a director. The Court of Chancery is hereby vested with the exclusive jurisdiction to determine whether a director is entitled to the inspection sought. The Court may summarily order the corporation to permit the director to inspect any and all books and records, the stock ledger and the list of stockholder's and to make copies or extracts therefrom. The burden of proof shall be upon the corporation to establish that the inspection such director seeks is for an improper purpose. The Court may, in its discretion, prescribe any limitations or conditions with reference to the inspection, or award such other and further relief as the Court may deem just and proper. (8 Del. C. 1953, § 220; 56 Del. Laws, c. 50; 63 Del. Laws, c. 25, § 9; 70 Del. Laws, c. 79, §§ 11, 12; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 339, § 39; 74 Del. Laws, c. 84, §§ 5-8.)

§ 228. Consent of stockholders or members in lieu of meeting.

(a) Unless otherwise provided in the certificate of incorporation, any action required by this chapter to be taken at any annual or special meeting of stockholders of a corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the corporation by delivery to its registered office in this State, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

(b) Unless otherwise provided in the certificate of incorporation, any action required by this chapter to be taken at a meeting of the members of a nonstock corporation, or any action which may be taken at any meeting of the members of a nonstock corporation, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all members having a right to vote thereon were present and voted and shall be delivered to the corporation by delivery to its registered office in this State, its principal
place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of members are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

(c) Every written consent shall bear the date of signature of each stockholder or member who signs the consent, and no written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest dated consent delivered in the manner required by this section to the corporation, written consents signed by a sufficient number of holders or members to take action are delivered to the corporation by delivery to its registered office in this State, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders or members are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

(d)(1) A telegram, cablegram or other electronic transmission consenting to an action to be taken and transmitted by a stockholder, member or proxyholder, or by a person or persons authorized to act for a stockholder, member or proxyholder, shall be deemed to be written, signed and dated for the purposes of this section, provided that any such telegram, cablegram or other electronic transmission sets forth or is delivered with information from which the corporation can determine (A) that the telegram, cablegram or other electronic transmission was transmitted by the stockholder, member or proxyholder or by a person or persons authorized to act for the stockholder, member or proxyholder and (B) the date on which such stockholder, member or proxyholder or authorized person or persons transmitted such telegram, cablegram or electronic transmission. The date on which such telegram, cablegram or electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. No consent given by telegram, cablegram or other electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and until such paper form shall be delivered to the corporation by delivery to its registered office in this State, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders or members are recorded. Delivery made to a corporation's registered office shall be made by hand or by certified or registered mail, return receipt requested. Notwithstanding the foregoing limitations on delivery, consents given by telegram, cablegram or other electronic transmission, may be otherwise delivered to the principal place of business of the corporation or to an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders or members are recorded if, to the extent and in the manner provided by resolution of the board of directors or governing body of the corporation.

(2) Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing.

(e) Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders or members who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of holders or members to take the action were delivered to the corporation as provided in subsection (c) of this section. In the event that the action which is consented to is such as would have required the filing of a certificate under any other section of this title, if such action had been voted on by stockholders or by members at a meeting thereof, the certificate filed under such other section shall state, in lieu of any statement required by such section concerning any vote of stockholders or members, that written consent has been given in accordance with this section. (8 Del. C. 1953, § 228; 56 Del. Laws, c. 50; 56 Del. Laws, c. 186, § 14; 57 Del. Laws, c. 148, § 16; 58 Del. Laws, c. 235, § 4; 66 Del. Laws, c. 136, §§ 12-14; 67 Del. Laws, c. 376, §§ 7, 8; 70 Del. Laws, c. 349, § 4; 72 Del. Laws, c. 343, § 15; 73 Del. Laws, c. 82, § 11.)
§ 242. Amendment of certificate of incorporation after receipt of payment for stock; nonstock corporations.
(a) After a corporation has received payment for any of its capital stock, it may amend its certificate of incorporation, from time to time, in any and as many respects as may be desired, so long as its certificate of incorporation as amended would contain only such provisions as it would be lawful and proper to insert in an original certificate of incorporation filed at the time of the filing of the amendment; and, if a change in stock or the rights of stockholders, or an exchange, reclassification, subdivision, combination or cancellation of stock or rights of stockholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification, subdivision, combination or cancellation. In particular, and without limitation upon such general power of amendment, a corporation may amend its certificate of incorporation, from time to time, so as:
(1) To change its corporate name; or
(2) To change, substitute, enlarge or diminish the nature of its business or its corporate powers and purposes; or
(3) To increase or decrease its authorized capital stock or to reclassify the same, by changing the number, par value, designations, preferences, or relative, participating, optional, or other special rights of the shares, or the qualifications, limitations or restrictions of such rights, or by changing shares with par value into shares without par value, or shares without par value into shares with par value either with or without increasing or decreasing the number of shares, or by subdividing or combining the outstanding shares of any class or series of a class of shares into a greater or lesser number of outstanding shares; or
(4) To cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared; or
(5) To create new classes of stock having rights and preferences either prior and superior or subordinate and inferior to the stock of any class then authorized, whether issued or unissued; or
(6) To change the period of its duration.
Any or all such changes or alterations may be effected by 1 certificate of amendment.
(b) Every amendment authorized by subsection (a) of this section shall be made and effected in the following manner:
(1) If the corporation has capital stock, its board of directors shall adopt a resolution setting forth the amendment proposed, declaring its advisability, and either calling a special meeting of the stockholders entitled to vote in respect thereof for the consideration of such amendment or directing that the amendment proposed be considered at the next annual meeting of the stockholders. Such special or annual meeting shall be called and held upon notice in accordance with § 222 of this title. The notice shall set forth such amendment in full or a brief summary of the changes to be effected thereby, as the directors shall deem advisable. At the meeting a vote of the stockholders entitled to vote thereon shall be taken for and against the proposed amendment. If a majority of the outstanding stock entitled to vote thereon, and a majority of the outstanding stock of each class entitled to vote thereon as a class has been voted in favor of the amendment, a certificate setting forth the amendment and certifying that such amendment has been duly adopted in accordance with this section shall be executed, acknowledged and filed and shall become effective in accordance with § 103 of this title.
(2) The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the certificate of incorporation, if the amendment would increase or decrease the aggregate number of authorized shares of such class, increase or decrease the par value of the shares of such class, or alter or change the powers, preferences, or special rights of the shares of such class so as to affect them adversely. If any proposed amendment would alter or change the powers, preferences, or special rights of 1 or more series of any class so as to affect them adversely,
but shall not so affect the entire class, then only the shares of the series so affected by the amendment shall be considered a separate class for the purposes of this paragraph. The number of authorized shares of any such class or classes of stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of the corporation entitled to vote irrespective of this subsection, if so provided in the original certificate of incorporation, in any amendment thereto which created such class or classes of stock or which was adopted prior to the issuance of any shares of such class or classes of stock, or in any amendment thereto which was authorized by a resolution or resolutions adopted by the affirmative vote of the holders of a majority of such class or classes of stock.

(3) If the corporation has no capital stock, then the governing body thereof shall adopt a resolution setting forth the amendment proposed and declaring its advisability. If a majority of all the members of the governing body shall vote in favor of such amendment, a certificate thereof shall be executed, acknowledged and filed and shall become effective in accordance with § 103 of this title. The certificate of incorporation of any such corporation without capital stock may contain a provision requiring any amendment thereto to be approved by a specified number or percentage of the members or of any specified class of members of such corporation in which event such proposed amendment shall be submitted to the members or to any specified class of members of such corporation without capital stock in the same manner, so far as applicable, as is provided in this section for an amendment to the certificate of incorporation of a stock corporation; and in the event of the adoption thereof by such members, a certificate evidencing such amendment shall be executed, acknowledged and filed and shall become effective in accordance with § 103 of this title.

(4) Whenever the certificate of incorporation shall require for action by the board of directors, by the holders of any class or series of shares or by the holders of any other securities having voting power the vote of a greater number or proportion than is required by any section of this title, the provision of the certificate of incorporation requiring such greater vote shall not be altered, amended or repealed except by such greater vote.

(c) The resolution authorizing a proposed amendment to the certificate of incorporation may provide that at any time prior to the effectiveness of the filing of the amendment with the Secretary of State, notwithstanding authorization of the proposed amendment by the stockholders of the corporation or by the members of a nonstock corporation, the board of directors or governing body may abandon such proposed amendment without further action by the stockholders or members. (8 Del. C. 1953, § 242; 56 Del. Laws, c. 50; 57 Del. Laws, c. 148, §§ 18-21; 59 Del. Laws, c. 106, § 7; 63 Del. Laws, c. 25, § 12; 64 Del. Laws, c. 112, § 24; 67 Del. Laws, c. 376, § 10; 70 Del. Laws, c. 349, §§ 5-7; 70 Del. Laws, c. 587, § 14, 15; 72 Del. Laws, c. 123, § 5.)


(a) A corporation, by resolution of its board of directors, may retire any shares of its capital stock that are issued but are not outstanding.

(b) Whenever any shares of the capital stock of a corporation are retired, they shall resume the status of authorized and unissued shares of the class or series to which they belong unless the certificate of incorporation otherwise provides. If the certificate of incorporation prohibits the reissuance of such shares, or prohibits the reissuance of such shares as a part of a specific series only, a certificate stating that reissuance of the shares (as part of the class or series) is prohibited identifying the shares and reciting their retirement shall be executed, acknowledged and filed and shall become effective in accordance with § 103 of this title. When such certificate becomes effective, it shall have the effect of amending the certificate of incorporation so as to reduce accordingly the number of authorized shares of the class or series to which such shares belong or, if such retired shares constitute all of the authorized shares of the class or series to which they belong, of eliminating from the certificate of incorporation all reference to such class or series of stock.

(c) If the capital of the corporation will be reduced by or in connection with the retirement of shares, the reduction of capital shall be effected pursuant to § 244 of this title. (8 Del. C.
§ 244. Reduction of capital.
(a) A corporation, by resolution of its board of directors, may reduce its capital in any of the following ways:
(1) By reducing or eliminating the capital represented by shares of capital stock which have been retired;
(2) By applying to an otherwise authorized purchase or redemption of outstanding shares of its capital stock some or all of the capital represented by the shares being purchased or redeemed, or any capital that has not been allocated to any particular class of its capital stock;
(3) By applying to an otherwise authorized conversion or exchange of outstanding shares of its capital stock some or all of the capital represented by the shares being converted or exchanged, or some or all of any capital that has not been allocated to any particular class of its capital stock, or both, to the extent that such capital in the aggregate exceeds the total aggregate par value or the stated capital of any previously unissued shares issuable upon such conversion or exchange;
(4) By transferring to surplus (i) some or all of the capital not represented by any particular class of its capital stock; (ii) some or all of the capital represented by issued shares of its par value capital stock, which capital is in excess of the aggregate par value of such shares; or (iii) some of the capital represented by issued shares of its capital stock without par value.
(b) Notwithstanding the other provisions of this section, no reduction of capital shall be made or effected unless the assets of the corporation remaining after such reduction shall be sufficient to pay any debts of the corporation for which payment has not been otherwise provided. No reduction of capital shall release any liability of any stockholder whose shares have not been fully paid.
(c) Repealed. (8 Del. C. 1953, § 244; 56 Del. Laws, c. 50; 59 Del. Laws, c. 106, § 9; 64 Del. Laws, c. 112, §§ 25, 26.)

Subchapter IX. Merger, Consolidation or Conversion

§ 262. Appraisal rights.
(a) Any stockholder of a corporation of this State who holds shares of stock on the date of the making of a demand pursuant to subsection (d) of this section with respect to such shares, who continuously holds such shares through the effective date of the merger or consolidation, who has otherwise complied with subsection (d) of this section and who has neither voted in favor of the merger or consolidation nor consented thereto in writing pursuant to § 228 of this title shall be entitled to an appraisal by the Court of Chancery of the fair value of the stockholder's shares of stock under the circumstances described in subsections (b) and (c) of this section. As used in this section, the word "stockholder" means a holder of record of stock in a stock corporation and also a member of record of a nonstock corporation; the words "stock" and "share" mean and include what is ordinarily meant by those words and also membership or membership interest of a member of a nonstock corporation; and the words "depository receipt" mean a receipt or other instrument issued by a depository representing an interest in one or more shares, or fractions thereof, solely of stock of a corporation, which stock is deposited with the depository.
(b) Appraisal rights shall be available for the shares of any class or series of stock of a constituent corporation in a merger or consolidation to be effected pursuant to § 251 (other than a merger effected pursuant to § 251(g) of this title), § 252, § 254, § 257, § 258, § 263 or § 264 of this title:
(1) Provided, however, that no appraisal rights under this section shall be available for the shares of any class or series of stock, which stock, or depository receipts in respect thereof, at the record date fixed to determine the stockholders entitled to receive notice of and to vote at the meeting of stockholders to act upon the agreement of merger or consolidation, were either
(i) listed on a national securities exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc. or (ii) held of record by more than 2,000 holders; and further provided that no appraisal rights shall be available for any shares of stock of the constituent corporation surviving a merger if the merger did not require for its approval the vote of the stockholders of the surviving corporation as provided in subsection (f) of § 251 of this title.

(2) Notwithstanding paragraph (1) of this subsection, appraisal rights under this section shall be available for the shares of any class or series of stock of a constituent corporation if the holders thereof are required by the terms of an agreement of merger or consolidation pursuant to §§ 251, 252, 254, 257, 258, 263 and 264 of this title to accept for such stock anything except:
a. Shares of stock of the corporation surviving or resulting from such merger or consolidation, or depository receipts in respect thereof;
b. Shares of stock of any other corporation, or depository receipts in respect thereof, which shares of stock (or depository receipts in respect thereof) or depository receipts at the effective date of the merger or consolidation will be either listed on a national securities exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc. or held of record by more than 2,000 holders;
c. Cash in lieu of fractional shares or fractional depository receipts described in the foregoing subparagraphs a. and b. of this paragraph; or
d. Any combination of the shares of stock, depository receipts and cash in lieu of fractional shares or fractional depository receipts described in the foregoing subparagraphs a., b. and c. of this paragraph.

(3) In the event all of the stock of a subsidiary Delaware corporation party to a merger effected under § 253 of this title is not owned by the parent corporation immediately prior to the merger, appraisal rights shall be available for the shares of the subsidiary Delaware corporation.

(c) Any corporation may provide in its certificate of incorporation that appraisal rights under this section shall be available for the shares of any class or series of its stock as a result of an amendment to its certificate of incorporation, any merger or consolidation in which the corporation is a constituent corporation or the sale of all or substantially all of the assets of the corporation. If the certificate of incorporation contains such a provision, the procedures of this section, including those set forth in subsections (d) and (e) of this section, shall apply as nearly as is practicable.

(d) Appraisal rights shall be perfected as follows:

(1) If a proposed merger or consolidation for which appraisal rights are provided under this section is to be submitted for approval at a meeting of stockholders, the corporation, not less than 20 days prior to the meeting, shall notify each of its stockholders who was such on the record date for such meeting with respect to shares for which appraisal rights are available pursuant to subsection (b) or (c) hereof that appraisal rights are available for any or all of the shares of the constituent corporations, and shall include in such notice a copy of this section. Each stockholder electing to demand the appraisal of such stockholder's shares shall deliver to the corporation, before the taking of the vote on the merger or consolidation, a written demand for appraisal of such stockholder's shares. Such demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such stockholder's shares. A proxy or vote against the merger or consolidation shall not constitute such a demand. A stockholder electing to take such action must do so by a separate written demand as herein provided. Within 10 days after the effective date of such merger or consolidation, the surviving or resulting corporation shall notify each stockholder of each constituent corporation who has complied with this subsection and has not voted in favor of or consented to the merger or consolidation of the date that the merger or consolidation has become effective; or

(2) If the merger or consolidation was approved pursuant to § 228 or § 253 of this title, then either a constituent corporation before the effective date of the merger or consolidation or the
surviving or resulting corporation within 10 days thereafter shall notify each of the holders of any class or series of stock of such constituent corporation who are entitled to appraisal rights of the approval of the merger or consolidation and that appraisal rights are available for any or all shares of such class or series of stock of such constituent corporation, and shall include in such notice a copy of this section. Such notice may, and, if given on or after the effective date of the merger or consolidation, shall, also notify such stockholders of the effective date of the merger or consolidation. Any stockholder entitled to appraisal rights may, within 20 days after the date of mailing of such notice, demand in writing from the surviving or resulting corporation the appraisal of such holder's shares. Such demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such holder's shares. If such notice did not notify stockholders of the effective date of the merger or consolidation, either (i) each such constituent corporation shall send a second notice before the effective date of the merger or consolidation notifying each of the holders of any class or series of stock of such constituent corporation that are entitled to appraisal rights of the effective date of the merger or consolidation or (ii) the surviving or resulting corporation shall send such a second notice to all such holders on or within 10 days after such effective date; provided, however, that if such second notice is sent more than 20 days following the sending of the first notice, such second notice need only be sent to each stockholder who is entitled to appraisal rights and who has demanded appraisal of such holder's shares in accordance with this subsection. An affidavit of the secretary or assistant secretary or of the transfer agent of the corporation that is required to give either notice that such notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein. For purposes of determining the stockholders entitled to receive either notice, each constituent corporation may fix, in advance, a record date that shall be not more than 10 days prior to the date the notice is given, provided, that if the notice is given on or after the effective date of the merger or consolidation, the record date shall be such effective date. If no record date is fixed and the notice is given prior to the effective date, the record date shall be the close of business on the day next preceding the day on which the notice is given.

(e) Within 120 days after the effective date of the merger or consolidation, the surviving or resulting corporation or any stockholder who has complied with subsections (a) and (d) hereof and who is otherwise entitled to appraisal rights, may file a petition in the Court of Chancery demanding a determination of the value of the stock of all such stockholders. Notwithstanding the foregoing, at any time within 60 days after the effective date of the merger or consolidation, any stockholder shall have the right to withdraw such stockholder's demand for appraisal and to accept the terms offered upon the merger or consolidation. Within 120 days after the effective date of the merger or consolidation, any stockholder who has complied with the requirements of subsections (a) and (d) hereof, upon written request, shall be entitled to receive from the corporation surviving the merger or resulting from the consolidation a statement setting forth the aggregate number of shares not voted in favor of the merger or consolidation and with respect to which demands for appraisal have been received and the aggregate number of holders of such shares. Such written statement shall be mailed to the stockholder within 10 days after such stockholder's written request for such a statement is received by the surviving or resulting corporation or within 10 days after expiration of the period for delivery of demands for appraisal under subsection (d) hereof, whichever is later.

(f) Upon the filing of any such petition by a stockholder, service of a copy thereof shall be made upon the surviving or resulting corporation, which shall within 20 days after such service file in the office of the Register in Chancery in which the petition was filed a duly verified list containing the names and addresses of all stockholders who have demanded payment for their shares and with whom agreements as to the value of their shares have not been reached by the surviving or resulting corporation. If the petition shall be filed by the surviving or resulting corporation, the petition shall be accompanied by such a duly verified list. The Register in Chancery, if so ordered by the Court, shall give notice of the time and place fixed for the hearing of such petition by registered or certified mail to the surviving or resulting corporation and to the stockholders shown on the list at the addresses therein stated.
Such notice shall also be given by 1 or more publications at least 1 week before the day of the hearing, in a newspaper of general circulation published in the City of Wilmington, Delaware or such publication as the Court deems advisable. The forms of the notices by mail and by publication shall be approved by the Court, and the costs thereof shall be borne by the surviving or resulting corporation.

(g) At the hearing on such petition, the Court shall determine the stockholders who have complied with this section and who have become entitled to appraisal rights. The Court may require the stockholders who have demanded an appraisal for their shares and who hold stock represented by certificates to submit their certificates of stock to the Register in Chancery for notation thereon of the pendency of the appraisal proceedings; and if any stockholder fails to comply with such direction, the Court may dismiss the proceedings as to such stockholder.

(h) After determining the stockholders entitled to an appraisal, the Court shall appraise the shares, determining their fair value exclusive of any element of value arising from the accomplishment or expectation of the merger or consolidation, together with a fair rate of interest, if any, to be paid upon the amount determined to be the fair value. In determining such fair value, the Court shall take into account all relevant factors. In determining the fair rate of interest, the Court may consider all relevant factors, including the rate of interest which the surviving or resulting corporation would have had to pay to borrow money during the pendency of the proceeding. Upon application by the surviving or resulting corporation or by any stockholder entitled to participate in the appraisal proceeding, the Court may, in its discretion, permit discovery or other pretrial proceedings and may proceed to trial upon the appraisal prior to the final determination of the stockholder entitled to an appraisal. Any stockholder whose name appears on the list filed by the surviving or resulting corporation pursuant to subsection (f) of this section and who has submitted such stockholder's certificates of stock to the Register in Chancery, if such is required, may participate fully in all proceedings until it is finally determined that such stockholder is not entitled to appraisal rights under this section.

(i) The Court shall direct the payment of the fair value of the shares, together with interest, if any, by the surviving or resulting corporation to the stockholders entitled thereto. Interest may be simple or compound, as the Court may direct. Payment shall be so made to each such stockholder, in the case of holders of uncertificated stock forthwith, and the case of holders of shares represented by certificates upon the surrender to the corporation of the certificates representing such stock. The Court's decree may be enforced as other decrees in the Court of Chancery may be enforced, whether such surviving or resulting corporation be a corporation of this State or of any state.

(j) The costs of the proceeding may be determined by the Court and taxed upon the parties as the Court deems equitable in the circumstances. Upon application of a stockholder, the Court may order all or a portion of the expenses incurred by any stockholder in connection with the appraisal proceeding, including, without limitation, reasonable attorney's fees and the fees and expenses of experts, to be charged pro rata against the value of all the shares entitled to an appraisal.

(k) From and after the effective date of the merger or consolidation, no stockholder who has demanded appraisal rights as provided in subsection (d) of this section shall be entitled to vote such stock for any purpose or to receive payment of dividends or other distributions on the stock (except dividends or other distributions payable to stockholders of record at a date which is prior to the effective date of the merger or consolidation); provided, however, that if no petition for an appraisal shall be filed within the time provided in subsection (e) of this section, or if such stockholder shall deliver to the surviving or resulting corporation a written withdrawal of such stockholder's demand for an appraisal and an acceptance of the merger or consolidation, either within 60 days after the effective date of the merger or consolidation as provided in subsection (e) of this section or thereafter with the written approval of the corporation, then the right of such stockholder to an appraisal shall cease. Notwithstanding the foregoing, no appraisal proceeding in the Court of Chancery shall be dismissed as to any stockholder without the approval of the Court, and such approval may be conditioned upon such terms as the Court deems just.

Subchapter XI. Insolvency; Receivers and Trustees

§ 291. Receivers for insolvent corporations; appointment and powers.
Whenever a corporation shall be insolvent, the Court of Chancery, on the application of any creditor or stockholder thereof, may, at any time, appoint 1 or more persons to be receivers of and for the corporation, to take charge of its assets, estate, effects, business and affairs, and to collect the outstanding debts, claims, and property due and belonging to the corporation, with power to prosecute and defend, in the name of the corporation or otherwise, all claims or suits, to appoint an agent or agents under them, and to do all other acts which might be done by the corporation and which may be necessary or proper. The powers of the receivers shall be such and shall continue so long as the Court shall deem necessary. (8 Del. C. 1953, § 291; 56 Del. Laws, c. 50.)

Subchapter XIII. Suits Against Corporations, Directors, Officers or Stockholders

§ 325. Actions against officers, directors or stockholders to enforce liability of corporation; unsatisfied judgment against corporation.
(a) When the officers, directors or stockholders of any corporation shall be liable by the provisions of this chapter to pay the debts of the corporation, or any part thereof, any person to whom they are liable may have an action, at law or in equity, against any 1 or more of them, and the complaint shall state the claim against the corporation, and the ground on which the plaintiff expects to charge the defendants personally.
(b) No suit shall be brought against any officer, director or stockholder for any debt of a corporation of which such person is an officer, director or stockholder, until judgment be obtained therefor against the corporation and execution thereon returned unsatisfied. (8 Del. C. 1953, § 325; 56 Del. Laws, c. 50; 71 Del. Laws, c. 339, § 71.)