

LEGISLATIVE HISTORY CHECKLIST

NJSA: 14A:1-2.1 et al

(Title 14A--
Corporations--various
amendments)

LAWS OF: 1988

CHAPTER: 94

Bill No: S2115

Sponsor(s): D'Ambrosio and others

Date Introduced: February 29, 1988

Committee: Assembly: ----

Senate: Judiciary

Amended during passage: Yes Amendments during passage
denoted by asterisks.

Date of Passage: Assembly: June 9, 1988

Senate: June 2, 1988

Date of Approval: August 4, 1988

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: No

Senate: Yes

Fiscal Note: No

Veto Message: No

Message on signing: No

Following were printed:

Reports: Yes

Hearings: No

(Over)

[Faint handwritten notes and signatures]

[Handwritten mark]

974.90
C822
1987a

New Jersey. Corporation
Law Revision Commission
Report...February 1,
1986. Trenton, 1986.

See:

MacKay, John R. The Business Corporation Revisions 122 NJLJ 1174 (1988)

[FIRST REPRINT]-
SENATE, No. 2115

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 29, 1988

By Senators AMBROSIO, O'CONNOR, LASKIN,
DORSEY and DiFRANCESCO

1 AN ACT revising the law concerning corporations, amending and
supplementing the "New Jersey Business Corporation Act"
3 being Title 14A of the New Jersey Statutes, enacting additional
sections to Title 14A of the New Jersey Statutes, and repealing
5 various sections of law in connection therewith.

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

9 1. (New section) Section 14A:1-2.1 is added to the New Jersey
Statutes as follows:

11 14A:1-2.1. Definitions.

As used in this act, unless the context otherwise requires, the
13 term:

(a) "Act" or "this act" means the "New Jersey Business
15 Corporation Act" and includes all amendments and supplements
thereto.

17 (b) "Attorney General" means the Attorney General of New
Jersey.

19 (c) "Authorized shares" means the shares of all classes and
series which the corporation is authorized to issue.

21 (d) "Board" means board of directors. "Entire board" means
the total number of directors which the corporation would have if
23 there were no vacancies.

(e) "Bonds" includes secured and unsecured bonds, debentures,
25 notes and other written obligations for the payment of money.

(f) "Certificate of incorporation" includes:

27 (i) the original certificate of incorporation or any other
instrument filed or issued under any statute to form a
29 domestic or foreign corporation, as amended,
supplemented or restated by certificates of amendment,
31 merger or consolidation or by other certificates or
instruments filed or issued under any statute; and

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SJU committee amendments adopted May 9, 1988.

1 (ii) a special act or charter creating a domestic or
foreign corporation, as amended, supplemented or restated.

3 (g) "Corporation" or "domestic corporation" means a
corporation for profit organized under this act, or existing on its
5 effective date and theretofore organized under any other law of
this State for a purpose or purposes for which a corporation may
7 be organized under this act.

(h) "Director" means any member of the governing board of a
9 corporation, whether designated as director, trustee, manager,
governor, or by any other title.

11 (i) "Foreign corporation" means a corporation for profit
organized under laws of a jurisdiction other than this State for a
13 purpose or purposes for which a corporation may be organized
under this act.

15 (j) "Resolution" means any action taken or authority granted
by the shareholders, the board, or a committee of the board,
17 regardless of whether evidenced by a formal resolution.

(k) "Secretary of State" means the Secretary of State of New
19 Jersey.

(l) "Shareholder" means one who is a holder of record of shares
21 in a corporation.

(m) "Shares" means the units into which the proprietary
23 interests in a corporation are divided.

(n) "Subscriber" means one who subscribes for shares in a
25 corporation, whether before or after incorporation.

(o) "Subsidiary" means a domestic or foreign corporation
27 whose outstanding shares are owned directly or indirectly by
another domestic or foreign corporation in such number as to
29 entitle the holder at the time to elect a majority of its directors
without regard to voting power which may thereafter exist upon a
31 default, failure or other contingency.

(p) "Treasury shares" means shares of a corporation which
33 have been issued, and have been subsequently acquired by the
corporation under circumstances which do not result in
35 cancellation. Treasury shares are issued shares, but not
outstanding shares.

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

14A:1-6. Execution, filing and recording of documents.

39 (1) If a document relating to a domestic or foreign corporation

1 is required or permitted to be filed in the office of the Secretary
of State under this act:

3 (a) The document shall be in the English language, shall be
typed or machine printed,¹ except that the corporate name need
5 not be in the English language if written in English letters or
Arabic or Roman numerals, and except that this requirement
7 shall not apply to a certificate of good standing under paragraph
14A:2-4(2)(b), section 14A:2-5, or subsection 14A:13-4 (2).

9 (b) The filing shall be accomplished by delivering the document
to the office of the Secretary of State, together with the fees
11 and any accompanying documents required by law. Thereupon,
the Secretary of State shall endorse [upon it] the document with
13 the word "Filed" with his official title [and the date of filing
thereof,] and shall file it in his office. [If so requested at the
15 time of the delivery of the document to his office, the Secretary
of State shall include the time of filing in his endorsement
17 thereon] Each document accepted for filing shall be deemed filed
as of the latest date and time of receipt stamped upon it pursuant
19 to subsection (1). If a document was erroneously rejected for
filing by the Secretary of State or for any other reason the latest
21 "received" date would not properly reflect the filing date, the
Secretary of State shall, upon request, mark the document
23 "Filed" as of the correct date.

(c) The transaction in connection with which the document has
25 been filed shall be effective at the time of filing, unless a
subsequent effective time is set forth in such document pursuant
27 to any other provision of this act, in which case such transaction
shall be effective at the time so specified, which shall in no event
29 be later than [30] 90 days after the date of filing.

(2) If a document relating to a domestic corporation or a
31 foreign corporation is required or permitted to be filed under this
act and is also required by this act to be executed on behalf of
33 such corporation, the document shall be signed by the chairman
of the board, or the president or a vice-president. The name of
35 any person so signing such a document, and the capacity in which
he signs, shall be stated beneath or opposite his signature. The
37 document may, but need not, contain

(a) The corporate seal; or

39 (b) An attestation by the secretary or an assistant secretary of
the corporation; or

1 (c) An acknowledgment or proof.

2 If the corporation is in the hands of a receiver, trustee, or
3 other court appointed officer, the document shall be signed by
4 such fiduciary or the majority of them, if there are more than
5 one.

6 (3) [If a document relating to a domestic or foreign
7 corporation was required or permitted to be filed in the office of
8 the Secretary of State under the law in force prior to the
9 effective date of this act and was or is duly executed before or
10 after the effective date of this act, in accordance with such law,
11 to reflect any vote, consent, certification, or action by directors,
12 officers, or shareholders of a corporation or by any such persons
13 on behalf of the corporation, duly taken, given or made before
14 the effective date of this act, such document and any annual
15 report by a corporation, so executed, may be filed in the office of
16 the Secretary of State on the effective date of this act, and
17 within six months thereafter.] (Deleted by amendment, P.L. 19. . . ,
18 c. . .).

19 (4) The Secretary of State shall record all documents,
20 excepting annual reports, which relate to or in any way affect
21 corporations, and which are required or permitted by law to be
22 filed in his office. The recording may be effected by typewritten
23 copy, or by photographic, microphotographic or microfilming
24 process, or in such other manner as may be provided by law. Such
25 records shall be kept in a place separate and away from the place
26 where the originals are filed.

27 (5) If any instrument filed with the Secretary of State under
28 any provision of this act is an inaccurate record of the corporate
29 action therein referred to, or was defectively or erroneously
30 executed, such instrument may be corrected by filing with the
31 Secretary of State a certificate of correction executed on behalf
32 of the corporation. The certificate of correction shall specify
33 the inaccuracy or defect to be corrected and shall set forth the
34 correction. The instrument so corrected shall be deemed to have
35 been effective in its corrected form as of its original filing date
36 except as to persons who relied upon the inaccurate portion of
37 the certificate and who are adversely affected by the correction;
38 the correction shall be effective as to such persons as of the
39 effective date of filing of the certificate of correction.

1 (6) Whenever this act requires that any certificate, report or
2 statement made, published or recorded by any corporation,
3 domestic or foreign, state the residence or post office address of
4 any incorporator, shareholder, director or officer, there may be
5 furnished in the document either the home address or the business
6 address of the person.

7 (7) All documents submitted or resubmitted to the Secretary
8 of State shall be stamped immediately with the word "Received"
9 together with the date and time of receipt.

(cf: P.L. 1973, c. 366, s. 1)

11 3. N.J.S. 14A:1-8 is amended to read as follows:

12 14A:1-8. Notices.

13 In computing the period of time for the giving of any notice
14 required or permitted by this act, or by a certificate of
15 incorporation or by-laws or any resolution of directors or
16 shareholders, the day on which the notice is given shall be
17 excluded, and the day on which the matter noticed is to occur
18 shall be included. If notice is given by mail, the notice shall be
19 deemed to be given when deposited in the mail addressed to the
20 person to whom it is directed at his last address as it appears on
21 the records of the corporation, with postage prepaid thereon.
22 Any notice required or permitted to be given under this act by
23 mail or by certified mail, return receipt requested, may be given
24 by personal delivery to the person to whom it is directed.

25 (cf: N.J.S. 14A:1-8)

26 4. N.J.S. 14A:1-9 is amended to read as follows:

27 14A:1-9. Certificates and certified copies.

28 (1) Upon request of any person, the Secretary of State shall
29 furnish certified copies of documents filed in his office in
30 accordance with the provisions of this act.

31 (2) Upon request of any person, the Secretary of State shall
32 certify to the existence or non-existence of any facts on record
33 in his office relating to domestic or foreign corporations.

34 (3) In addition, the Secretary of State shall provide information
35 and documents upon telephone request and over the counter in
36 accordance with sections 3 and 4 of P.L. 1982, c. 150 (C.
37 52:16A-37 and C. 52:16A-38).

(cf: N.J.S. 14A:1-9)

39 5. (New section) Section 14A:1-10 is added to the New Jersey
Statutes as follows:

1 14A:1-10. Filing documents by telecopy.

3 (1) The Secretary of State may accept for filing by means of
telecopy any document required or permitted to be filed in the
5 office of the Secretary of State except those requiring an
original signature¹.

7 ¹[(2) The facsimile of a signature on a document accepted for
filing by means of telecopy shall be deemed an original
signature.]¹

9 ¹[(3)] (2)¹ The Secretary of State shall charge a fee for the
filing of a document by telecopy, which fee shall be in addition to
11 the usual fee charged for filing the document.

13 ¹[(4)] (3)¹ "Telecopy" means any method or means adopted by
the Secretary of State for the transmission or receipt of
facsimile documents.

15 6. (New section) Section 14A:1-11 is added to the New Jersey
Statutes as follows:

17 14A:1-11. Preclearance of documents to be filed.

Any document required to be filed under this act may be
19 submitted to the Secretary of State for review prior to the time
the document is formally filed. The Secretary of State shall
21 determine whether the document is acceptable for filing and, if it
is not acceptable, shall state why it is not acceptable. The
23 Secretary of State shall charge a fee for the preclearance of
documents.

25 7. N.J.S. 14A:2-2 is amended to read as follows:

14A:2-2. Corporate name of domestic or foreign corporations.

27 (1) The corporate name of a domestic corporation or of a
foreign corporation authorized to transact business in this State

29 (a) Shall not contain any word or phrase, or abbreviation or
derivative thereof, which indicates or implies that it is organized
31 for any purpose other than one or more of the purposes permitted
by its certificate of incorporation;

33 (b) Shall [not be the same as, or confusingly similar to, the
corporate name of any domestic corporation, including a
35 corporate name set forth in a certificate of incorporation filed in
the office of the Secretary of State whose effective date is
37 subsequent to the date of filing, as authorized by subsection
14A:2-7(2), or of any foreign corporation, authorized to transact
39 business in this State or any nonprofit corporation organized

1 pursuant to the provisions of Title 15 of the Revised Statutes or
any corporate name reserved or registered under this act] be such
3 as to distinguish it upon the records in the office of the Secretary
of State from the names of other for profit and nonprofit
5 domestic corporations and for profit and nonprofit foreign
corporations qualified to do business in this State and ¹from the
7 names of domestic limited partnerships and foreign limited
partnerships and¹ from names subject to a current name
9 reservation or a current name registration, unless [the written
consent of such other domestic or foreign corporation or
11 nonprofit corporation or holder of a reserved or registered name
to the adoption of its name, or a confusingly similar name, is
13 filed in the office of the Secretary of State with the certificate
of incorporation or with the application for an original or
15 amended certificate of authority to transact business in this
State or, in lieu of such consent,] there is filed a certified copy of
17 a final judgment of a court of competent jurisdiction establishing
the prior right of the corporation to the use of such name in this
19 State; [and]

(c) Shall not contain any word or phrase, or any abbreviation or
21 derivative thereof, the use of which is prohibited or restricted by
any other statute of this State, unless any such restrictions have
23 been complied with; and

(d) Shall contain the word "corporation," "company,"
25 "incorporated," ¹[or "limited,"]¹ or shall contain an abbreviation
of one of those words, ¹or shall include the abbreviation Ltd.¹ or
27 shall contain words or abbreviations of like import in other
languages, except that a foreign corporation which does not have
29 those words or an abbreviation thereof in its name shall add at
the end of its name one of those words or an abbreviation thereof
31 for use in this State.

(2) This section

(a) Shall not require any domestic corporation [organized prior
33 to the effective date of this act] or any foreign corporation
35 authorized to transact business in this State [prior to the
effective date of this act] to change its corporate name [in order
37 to comply with this section, if such name is otherwise lawful on
the effective date of this act. No such corporation shall change
39 its corporate name on or after the effective date of this act to a

1 name which is not available or corporate use under this section];
and

3 (b) Shall not prevent a domestic corporation with which
another corporation, domestic or foreign, is merged, or which is
5 formed by the reorganization or consolidation of one or more
other domestic or foreign corporations or upon a sale, lease or
7 other disposition to, or exchange with, a domestic corporation of
all or substantially all the assets of another corporation, domestic
9 or foreign, including its name, from having the same corporate
name as any of such corporations if at the time such other
11 corporation was organized under the laws of, or is authorized to
transact business in, this State.

13 (3) If the name of a foreign corporation is not available for use
in this State because of the prohibitions of subsection 14A:2-2
15 (1), such corporation may be authorized to transact business in
this State under [a fictitious] an assumed name which is available
17 for corporate use under this section. Such corporation shall file
in the office of the Secretary of State with its application for an
19 original or amended certificate of authority a resolution of its
board adopting such [fictitious] assumed name for use in
21 transacting business in this State.

(4) The corporate name of a domestic corporation or nonprofit
23 corporation which has been dissolved [and any name confusingly
similar to the name of a domestic corporation or nonprofit
25 corporation which has been dissolved] shall not be available for
corporate use for [two years] one year after the effective time of
27 dissolution, unless, within such [two year] one-year period, the
written consent of such dissolved corporation to the adoption of
29 its name [, or a confusingly similar name,] is filed in the office of
the Secretary of State with the certificate of incorporation of
31 another domestic corporation or with the application of a foreign
corporation for an original or amended certificate of authority to
33 transact business in this State.

(5) The filing in the office of the Secretary of State of the
35 certificate of incorporation of a domestic corporation or the
issuance by the Secretary of State of a certificate to a foreign
37 corporation authorizing it to transact business in this State shall
not preclude an action by this State to enjoin a violation of this
39 section or an action by any person adversely affected to enjoin

1 such violation or the use of a corporate name in violation of the
rights of such person, whether on principles of unfair competition
3 or otherwise. The court in any such action may grant any other
appropriate relief.

5 (cf: P.L. 1983, c. 490, s. 1)

8. N.J.S. 14A:2-2.1 is amended to read as follows:

7 14A:2-2.1. [Fictitious corporate] Corporate ¹[trade] alternate¹
names.

9 (1) No domestic corporation, or foreign corporation which
transacts business in this State within the meaning of section
11 14A:13-3, shall transact any business in this State using a
[fictitious] name other than its actual name unless

13 (a) It also uses its actual name in the transaction of any such
business in such a manner as not to be deceptive as to its actual
15 identity; or

(b) It has been authorized to transact business in this State,
17 using [the fictitious] an assumed name as provided in subsection
14A:2-2(3); or

19 (c) It has first registered the [fictitious] ¹[trade] alternate¹
name as provided in this section.

21 (2) Any corporation may adopt and use any [fictitious] ¹[trade]
alternate¹ name, including any which would be unavailable as the
23 name of a domestic or foreign corporation because of the
prohibitions of paragraph 14A:2-2(1)(b), but not including a name
25 prohibited as a corporate name by paragraph 14A:2-2(1)(c), by
filing a certificate of registration of [fictitious] a corporate
27 ¹[trade] alternate¹ name with the Secretary of State executed on
behalf of the corporation. The certificate shall set forth

29 (a) The name, jurisdiction and date of incorporation of the
corporation;

31 (b) The [fictitious] ¹[trade] alternate¹ name;

(c) A brief statement of the character or nature of the
33 particular business or businesses to be conducted using the
[fictitious] ¹[trade] alternate¹ name;

35 (d) That the corporation intends to use such name in this State;

(e) That the corporation has not previously used the [fictitious]
37 ¹[trade] alternate¹ name in this State in violation of this section
or, if it has, the month and year in which it commenced such use.

39 (3) Such a registration shall be effective for five years from

1 the date of filing, unless sooner terminated as provided below,
and may be renewed successively for additional five-year periods
3 by filing a certificate of renewal executed on behalf of the
corporation at any time within three months prior to, but not
5 later than, the date of expiration of the registration. Not more
than four months and not less than one month prior to the date of
7 expiration of the registration, the Secretary of State shall notify
the corporation of the date of expiration and the requirements
9 for renewal of the registration. The certificate of renewal shall
be effective as of the date of expiration of the earlier
11 registration. The certificate of renewal shall set forth the
information required in paragraph 14A:2-2.1(2)(a) through
13 paragraph 14A:2-2.1(2)(d), the date of filing of the certificate of
registration then in effect, and that the corporation is continuing
15 to use the [fictitious] ¹[trade] alternate¹ name. If a corporation
ceases to use ¹[a trade] an alternate¹ name in this State prior to
17 the expiration date of the five-year registration period, it may
file a termination certificate. A termination certificate shall
19 state the name of the corporation, the ¹[trade] alternate¹ name
for which the corporation has filed a certificate of registration
21 and that the corporation has ceased to use the registered ¹[trade]
alternate¹ name. The termination certificate may recite the
23 date upon which the corporation ceased to use the ¹[trade]
alternate¹ name, but no recital shall be required.

25 (4) Nothing in this section shall be construed

(a) To grant to the registrant of ¹[a]¹ [fictitious] ¹[trade] an
27 alternate¹ name any right in the name as against any prior or
subsequent user of the name, regardless of whether used as a
29 trademark, trade name, business name, or corporate name; or

(b) To interfere with the power of any court to enjoin the use
31 of any such name on the basis of the law of unfair competition or
on any other basis except the mere fact of identity or similarity
33 of the [fictitious] ¹[trade] alternate¹ name to any other corporate
name.

35 (5) A corporation which has used ¹[a]¹ [fictitious] ¹[trade] an
alternate¹ name in this State contrary to the provisions of this
37 section shall, upon filing a certificate of registration of
[fictitious] ¹[trade] alternate¹ name or an untimely certificate of
39 renewal, pay to the Secretary of State the filing fee prescribed

1 for such a certificate plus an additional filing fee equal to the
2 full amount of the regular filing fee multiplied by the number of
3 years it has been using such [fictitious] ¹[trade] alternate¹ name
4 in violation of this section after [the operative date of the
5 prohibitions of this section specified in subsection 14A:2-2.1(8)]
August 1, 1974. For purposes of this subsection, any part of a
6 year shall be considered a full year.

7 (6) The failure of a corporation to file a certificate of
8 registration or renewal of [fictitious] ¹[trade] alternate¹ name
9 shall not impair the validity of any contract or act of such
10 corporation and shall not prevent such corporation from
11 defending any action or proceeding in any court of this State, but
12 no such corporation shall maintain any action or proceeding in
13 any court of this State arising out of a contract or act in which it
14 used such [fictitious] ¹[trade] alternate¹ name until it has filed
15 such a certificate.

16 (7) (a) A corporation which files a certificate of registration of
17 [fictitious] ¹[trade] alternate¹ name which contains a false
18 statement or omission regarding the date it first used a fictitious
19 name in this State shall, if such false statement or omission
20 reduces the amount of the additional fee it paid or should have
21 paid as provided in subsection 14A:2-2.1(5), forfeit to the State a
22 penalty of not less than \$200.00 nor more than \$500.00.

23 (b) A corporation which ought to have filed a certificate of
24 registration or renewal of [fictitious] ¹[trade] alternate¹ name
25 and fails to do so within 60 days after being notified of its
26 obligation to do so by certified or registered mail by the
27 Secretary of State, by any other governmental officer, or by any
28 person aggrieved by its failure to do so, shall forfeit to the State
29 a penalty of not less than \$200.00 nor more than \$500.00.

30 (c) Such penalty shall be recovered with costs in an action
31 prosecuted by the Attorney General. The court may proceed in
32 such an action in a summary manner or otherwise.

33 (8) [The prohibitions of this section shall not be operative until
34 three months from the effective date of the act of which this is a
35 part. Any certificate of registration filed during that
36 three-month period need not include the information required by
37 paragraph 14A:2-2.1(2)(e).] (Deleted by amendment, P.L. 19
38 c. ...).

(cf: P.L. 1973, c. 366, s. 3)

1 9. N.J.S. 14A:2-3 is amended to read as follows:

14A:2-3. Reserved name.

3 (1) The exclusive right to the use of a corporate name may be reserved upon compliance with the provisions of this section.

5 (2) The reservation shall be made by filing in the office of the Secretary of State an application to reserve a specified corporate name, or the first name available for corporate use among not more than three specified names, executed by or on behalf of the applicant and setting forth the name and address of the applicant. If the Secretary of State finds that the name complies with the provisions of section 14A:2-2, he shall reserve it for the exclusive use of the applicant for a period of 120 days from the date of filing of the application and shall issue a certificate of reservation.

15 (3) The right to the exclusive use of a specified corporate name so reserved may be transferred by filing in the office of the Secretary of State a notice of such transfer, executed by or on behalf of the applicant for whom the name was reserved, and specifying the name and address of the transferee.

19 (4) The holder of a reserved name may renew the reservation for additional periods of 120 days by filing an application for renewal within the last 30 days of the current reservation period. There shall be no limit upon the number of renewals.

(cf: P.L. 1973, c. 366, s. 4)

25 10. N.J.S. 14A:2-7 is amended to read as follows:

14A:2-7. Certificate of incorporation.

27 (1) The certificate of incorporation shall set forth:

(a) The name of the corporation;

29 (b) The purpose or purposes for which the corporation is organized. It shall be a sufficient compliance with this paragraph to state, alone or with specifically enumerated purposes, that the corporation may engage in any activity within the purposes for which corporations may be organized under this act, and all such activities shall by such statement be deemed within the purposes of the corporation, subject to expressed limitations, if any;

31 (c) The aggregate number of shares which the corporation shall have authority to issue; [if such shares are to consist of one class only, the par value of each of such shares, or a statement that all of such shares are without par value;]

1 (d) If the shares are, or are to be, divided into classes, or into
classes and series, the designation of each class and series, the
3 number of shares in each class and series, and a statement of the
relative rights, preferences and limitations of the shares of each
5 class and series, to the extent that such designations, numbers,
relative rights, preferences and limitations have been determined;

7 (e) If the shares are, or are to be, divided into classes, or into
classes and series, a statement of any authority vested in the
9 board to divide the shares into classes or series or both, and to
determine or change for any class or series its designation,
11 number of shares, relative rights, preferences and limitations;

(f) Any provision not inconsistent with this act or any other
13 statute of this State, which the incorporators elect to set forth
for the management of the business and the conduct of the
15 affairs of the corporation, or creating, defining, limiting or
regulating the powers of the corporation, its directors and
17 shareholders or any class of shareholders, including any provision
which under this act is required or permitted to be set forth in
19 the by-laws;

(g) The address of the corporation's initial registered office,
21 and the name of the corporation's initial registered agent at such
address;

23 (h) The number of directors constituting the first board and the
names and addresses of the persons who are to serve as such
25 directors;

(i) The names and addresses of the incorporators;

27 (j) The duration of the corporation if other than perpetual; and

(k) If, pursuant to subsection 14A:2-7(2), the certificate of
29 incorporation is to be effective on a date subsequent to the date
of filing, the effective date of the certificate.

31 (2) The certificate of incorporation shall be filed in the office
of the Secretary of State. The corporate existence shall begin
33 upon the effective date of the certificate, which shall be the date
of the filing or such later time, not to exceed [30] 90 days from
35 the date of filing, as may be set forth in the certificate. Such
filing shall be conclusive evidence that all conditions precedent
37 required to be performed by the incorporators have been
complied with and, after the corporate existence has begun, that
39 the corporation has been incorporated under this act, except as

1 against this State in a proceeding to cancel or revoke the
certificate of incorporation or for involuntary dissolution of the
3 corporation.

(3) The certificate of incorporation may provide that a
5 director shall not be personally liable, or shall be liable only to
the extent therein provided, to the corporation or its shareholders
7 for damages for breach of any duty owed to the corporation or its
shareholders, except that such provision shall not relieve a
9 director from liability for any breach of duty based upon an act
or omission (a) in breach of such person's duty of loyalty to the
11 corporation or its shareholders, (b) not in good faith or involving a
knowing violation of law or (c) resulting in receipt by such person
13 of an improper personal benefit.

(cf: P.L. 1987, c. 35, s. 1)

15 11. N.J.S. 14A:3-3 is amended to read as follows:

14A:3-3. Guaranty not in furtherance of [corporate purposes]
17 business interest.

(1) A corporation may give a guaranty not in furtherance of its
19 [corporate purposes or those of any subsidiary, joint venture or
other enterprise in which it has an interest,] direct or indirect
21 business interests only when authorized at a meeting of
shareholders by the affirmative vote of [two-thirds] all of the
23 votes cast by the holders of each class and series of shares
entitled to vote thereon. If authorized by such a [like] vote,
25 [such] the guaranty may be secured by a mortgage of or a
security interest in all or any part of the corporate property, or
27 any interest therein, wherever situated.

(2) Nothing in subsection 14A:3-3(1) shall be deemed to
29 diminish the rights, if any, of the corporation's creditors.

(cf: P.L. 1973, c. 366, s. 7)

31 12. N.J.S. 14A:3-4 is amended to read as follows:

14A:3-4. Contributions by corporations.

(1) Any corporation organized for any purpose under any
33 general or special law of this State, unless otherwise provided in
its certificate of incorporation or by-laws, shall have power,
35 irrespective of corporate benefit, to aid, singly or in cooperation
with other corporations and with natural persons, in the creation
37 or maintenance of institutions or organizations engaged in
community fund, hospital, charitable, philanthropic, educational,
39

1 scientific or benevolent activities or patriotic or civic activities
2 conducive to the betterment of social and economic conditions,
3 and the [directors may appropriate, spend or contribute for such
4 purposes such reasonable sums as they] board may authorize the
5 making of contributions for those purposes in money, securities,
6 including shares of the corporation, or other property, in such
7 reasonable amounts as the board may determine; provided, that a
8 contribution shall not be authorized hereunder if at the time of
9 the contribution or immediately thereafter the donee institution
10 shall own more than 10% of the voting stock of the donor
11 corporation or one of its subsidiaries.

(2) The provisions of this section shall not be construed as
12 directly or indirectly minimizing or interpreting the rights and
13 powers of corporations, as heretofore existing, with reference to
14 appropriations, expenditures or contributions of the nature above
15 specified.

16 (cf: N.J.S. 14A:3-4)

17 13. N.J.S. 14A:3-5 is amended to read as follows:

18 14A:3-5. Indemnification of directors, officers and employees.

(1) As used in this section,

20 (a) "Corporate agent" means any person who is or was a
21 director, officer, employee or agent of the indemnifying
22 corporation or of any constituent corporation absorbed by the
23 indemnifying corporation in a consolidation or merger and any
24 person who is or was a director, officer, trustee, employee or
25 agent of any other enterprise, serving as such at the request of
26 the indemnifying corporation, or of any such constituent
27 corporation, or the legal representative of any such director,
28 officer, trustee, employee or agent;

(b) "Other enterprise" means any domestic or foreign
29 corporation, other than the indemnifying corporation, and any
30 partnership, joint venture, sole proprietorship, trust[, employee
31 benefit plan] or other enterprise, whether or not for profit,
32 served by a corporate agent;

(c) "Expenses" means reasonable costs, disbursements and
33 counsel fees;

(d) "Liabilities" means amounts paid or incurred in satisfaction
34 of settlements, judgments, fines and penalties; [and]

(e) "Proceeding" means any pending, threatened or completed
35

1 civil, criminal, administrative or arbitrate action, suit or
2 proceeding, and any appeal therein and any inquiry or
3 investigation which could lead to such action, suit or proceeding;
4 and

5 (f) References to "other enterprises" include employee benefit
6 plans; references to "fines" include any excise taxes assessed on
7 a person with respect to an employee benefit plan; and references
8 to "serving at the request of the indemnifying corporation"
9 include any service as a corporate agent which imposes duties on,
10 or involves services by, the corporate agent with respect to an
11 employee benefit plan, its participants, or beneficiaries; and a
12 person who acted in good faith and in a manner the person
13 reasonably believed to be in the interest of the participants and
14 beneficiaries of an employee benefit plan shall be deemed to have
15 acted in a manner "not opposed to the best interests of the
16 corporation" as referred to in this section.

17 (2) Any corporation organized for any purpose under any
18 general or special law of this State shall have the power to
19 indemnify a corporate agent against his expenses and liabilities in
20 connection with any proceeding involving the corporate agent by
21 reason of his being or having been such a corporate agent, other
22 than a proceeding by or in the right of the corporation, if

23 (a) Such corporate agent acted in good faith and in a manner he
24 reasonably believed to be in or not opposed to the best interests
25 of the corporation; and

26 (b) With respect to any criminal proceeding, such corporate
27 agent had no reasonable cause to believe his conduct was
28 unlawful. The termination of any proceeding by judgment, order,
29 settlement, conviction or upon a plea of nolo contendere or its
30 equivalent, shall not of itself create a presumption that such
31 corporate agent did not meet the applicable standards of conduct
32 set forth in paragraphs 14A:3-5(2)(a) and 14A:3-5(2)(b).

33 (3) Any corporation organized for any purpose under any
34 general or special law of this State shall have the power to
35 indemnify a corporate agent against his expenses in connection
36 with any proceeding by or in the right of the corporation to
37 procure a judgment in its favor which involves the corporate
38 agent by reason of his being or having been such corporate agent,
39 if he acted in good faith and in a manner he reasonably believed

1 to be in or not opposed to the best interests of the corporation.
2 However, in such proceeding no indemnification shall be provided
3 in respect of any claim, issue or matter as to which such
4 corporate agent shall have been adjudged to be liable to the
5 corporation, unless and only to the extent that the Superior Court
6 or the court in which such proceeding was brought shall
7 determine upon application that despite the adjudication of
8 liability, but in view of all circumstances of the case, such
9 corporate agent is fairly and reasonably entitled to indemnity for
10 such expenses as the Superior Court or such other court shall
11 deem proper.

12 (4) Any corporation organized for any purpose under any
13 general or special law of this State shall indemnify a corporate
14 agent against expenses to the extent that such corporate agent
15 has been successful on the merits or otherwise in any proceeding
16 referred to in subsections 14A:3-5(2) and 14A:3-5(3) or in defense
17 of any claim, issue or matter therein.

18 (5) Any indemnification under subsection 14A:3-5(2) and, unless
19 ordered by a court, under subsection 14A:3-5(3) may be made by
20 the corporation only as authorized in a specific case upon a
21 determination that indemnification is proper in the circumstances
22 because the corporate agent met the applicable standard of
23 conduct set forth in subsection 14A:3-5(2) or subsection
24 14A:3-5(3). Unless otherwise provided in the certificate of
25 incorporation or by-laws, such determination shall be made

26 (a) By the board of directors or a committee thereof, acting by
27 a majority vote of a quorum consisting of directors who were not
28 parties to or otherwise involved in the proceeding; or

29 (b) If such a quorum is not obtainable, or, even if obtainable
30 and such quorum of the board of directors or committee by a
31 majority vote of the disinterested directors so directs, by
32 independent legal counsel, in a written opinion, such counsel to be
33 designated by the board of directors; or

34 (c) By the shareholders if the certificate of incorporation or
35 by-laws or a resolution of the board of directors or of the
36 shareholders so directs.

37 (6) Expenses incurred by a corporate agent in connection with a
38 proceeding may be paid by the corporation in advance of the final
39 disposition of the proceeding as authorized by the board of

1 directors upon receipt of an undertaking by or on behalf of the
corporate agent to repay such amount unless it shall ultimately
3 be determined that he is entitled to be indemnified as provided in
this section.

5 (7)(a) If a corporation upon application of a corporate agent has
failed or refused to provide indemnification as required under
7 subsection 14A:3-5(4) or permitted under subsections 14A:3-5(2),
14A:3-5(3) and 14A:3-5(6), a corporate agent may apply to a
9 court for an award of indemnification by the corporation, and
such court

11 (i) may award indemnification to the extent authorized
under subsections 14A:3-5(2) and 14A:3-5(3) and shall
13 award indemnification to the extent required under
subsection 14A:3-5(4), notwithstanding any contrary
15 determination which may have been made under subsection
14A:3-5(5); and

17 (ii) may allow reasonable expenses to the extent
authorized by, and subject to the provisions of, subsection
19 14A:3-5(6), if the court shall find that the corporate agent
has by his pleadings or during the course of the proceeding
21 raised genuine issues of fact or law.

(b) Application for such indemnification may be made

23 (i) in the civil action in which the expenses were or are to
be incurred or other amounts were or are to be paid; or

25 (ii) to the Superior Court in a separate proceeding. If the
application is for indemnification arising out of a civil
27 action, it shall set forth reasonable cause for the failure to
make application for such relief in the action or
29 proceeding in which the expenses were or are to be
incurred or other amounts were or are to be paid.

31 The application shall set forth the disposition of any previous
application for indemnification and shall be made in such a
33 manner and form as may be required by the applicable rules of
court or, in the absence thereof, by direction of the court to
35 which it is made. Such application shall be upon notice to the
corporation. The court may also direct that notice shall be given
37 at the expense of the corporation to the shareholders and such
other persons as it may designate in such manner as it may
39 require.

1 (8) The indemnification and advancement of expenses provided
by or granted pursuant to the other subsections of this section
3 shall not exclude any other rights to which a corporate agent may
be entitled under a certificate of incorporation, by-law,
5 agreement, vote of shareholders, or otherwise; provided that no
indemnification shall be made to or on behalf of a corporate agent
7 if a judgment or other final adjudication adverse to the corporate
agent establishes that his acts or omissions (a) were in breach of
9 his duty of loyalty to the corporation or its shareholders, (b) were
not in good faith or involved a knowing violation of law or (c)
11 resulted in receipt by the corporate agent of an improper
personal benefit.

13 (9) Any corporation organized for any purpose under any
general or special law of this State shall have the power to
15 purchase and maintain insurance on behalf of any corporate agent
against any expenses incurred in any proceeding and any
17 liabilities asserted against him by reason of his being or having
been a corporate agent, whether or not the corporation would
19 have the power to indemnify him against such expenses and
liabilities under the provisions of this section. The corporation
21 may purchase such insurance from, or such insurance may be
reinsured in whole or in part by, an insurer owned by or otherwise
23 affiliated with the corporation, whether or not such insurer does
business with other insureds.

25 (10) The powers granted by this section may be exercised by
the corporation, notwithstanding the absence of any provision in
27 its certificate of incorporation or by-laws authorizing the
exercise of such powers.

29 (11) Except as required by subsection 14A:3-5(4), no
indemnification shall be made or expenses advanced by a
31 corporation under this section, and none shall be ordered by a
court, if such action would be inconsistent with a provision of the
33 certificate of incorporation, a by-law, a resolution of the board
of directors or of the shareholders, an agreement or other proper
35 corporate action, in effect at the time of the accrual of the
alleged cause of action asserted in the proceeding, which
37 prohibits, limits or otherwise conditions the exercise of
indemnification powers by the corporation or the rights of
39 indemnification to which a corporate agent may be entitled.

1 (12) This section does not limit a corporation's power to pay or
reimburse expenses incurred by a corporate agent in connection
3 with the corporate agent's appearance as a witness in a
proceeding at a time when the corporate agent has not been made
5 a party to the proceeding.

(cf: P.L. 1987, c. 35, s. 2)

7 14. N.J.S. 14A:4-2 is amended to read as follows:

14A:4-2. Function of registered agent and office; service of
9 process, notice or demand.

(1) Every registered agent shall be an agent of the corporation
11 which has appointed him, upon whom process against the
corporation may be served.

13 (2) Whenever any law of this State requires or permits any
notice or demand to be given to or made upon a domestic
15 corporation or a foreign corporation authorized to transact
business in this State, its officers or directors, such notice or
17 demand may be sent by mail or otherwise, as the law may require
or permit, to the registered office of the corporation in this
19 State, and such notice so given or demand so made shall be
sufficient notice or demand.

21 (3) The provisions of this section shall not exclude any other
method provided by law for service of process upon a corporation,
23 domestic or foreign, or for service of a notice or demand upon
such corporation, its officers or directors.

25 (4) [Whenever any law of this State requires that any
certificate, report or statement made, published, filed or
27 recorded by any corporation, domestic or foreign, state the
residence or post office address of any incorporator, shareholder,
29 director or officer, there must be furnished in such document the
residence or business office address of such person.] (Deleted by
31 amendment, P.L. 19 , c. . . .)

(cf: P.L. 1969, c. 102, s. 2)

33 15. N.J.S. 14A:4-4 is amended to read as follows:

14A:4-4. Resignation of registered agent.

35 (1) The registered agent of a domestic corporation or a foreign
corporation authorized to transact business in this State may
37 resign by complying with the provisions of this section.

(2) The registered agent shall serve a notice of resignation by
39 certified mail, return receipt requested, upon the president, or

1 any vice president, or the secretary or treasurer of the
corporation at the address last known to the agent, and shall
3 make an affidavit of such service. The notice shall also advise
4 the recipient of the requirements of subsection 14A:4-3(1) and
5 the penalties for failure to comply imposed by subsection
6 14A:4-3(4). If such service cannot be made, the affidavit shall so
7 state, and shall state briefly why such service cannot be made.
The affidavit, together with a copy of the notice of resignation,
9 shall be filed in the office of the Secretary of State.

(3) Such resignation shall become effective upon the expiration
11 of 30 days after the filing in the office of the Secretary of State
of the affidavit under this section or upon the designation by the
13 corporation of a new registered agent pursuant to this act,
whichever is earlier. If the corporation fails to designate a new
15 registered agent within said 30-day period, the corporation shall
thereafter be deemed to have no registered agent or registered
17 office in this State.

(4) Service of a notice of resignation shall be in lieu of and
19 shall be deemed to be the written demand of the Secretary of
20 State required by subsection 14A:4-3(4).

21 (cf: N.J.S. 14A:4-4)

16. N.J.S. 14A:4-5 is amended to read as follows:

23 14A:4-5. Annual report to Secretary of State.

(1) Every domestic corporation and every foreign corporation
25 authorized to transact business in this State shall file in the
office of the Secretary of State, within the time prescribed by
27 this section, an annual report, executed on behalf of the
corporation, ¹or executed by the registered agent,¹ setting forth

29 (a) The name of the corporation and, in the case of a foreign
corporation, the jurisdiction of its incorporation;

31 (b) The address of the registered office of the corporation in
this State, and the name of its registered agent in this State at
33 such address [, and, in the case of a foreign corporation, the
address of its main business or headquarters office];

35 (c) The names and addresses of the directors and officers of
the corporation; [and]

37 (d) [The date appointed for the next annual meeting of the
shareholders for the election of directors.] (Deleted by
39 amendment, P.L. 19 , c);

- 1 (e) The address of its main business or headquarters office; and
2 (f) The address of its principal business office in New Jersey,
3 if any.

4 (2) The Secretary of State shall designate a date for filing
5 annual reports for each corporation required to submit a report
6 pursuant to this section and shall annually notify the corporation
7 of the date so designated not less than 60 days prior to such
8 date. The corporation shall file the report within 30 days before
9 or 30 days after the date so designated. If the date so designated
10 is not more than six months after the date on which an annual
11 report pursuant to the provisions of prior law was filed or on
12 which the certificate of incorporation became effective, the
13 corporation shall not be required to file an annual report until one
14 year after the first occurrence of the date so designated.

15 (3) If the report is not so filed, the corporation shall, after
16 written demand therefor by the Secretary of State by certified
17 mail addressed to the corporation at the last address appearing of
18 record in his office, forfeit to the State a penalty of \$200.00 for
19 each report required to have been filed not more than five years
20 prior thereto and remaining unfiled, to be recovered with costs in
21 a civil action prosecuted by the Attorney General. No
22 corporation shall be subject to penalty if it shall, within 30 days
23 after such written demand, file the reports required by law and
24 pay to the Secretary of State the fee provided by law for the
25 filing of each such report. In lieu of such civil action, the
26 Secretary of State, after expiration of such 30-day period, may
27 issue a certificate to the Clerk of the Superior Court that the
28 corporation is indebted for the payment of such penalty, and
29 thereupon the clerk shall immediately enter upon his record of
30 docketed judgments the name of such corporation as the
31 judgment debtor, and of the State as the judgment creditor, a
32 statement that the penalty is imposed under this section, the
33 amount of the penalty, and the date of such certificate. Such
34 entry shall have the same force as a judgment docketed in the
35 Superior Court. The Secretary of State within five days after
36 such entry shall give notice thereof to the corporation by
37 certified mail addressed to the corporation at the last address
38 appearing of record in his office.

39 (4) The Secretary of State shall furnish annual report forms,

1 shall keep in his office all such reports and shall prepare an
alphabetical index thereof, which reports and index shall be open
3 to public inspection at proper hours.

5 (5) In the event a domestic corporation fails to file an annual
report for two consecutive years with the Secretary of State,
then, after written notice by certified mail to the corporation at
its last known main business or headquarters office and at the
address of its registered agent, the Secretary of State may issue
a proclamation declaring that the certificate of incorporation of
the corporation has been revoked and that all powers conferred
by law upon it shall thereafter be inoperative and void. The
proclamation of the Secretary of State shall be filed in the office
of the Secretary of State. No corporation's certificate of
incorporation shall be revoked pursuant to this subsection if,
within 30 days after the giving of notice, it files the reports
required by law and pays to the Secretary of State all of the fees
due for the filing of the reports and all penalties which have been
imposed pursuant to subsection (3).

19 (6) In the event a foreign corporation fails to file an annual
report for two consecutive years with the Secretary of State,
then, after written notice by certified mail to the corporation at
its last known main business or headquarters office and at the
address of its registered agent, the Secretary of State may issue
a proclamation declaring that the certificate of authority to do
business of the corporation and the powers conferred by law upon
it shall be revoked. The proclamation of the Secretary of State
shall be filed in the office of the Secretary of State. No
corporation's certificate of authority shall be revoked pursuant
to this paragraph if, within 30 days after the giving of notice, it
files the reports required by law and pays to the Secretary of
State all of the fees due for the filing of the reports and all
penalties which have been imposed pursuant to subsection (3).

33 (7) If the certificate of incorporation of a domestic
corporation or a certificate of authority of a foreign corporation
has been revoked by proclamation, the certificate shall be
reinstated by proclamation of the Secretary of State upon: (a)
payment by the corporation of all fees and fines due to the
Secretary of State and (b) certification of the Director of the
Division of Taxation that no cause exists for revocation of the
39

1 corporation's certificate of incorporation or certificate of
2 authority pursuant to R.S. 54:11-2. The reinstatement relates
3 back to the date of issuance of the proclamation revoking the
4 certificate of incorporation or the certificate of authority and
5 shall validate all actions taken in the interim. In the event that
6 in the interim the corporate name has become unavailable, the
7 Secretary of State shall issue the certificate upon, in the case of
8 a domestic corporation, the filing of an amendment to its
9 certificate of incorporation to change the corporate name to an
10 available name, and, in the case of a foreign corporation, the
11 filing of an amended certificate of authority adopting an assumed
12 name.

13 (cf: P.L. 1973, c. 366, s. 11)

14 17. N.J.S. 14A:5-8 is amended to read as follows:

15 14A:5-8. Voting list.

16 (1) The officer or agent having charge of the stock transfer
17 books for shares of a corporation shall make [and certify] a
18 complete list of the shareholders entitled to vote at a
19 shareholders' meeting or any adjournment thereof. A list
20 required by this subsection may consist of cards arranged
21 alphabetically or any equipment which permits the visual display
22 of the information required by this section. Such list shall

23 (a) Be arranged alphabetically within each class, series, or
24 group of shareholders maintained by the corporation for
25 convenience of reference, with the address of, and the number of
26 shares held by, each shareholder;

27 (b) Be produced (or available by means of a visual display) at
28 the time and place of the meeting;

29 (c) Be subject to the inspection of any shareholder [during the
30 whole time of] for reasonable periods during the meeting ¹[for
31 any proper purpose]¹; and

32 (d) Be prima facie evidence as to who are the shareholders
33 entitled to examine such list or to vote at any meeting.

34 (2) If the requirements of this section have not been complied
35 with, the meeting shall, on the demand of any shareholder in
36 person or by proxy, be adjourned until the requirements are
37 complied with. Failure to comply with the requirements of this
38 section shall not affect the validity of any action taken at such
39 meeting prior to the making of any such demand.

(cf: P.L. 1973, c. 366, s. 14)

1 18. N.J.S. 14A:5-12 is amended to read as follows:

14A:5-12. Greater voting requirements.

3 (1) [Whenever] The provisions of the certificate of
5 incorporation shall control whenever, with respect to any action
7 to be authorized by the shareholders of a corporation, including
9 the election of directors, the certificate of incorporation requires
11 the affirmative vote of a greater proportion of the votes cast,
including a unanimous vote, by the holders of shares entitled to
vote thereon, or by the holders of shares of any class or series
thereof, than is required by this act with respect to such action [,
the provisions of the certificate of incorporation shall control].

(2) An amendment of the certificate of incorporation which
changes or deletes such a provision shall be authorized by the
same vote as would be required to take action under [such] the
provision.

(cf: N.J.S. 14A:5-12)

17 19. N.J.S. 14A:5-13 is amended to read as follows:

14A:5-13. Shares owned or controlled by the corporation not
voted or counted.

[Treasury shares shall not be voted at any meeting or] A
21 corporation holding its own shares shall not vote those shares at
23 any meeting and those shares shall not be counted in determining
the total number of outstanding shares at any given time. If the
25 corporation holds a majority of the shares entitled to [cast the
plurality of the votes required] vote for the election of directors
27 of another domestic corporation or a foreign corporation, shares
of the corporation held by such other domestic corporation or
foreign corporation shall not be voted at any meeting or counted
29 in determining the total number of outstanding shares at any
given time.

31 (cf: N.J.S. 14A:5-13)

20. N.J.S. 14A:5-19 is amended to read as follows:

33 14A:5-19. Proxy voting.

(1) Every shareholder entitled to vote at a meeting of
35 shareholders or to express consent without a meeting may
authorize another person or persons to act for him by proxy.
37 Every proxy shall be executed in writing by the shareholder or his
agent, except that a proxy may be given by a shareholder or his
39 agent by telegram or cable or [its equivalent] by any means of

1 electronic communication which results in a writing. No proxy
2 shall be valid for more than 11 months, unless a longer time is
3 expressly provided therein [, but in no event shall a proxy be valid
4 after three years from the date of execution]. Unless it is
5 [coupled with an interest] irrevocable as provided in subsection
6 14A:5-19(3), a proxy shall be revocable at will. The grant of a
7 later proxy revokes any earlier proxy unless the earlier proxy is
8 irrevocable. A proxy shall not be revoked by the death or
9 incapacity of the shareholder, but [such] the proxy shall continue
10 to be in force until revoked by the personal representative or
11 guardian of the shareholder. The presence at any meeting of any
12 shareholder who has given a proxy [shall] does not revoke [such]
13 the proxy unless the shareholder [shall file] files written notice of
14 [such] the revocation with the secretary of the meeting prior to
15 the voting of [such] the proxy or votes the shares subject to the
16 proxy by written ballot.

17 (2) A person named in a proxy as the attorney or agent of a
18 shareholder may, if the proxy so provides, substitute another
19 person to act in his place, including any other person named as an
20 attorney or agent in the same proxy. The substitution shall not
21 be effective until an instrument effecting it is filed with the
22 secretary of the corporation.

23 (3) A proxy which states that it is irrevocable is irrevocable if
24 coupled with an interest either in the stock itself or in the
25 corporation and, in particular and without limitation, if it is held
26 by any of the following or a nominee of any of the following:

27 (a) A pledgee;

28 (b) A person who has purchased or agreed to purchase the
29 shares;

30 (c) A creditor of the corporation who has extended credit or
31 has agreed to continue to extend credit to the corporation if
32 the proxy is given in consideration of the extension or
33 continuation;

34 (d) A person who has agreed to perform services as an
35 employee of the corporation if the proxy is given in
36 consideration of the agreement; or

37 (e) A person designated pursuant to the terms of an
agreement as to voting between two or more shareholders.

1 An irrevocable proxy becomes revocable when the interest
2 which supports the proxy has terminated.

3 (4) Unless noted conspicuously on the share certificate, an
4 otherwise irrevocable proxy may be revoked by a person who
5 becomes the holder of the shares without actual knowledge of the
6 restriction.

7 (cf: P.L. 1973, c. 366, s. 15)

8 21. N.J.S. 14A:5-21 is amended to read as follows:

9 14A:5-21. Agreements as to voting; provision in certificate of
10 incorporation as to control of directors.

11 (1) An agreement between two or more shareholders, if in
12 writing and signed by the parties thereto, may provide that in
13 exercising any voting rights, the shares held by them shall be
14 voted as therein provided, or as they may agree, or as determined
15 in accordance with a procedure agreed upon by them. Those
16 agreements shall be specifically enforceable.

17 (2) A provision in the certificate of incorporation otherwise
18 prohibited by law because it improperly restricts the board in its
19 management of the business of the corporation, or improperly
20 transfers or provides for the transfer to one or more persons
21 named in the certificate of incorporation or to be selected from
22 time to time by shareholders, all or any part of such management
23 otherwise within the authority of the board, shall nevertheless be
24 valid if all the incorporators have authorized such provision in the
25 certificate of incorporation or the holders of record of all
26 outstanding shares, whether or not having voting power, have
27 authorized such provision in an amendment to the certificate of
28 incorporation. If all management powers otherwise within the
29 authority of the board are so transferred, the certificate of
30 incorporation may provide that the corporation shall not have a
31 board in which case the certificate of incorporation and any other
32 certificate or document requiring a statement of the number,
33 names, and addresses of directors shall set out in lieu thereof the
34 name, address, and title, if any, of the person or persons in whom
35 such management authority is then vested.

36 (3) A provision authorized by subsection 14A:5-21(2) shall
37 become invalid if, to the knowledge of the board, or of the person
38 or persons having the management authority otherwise in the
39 board,

1 (a) Subsequent to the adoption of such provision, shares are
transferred or issued to any person who takes delivery of the
3 share certificate without notice thereof, unless such person
consents in writing to such provisions; or

5 (b) Any shares of the corporation are listed on a national
securities exchange or regularly quoted in an over-the-counter
7 market by one or more members of a national or affiliated
securities association.

9 (4) If a provision authorized by subsection 14A:5-21(2) shall
have become invalid as provided in subsection 14A:5-21(3), the
11 board, or the person or persons having the management authority
otherwise in the board, shall amend the certificate of
13 incorporation to delete such provision by filing a certificate of
amendment in the office of the Secretary of State. The
15 certificate shall be executed on behalf of the corporation and
shall set forth

17 (a) The name of the corporation;

(b) The date of the adoption of the amendment;

19 (c) The deleted provision; and

(d) The event set forth in subsection 14A:5-21(3)

21 by reason of which the provision has become invalid.

(5) The effect of any provision authorized by subsection
23 14A:5-21(2) shall be to relieve the directors, if any, and grant to
and impose upon, the person or persons vested with management
25 authority otherwise in the board the rights, powers, privileges,
and liabilities, including liability for managerial acts or
27 omissions, that are granted to and imposed upon directors by law
to the extent that, and so long as, the discretion and powers
29 which otherwise would be in the directors in their management of
corporate affairs are vested in such person or persons by any such
31 provision. Such person or persons shall be deemed to be directors
for purposes of applying the provisions of this act and shall be
33 deemed to be corporate agents for the purposes of section
14A:3-5.

35 (6) If the certificate of incorporation contains a provision
authorized by subsection 14A:5-21(2), the existence of such
37 provision shall be noted conspicuously on the face of every
certificate for shares issued by such corporation, and each holder
39 of such certificate shall conclusively be deemed to have taken
delivery with notice of such provision.

1 (7) As used in this section, "person" shall include a natural
2 person, a domestic or foreign corporation, a partnership, limited
3 partnership, trust, firm, society, association, joint stock
4 company, or any other entity legally competent to contract in its
5 own name.

(cf: P.L. 1973, c. 366, s. 16)

7 22. N.J.S. 14A:5-28 is amended to read as follows:

14A:5-28. Books and records; right of inspection.

9 (1) Each corporation shall keep books and records of account
10 and minutes of the proceedings of its shareholders, board and
11 executive committee, if any. Unless otherwise provided in the
12 bylaws, such books, records and minutes may be kept outside this
13 State. The corporation shall [make available for inspection] keep
14 at its principal office, its registered office, or at the office of its
15 transfer agent [in this State], a record or records containing the
16 names and addresses of all shareholders, the number, class and
17 series of shares held by each and the dates when they
18 respectively became the owners of record thereof[, within 10
19 days after demand by a shareholder entitled to inspect them, as
20 defined in subsection 14A:5-28 (3), except that in the case of
21 shares listed on a national securities exchange, the records may
22 be made available at the office of the corporation's transfer
23 agent within or without this State]. Any of the foregoing books,
24 minutes or records any be in written form or in any other form
25 capable of being converted into [written] readable form within a
26 reasonable time. A corporation shall convert into [written]
27 readable form without charge any such records not in such form,
28 upon the written request of any person entitled to inspect them.

29 (2) Upon the written request of any shareholder, the
30 corporation shall mail to such shareholder its balance sheet as at
31 the end of the preceding fiscal year, and its profit and loss and
32 surplus statement for such fiscal year.

33 (3) Any person who shall have been a shareholder of record of
34 a corporation for at least six months immediately preceding his
35 demand, or any person holding, or so authorized in writing by the
36 holders of, at least 5% of the outstanding shares of any class or
37 series, upon at least five days' written demand shall have the
38 right for any proper purpose to examine in person or by agent or
39 attorney, during usual business hours, its minutes of the

1 proceedings of its shareholders and record of shareholders and to
2 make extracts therefrom, at the places where the same are kept
3 pursuant to subsection 14A:5-28(1).

4 (4) Nothing herein contained shall impair the power of any
5 court, upon proof by a shareholder of proper purpose, irrespective
6 of the period of time during which [said] the shareholder shall
7 have been a shareholder of record, and irrespective of the number
8 of shares held by him, to compel the production for examination
9 by such shareholder of the books and records of account, minutes,
10 and record of shareholders of a corporation. The court may, in
11 its discretion prescribe any limitations or conditions with
12 reference to the inspection, or award any other or further relief
13 as the court may deem just and proper. The court may order
14 books, documents and records, pertinent extracts therefrom, or
15 duly authenticated copies thereof, to be brought ¹[with] ¹within¹
16 this State and kept in this State upon whatever terms and
17 conditions as the order may prescribe. In any action for
18 inspection the court may proceed summarily.

19 (5) Holders of voting trust certificates representing shares of
20 the corporation shall be regarded as shareholders for the purpose
21 of this section.

(cf: P.L. 1973, c. 366, s. 18)

22 23. N.J.S. 14A:5-29 is amended to read as follows:

14A:5-29. Preemptive rights.

24 (1) [Except as otherwise provided in the certificate of
25 incorporation, a corporation may issue or deliver unissued or
26 treasury shares, or option rights, or obligations or other securities
27 having conversion or option rights, without first offering them to
28 existing shareholders] The shareholders of corporations organized
29 after January 1, 1969 shall not have preemptive rights unless the
30 certificate of incorporation provides otherwise. The shareholders
31 of corporations organized prior to January 1, 1969 shall have
32 preemptive rights unless the certificate of incorporation provides
33 otherwise. Any corporation may alter or abolish preemptive
34 rights by amendment to its certificate of incorporation.

35 (2) [The preemptive rights, whether created by statute or
36 common law, of shareholders of corporations organized prior to
37 the effective date of this act shall not be affected by subsection
38 14A:5-29(1). Any such corporation may alter or abolish its
39

1 shareholders' preemptive rights by an amendment of its
2 certificate of incorporation] Any corporation may elect to grant
3 its shareholders preemptive rights. An election may be made by
4 including in the certificate of incorporation a statement to the
5 effect that the shareholders shall have preemptive rights.

(3) [If a corporation organized after the effective date of this
7 act elects to grant its shareholders preemptive rights, such rights
8 shall be as provided in this subsection, except as otherwise
9 provided in the certificate of incorporation. Such an election
10 may be made by stating in the certificate of incorporation that
11 "The shareholders shall have preemptive rights." The effect of
12 the inclusion of such a statement shall be as follows] Unless
13 otherwise provided in the certificate of incorporation, the effect
14 of shareholders having preemptive rights shall be as follows:

15 (a) Upon the [issue] issuance for cash of shares, or options to
16 purchase shares, of the same class as those held by a shareholder,
17 the shareholder shall have a [preemptive] right to acquire a pro
18 rata portion of such shares or options so issued according to the
19 number of shares of such class held by him. Such preemptive
20 right shall extend to [unissued shares and to treasury shares. It
21 shall also extend to] shares, obligations or other securities,
22 however described, which are convertible into shares of the same
23 class as those held by the shareholder.

(b) Shares, obligations or other securities of the corporation
25 which are subject to preemptive rights as herein provided shall
26 not be deemed to be issued for cash within the meaning of this
27 section if cash constitutes only a part of the consideration
28 received by the corporation.

29 (c) A shareholder may waive his preemptive right; a waiver of a
30 preemptive right, when evidenced by a writing, shall be binding
31 upon the shareholder notwithstanding it is given without
32 consideration.

33 (d) No shareholder shall have a preemptive right to acquire
34 shares, obligations or other securities as herein provided, which

35 (i) are issued pursuant to a plan of merger or
36 consolidation;

37 (ii) are issued pursuant to subsection 14A:7-7(2) or
Chapter 8 of this act;

1 (iii) are issued to satisfy conversion or option rights,
however evidenced, granted by the corporation;

3 (iv) are issued pursuant to a plan of reorganization
approved by a court pursuant to a statute of this State or
5 of the United States; or

7 (v) are part of the shares, obligations or other securities
authorized in the original certificate of incorporation and
are issued within six months from the effective date of
9 such certificate.

(e) Upon the proposed issuance of shares, obligations or other
11 securities subject to preemptive rights, the board shall cause
notice to be given to each shareholder of record entitled to
13 preemptive rights. The notice shall set forth

(i) the amount of shares, obligations or other securities
15 with respect to which the shareholder has a preemptive
right and the method used to determine that amount;

17 (ii) the price and other terms and conditions upon which
the shareholder may purchase such shares, obligations or
19 other securities; and

(iii) the time within which and the method by which the
21 shareholder must exercise the right.

The notice shall be given at least 30 days prior to the time within
23 which the shareholder must exercise the right.

(f) Shares, obligations or other securities subject to preemptive
25 rights, which are not acquired by shareholders in the exercise of
their preemptive rights may, for a period not exceeding one year
27 after the date limited by the directors for the exercise of such
preemptive rights, be issued, sold, or optioned to such person or
29 persons as the board may determine, at a price not less than that
at which they were offered to such shareholders. Any such
31 shares, obligations or other securities not so issued, sold or
optioned during such one-year period, shall at the expiration of
33 such period again be subject to preemptive rights of shareholders.
(cf: P.L. 1973, c. 366, s. 20)

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

14A:6-1. Board of directors.

37 The business and affairs of a corporation shall be managed by
or under the direction of its board, except as in this act or in its
39 certificate of incorporation otherwise provided. Directors shall

1 be at least 18 years of age and need not be United States citizens
or residents of this State or shareholders of the corporation
3 unless the certificate of incorporation or by-laws so require. The
certificate of incorporation or by-laws may prescribe other
5 qualifications for directors.

(cf: P.L. 1973, c. 366, s. 21)

7 25. N.J.S. 14A:6-3 is amended to read as follows:

14A:6-3. Term of directors; resignation.

9 (1) The directors named in the certificate of incorporation shall
hold office until the first annual meeting of shareholders, and
11 until their successors shall have been elected and qualified. At
the first annual meeting of shareholders and at each annual
13 meeting thereafter the shareholders shall elect directors to hold
office until the next succeeding annual meeting, except in case of
15 the classification of directors [as permitted by this act] pursuant
to subsection 14A:6-4(1) and in the case of directors whose terms
17 expire as provided for in subsection 14A:6-4(2). Each director
shall hold office for the term for which he is elected and until his
19 successor shall have been elected and qualified.

(2) A director may resign by written notice to the corporation.
21 The resignation shall be effective upon receipt thereof by the
corporation or at such subsequent time as shall be specified in the
23 notice of resignation.

(cf: N.J.S. 14A:6-3)

25 26. N.J.S. 14A:6-4 is amended to read as follows:

14A:6-4. Classification of directors; restriction of right to
27 choose directors.

(1) A corporation may provide in its certificate of
29 incorporation for the classification of its directors in respect to
the time for which they shall severally hold office, but no class of
31 directors shall hold office for a term shorter than one year or
longer than five years, and the term of office of at least one
33 class shall expire in each year. No classification of directors
shall be effective prior to the first annual meeting of
35 shareholders.

(2) Any corporation having more than one class or series of
37 shares may provide in its certificate of incorporation for the
election of one or more directors by the shareholders of any class
39 or series, to the exclusion of other shareholders. The certificate

1 of incorporation may grant shareholders of a class or series of
2 shares the right to elect one or more directors upon the
3 occurrence of stated events for a specific term or a term ending
4 upon the occurrence of stated events.

5 (cf: N.J.S. 14A:6-4)

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

7 14A:6-5. Vacancies and newly created directorships.

8 (1) Unless otherwise provided in the certificate of
9 incorporation or the by-laws, any directorship not filled at the
10 annual meeting [and], any vacancy, however caused, occurring in
11 the board, and newly created directorships resulting from an
12 increase in the authorized number of directors may be filled by
13 the affirmative vote of a majority of the remaining directors
14 even though less than a quorum of the board, or by a sole
15 remaining director. A director so elected by the board shall hold
16 office until the next succeeding annual meeting of shareholders
17 and until his successor shall have been elected and qualified.

18 (2) Unless otherwise provided in the certificate of
19 incorporation or by-laws, when one or more directors shall resign
20 from the board effective at a future date, a majority of the
21 directors, then in office, including those who have so resigned,
22 shall have power to fill such vacancy or vacancies, the vote
23 thereon to take effect when such resignation or resignations shall
24 become effective, and each director so chosen shall hold office as
25 herein provided in the filling of other vacancies.

26 (3) Any directorship [to be filled by reason of an increase in the
27 number of directors shall] not filled by the board may be filled by
28 [election] the shareholders at an annual meeting or at a special
29 meeting of shareholders called for that purpose[, except that the
30 certificate of incorporation or a by-law adopted by the
31 shareholders may authorize the board to fill any such
32 directorship. A director elected by the board to fill any such
33 directorship shall hold office until the next succeeding annual
34 meeting of shareholders and until his successor shall have been
35 elected and qualified].

36 (4) If by reason of death, resignation or other cause a
37 corporation has no directors in office, any shareholder or the
38 executor or administrator of a deceased shareholder may call a
39 special meeting of shareholders for the election of directors and,

1 over his own signature, shall give notice of said meeting in
accordance with section 14A:5-4 except to the extent that such
3 notice is waived pursuant to section 14A:5-5.

(cf: N.J.S. 14A:6-5)

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

14A:6-6. Removal of directors.

7 (1) One or more or all the directors of a corporation may be
removed for cause or, unless otherwise provided in the certificate
9 of incorporation, without cause by the shareholders by the
affirmative vote of the majority of the votes cast by the holders
11 of shares entitled to vote for the election of directors. [If the
certificate of incorporation, so provides, one or more or all the
13 directors may be removed without cause by like vote of the
shareholders.]

15 (2) [The] Unless otherwise provided in the certificate of
incorporation, the removal of directors, with or without cause, by
17 vote of the shareholders as provided in subsection 14A:6-6(1), is
subject to the following qualifications

19 (a) In any case where cumulative voting is authorized, if less
than the total number of directors then serving on the board is to
21 be removed by the shareholders, no one of the directors may be
so removed if the votes cast against his removal would be
23 sufficient to elect him if then voted cumulatively at an election
of the entire board; or, if there are classes of directors, at an
25 election of the class of directors of which he is a part;

(b) A director elected by a class vote, as authorized by
27 subsection 14A:6-4(2), may be removed only by a class vote of
the holders of shares entitled to vote for his election;

29 (c) If the certificate of incorporation requires a greater vote
than a plurality of the votes cast for the election of directors, no
31 director may be removed except by the greater vote required to
elect him; and

33 (d) Shareholders of a corporation whose board of directors is
classified as provided in subsection 14A:6-4(1) shall not be
35 entitled to remove directors without cause.

(3) The certificate of incorporation or a by-law adopted by the
37 shareholders may provide that the board shall have the power to
remove directors for cause and to suspend directors pending a
39 final determination that cause exists for removal.

1 (4) The Superior Court, in an action in which the court may
2 proceed in a summary manner or otherwise, may review the
3 removal or suspension of a director for cause.

4 (5) No act of the board done during the period when a director
5 has been suspended or removed for cause shall be impugned or
6 invalidated solely on account of the suspension or removal if the
7 suspension or removal is thereafter rescinded by the shareholders
8 or by the board or by the final judgment of the court.

9 (cf: N.J.S. 14A:6-6)

10 29. (New section) Section 14A:6-7.1 is added to the New
11 Jersey Statutes as follows:

12 14A:6-7.1. Directors' voting; quorum of board of directors and
13 committees; action of board and committees; action of directors
14 without a meeting.

15 (1) Each director shall have one vote at meetings of the board
16 or at meetings of board committees unless the certificate of
17 incorporation provides the director is entitled to more than one
18 vote pursuant to a provision in the certificate of incorporation
19 consistent with subsection 14A:6-7.1(2).

20 (2) The certificate of incorporation may provide either that one
21 or more directors elected by the holders of shares of a class or
22 series shall have more than one vote or that the shareholders at
23 an annual or special meeting shall have the right to designate one
24 or more directors who shall have more than one vote. The
25 certificate of incorporation shall also specify either the number
26 of votes which those directors shall have or that the shareholders
27 electing those directors shall have the right to specify the
28 number of votes which the directors shall have. Any person
29 appointed by the board to fill a vacancy of a directorship with
30 more than one vote shall have only one vote unless otherwise
31 provided by the certificate of incorporation. If a director has
32 more than one vote as provided in this subsection, any reference
33 in this act to the vote or act of a majority of the board, of the
34 directors, or of the entire board, or similar language, means the
35 vote or act of directors who are entitled to cast a majority of the
36 votes.

37 (3) The participation of directors with a majority of the votes
38 of the entire board, or of any committee thereof, shall constitute
39 a quorum for the transaction of business, unless the certificate of

1 incorporation or the by-laws provide that a greater or lesser
2 proportion shall constitute a quorum, which in no case shall be
3 less than one-third of the votes of the entire board or committee.

4 (4) Any action approved by a majority of the votes of directors
5 present at a meeting at which a quorum is present shall be the
6 act of the board or of the committee, unless this act, or the
7 certificate of incorporation, or the by-laws requires a greater
8 proportion, including a unanimous vote.

9 (5) Unless otherwise provided by the certificate of
10 incorporation or by-laws, any action required or permitted to be
11 taken pursuant to authorization voted at a meeting of the board
12 or any committee thereof, may be taken without a meeting if,
13 prior or subsequent to the action, all members of the board or of
14 such committee, as the case may be, consent thereto in writing
15 and the written consents are filed with the minutes of the
16 proceedings of the board or committee. Such consent shall have
17 the same effect as a unanimous vote of the board or committee
18 for all purposes, and may be stated as a unanimous vote in any
19 certificate or other document filed with the Secretary of State.

20 30. N.J.S. 14A:6-8 is amended to read as follows:

21 14A:6-8. [Effect of common directorships and directors'
22 personal interest] Director conflicts of interest.

23 (1) No contract or other transaction between a corporation and
24 one or more of its directors, or between a corporation and any
25 domestic or foreign corporation, firm or association of any type
26 or kind in which one or more of its directors are directors or are
27 otherwise interested, shall be void or voidable solely by reason of
28 such common directorship or interest, or solely because such
29 director or directors are present at the meeting of the board or a
30 committee thereof which authorizes or approves the contract or
31 transaction, or solely because his or their votes are counted for
32 such purpose, if any one of the following is true:

33 (a) The contract or other transaction is fair and reasonable as
34 to the corporation at the time it is authorized, approved or
35 ratified; or

36 (b) The fact of the common directorship or interest is disclosed
37 or known to the board or committee and the board or committee
38 authorizes, approves, or ratifies the contract or transaction by
39 unanimous written consent, provided at least one director so

1 consenting is disinterested, or by affirmative vote of a majority
of the disinterested directors, even though the disinterested
3 directors be less than a quorum; or

(c) The fact of the common directorship or interest is disclosed
5 or known to the shareholders, and they authorize, approve or
ratify the contract or transaction.

7 (2) Common or interested directors may be counted in
determining the presence of a quorum at a board or committee
9 meeting at which a contract or transaction described in
subsection 14A:6-8(1) is authorized, approved or ratified.

11 (3) The board, by the affirmative vote of a majority of
directors in office and irrespective of any personal interest of
13 any of them, shall have authority to establish reasonable
compensation of directors for services to the corporation as
15 directors, officers, or otherwise[; provided that the approval of
the shareholders shall be required if the by-laws so provide].

17 (cf: P.L. 1973, c. 366, s. 24)

31. N.J.S. 14A:6-10 is amended to read as follows:

19 14A:6-10. Place and notice of directors' meetings.

(1) Meetings of the board may be held either within or without
21 this State, unless otherwise provided by the certificate of
incorporation or the by-laws.

23 (2) Regular meetings of the board may be held with or without
notice as prescribed in the by-laws. Special meetings of the
25 board shall be held upon such notice as is prescribed in the
by-laws. Notice of any meeting need not be given to any director
27 who signs a waiver of notice, whether before or after the
meeting. The attendance of any director at a meeting without
29 protesting prior to the conclusion of the meeting the lack of
notice of such meeting shall constitute a waiver of notice by
31 him. Neither the business to be transacted at, nor the purpose of,
any meeting of the board need be specified in the notice or
33 waiver of notice of such meeting unless required by the by-laws.
Notice of an adjourned meeting need not be given if the time and
35 place are fixed at the meeting adjourning and if the period of
adjournment does not exceed ten days in any one adjournment.

37 (3) [Any] Where appropriate communication facilities are
reasonably available, any or all directors [may] shall have the
39 right to participate in all or any part of a meeting of the board or

1 a committee of the board by means of conference telephone or
any means of communication by which all persons participating in
3 the meeting are able to hear each other, unless otherwise
provided in the certificate of incorporation or the by-laws.

5 (cf: P.L. 1969, c. 102, s. 7)

32. N.J.S. 14A:6-11 is amended to read as follows:

7 14A:6-11. Loans to directors, officers or employees.

9 A corporation may lend money to, or guarantee any obligation
of, or otherwise assist, any director, officer or [other] employee
of the corporation or of any subsidiary, whenever, in the
11 judgment of the directors, such loan, guarantee or assistance may
reasonably be expected to benefit the corporation[; provided,
13 however, that a corporation shall not lend money to, guarantee
any obligation of, or otherwise assist, any officer or other
15 employee who is also a director of the corporation, except
pursuant to a plan adopted by the shareholders in accordance with
17 the provisions of Chapter 8 of this act, unless such loan,
guarantee or assistance is authorized by the certificate of
19 incorporation or a by-law adopted by the shareholders, and then
only when authorized by a majority of the entire board]. The
21 loan, guarantee or other assistance may be made with or without
interest, and may be unsecured, or secured in such manner as the
23 board shall approve, including, without limitation, a pledge of
shares of the corporation, and may be made upon such other
25 terms and conditions as the board may determine.
[Notwithstanding the provisions of subsection 14A:7-5(1), the
27 proceeds of any such loan may be applied to the purchase of
shares of the corporation, and any shares so purchased shall be
29 deemed to be fully paid and nonassessable.]

(cf: P.L. 1973, c. 366, s. 26)

31 33. N.J.S. 14A:6-14 is amended to read as follows:

33 14A:6-14. Liability of directors; reliance on [corporate]
records and reports.

35 (1) Directors and members of any committee designated by the
board shall discharge their duties in good faith and with that
degree of diligence, care and skill which ordinarily prudent [men]
37 people would exercise under similar circumstances in like
positions.

39 (2) In discharging their duties, directors and members of any

1 committee designated by the board shall not be liable if, acting in
good faith, they rely

3 (a) Upon the opinion of counsel for the corporation; [or]

5 (b) Upon written reports setting forth financial data concerning
the corporation and prepared by an independent public accountant
or certified public accountant or firm of such accountants; [or]

7 (c) Upon financial statements, books of account or reports of
the corporation represented to them to be correct by the
9 president, the officer of the corporation having charge of its
books of account, or the person presiding at a meeting of the
11 board; or

(d) Upon written reports of committees of the board.

13 (3) A director shall not be personally liable to the corporation
or its shareholders for damages for breach of duty as a director if
15 and to the extent that such liability has been eliminated or
limited by a provision in the certificate of incorporation
17 authorized by subsection (3) of N.J.S. 14A:2-7.

(cf: P.L. 1987, c. 35, s. 3)

19 34. N.J.S. 14A:6-16 is amended to read as follows:

21 14A:6-16. Removal and resignation of officers; filling of
vacancies.

(1) Any officer elected [or appointed] by the board may be
23 removed by the board with or without cause. An officer elected
by the shareholders may be removed, with or without cause, only
25 by vote of the shareholders but his authority to act as an officer
may be suspended by the board for cause. The removal of an
27 officer [without cause] shall be without prejudice to his contract
rights, if any. Election [or appointment] of an officer shall not of
29 itself create contract rights.

(2) An officer may resign by written notice to the corporation.
31 The resignation shall be effective upon receipt thereof by the
corporation or at such subsequent time as shall be specified in the
33 notice of resignation.

(3) Any vacancy occurring among the officers, however caused,
35 shall be filled in the manner provided in the by-laws. In the
absence of such provision, any vacancy shall be filled by the
37 board.

(cf: N.J.S. 14A:6-16)

39 35. N.J.S. 14A:7-3 is amended to read as follows:

1 14A:7-3. Subscriptions for shares.

3 (1) Unless otherwise provided by the subscription agreement or
5 unless all of the subscribers consent to the revocation of such
7 subscription, a subscription for shares of a corporation to be
9 formed shall be irrevocable for a period of six months if no
11 certificate of incorporation shall be filed within such period. If
13 the certificate of incorporation is filed within such period, or if it
15 is filed at any later time before revocation, such subscription
17 shall also be irrevocable until 60 days after the filing of the
19 certificate of incorporation. Subscriptions for shares, whether
21 made before or after the organization of a corporation, shall be
23 accepted or rejected by the board, unless the certificate of
25 incorporation or the by-laws require action by the shareholders.

27 (2) A subscription agreement, whether made before or after the
29 formation of a corporation, shall not be enforceable unless it
31 satisfies the requirements provided in N.J.S. [§] 12A:8-319 with
33 respect to a contract for the sale of securities.

35 (3) A subscriber shall not become a holder of any shares for
37 which the full consideration has not been paid. Unless otherwise
39 provided by the subscription agreement

41 (a) Any payment made by the subscriber, in accordance with
43 the subscription agreement or as called for by the board, shall be
45 applied to pay the full consideration for as many whole shares as
47 possible and any remaining balance of such payment shall be
49 applied as part payment of a share;

51 (b) A share certificate shall be registered in the name of the
53 subscriber for the number of shares so paid for in full; and

55 (c) The corporation shall be entitled to retain such share
57 certificate as security for the performance by the subscriber of
59 his obligations under the subscription agreement and subject to
61 the power of sale or rescission upon default provided in
63 paragraphs 14A:7-3(5)(b) and 14A:7-3(5)(c).

65 (4) Unless otherwise provided by the subscription agreement

67 (a) Subscriptions for shares, whether made before or after the
69 organization of a corporation, shall be paid in full at such time,
71 or in such installments and at such times, as shall be determined
73 by the board;

75 (b) Any call made by the board for payment on subscriptions

1 shall be uniform as to all shares of the same class or as to all
shares of the same series, as the case may be;

3 (c) All such calls for payments on subscriptions shall be upon 30
days' notice thereof and of the time and place of payment, which
5 notice shall be given personally or by registered or certified mail.

(5) In the event of default in the payment of any installment or
7 call or other amount due under the terms of the subscription
agreement, including any amount which may become due as a
9 result of a default in the performance of any provision thereof,
the corporation shall have the following rights and duties:

11 (a) It may proceed to collect the amount due in the same
manner as any other debt owing to it. At any time before full
13 satisfaction of the claim or any judgment therefor, it may
proceed as provided in paragraph 14A:7-3(5)(b).

15 (b) It may sell the shares in any reasonable manner. Notice of
the time and place of any public sale or of the time after which
17 any private sale may be had, together with a statement of the
amount due upon each share, shall be given in writing to the
19 subscriber personally or by registered or certified mail at least 20
days before any such time stated in the notice. Unless otherwise
21 provided in the subscription agreement, the corporation may not
be the purchaser at any sale. Any excess of net proceeds realized
23 over the amount due plus interest shall be paid over to the
subscriber. If the sale is made in good faith, in a reasonable
25 manner and upon the notice required by this paragraph, the
corporation may recover the difference between the amount due
27 plus interest and the net proceeds of the sale. A good faith
purchaser for value shall acquire title to the sold shares free of
29 any rights of the subscriber even though the corporation fails to
comply with one or more of the requirements of this subsection.

31 (c) It may rescind the subscription, with the effect provided in
subsection 14A:7-3(6), and may recover damages for breach of
33 contract. Unless special circumstances show proximate damages
of a different amount, the measure of damages shall be the
35 difference between the market price at the time and place for
tender of the shares and the unpaid contract price. Liquidated
37 damages may be provided for in the subscription agreement in an
amount which is reasonable under the circumstances, including
39 the difficulties of proof of loss. The subscriber shall be entitled

1 to restitution of any amount by which the sum of his payments
exceeds the corporation's damages for breach of contract,
3 whether fixed by agreement or judgment.

The rights and duties set forth in subsection 14A:7-3(5) shall be
5 interpreted as cumulative so far as is consistent with the purpose
of entitling the corporation to a full and single recovery of the
7 amount due or its damages. The subscription agreement may
limit the rights and remedies of the corporation set forth in
9 subsection 14A:7-3(5), and may add to them so far as is
consistent with the preceding sentence.

11 (6) The rescission by the corporation of a subscription under
which a portion of the shares subscribed for have been issued and
13 in which the corporation retains a security interest, as provided
in subsection 14A:7-3(3), shall effect the cancellation of such
15 shares.

(7) A contract made with a corporation to purchase its shares[,
17 whether shares to be issued or treasury shares,] is a subscription
agreement and not an executory contract to purchase shares,
19 unless otherwise provided in the agreement.

(cf: P.L. 1973, c. 366, s. 31)

21 36. N.J.S. 14A:7-4 is amended to read as follows:

14A:7-4. Consideration for shares.

23 (1) [Shares having a par value] Subject to any restriction
contained in the certificate of incorporation, shares may be
25 issued for such consideration[, not less than the par value
thereof,] as shall be fixed from time to time by the board or as
27 shall be determined in accordance with a general formula or at
not less than such minimum consideration as the board shall
29 authorize.

(2) [Shares without par value may be issued for such
31 consideration as may be fixed from time to time by the board
unless the certificate of incorporation reserves to the] The
33 shareholders may reserve in the certificate of incorporation the
right to fix the consideration to be received for shares. If such
35 right is reserved as to any shares, the shareholders shall either fix
the consideration to be received for such shares or authorize the
37 board to fix such consideration.

(3) [Unless otherwise provided in the certificate of
39 incorporation, treasury shares may be disposed of by the

1 corporation for such consideration as may be fixed from time to
time by the board.] (Deleted by amendment, P.L. 19. ., c. . . .).

3 (4) [That part of the surplus of a corporation which is
transferred to stated capital upon the issuance of shares as a
5 share dividend shall be the consideration for the issuance of such
shares.] (Deleted by amendment, P.L. 19. ., c. . . .).

7 (5) [Upon a conversion of shares or of convertible bonds, or
upon an exchange of shares with or without par value for the
9 same or a different number of shares with or without par value,
whether of the same or different class or series, the
11 consideration for the shares so issued in exchange or conversion
shall be

13 (a) The stated capital then represented by the shares so
exchanged or converted, or, in the case of convertible bonds, the
15 principal sum of and the accrued interest on the convertible
bonds;

17 (b) Any stated capital not theretofore allocated to any
designated class or series of shares which is thereupon allocated
19 to the new shares;

(c) That part of surplus, if any, transferred to stated capital
21 upon the issuance of shares for the shares or bonds so exchanged
or converted; and

23 (d) Any additional consideration paid to the corporation upon
the issuance of shares for the shares or bonds so exchanged or
25 converted.] (Deleted by amendment, P.L. 19. ., c. . . .).

(6) [In the absence of fraud in the transaction, the judgment of
27 the board or the shareholders, as the case may be, as to the value
of the consideration received for shares shall be conclusive] A
29 good faith judgment of the board of directors or the shareholders,
as the case may be, as to the value of the consideration is
31 conclusive.

(cf: N.J.S. 14A:7-4)

33 37. N.J.S. 14A:7-5 is amended to read as follows:

14A:7-5. Payment for shares; nonassessability.

35 (1) Subject to any restrictions contained in the certificate of
incorporation, the consideration for the issuance of shares may be
37 paid, in whole or in part, in: (a) money, (b) [in] real property, (c)
[in] tangible or intangible personal property, including stock of
39 another corporation, [or in] and obligations of the subscriber or of

1 another person, whether secured or unsecured, (d) labor or
2 services actually performed for the corporation or in its
3 formation, or (e) labor or services to be performed in the future
4 for the corporation. [Neither obligations of the subscriber nor
5 any future services shall constitute payment or part payment for
6 the issuance of shares of the corporation] A new employee's
7 termination of employment with a prior employer or the
8 employee's acceptance of employment with the corporation is
9 adequate consideration for the issuance of shares.

10 (2) When payment of the full consideration for which shares are
11 to be issued is made, the subscriber shall thereupon become
12 entitled to all the rights and privileges of a holder of such shares,
13 including the registration in his name of a certificate
14 representing them, and such shares shall be fully paid and
15 nonassessable.

(cf: P.L. 1973, c. 366, s. 32)

17 38. N.J.S. 14A:7-6 is amended to read as follows:

14A:7-6. Redeemable shares.

18 (1) A corporation may provide in its certificate of
19 incorporation for one or more classes or series of shares which
20 are redeemable, in whole or in part, at the option of the
21 corporation in cash, its bonds or other property, at such price or
22 prices, within such period or periods, and under such conditions as
23 are stated in the certificate of incorporation. A sinking fund may
24 be created for the redemption of any class or series of
25 redeemable shares.

26 (2) A corporation which is an open-end investment company, as
27 defined in an Act of Congress entitled "Investment Company Act
28 of 1940," as amended or supplemented, or any act adopted in
29 substitution therefor, may, if its certificate of incorporation so
30 provides and upon compliance with that act, issue shares which
31 are redeemable at the option of the holder at a price
32 approximately equal to the shares' proportionate interest in the
33 net assets of the corporation, and a shareholder may compel
34 redemption of such shares in accordance with their terms.

35 (3) A corporation may provide, in its [original] certificate of
36 incorporation [or by an amendment approved by unanimous vote
37 of the shareholders,] for one or more classes or series of shares
38 which are redeemable, in whole or in part, at the option of the
39

1 shareholder. Subject to the restrictions imposed by section
2 14A:7-16, such shares may be redeemable in cash, bonds of the
3 corporation or other property, at such price or prices, as are
4 fixed, or established by formula, within such period or periods and
5 under such conditions as are stated in the certificate of
6 incorporation, and such shares may also be redeemable at the
7 option of the corporation, as provided in subsection 14A:7-6(1).
8 [The] If any shares redeemable at the option of the shareholder
9 are outstanding, the certificate of incorporation may be amended
10 to delete or [change a provision for shares redeemable at the
11 option of the shareholder] limit the provisions concerning
12 redeemability with respect to those outstanding shares only with
13 the unanimous approval of the holders of [such] those shares. [A
14 provision for shares redeemable at the option of the shareholder
15 shall become invalid when the number of holders of such shares,
16 other than directors, officers, employees and the spouses of such
17 persons, shall become 25 or more. For the purposes of the
18 preceding sentence, shares which are held in joint or common
19 tenancy or by the entireties shall be counted as held by one
20 holder.] The provisions of this subsection shall not be applicable
21 to an open-end investment company.

22 (4) [If a provision for shares redeemable at the option of the
23 holder shall have become invalid as provided in subsection
24 14A:7-6(3), the board shall amend the certificate of incorporation
25 to delete such provision by filing a certificate of amendment in
26 the office of the Secretary of State. The certificate shall be
27 executed on behalf of the corporation and shall set forth

- 28 (a) The name of the corporation;
29 (b) The date of adoption of the amendment;
30 (c) The deleted provision; and
31 (d) That the provision for shares redeemable at the option of
32 the holder has become invalid because the number of holders of
33 such shares, other than directors, officers, employees and the
34 spouses of such persons, has become 25 or more.

35 The corporation shall thereupon give written notice of such
36 invalidity to each holder of shares which have ceased to be
37 redeemable at the option of the holder.] (Deleted by amendment,
38 P.L. 19 , c. . . .).

39 (cf: P.L. 1973, c. 366, s. 33)

1 39. N.J.S. 14A:7-7 is amended to read as follows:

 14A:7-7. Share rights and options.

3 (1) Subject to any provisions in respect thereof set forth in its
5 certificate of incorporation, a corporation may create and issue,
7 whether or not in connection with the issuance and sale of any of
9 its shares or bonds, rights or options entitling the holders thereof
11 to purchase from the corporation shares of any class or series for
13 such consideration and upon such terms and conditions as may be
15 fixed by the board. [The shares to be purchased upon the exercise
17 of any such right or option may be authorized but unissued shares,
19 treasury shares or shares to be purchased or acquired by the
21 corporation for the purpose.] Such rights or options shall be
23 evidenced in such manner as the board shall approve and, without
25 limiting the generality of the foregoing, may be evidenced by
27 warrants attached to or forming part of bond instruments or
share certificates or existing independently thereof. The
instruments evidencing such rights or options shall set forth or
incorporate by reference the terms and conditions of their
exercise, including the time or times, which may be limited or
unlimited in duration, within which, and the price or prices at
which such shares may be purchased from the corporation, and
any limitations on the transferability of any such right or option.
The consideration for shares to be purchased upon the exercise of
any such right or option shall comply with the requirements of
sections 14A:7-4 and 14A:7-5. [In the absence of fraud in the
transaction, the] A good faith judgment of the board as to the
adequacy of the consideration received for such rights or options
[shall be] is conclusive.

29 (2) [If such rights or options are to be issued to employees as
31 defined in subsection 14A:8-1(2), or to their families, dependents
33 or beneficiaries, pursuant to a plan, the provisions of Chapter 8
35 of this act govern their issuance. Without acting pursuant to a
37 plan, a corporation may also issue such rights or options to any
39 such employee, as an incentive to service or continued service of
any such employee, provided, however, that shareholder approval
shall be required for the issuance of any such right or option if
the shares of the corporation subject thereto, together with the
shares subject to or acquired by exercise of any rights or options
previously issued by the corporation to such employee, his

1 dependents or beneficiaries, would equal in number more than 1%
2 of the shares of any class of the corporation outstanding at the
3 date of the board action authorizing the issuance of such right or
option.] (Deleted by amendment, P.L. 19. ., c. . . .)

5 (cf: P.L. 1973, c. 366, s. 34)

7 40. (New section) Section 14A:7-8.1 is added to the New Jersey
Statutes as follows:

14A:7-8.1. Par value of shares and stated capital.

9 (1) Unless otherwise provided in the certificate of
incorporation, all shares shall have no par value and no stated
11 capital shall be required to be maintained.

13 (2) A corporation in its certificate of incorporation may specify
a par value for any class or series of its shares, may require that
a specified stated capital be maintained, or may impose any other
15 capitalization requirements. A corporation which specifies in its
certificate of incorporation the par value for its shares or a
17 specified stated capital shall not be subject to any limitations on
distributions other than those set forth in section 14A:7-14.1,
19 unless other restrictions are set forth in the certificate of
incorporation.

21 (3) If for any reason the laws of this State or those of any other
jurisdiction require that the par value of shares or stated capital
23 of a corporation be ascertained, then solely for that purpose a
domestic corporation which has not otherwise made express
25 provision therefor in its certificate of incorporation shall be
deemed to have declared and be entitled to declare that its
27 capital stock has a par value of one mill per share and a stated
capital of one mill times the number of shares then outstanding.

29 41. N.J.S. 14A:7-9 is amended to read as follows:

14A:7-9. Convertible shares and bonds.

31 (1) When so provided in its certificate of incorporation, a
corporation may issue shares of any class or series convertible, at
33 the option of the holder or of the corporation or both, into shares
of any other class or classes or of any series of the same or any
35 other class or classes.

37 (2) Unless otherwise provided in its certificate of
incorporation, a corporation may issue bonds convertible, at the
option of the holder or of the corporation or both, into shares of
39 any class or classes or of any series of any class or classes, upon

1 such terms and conditions as may be fixed by the board. The
bond instrument shall set forth or incorporate by reference the
3 terms and conditions of the conversion privilege.

(3) No issue of shares or bonds convertible into shares of the
5 corporation shall be made unless a sufficient number of shares of
the appropriate class or classes or series, either authorized but
7 unissued or treasury shares, are reserved by the board to be
issued or disposed of only in satisfaction of the conversion
9 privileges of the convertible shares or bonds being issued.

(4) If there is shareholder approval of the issue of shares or
11 bonds convertible into shares of the corporation, such approval
may provide that the board is authorized upon such issue to
13 increase the authorized shares of any class or series to such
number as will be not more than sufficient, when added to the
15 previously authorized but unissued shares of such class or series,
to satisfy the conversion privileges of the convertible shares or
17 bonds being issued. The board, when so authorized, may increase
the authorized shares of the corporation by filing a certificate of
19 amendment to the certificate of incorporation. The certificate
shall be executed on behalf of the corporation and shall set forth

21 (a) The name of the corporation;

(b) The date of adoption of the amendment;

23 (c) The amendment so adopted;

(d) That the amendment is made pursuant to authority granted
25 by the shareholders in connection with shareholder approval of
the issue of shares or bonds of the corporation convertible into
27 the shares being authorized by the amendment; and

(e) The designation of the convertible shares or bonds and the
29 date of such shareholder approval.

(5) [If, upon the conversion of shares, the stated capital
31 represented by the shares being converted is greater than the
amount of stated capital required by the provisions of subsections
33 14A:7-8(1) and 14A:7-8(2) to be represented by the shares being
issued, a reduction of stated capital by all or any part of such
35 excess may be accomplished at any time thereafter by the
procedure set forth in section 14A:7-19. Subsection 14A:7-19(3)
37 shall not limit the power of the board to make such reduction of
stated capital.] (Deleted by amendment, P.L. 19. ., c. . .).

39 (6) [No privilege of conversion shall be conferred upon, or

1 altered in respect to, any shares or bonds which would result in
the receipt by the corporation, upon the exercise of such
3 privilege, of less than the minimum consideration for which the
new shares may lawfully be issued, except that a privilege of
5 conversion may provide for adjustments of the conversion rate or
price as required to maintain the value of the privilege
7 unimpaired by changes in the capital structure of the corporation
occurring after the issue of such convertible shares or bonds.]
9 (Deleted by amendment, P.L. 19. ., c. . . .).

(7) When bonds have been converted, they shall be cancelled
11 and not reissued. The disposition of converted shares is provided
for in section 14A:7-18.

13 (cf: N.J.S. 14A:7-9)

42. N.J.S. 14A:7-11 is amended to read as follows:

15 14A:7-11. Certificates representing shares.

(1) The shares of a corporation shall be represented by
17 certificates or, in accordance with subsection 14A:7-11(6), shall
be uncertificated shares. Certificates shall be signed by, or in
19 the name of the corporation by, the chairman or vice-chairman
of the board, or the president or a vice-president, and may be
21 countersigned by the treasurer or an assistant treasurer, or the
secretary or an assistant secretary of the corporation and may be
23 sealed with the seal of the corporation or a facsimile thereof. [If
the certificate is countersigned by a transfer agent or registrar,
25 who is not an officer or employee of the corporation, any and]
Any or all [other] signatures upon a certificate may be a
27 [facsimiles] facsimile. In case any officer, transfer agent or
registrar who has signed or whose facsimile signature has been
29 placed upon such certificate, shall have ceased to be such officer,
transfer agent, or registrar before such certificate is issued, it
31 may be issued by the corporation with the same effect as if he
were such officer, transfer agent or registrar at the date of its
33 issue.

(2) Every share certificate delivered after the effective date of
35 this act by a corporation which is authorized to issue shares of
more than one class shall set forth upon the face or back of the
37 certificate, a full statement

(a) Of the designations, relative rights, preferences and
39 limitations of the shares of each class and series

1 authorized to be issued, so far as the same have been determined,
and

3 (b) Of the authority of the board to divide the shares into
classes or series and to determine and change the relative rights,
5 preferences and limitations of any class or series, or
shall set forth that the corporation will furnish to any
7 shareholder, upon request and without charge, such a full
statement.

9 (3) Each certificate representing shares shall state upon the
face thereof

11 (a) That the corporation is organized under the laws of this
State;

13 (b) The name of the person to whom issued; and

(c) The number and class of shares, and the designation of the
15 series, if any, which such certificate represents.

(4) No certificate shall be issued for any share until such share
17 is fully paid[, except as provided in section 14A:8-3].

(5) A card which is punched, magnetically coded or otherwise
19 treated so as to facilitate machine or automatic processing, may
be used as a share certificate if it otherwise complies with the
21 provisions of this section.

(6) The board may provide that some or all of the shares of any
23 class or series shall be represented by uncertificated shares.
Within a reasonable time after the issuance or transfer of
25 uncertificated shares, the corporation shall send to the registered
owner thereof a written notice containing the information
27 required to be set forth or stated on certificates by subsections
14A:7-11(2) and 14A:7-11(3), and if required, 14A:7-12(2).
29 Except as otherwise expressly provided by law, the rights and
obligations of the holders of uncertificated shares and the rights
31 and obligations of the holders of certificates representing shares
of the same class and series shall be identical.

33 (cf: P.L. 1973, c. 366, s. 36)

43. N.J.S. 14A:7-12 is amended to read as follows:

35 14A:7-12. Transfer of shares and restrictions on transfer.

(1) The shares of a corporation shall be personal property and
37 shall be transferable in accordance with the provisions of Chapter
8 of the Uniform Commercial Code (N.J.S. 12A:8-101 et seq.), as
39 amended from time to time, except as otherwise provided in this
act.

1 (2) Any reasonable restriction on the transfer or registration of
2 transfer of shares, or other securities having conversion or option
3 rights, may be enforced against the holder of the restricted
4 securities and any successor or transferee of the holder, including
5 any fiduciary entrusted with responsibility for the person or
6 property of the holder. Such restriction shall be valid only if
7 imposed by the certificate of incorporation or by-laws or by the
8 provisions of an employee benefit plan permitted by Chapter 8 of
9 this act, or by a written agreement among any number of
10 shareholders or among such holders and the corporation. No
11 restriction shall be valid with respect to any securities issued
12 prior to the imposition of the restriction unless their holders shall
13 have voted in favor of the imposition of the restriction or are
14 parties to the agreement imposing it. Unless noted conspicuously
15 on the security or contained in the information statement
16 required by subsection 14A:7-11(6), a restriction shall not be
17 valid against a person who becomes the holder of the security
18 without actual knowledge of the restriction.

19 (3) In particular and without limitation of the generality of the
20 power granted by subsection 14A:7-12(2) to impose restrictions, a
21 restriction on the transfer or registration of transfer of shares, or
22 other securities having conversion or option rights, may be
23 enforced as provided in subsection 14A:7-12(2), if it:

24 (a) Obligates the holder of the restricted securities to offer to
25 the corporation or to any other holders of securities of the
26 corporation or to any other person or to any combination of the
27 foregoing, a prior opportunity, to be exercised within a
28 reasonable time, to acquire the restricted securities;

29 (b) Obligates the corporation or any holder of securities of the
30 corporation or any other person or any combination of the
31 foregoing, to purchase the securities which are the subject of an
32 agreement respecting the purchase and sale of the restricted
33 securities;

34 (c) Requires the corporation or the holders of any class or
35 series of securities of the corporation to consent to any proposed
36 transfer of the restricted securities or to approve the proposed
37 transferee of the restricted securities;

38 (d) Prohibits the transfer of the restricted securities to
39 designated persons or classes of persons, and such designation is
not manifestly unreasonable; or

1 (e) Exists for the purpose of maintaining the status of the
corporation as an electing small business corporation under
3 subchapter S of the United States Internal Revenue Code.

(4) If a restriction on transfer of shares or other securities
5 having conversion or option rights is held not to be authorized by
the law of this State, the corporation shall nevertheless have an
7 option for a period of 30 days after the judgment setting aside
the restriction becomes final, to acquire the restricted securities
9 at a price to be agreed upon by the parties, or if no agreement is
reached as to price, then at their fair value as determined by any
11 court having jurisdiction. In order to determine fair value, the
court may appoint an appraiser to receive evidence and report to
13 the court his findings and recommendations as to fair value. The
appraiser shall have such powers and shall proceed so far as
15 applicable, in the same manner as an appraiser appointed under
section 14A:11-8.

17 (cf: N.J.S. 14A:7-12)

44. (New section) Section 14A:7-14.1 is added to the New
19 Jersey Statutes as follows:

14A:7-14.1. Limitations on distributions to shareholders.

21 (1) "Distribution" means a direct or indirect transfer of money
or other property (except its own shares) or incurrence of
23 indebtedness by a corporation to or for the benefit of its
shareholders in respect of any of its shares. A distribution may
25 be in the form of a dividend, a purchase, redemption or other
acquisition of its shares, or otherwise.

27 (2) A corporation may not make a distribution if, after giving
effect thereto, either:

29 (a) The corporation would be unable to pay its debts as they
become due in the usual course of its business; or

31 (b) The corporation's total assets would be less than its total
liabilities.

33 (3) Determinations under paragraph 14A:7-14.1(2)(b) may be
based upon (i) financial statements prepared on the basis of
35 generally accepted accounting principles, (ii) financial statements
prepared on the basis of other accounting practices and principles
37 that are reasonable in the circumstances, or (iii) a fair valuation
or other method that is reasonable in the circumstances.

39 (4) In the case of a purchase, redemption or other acquisition

1 by a corporation of its own shares, the effect of a distribution
shall be measured as of the earlier of (i) the date money or other
3 property is transferred or debt is incurred by the corporation, or
(ii) the date the shareholder ceases to be a shareholder with
5 respect to the acquired shares. In all other cases, the effect of a
distribution shall be measured (i) as of the date of its
7 authorization if payment occurs 120 days or less following the
date of authorization, or (ii) as of the date of payment if payment
9 occurs more than 120 days following the date of authorization.

(5) A corporation's indebtedness to a shareholder incurred by
11 reason of a distribution made in accordance with this section
shall not be subordinated to the corporation's indebtedness to its
13 general, unsecured creditors except to the extent subordinated by
agreement.

15 45. N.J.S. 14A:7-15 is amended to read as follows:

14A:7-15. [Share] Authority to pay dividends.

17 (1) Subject to any restrictions contained in the certificate of
incorporation and to the provisions of section 14A:7-14.1, a
19 corporation may, from time to time, by resolution of its board,
pay dividends on its shares in cash, in its own shares, in its bonds
21 or in other property, including the shares or bonds of other
corporations [as provided in this section].

23 (2) [Such dividends may be paid in authorized but unissued
shares out of surplus upon the following conditions

25 (a) If a dividend is payable in shares having a par value, such
shares shall be issued at not less than the par value thereof and
27 there shall be transferred to stated capital at the time such
dividend is paid an amount of surplus at least equal to the
29 aggregate par value of the shares to be issued as a dividend;

(b) If a dividend is payable in shares without par value, the
31 amount of stated capital to be represented by each share shall be
fixed by the board by resolution adopted at the time such
33 dividend is declared, unless the certificate of incorporation
reserves to the shareholders the right to fix the consideration for
35 the issue of such shares, and there shall be transferred to stated
capital at the time such dividend is paid an amount of surplus
37 equal to the aggregate stated capital represented by such
shares.] (Deleted by amendment, P.L. 19. ., c. . . .).

39 (3) [Such dividends may be paid in treasury shares, in

1 which event no transfer from surplus to capital need be made.]
2 (Deleted by amendment, P.L. 19. ., c. . . .).

3 (4) [A corporation paying a dividend in authorized but unissued
4 shares to the holders of any class or series of outstanding shares
5 may at its option make an equivalent distribution on treasury
6 shares of the same class or series and any shares so distributed
7 shall be treasury shares.] (Deleted by amendment, P.L. 19. ., c. .
8 . .).

9 (5) Unless the certificate of incorporation otherwise provides, a
10 dividend may be paid in shares having a preference in the assets
11 of the corporation upon liquidation, whether or not the net assets
12 [remaining after such payment] at the time of the share dividend
13 are less than the aggregate amount of such prior and newly
14 created preferences [of such outstanding shares].

15 (6) [A split-up or division of the issued shares of any class or
16 series into a greater number of shares of the same class or series
17 without increasing the stated capital of the corporation shall not
18 be construed to be a share dividend within the meaning of this
19 section.] (Deleted by amendment, P.L. 19. ., c. . . .).

(cf: N.J.S. 14A:7-15)

21 46. N.J.S. 14A:7-15.1 is amended to read as follows:

22 14A:7-15.1. Share dividends, share divisions and combinations.

23 (1) A corporation may effect a share dividend or a division or
24 combination of its shares in the manner hereinafter set forth. As
25 used in this section, the terms "division" and "combination" mean
26 dividing or combining shares of any class or series, whether issued
27 or unissued, into a greater or lesser number of shares of the same
28 class or series [without in either case changing the stated capital
29 of the corporation].

30 (2) Except as otherwise provided in the certificate of
31 incorporation, a share dividend, a division or combination may be
32 effected by action of the board alone [unless (a) the rights or
33 preferences of the holders of outstanding shares of any class or
34 series will be adversely affected thereby or (b) the number of
35 authorized but unissued shares will be increased thereby, in either
36 of which cases shareholder approval shall be required in
37 accordance with subsection 14A:9-2(4) and section 14A:9-3. In
38 any case in which the]. The board [alone is authorized to effect]
39 in effecting a share dividend, combination or division[, it] shall

1 have authority to amend the certificate of incorporation to
increase or decrease the par value of shares, increase or decrease
3 the number of authorized shares [or] and to make any other
change necessary or appropriate to assure that the rights or
5 preferences of the holders of outstanding shares of any class or
series will not be adversely affected by such combination or
7 division. Notwithstanding the foregoing sentence, the board shall
not have the authority to amend the certificate of incorporation,
9 and shareholder approval for the amendment shall be required in
accordance with subsection 14A:9-2(4) and section 14A:9-3, if as
11 a result of the amendment:

13 (a) The rights or preferences of the holders of outstanding
shares of any class or series will be adversely affected; or

15 (b) The percentage of authorized shares that remains unissued
after the share dividend, division or combination will exceed the
17 percentage of authorized shares that was unissued before the
share dividend, division or combination.

19 (3) If a share dividend, division or combination is effected by
board action without shareholder approval and includes an
amendment of the certificate of incorporation, there shall be
21 executed on behalf of the corporation and filed in the office of
the Secretary of State a certificate of amendment setting forth

23 (a) The name of the corporation;

25 (b) The date of adoption by the board of the resolution
approving the dividend, division or combination;

27 (c) That the [division or combination] amendment to the
certificate of incorporation will not adversely affect the rights or
preferences of the holders of outstanding shares of any class or
29 series and will not[, except as permitted by subsection
14A:7-15.1(5), increase the number of] result in the percentage of
31 authorized [but unissued] shares that remains unissued after the
share dividend, division or combination exceeding the percentage
33 of authorized shares that was unissued before the share dividend,
division or combination;

35 (d) The class or series and number of shares thereof subject to
the dividend, division or combination and the number of shares to
37 be issued on the dividend or into which they are to be divided or
combined;

39 (e) [Any] The amendment of the certificate of incorporation

1 made in connection with the dividend, division or combination[, or
that no amendment is being made]; and

3 (f) If the dividend, division or combination is to become
effective at a time subsequent to the time of filing, the date,
5 which may not exceed [30] 90 days from the date of filing, when
the same is to become effective.

7 (4) If a share dividend, division or combination is effected by
action of the board and the shareholders, there shall be executed
9 on behalf of the corporation and filed in the office of the
Secretary of State a certificate of amendment as provided in
11 subsection 14A:9-4(3), which certificate shall set forth, in
addition to all information required by said subsection, the
13 information required by paragraph 14A:7-15.1(3)(d).

(5) Upon a combination becoming effective, the authorized
15 shares of the class or series subject thereto shall be reduced by
the same percentage [number] by which the issued shares of such
17 class or series were reduced as a result of the combination unless
the certificate of incorporation otherwise provides or the
19 combination was approved by the shareholders in accordance with
subsection 14A:9-2(4) and section 14A:9-3.

21 (6) [Nothing herein shall be deemed to prevent the corporation
from increasing or decreasing its stated capital as permitted by
23 this act in connection with any division or combination effected
pursuant to this section.] [Deleted by amendment, P.L. 19. ., c. .
25 . .].

(cf: P.L. 1973, s. 366, s. 38)

27 47. N.J.S. 14A:7-16 is amended to read as follows:

29 14A:7-16. [Right of a corporation to acquire and dispose of its
own shares] Acquisitions of a corporation's own shares.

(1) [A] Subject to the provisions of section 14A:7-14, a
31 corporation [shall have the right to purchase or otherwise] may
acquire[, and to sell, create a security interest in, or otherwise
33 dispose of] its own shares[, but purchases of its own shares,
whether direct or indirect, shall be made only out of surplus,
35 except as provided in subsections 14A:7-16(2), 14A:7-16(3) and
14A:7-16(4)].

37 (2) [A corporation may purchase its own shares out of stated
capital for the purpose of

39 (a) Eliminating fractional shares;

1 (b) Collecting or compromising indebtedness to the corporation;
or

3 (c) Paying dissenting shareholders entitled to payment for their
shares under the provisions of this act.] (Deleted by amendment,
5 P.L. 19. ., c. . . .).

(3) [A corporation may redeem or purchase its redeemable
7 shares out of stated capital, except when after such redemption
or purchase net assets would be less than the stated capital
9 remaining after giving effect to the cancellation of such shares.]
(Deleted by amendment, P.L. 19. ., c. . . .).

11 (4) [A corporation may purchase its nonredeemable shares out
of stated capital, if such shares have a preference over the shares
13 of any other class or series in the payment of dividends or in the
distribution of the assets upon liquidation, except when after such
15 purchase net assets would be less than the stated capital
remaining after giving effect to the cancellation of such shares.]
17 (Deleted by amendment, P.L. 19. ., c. . . .).

(5) No [purchase or redemption] acquisition of its own shares
19 shall be made by a corporation

(a) Contrary to any restrictions contained in the certificate of
21 incorporation;

(b) [At a time when the corporation is insolvent or when such
23 purchase or redemption would render the corporation insolvent;]
(Deleted by amendment, P.L. 19. ., c. . . .);

(c) Unless after such [purchase or redemption] acquisition there
25 remain outstanding one or more classes or series of shares
27 possessing, among them collectively, voting rights and unlimited
residual rights as to dividends and distribution of assets on
29 liquidation; or

(d) In the case of redeemable shares and within the period of
31 their redeemability, at a price greater than the applicable
redemption price plus, in the case of shares entitled to
33 cumulative dividends, the dividends which would have accrued to
the next dividend date following the date of [purchase or
35 redemption] acquisition.

(6) [A corporation which has purchased its own shares out of
37 surplus may defer payment for such shares over such period as
may be agreed between it and the selling shareholder. The
39 obligation so created shall constitute an ordinary debt of the

1 corporation and the validity of any payment made upon the debt
so created shall not be affected by the absence of surplus at the
3 time of such payment.] (Deleted by amendment, P.L. 19.., c. ...).

5 (7) Unless the certificate of incorporation otherwise provides, a
corporation may [purchase or redeem] acquire its shares whether
or not the net assets remaining after the transaction are less than
7 the aggregate amount of the preferences of outstanding shares in
the assets of the corporation upon liquidation.

9 (8) In connection with an agreement to acquire its shares, a
corporation may grant a security interest in the acquired shares
11 to secure an obligation to pay for the acquisition. The shares
shall not be deemed to be reacquired by the corporation and
13 cancelled on its books until the obligation of the corporation is
fully paid or discharged.

15 (9) A corporation may acquire or agree to acquire its shares,
notwithstanding that the acquisition would constitute a
17 distribution prohibited under section 14A:7-14.1, if all or part of
the purchase price is deferred until such time as the payment
19 would not constitute a prohibited distribution.

(cf: N.J.S.14A:7-16)

21 48. N.J.S. 14A:7-18 is amended to read as follows:

14A:7-18. Cancellation of reacquired shares.

23 (1) When shares of a corporation are reacquired [out of stated
capital] by purchase, by redemption or by their conversion into
25 other shares of the corporation, the reacquisition shall effect
their cancellation, unless the board determines that the shares
27 shall be treasury shares or the by-laws so provide. In addition,
any shares which were treasury shares on or before [January 1,
29 1987, shall continue to be treasury shares unless cancelled by the
board. The board may cancel treasury shares at any time. [When
31 shares of a corporation are otherwise reacquired by it, the
corporation may retain them as treasury shares or may cancel
33 them by resolution of the board. In all cases of cancellation,
except that of converted shares, a statement of cancellation shall
35 be filed as provided in subsection 14A:7-18(2).] Upon their
cancellation, [reacquired] shares shall be restored to the status of
37 authorized but unissued shares, unless the certificate of
incorporation, or the plan of merger or consolidation in the case
39 of shares acquired by the corporation pursuant to Chapter 11 of

1 this act, provides that such shares shall not be reissued, in which
2 case [the filing of the statement of cancellation] a certificate of
3 amendment to the certificate of incorporation shall be filed,
4 pursuant to a resolution of the board, [shall constitute an
5 amendment to the certificate of incorporation and shall reduce]
6 reducing the authorized number of shares by the number of shares
7 so cancelled.

(2) The [statement of cancellation] certificate of amendment
8 reducing the authorized shares shall be executed on behalf of the
9 corporation and filed in the office of the Secretary of State not
10 later than 30 days after the cancellation of the reacquired shares
11 not to be reissued. The statement shall set forth:

12 (a) The name of the corporation;

13 (b) The number of shares cancelled, itemized by classes and
14 series, and [if cancelled shares were not reacquired out of stated
15 capital or by their conversion into other shares of the
16 corporation,] the date of adoption of the resolution of the board
17 cancelling such shares;

18 (c) The aggregate number of [issued] authorized shares,
19 itemized by classes and series, after giving effect to such
20 cancellation;

21 (d) [The amount, expressed in dollars, of the stated capital of
22 the corporation after giving effect to such cancellation] A
23 statement that the certificate of incorporation or plan of merger
24 provides that the shares cancelled shall not be reissued; and

25 (e) [If the certificate of incorporation, or the plan of merger or
26 consolidation in the case of shares acquired by the corporation
27 pursuant to Chapter 11 of this act, provides that the cancelled
28 shares shall not be reissued

29 (i) that] That the certificate of incorporation is amended
30 [pursuant to a resolution of the board] by decreasing the
31 aggregate number of shares which the corporation is
32 authorized to issue by the number of shares cancelled[, and

33 (ii) the number of shares which the corporation has
34 authority to issue, itemized by classes and series, after
35 giving effect to such cancellation; and].

36 (f) [If shareholder approval is required by subsection
37 14A:7-18(3) for a reduction of the stated capital of the
38 corporation, a statement of the date of approval by the
39

1 shareholders, the number of shares entitled to vote thereon, and
the number of shares voted for and against the reduction of the
3 stated capital, respectively; and, if any class or series of shares is
entitled to vote thereon as a class, a separate statement of such
5 facts for each class and series entitled to vote separately.]
(Deleted by amendment, P.L. 19. ., c. . . .).

7 (3) [Except as otherwise provided in this subsection, upon the
cancellation of reacquired shares of any class or series the stated
9 capital of the corporation shall be reduced by the amount
represented by such shares before their cancellation. The stated
11 capital represented by each share shall be deemed to be the
amount of stated capital represented by all issued shares of such
13 class or series, including the cancelled shares, divided by the
total number of such issued shares. In the case of shares without
15 par value for whose issue the consideration was fixed by the
shareholders, as provided in subsection 14A:7-4(2), if such shares
17 are not redeemable and are not preferred over the shares of any
other class or series in the payment of dividends or in the
19 distribution of assets upon liquidation and have not been
reacquired for any of the purposes set forth in subsection
21 14A:7-16(2), their cancellation shall cause a reduction of the
stated capital only to the extent, if any, that the stated capital
23 represented by such shares exceeded the minimum amount
required, as provided in subsection 14A:7-8(2), unless such further
25 reduction has been approved by a vote of the shareholders or is
authorized by the certificate of incorporation. This subsection
27 shall not be applicable to converted shares.] (Deleted by
amendment, P.L. 19. ., c. . . .).

29 (4) A [statement of cancellation of converted] certificate of
amendment reducing the authorized shares because of the
31 conversion of convertible shares shall be filed only if the
certificate of incorporation provides that such shares shall not be
33 reissued. The [statement of cancellation] certificate of
amendment shall set forth the information required by
35 [paragraphs] subsection 14A:7-18(2) [(a), (b), (c) and (e)] and in the
case of cancellation of converted shares, the certificate of
37 amendment shall be filed not later than [60] 90 days after the
close of the fiscal year in which the shares were reacquired.

39 (5) Nothing contained in this section shall be construed to

1 forbid a cancellation of shares or a reduction of [stated capital]
2 authorized shares in any other manner permitted by this act.

3 (cf: P.L. 1973, c. 366, s. 40)

4 49. N.J.S. 14A:8-1 is amended to read as follows:

5 14A:8-1. Employee benefit plans.

6 (1) A corporation may[, in the manner prescribed in section
7 14A:8-2,] establish and carry out wholly or partly at its expense,
8 any one or more of the following plans for the benefit of some or
9 all employees, as hereinafter defined, and their families,
dependents or beneficiaries:

10 (a) Plans providing for the sale or distribution of its shares of
11 any class or series, held by it or issued or purchased by it for the
12 purpose, including stock option, stock purchase, stock bonus,
13 profit-sharing, savings, pension, retirement, deferred
14 compensation and other plans of similar nature, whether or not
15 such plans also provide for the distribution of cash or property
16 other than its shares;

17 (b) Plans providing for payments solely in cash or property
18 other than shares of the corporation, including profit-sharing,
19 bonus, savings, pension, retirement, deferred compensation and
20 other plans of similar nature; and

21 (c) Plans for the furnishing of medical services; life, sickness,
22 accident, disability or unemployment insurance or benefits;
23 education; housing; social and recreational services; and other
24 similar aids and services.

25 (2) The term "employees" as used in this Chapter means
26 employees, officers, directors, and agents of the corporation or
27 any subsidiary thereof, or other persons who are or have been
28 actively engaged in the conduct of the business of the corporation
29 or any subsidiary thereof, including any who have retired, become
30 disabled or died prior to the establishment of any plan heretofore
31 or hereafter adopted.

32 (3) Employee benefits plans may be adopted, amended or
33 terminated by a corporation by the act of its board, a committee
34 of the board, or officers to whom the responsibility has been
35 delegated. Notwithstanding the foregoing, any plan providing for
36 the issuance of shares shall be initially adopted by the board or
37 any committee thereof.

38 (cf: P.L. 1973, c. 366, s. 42)

1 50. (New section) Section 14A:8-2.1 is added to the New
Jersey Statutes as follows:

3 14A:8-2.1. Trust funds for employees; creation; maintenance
and administration.

5 Any domestic or foreign corporation which has adopted, or
hereafter adopts, a plan described in section 14A:8-1 may
7 establish one or more trust funds of the property contributed or
held by any corporation or any subsidiary thereof for the purposes
9 of a plan. Any trust fund may be held and administered by the
corporation adopting a plan or by any trustee or trustees, within
11 or without this State, appointed by the corporation for that
purpose.

13 51. (New section) Section 14A:8-3.1 is added to the New
Jersey Statutes as follows:

15 14A:8-3.1. Continuation of trust; law against perpetuities
inapplicable.

17 The period for which any trust may be created and maintained
may be as long as may be desirable for the complete
19 administration of any plan as originally adopted or thereafter
amended, and no trust or trust fund shall be subject to or held to
21 be in violation of any principle of law, against perpetuities or
restraints on alienation or perpetual accumulations or trusts.

23 52. N.J.S. 14A:9-1 is amended to read as follows:

14A:9-1. Amendment of certificate of incorporation.

25 (1) A corporation may amend its certificate of incorporation,
from time to time, in any and as many respects as may be desired
27 so long as the amendment contains only such provisions as might
lawfully be contained in an original certificate of incorporation
29 filed at the time of making such amendment.

31 (2) In particular, and without limitation upon the general power
of amendment granted by subsection 14A:9-1(1), a corporation
may amend its certificate of incorporation

33 (a) To change its corporate name;

35 (b) To enlarge, limit, or otherwise change its corporate
purposes or powers;

37 (c) To change the duration of the corporation, [or] even if such
duration has expired, [but the corporation continues in business,
to revive its existence for a] to a limited or perpetual duration;

39 (d) To increase or decrease the aggregate number of shares or

- 1 shares of any class or series of any class, which the corporation
has authority to issue;
- 3 (e) To increase or decrease the par value of the authorized
shares of any class having a par value, whether issued or unissued;
- 5 (f) To exchange, classify, reclassify or cancel all or any part of
its shares, whether issued or unissued;
- 7 (g) To change the designation of all or any part of its shares,
whether issued or unissued, and to change the preferences,
9 limitations and the relative rights in respect of all or any part of
its shares, whether issued or unissued;
- 11 (h) To change shares having a par value, whether issued or
unissued, into the same or a different number of shares without
13 par value, and to change shares without par value, whether issued
or unissued, into the same or a different number of shares having
15 a par value;
- (i) To change the shares of any class or series, whether issued
17 or unissued, and whether with or without par value, into a
different number of shares of the same class or series or into the
19 same or a different number of shares, either with or without par
value, of other classes or series;
- 21 (j) To create new classes or series of shares having rights and
preferences superior or inferior to, or equal with, the shares of
23 any class or series then authorized, whether issued or unissued;
- (k) To cancel or otherwise affect the right of the holders of the
25 shares of any class or series to receive dividends which have
accrued but have not been declared;
- 27 (l) To divide any class of shares, whether issued or unissued,
into series and fix the designations of such series and the
29 preferences, limitations and relative rights of the shares of such
series;
- 31 (m) To authorize the board to divide authorized but unissued
shares of any class into series and fix the designations and
33 number of shares of such series and the preferences, limitations
and relative rights of the shares of such series;
- 35 (n) To authorize the board to fix or change the designation or
number of shares of, or preferences, limitations or relative rights
37 of the shares of any theretofore established series the shares of
which have not been issued;
- 39 (o) To revoke, diminish or enlarge the authority of the board to

1 take any of the actions set forth in paragraphs 14A:9-1(2)(m) and
14A:9-1(2)(n);

3 (p) To limit, deny or grant to shareholders of any class the
preemptive right to acquire additional or treasury shares of the
5 corporation, whether then or thereafter authorized;

(q) To strike out, change or add any provision, not inconsistent
7 with law, for the management of the business and the conduct of
the affairs of the corporation, or creating, defining, limiting and
9 regulating the powers of the corporation, its directors and
shareholders or any class of shareholders, including any provision
11 which under this act is required or permitted to be set forth in
the by-laws.

13 (3) [An amendment of the certificate of incorporation may, by
resolution of the board, be accompanied by a reduction of stated
15 capital. Such reduction shall not be part of the amendment, but
may be set forth in the certificate of amendment as provided in
17 subsection 14A:9-4(4) and shall become effective as provided in
subsection 14A:9-4(5).] (Deleted by amendment, P.L. 19. .,
19 c. . . .)

(cf: N.J.S. 14A:9-1)

21 53. N.J.S. 14A:9-2 is amended to read as follows:

14A:9-2. Procedure to amend certificate of incorporation.

23 (1) Before the organization meeting of the board, the
incorporators may amend the certificate of incorporation by
25 complying with subsection 14A:9-4(1).

(2) Amendment of the certificate of incorporation by action of
27 the board is provided for in subsection 14A:4-3(1), subsection
14A:5-21(4), subsection 14A:7-2(4), subsection 14A:7-6(4),
29 subsection 14A:7-9(4), subsection 14A:7-15.1(3), and subsections
14A:7-18(1) and 14A:7-18(4). Amendment of the certificate of
31 incorporation by action of the registered agent to change the
registered office is provided for in subsection 14A:4-3(3).

33 (3) An amendment of the certificate of incorporation pursuant
to a plan of merger may be made in the manner provided in
35 Chapter 10 of this act.

(4) All other amendments of the certificate of incorporation
37 shall be made in the following manner:

(a) The board shall approve the proposed amendment and direct
39 that it be submitted to a vote at a meeting of the shareholders.

1 (b) Written notice setting forth the proposed amendment or a
summary of the changes to be effected thereby shall be given to
3 each shareholder of record entitled to vote thereon within the
time and in the manner provided in this act for the giving of
5 notice of meetings of shareholders.

(c) At such meeting a vote of shareholders entitled to vote
7 thereon shall be taken on the proposed amendment. The proposed
amendment shall be adopted upon receiving the affirmative vote
9 of a majority of the votes cast by the holders of shares entitled
to vote thereon and, in addition, if any class or series of shares is
11 entitled to vote thereon as a class, the affirmative vote of a
majority of the votes cast in each class vote; except that, in the
13 case of a corporation organized prior to [the effective date of
this act] January 1, 1969, the proposed amendment shall be
15 adopted upon receiving the affirmative vote of two-thirds of the
votes so cast. The voting requirements of this section shall be
17 subject to such greater requirements as are provided in this act
for specific amendments, or as may be provided in the certificate
19 of incorporation.

(d) Subject to the provisions of section 14A:5-12, a corporation
21 organized prior to [the effective date of this act] January 1, 1969
may adopt the majority voting requirements prescribed in
23 paragraph 14A:9-2(4)(c) by amendment of its certificate of
incorporation adopted by the affirmative vote of two-thirds of
25 the votes cast by the holders of shares entitled to vote thereon.

(e) Any number of amendments may be acted upon at one
27 meeting.

(f) Upon adoption, a certificate of amendment shall be filed in
29 the office of the Secretary of State as provided in section
14A:9-4.

31 (cf: P.L. 1973, c. 366, s. 47)

54. N.J.S. 14A:9-4 is amended to read as follows:

33 14A:9-4. Certificate of amendment.

(1) If the amendment is made as provided by subsection
35 14A:9-2(1), a certificate of amendment shall, subject to
subsection 14A:2-6(3), be signed by all the incorporators, shall set
37 forth the name of the corporation and the amendment so adopted,
and shall recite that the amendment is made by unanimous
39 consent of the incorporators before the organization meeting of
the directors.

1 (2) If the amendment is made by the board as referred to in
subsubsection 14A:9-2(2), a certificate of amendment shall be
3 executed on behalf of the corporation. The certificate shall set
forth the information required by the section of this act which
5 empowers the board to make the amendment.

(3) If the amendment is made as provided by subsection
7 14A:9-2(4), a certificate of amendment shall be executed on
behalf of the corporation and shall set forth

9 (a) The name of the corporation;

(b) The amendment so adopted;

11 (c) The date of the adoption of the amendment by the
shareholders;

13 (d) The number of shares entitled to vote thereon, and if the
shares of any class or series are entitled to vote thereon as a
15 class, the designation and number of shares entitled to vote
thereon of each such class or series;

17 (e) The number of shares voted for and against such
amendment, respectively, and if the shares of any class or series
19 are entitled to vote thereon as a class, the number of shares of
each such class and series voted for and against such amendment,
21 respectively;

(f) If such amendment is intended to provide for an exchange,
23 reclassification or cancellation of issued shares, a statement of
the manner in which the same shall be effected; and

25 (g) If, pursuant to subsection 14A:9-4(5), the amendment is to
become effective at a time subsequent to the time of filing, the
27 date when the amendment is to become effective.

(4) [If such amendment is accompanied by a reduction of stated
29 capital, the corporation may also include in the certificate, at its
discretion, in lieu of a statement of reduction under section
31 14A:7-19, a statement of the amount of the reduction, the
manner in which the reduction is effected, and the amount,
33 expressed in dollars, of stated capital of the corporation after
giving effect to the reduction.] (Deleted by amendment, P.L. 19.
35 ., c. . . .).

(5) Each certificate of amendment of the certificate of
37 incorporation shall be filed in the office of the Secretary of State
and the amendment shall become effective upon the date of filing
39 or at such later time, not to exceed [30] 90 days from the date of

1 filing, as may be set forth in the certificate. [If the certificate
of amendment includes a statement provided for in subsection
3 14A:9-4(4), the stated capital shall be reduced when the
amendment becomes effective.]

5 (cf: P.L. 1973, c. 366, s. 48)

55. N.J.S. 14A:9-5 is amended to read as follows:

7 14A:9-5. Restated certificate of incorporation.

9 (1) A corporation may restate and integrate in a single
certificate the provisions of its certificate of incorporation as
theretofore amended, including any provision effected by a
11 merger or consolidation and any further amendments as may be
adopted concurrently with the restated certificate.

13 (2) If the proposed restated certificate merely restates and
integrates, but does not substantively amend the certificate of
15 incorporation as theretofore amended, it may be adopted by the
board.

17 (3) If the proposed restated certificate restates and integrates
and also substantively amends the certificate of incorporation as
19 theretofore amended, such restated certificate shall be adopted
in the following manner:

21 (a) The board shall approve the proposed restated certificate
and direct that it be submitted to a vote at a meeting of the
23 shareholders;

25 (b) Written notice setting forth the proposed restated
certificate shall be given to each shareholder of record entitled
to vote thereon within the time and in the manner provided in
27 this act for the giving of notice of such meeting;

29 (c) At such meeting a vote of shareholders entitled to vote
thereon shall be taken on the proposed restated certificate. The
proposed restated certificate shall be adopted upon receiving a
31 number of votes sufficient to adopt an amendment to the
corporation's certificate of incorporation. The voting
33 requirements of this section shall be subject to such greater
requirements as are provided in this act for specific amendments
35 or as may be provided in the certificate of incorporation.

37 (4) The restated certificate shall recite that it is a restated
certificate and shall contain all such provisions as are required in
an original certificate of incorporation filed at the time the
39 restated certificate is filed, except that

1 (a) It shall state the address of the corporation's then current
registered office, and the name of its then current registered
3 agent, and it shall also state the number, names and addresses of
the directors constituting its then current board;

5 (b) It need not include statements as to the incorporator or
incorporators or as to the first directors or the first registered
7 office and registered agent;

(c) If, pursuant to subsection 14A:9-5(6), the restated
9 certificate is to become effective subsequent to the time of
filing, it shall state the date when it is to become effective.

11 (5) The restated certificate shall be executed on behalf of the
corporation, and shall be filed in the office of the Secretary of
13 State. There shall be attached to it and filed therewith a
certificate executed on behalf of the corporation and setting forth

15 (a) The name of the corporation;

(b) The date such restated certificate was adopted; and

17 (c) If the restated certificate was adopted by the
shareholders, it shall also set forth

19 (i) the number of shares entitled to vote thereon, and, if
the shares of any class or series are entitled to vote
21 thereon as a class, the designation and number of shares
entitled to vote thereon of each such class and series;

23 (ii) the number of shares voted for and against such
adoption, and, if the shares of any class or series are
25 entitled to vote thereon as a class, the number of shares of
each such class and series voted for and against such
27 adoption; and

(iii) if any amendment of the certificate of incorporation
29 made by such restated certificate is intended to provide
for an exchange, reclassification, or cancellation of issued
31 shares, a statement of the manner in which the same shall
be effected.

33 (6) The restated certificate shall become effective upon the
date of filing with the Secretary of State or at such later time,
35 not to exceed [30] 90 days from the date of filing, as may be set
forth therein. A restated certificate adopted in the manner
37 prescribed herein, whether by action of the board alone pursuant
to subsection 14A:9-5 (2) or by action of the board and the

1 shareholders pursuant to subsection 14A:9-5(3), shall supersede
2 for all purposes the original certificate of incorporation and all
3 amendments thereto made prior to the adoption of such restated
4 certificate, and such restated certificate may be separately
5 certified as the certificate of incorporation.

(cf: P.L. 1973, c. 366, s. 49)

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

14A:10-1. Procedure for merger.

9 (1) Any two or more domestic corporations may merge into one
10 of such corporations pursuant to a plan of merger approved in the
11 manner provided in this act.

(2) The board of each corporation shall approve a plan of
12 merger setting forth

(a) The names of the corporations proposing to merge, and the
13 name of the corporation into which they propose to merge, which
14 is hereinafter designated as the surviving corporation;

(b) The terms and conditions of the proposed merger, including
15 a statement of any amendments in the certificate of
16 incorporation of the surviving corporation to be effected by such
17 merger which amendments may be set forth in and effected by a
18 restated certificate of incorporation which may be filed as an
19 additional document together with the certificate of merger;

(c) The manner and basis of converting the shares of each
20 corporation into shares, obligations, or other securities of the
21 surviving corporation or of any other corporation or, in whole or
22 in part, into cash or other property; and

(d) Such other provisions with respect to the proposed merger
23 as are deemed necessary or desirable.

24 (cf: P.L. 1973, c. 366, s. 51)

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

14A:10-3. Approval by shareholders.

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

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

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

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

31 (3) Subject to the provisions of section 14A:5-12, a corporation
organized prior to [the effective date of this act] January 1,
33 1969, may adopt the majority voting requirements prescribed in
subsection 14A:10-3(2) by an amendment of its certificate of
35 incorporation adopted by the affirmative vote of two-thirds of
the votes cast by the holders of shares entitled to vote thereon.

37 (4) Notwithstanding the provisions set forth in subsections
14A:10-3(1) and 14A:10-3(2), the approval of the shareholders of
39 a surviving corporation shall not be required to authorize a

1 merger (unless its certificate of incorporation otherwise provides)
if

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

7 (b) [Either (i) no shares of common stock of the surviving
corporation and no securities convertible into such common
9 shares are to be issued or delivered under the plan of merger or
(ii) the number of common shares of the surviving corporation to
11 be issued or delivered under such plan, plus those initially issuable
upon conversion of any other securities to be issued or delivered
13 under such plan, does not exceed 20% of the following: the
number of common shares of the surviving corporation
15 outstanding immediately prior to the merger becoming effective
plus the number of such common shares, if any, initially issuable
17 upon conversion of any other securities then outstanding] Each
shareholder of the surviving corporation whose shares were
19 outstanding immediately before the effective date of the merger
will hold the same number of shares, with identical designations,
21 preferences, limitations, and rights, immediately after;

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

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

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

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

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

39 (cf: P.L. 1973, c. 366, s. 53)

1 58. (New section) N.J.S. 14A:10-4.1 is added to the New
Jersey Statutes as follows:

3 14A:10-4.1. Certificate of merger or consolidation.

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

9 (a) The name of the surviving or new corporation and the names
of the merging or consolidating corporations;

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

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

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

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

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

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

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

39 59. (New section) N.J.S. 14A:10-5.1 is added to the New
Jersey Statutes as follows:

1 14A:10-5.1. Merger of subsidiary corporation.

3 (1) A domestic corporation owning at least 90% of the
5 outstanding shares of each class and series of another domestic
7 corporation or corporations, may merge the other corporation or
9 corporations into itself, or may merge itself, or itself and any
11 subsidiary corporation or corporations, into any subsidiary
13 corporation, without approval of the shareholders of any of the
15 corporations, except as provided in subsections 14A:10-5.1(5) and
17 14A:10-5.1(6). The board of the parent corporation shall approve
19 a plan of merger setting forth those matters required to be set
21 forth in plans of merger under section 14A:10-1. Approval by the
23 board of any subsidiary corporation shall not be required.

25 (2) If the parent corporation owns less than 100% of the
27 outstanding shares of each subsidiary corporation, it shall mail to
29 each minority shareholder of record of each subsidiary
31 corporation, unless waived in writing, a copy or a summary of the
33 plan of merger. The parent corporation shall also mail to each
35 shareholder who, under Chapter 11 of this act, is entitled to
37 dissent, a statement informing the shareholder that he has the
39 right to dissent and to be paid the fair value of his shares, and
outlining briefly, with particular reference to the time periods
within which actions shall be taken, the procedures set forth in
Chapter 11 of this act with which he shall comply in order to
assert and enforce that right.

(3) A certificate of merger shall be executed on behalf of the
parent corporation. The certificate shall set forth

(a) The name of the surviving corporation and the names of the
merged corporations;

(b) The plan of merger;

(c) The date of approval by the board of the parent corporation
of the plan of merger;

(d) The number of outstanding shares of each class and series of
each subsidiary corporation which is a party to the merger and
the number of shares of each class and series owned by the parent
corporation;

(e) If the parent corporation owns less than 100% of the
outstanding shares of each subsidiary corporation, the date of the
mailing of a copy or a summary of the plan of merger to minority
shareholders of each subsidiary corporation; or if all the

1 shareholders have waived the mailing in writing, a statement that
the waiver has been obtained;

3 (f) If approval of the shareholders of the parent corporation is
required by subsection 14A:10-5.1(6), the information as to the
5 corporation required by paragraphs 14A:10-4.1(1)(b) and
14A:10-4.1(1)(c); and

7 (g) If, pursuant to subsection 14A:10-5.1(4), the merger is to
become effective at a time subsequent to the date of filing with
9 the Secretary of State, the date when the merger is to become
effective.

11 (4) The executed original and a copy of the certificate shall be
filed in the office of the Secretary of State and the merger shall
13 become effective upon the date of the filing or at a later time,
not to exceed 90 days from the date of filing, as may be set forth
15 in the certificate. The Secretary of State shall, upon filing,
forward the copy of the certificate to the Director of the
17 Division of Taxation.

(5) Approval of the shareholders of any subsidiary corporation
19 shall be obtained pursuant to its certificate of incorporation, if
the certificate requires approval of a merger by the affirmative
21 vote of the holders of more than the percentage of the shares of
any class or series of the corporation then owned by the parent
23 corporation.

(6) Approval of the shareholders of the parent corporation shall
25 be obtained:

(a) Whenever its certificate of incorporation requires
27 shareholder approval of a merger; or

(b) Pursuant to section 14A:10-3 where

29 (i) the plan of merger contains a provision which would
change any part of the certificate of incorporation of the
31 parent corporation into which a subsidiary corporation is
being merged, unless the change is one that can be made
33 by the board without shareholder approval as referred to in
subsection 14A:9-2(2); or

35 (ii) a subsidiary corporation is to be the surviving
corporation.

37 (7) The grant of the power to merge under this section shall not
preclude the effectuation of any merger as elsewhere provided in
39 this Chapter.

1 60. N.J.S. 14A:10-7 is amended to read as follows:

2 14A:10-7. Merger or consolidation of domestic and foreign
3 corporations.

4 (1) One or more foreign corporations and one or more domestic
5 corporations may be merged or consolidated in the following
6 manner:

7 (a) Each domestic corporation shall comply with the provisions
8 of this act with respect to the merger or consolidation of
9 domestic corporations and each foreign corporation shall comply
10 with the applicable provisions of the laws of the jurisdiction
11 under which it is organized.

12 (b) The certificate of merger or consolidation required by
13 [section 14A:10-4] section 14A:10-4.1 shall be executed on behalf
14 of each domestic corporation and each foreign corporation and, in
15 addition to the information required by [subsection 14A:10-4(1)]
16 subsection 14A:10-4.1(1), shall set forth that the applicable
17 provisions of the laws of the jurisdiction under which each foreign
18 corporation was organized have been, or upon compliance with
19 filing and recording requirements will have been, complied with.

20 (c) If the surviving or new corporation is to be a foreign
21 corporation and is to transact business in this State, it shall
22 comply with the provisions of this act with respect to foreign
23 corporations, and, whether or not it is to transact business in this
24 State, the certificate of merger or consolidation required by
25 [section 14A:10-4] section 14A:10-4.1 shall, in addition to other
26 required information, set forth

27 (i) an agreement by such foreign corporation that it may
28 be served with process in this State in any proceeding for
29 the enforcement of any obligation of any domestic
30 corporation or any foreign corporation, previously
31 amenable to suit in this State, which is a party to such
32 merger or consolidation, and in any proceeding for the
33 enforcement of the rights of a dissenting shareholder of
34 any such domestic corporation against the surviving or new
35 corporation; and

36 (ii) an irrevocable appointment by such foreign
37 corporation of the Secretary of State of this State as its
38 agent to accept service of process in any such proceeding,
39 and the post office address, within or without this State,

1 to which the Secretary of State shall mail a copy of the
process in such proceeding;

3 (iii) an agreement by such foreign corporation that it will
5 promptly pay to the dissenting shareholders of any such
domestic corporation the amount, if any, to which they
7 shall be entitled under the provisions of this act with
respect to the rights of dissenting shareholders.

(2) The provisions of subsection 14A:10-3(4) shall apply to a
9 merger in which the surviving corporation is a domestic
corporation.

11 (3) If the surviving or new corporation is a domestic
corporation, the effect of such merger or consolidation shall be
13 the same as in the case of the merger or consolidation of
domestic corporations. If the surviving or new corporation is a
15 foreign corporation, the effect of such merger or consolidation
shall be the same as in the case of the merger or consolidation of
17 domestic corporations except insofar as the laws of the
jurisdiction of incorporation of such foreign corporation shall
19 provide otherwise.

(4) One or more foreign corporations and one or more domestic
21 corporations may be merged in the manner provided in [section
14A:10-5] section 14A:10-5.1, provided that, if the parent
23 corporation is a foreign corporation, it shall, notwithstanding the
provisions of the laws of its jurisdiction of incorporation, comply
25 with the provisions of [subsection 14A:10-5(2)] subsection
14A:10-5.1(2) with respect to notice to shareholders of any
27 domestic subsidiary corporation which is a party to the merger.
(cf. P.L. 1973, c. 366, s. 56)

29 61. N.J.S. 14A:10-11 is amended to read as follows:

31 14A:10-11. Sale or other disposition of assets other than in
regular course of business.

(1) A sale, lease, exchange, or other disposition of all, or
33 substantially all, the assets of a corporation, if not in the usual
and regular course of its business as conducted by such
35 corporation, may be made upon such terms and conditions and for
such consideration, which may consist in whole or in part of
37 money or property, real or personal, including shares, bonds, or
other securities of any other corporation, domestic or foreign, as
39 may be authorized in the following manner:

1 (a) The board shall recommend such sale, lease, exchange, or
2 other disposition and direct that it be submitted to a vote at a
3 meeting of shareholders.

4 (b) Written notice shall be given not less than 20 nor more than
5 60 days before such meeting to each shareholder of record,
6 whether or not entitled to vote at such meeting, in the manner
7 provided in this act for the giving of notice of meetings of
8 shareholders. Such notice shall include, or shall be accompanied
9 by

10 (i) a statement summarizing the principal terms of the
11 proposed transaction; and

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

20 (c) At such meeting the shareholders may approve such sale,
21 lease, exchange, or other disposition and may fix, or may
22 authorize the board to fix, any or all of the terms and conditions
23 thereof and the consideration to be received by the corporation
24 therefor. Such sale, lease, exchange or other disposition shall be
25 approved upon receiving the affirmative vote of a majority of the
26 votes cast by the holders of shares entitled to vote thereon, and,
27 in addition, if any class or series of shares is entitled to vote
28 thereon as a class, the affirmative vote of a majority of the votes
29 cast in each class vote; except that, in the case of a corporation
30 organized prior to [the effective date of this act] January 1,
31 1969, the sale, lease, exchange, or other disposition shall be
32 approved upon receiving the affirmative vote of two-thirds of the
33 votes so cast.

34 (d) Subject to the provisions of section 14A:5-12, a corporation
35 organized prior to [the effective date of this act] January 1,
36 1969, may adopt the majority voting requirements prescribed in
37 paragraph 14A:10-11(1)(c) by an amendment of its certificate of
38 incorporation adopted by the affirmative vote of two-thirds of
39 the votes cast by the holders of shares entitled to vote thereon.

1 (2) Notwithstanding such approval or authorization by the
shareholders, the board may abandon such sale, lease, exchange,
3 or other disposition of assets, subject to the rights of third
parties under any contracts relating thereto, without further
5 action by the shareholders.

(3) The sale, lease, exchange, or other disposition of all, or
7 substantially all, the assets of one or more subsidiaries of a
corporation, if not in the usual and regular course of business as
9 conducted by such subsidiary or subsidiaries, shall be treated as a
disposition within the meaning of subsection 14A:10-11(1) if the
11 subsidiary or subsidiaries constitute all, or substantially all, the
assets of the corporation.

13 (cf: P.L. 1973, c. 366, s. 58)

62. N.J. S. 14A:10-12 is amended to read as follows:

15 14A:10-12. Shareholders' rights on other corporate
acquisitions.

17 (1) Shareholders of a corporation which proposes to acquire,
directly or through a subsidiary, in exchange for its shares,
19 obligations or other securities, some or all of the outstanding
shares of another corporation, or some or all of the assets of a
21 corporation, a business trust, a business proprietorship or a
business partnership, shall have the same rights, if any, as they
23 would if they were shareholders of a surviving corporation in a
merger

25 (a) To notice of the proposed acquisition;

(b) To vote on the proposed acquisition; and

27 (c) To dissent from the proposed acquisition and be paid the
fair value of their shares,

29 if: (i) [the securities to be issued or delivered pursuant to such
acquisition are, or may be converted into, shares of the acquiring
31 corporation's common stock and] the number of voting shares
outstanding immediately after the transaction, plus the number
33 of voting shares issuable on conversion of other securities or on
exercise of rights and warrants issued pursuant to the
35 transaction, will exceed by more than 40% the total number of
voting shares of the corporation outstanding immediately before
37 the transaction; or (ii) [the number of the acquiring corporation's
common shares to be issued or delivered, plus those initially
39 issuable upon conversion or exchange of any other securities to be

1 issued or delivered, will exceed 40 per cent of the following: the
2 number of its common shares outstanding immediately prior to
3 the acquisition becoming effective plus the number of its
4 common shares, if any, initially issuable upon conversion or
5 exchange of any other securities then outstanding] the number of
6 participating shares outstanding immediately after the
7 transaction, plus the number of participating shares issuable on
8 conversion of other securities or on exercise of rights and
9 warrants issued pursuant to the transaction will exceed by more
10 than 40% the total number of participating shares of the
11 corporation outstanding immediately before the transaction.

(2) As used in subsection 14A:10-12(1):

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

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

17 (cf: P.L. 1973, c. 366, s. 59)

18 63. (New section) Section 14A:10-13 is added to the New
19 Jersey Statutes as follows:

14A:10-13. Share exchange. *

21 (1) A domestic or foreign corporation may acquire all of the
22 outstanding shares, or all of the outstanding shares of one or
23 more classes or series, of a domestic corporation if the board of
24 each corporation adopts and the shareholders of the acquired
25 corporation approve a plan of exchange.

(2) The plan of exchange shall set forth:

27 (a) The name of the acquired corporation, and the name of the
28 acquiring corporation;

29 (b) All classes and series of shares of the acquired corporation
30 which are proposed to be acquired by exchange;

31 (c) The terms and conditions of the proposed exchange;

32 (d) The manner and basis of exchanging the shares of the
33 acquired corporation for shares, obligations or other securities of
34 the acquiring corporation or any other corporation or for cash or
35 other property or for any combination of securities, cash or
36 property; and

37 (e) Other provisions considered necessary or desirable with
38 respect to the exchange.

39 (3) The board of the acquired corporation upon approving the

1 plan of exchange shall submit it to a vote at a meeting of its
shareholders. If the plan of exchange provides for the acquisition
3 of all of the outstanding shares of the acquired corporation, the
shareholders of the acquired corporation shall be entitled to all
5 the voting rights they would have if the exchange were a merger.
If less than all of the classes or series of shares of the acquired
7 corporation are to be acquired, only the holders of shares of those
classes or series of shares of the acquired corporation which are
9 proposed to be acquired shall be entitled to vote at the meeting.
Written notice shall be given not less than 20 and not more than
11 60 days before the meeting to each shareholder of record,
whether or not entitled to vote at the meeting, in the manner
13 provided in this act for the giving of notices of meetings of
shareholders. The notice shall include or be accompanied by:

- 15 (a) A copy or summary of the plan of exchange; and
(b) A statement informing shareholders who, under Chapter 11
17 of this act, are entitled to dissent, that they have the right to
dissent and to be paid the fair value of their shares and outlining
19 briefly, with particular reference to the time periods within
which actions shall be taken, the procedures set forth in Chapter
21 11 of this act with which they shall comply in order to assert and
enforce that right.

23 (4) The plan of exchange shall be approved upon receiving the
affirmative vote of a majority of the votes cast by the holders of
25 shares which are entitled to vote on the plan of exchange. In the
case of a corporation organized prior to January 1, 1969, the plan
27 of exchange shall be approved upon receiving the affirmative
vote of two-thirds of the votes so cast unless the corporation has
29 adopted the majority voting requirements prescribed in this
subsection or in subsection 14A:10-3(3) by an amendment of its
31 certificate of incorporation adopted by the affirmative vote of
two-thirds of the votes cast by the holders of shares entitled to
33 vote thereon.

(5) After approval of the plan of exchange, a certificate of
35 exchange shall be executed on behalf of each corporation which
shall set forth:

- 37 (a) The name of the acquired corporation and the name of the
acquiring corporation;
39 (b) The plan of exchange;

1 (c) The dates of the approval of the plan of exchange by the
boards of directors of each corporation;

3 (d) The date of the approval of shareholders of the acquired
corporation and, if necessary, the acquiring corporation;

5 (e) As to the acquired corporation whose shareholders are
entitled to vote: the number of shares entitled to vote thereon,
7 and if the shares of any class or series are entitled to vote
thereon as a class, the designation and number of shares entitled
9 to vote thereon of each said class or series; the number of shares
voted for and against the plan respectively, and, if the shares of
11 any class are entitled to vote as a class, the number of shares of
each class or series voted for and against the plan, respectively;

13 (f) That the plan of exchange was approved by the boards of
directors of each corporation; and

15 (g) If the exchange is to be effective at a time subsequent to
the date of filing with the Secretary of State, the date when the
17 exchange is to be effective, which date may be no more than 90
days after the filing of the certificate.

19 (6) The certificate of exchange shall be filed in the office of
the Secretary of State and the exchange shall become effective
21 upon the date of the filing or at a later time, not to exceed 90
days after the date of filing, as may be set forth in the
23 certificate.

(7) Upon the effective date of the exchange, the terms of the
25 plan of exchange shall automatically become effective. Without
limiting the foregoing, upon the effective date all of the
27 outstanding shares of the acquired corporation, which the plan of
exchange provides shall be acquired, automatically shall become
29 the property of the acquiring corporation; share certificates
which formerly evidenced the acquired shares shall only evidence
31 the right of the holder thereof to receive the consideration
provided for in the plan. The acquiring corporation may condition
33 the payment of the consideration provided for in the plan upon
the surrender of the share certificate evidencing the acquired
35 shares.

(8) Any shareholder of an acquired corporation whose shares
37 are acquired pursuant to the plan of exchange shall have all of
the rights of a dissenting shareholder under Chapter 11 of this act
39 to the extent the shareholder would have those rights if the plan

1 of exchange were treated as a merger under paragraph
14A:11-1(1)(a).

3 64. N.J.S. 14A:11-1 is amended to read as follows:

14A:11-1. Right of shareholders to dissent.

5 (1) Any shareholder of a domestic corporation shall have the
right to dissent from any of the following corporate actions

7 (a) Any plan of merger or consolidation to which the
corporation is a party, provided that, unless the certificate of
9 incorporation otherwise provides

(i) a shareholder shall not have the right to dissent from
11 any plan of merger or consolidation with respect to shares

(A) of a class or series which is listed on a national
13 securities exchange or is held of record by not less than
1,000 holders on the record date fixed to determine the
15 shareholders entitled to vote upon the plan of merger or
consolidation; or

(B) for which, pursuant to the plan of merger or
17 consolidation, he will receive (x) cash, (y) shares,
19 obligations or other securities which, upon consummation
of the merger or consolidation, will either be listed on a
21 national securities exchange or held of record by not less
than 1,000 holders, or (z) cash and such securities;

(ii) a shareholder of a surviving corporation shall not have
23 the right to dissent from a plan of merger, if the merger
25 did not require for its approval the vote of such
shareholders as provided in [section 14A:10-5] section
27 14A:10-5.1 or in subsections 14A:10-3(4), 14A:10-7(2) or
14A:10-7(4); or

(b) Any sale, lease, exchange or other disposition of all or
29 substantially all of the assets of a corporation not in the usual or
31 regular course of business as conducted by such corporation,
provided that, unless the certificate of incorporation otherwise
33 provides, the shareholder shall not have the right to dissent

(i) with respect to shares of a class or series which, at
35 the record date fixed to determine the shareholders
entitled to vote upon such transaction, is listed on a
37 national securities exchange or is held of record by not
less than 1,000 holders; or

(ii) from a transaction pursuant to a plan of dissolution of

1 the corporation which provides for distribution of
substantially all of its net assets
3 to shareholders in accordance with their respective
interests within one year after the date of such
5 transaction, where such transaction is wholly for
 (A) cash; or
7 (B) shares, obligations or other securities which, upon
consummation or the plan of dissolution will either be
9 listed on a national securities exchange or held of record
by not less than 1,000 holders; or
11 (C) cash and such securities; or
 (iii) from a sale pursuant to an order of a court having
13 jurisdiction.

 (2) Any shareholder of a domestic corporation shall have the
15 right to dissent with respect to any shares owned by him which
are to be acquired pursuant to section 14A:10-9.

17 (3) A shareholder may not dissent as to less than all of the
shares owned beneficially by him and with respect to which a
19 right of dissent exists. A nominee or fiduciary may not dissent on
behalf of any beneficial owner as to less than all of the shares of
21 such owner with respect to which the right of dissent exists.

 (4) A corporation may provide in its certificate of
23 incorporation that holders of all its shares, or of a particular
class or series thereof, shall have the right to dissent from
25 specified corporate actions in addition to those enumerated in
subsection 14A:11-1(1), in which case the exercise of such right
27 of dissent shall be governed by the provisions of this Chapter.

(cf: P.L. 1973, c. 366, s. 60)

29 65. N.J.S. 14A:11-2 is amended to read as follows:

31 14A:11-2. Notice of dissent; demand for payment;
endorsement of certificates.

 (1) Whenever a vote is to be taken, either at a meeting of
33 shareholders or upon written consents in lieu of a meeting
pursuant to section 14A:5-6, upon a proposed corporate action
35 from which a shareholder may dissent under section 14A:11-1,
any shareholder electing to dissent from such action shall file
37 with the corporation before the taking of the vote of the
shareholders on such corporate action, or within the time
39 specified in paragraphs 14A:5-6(2)(b) or 14A:5-6(2)(c), as the case

1 may be, if no meeting of shareholders is to be held, a written
notice of such dissent stating that he intends to demand payment
3 for his shares if the action is taken.

(2) Within 10 days after the date on which such corporate
5 action takes effect, the corporation, or, in the case of a merger
or consolidation, the surviving or new corporation, shall give
7 written notice of the effective date of such corporate action, by
certified mail to each shareholder who filed written notice of
9 dissent pursuant to subsection 14A:11-2(1), except any who voted
for or consented in writing to the proposed action.

11 (3) Within 20 days after the mailing of such notice, any
shareholder to whom the corporation was required to give such
13 notice and who has filed a written notice of dissent pursuant to
this section may make written demand on the corporation, or, in
15 the case of a merger or consolidation, on the surviving or new
corporation, for the payment of the fair value of his shares.

17 (4) Whenever a corporation is to be merged pursuant to [section
14A:10-5] section 14A:10-5.1 or subsection 14A:10-7(4) and
19 shareholder approval is not required under [subsections
14A:10-5(5) and 14A:10-5(6)] subsections 14A:10-5.1(5) and
21 14A:10-5.1(6), a shareholder who has the right to dissent pursuant
to section 14A:11-1 may, not later than 20 days after a copy or
23 summary of the plan of such merger and the statement required
by [subsection 14A:10-5(2)] subsection 14A:10-5.1(2) is mailed to
25 such shareholder, make written demand on the corporation or on
the surviving corporation, for the payment of the fair value of his
27 shares.

(5) Whenever all the shares, or all the shares of a class or
29 series, are to be acquired by another corporation pursuant to
section 14A:10-9, a shareholder of the corporation whose shares
31 are to be acquired may, not later than 20 days after the mailing
of notice by the acquiring corporation pursuant to paragraph
33 14A:10-9(3)(b), make written demand on the acquiring
corporation for the payment of the fair value of his shares.

35 (6) Not later than 20 days after demanding payment for his
shares pursuant to this section, the shareholder shall submit the
37 certificate or certificates representing his shares to the
corporation upon which such demand has been made for notation
39 thereon that such demand has been made, whereupon such

1 certificate or certificates shall be returned to him. If shares
2 represented by a certificate on which notation has been made
3 shall be transferred, each new certificate issued therefor shall
4 bear similar notation, together with the name of the original
5 dissenting holder of such shares, and a transferee of such shares
6 shall acquire by such transfer no rights in the corporation other
7 than those which the original dissenting shareholder had after
8 making a demand for payment of the fair value thereof.

9 (7) Every notice or other communication required to be given
10 or made by a corporation to any shareholder pursuant to this
11 Chapter shall inform such shareholder of all dates prior to which
12 action must be taken by such shareholder in order to perfect his
13 rights as a dissenting shareholder under this Chapter.

(cf: P.L. 1973, c. 366, s. 61)

15 66. N.J.S. 14A:11-3 is amended to read as follows:

16 14A:11-3. "Dissenting shareholder" defined; date for
17 determination of fair value.

18 (1) A shareholder who has made demand for the payment of his
19 shares in the manner prescribed by subsections 14A:11-2(3),
20 14A:11-2(4) or 14A:11-2(5) is hereafter in this Chapter referred
21 to as a "dissenting shareholder".

22 (2) Upon making such demand, the dissenting shareholder shall
23 cease to have any of the rights of a shareholder except the right
24 to be paid the fair value of his shares and any other rights of a
25 dissenting shareholder under this Chapter.

(3) "Fair value" as used in this Chapter shall be determined

27 (a) As of the day prior to the day of the meeting of
28 shareholders at which the proposed action was approved or as of
29 the day prior to the day specified by the corporation for the
30 tabulation of consents to such action if no meeting of
31 shareholders was held; or

32 (b) In the case of a merger pursuant to [section 14A:10-5]
33 section 14A:10-5.1 or subsection 14A:10-7(4) in which
34 shareholder approval is not required, as of the day prior to the
35 day on which the board of directors approved the plan of merger;
or

37 (c) In the case of an acquisition of all the shares or all the
shares of a class or series by another corporation pursuant to

1 section 14A:10-9, as of the day prior to the day on which the
board of directors of the acquiring corporation authorized the
3 acquisition, or, if a shareholder vote was taken pursuant to
section 14A:10-12, as of the day provided in paragraph
5 14A:11-3(3)(a).

In all cases, "fair value" shall exclude any appreciation or
7 depreciation resulting from the proposed action.

(cf: P.L. 1973, c. 366, s. 62)

9 67. N.J.S. 14A:12-1 is amended to read as follows:

14A:12-1. Methods of dissolution.

11 (1) A corporation may be dissolved in any one of the following
ways

13 (a) By the filing of a certificate of dissolution pursuant to
section 14A:12-5.1 upon expiration of any period of duration
15 stated in the corporation's certificate of incorporation;

(b) By action of the incorporators or directors pursuant to
17 section 14A:12-2;

(c) By action of the shareholders pursuant to section 14A:12-3;

19 (d) By action of the board and the shareholders pursuant to
section 14A:12-4;

21 (e) By action of a shareholder or shareholders pursuant to
section 14A:12-5;

23 (f) By a judgment of the Superior Court in an action brought
pursuant to sections 14A:12-6 or 14A:12-7, or otherwise;

25 (g) Automatically by a proclamation of the Secretary of State
repealing or revoking a certificate of incorporation for
27 nonpayment of taxes or for failure to file annual reports;

(h) By action of a corporation without assets pursuant to
29 section 14A:12-4.1.

(2) A corporation which has been dissolved in a proceeding
31 pursuant to section 14A:12-6 or 14A:12-7, or which has been
dissolved, or whose charter has been forfeited or revoked, for a
33 cause or by a method not mentioned in this section, shall be
subject to all the provisions of this Chapter and of Chapter 14, to
35 the extent that such provisions are compatible with a court
directed dissolution, or with the statute or [common law]
37 common-law proceeding pursuant to which such dissolution,
forfeiture or revocation is effected.

39 (cf: P.L. 1973, c. 366, s. 64)

1 68. (New section) Section 14A:12-4.1 is added to the New
Jersey Statutes as follows:

3 14A:12-4.1. Dissolution of corporations without assets.

5 (1) A corporation which has ceased doing business and does not
intend to recommence doing business may be dissolved by action
of its board and shareholders or, as set forth in this section, by a
7 corporate officer, if the corporation

9 (a) Has no assets;

11 (b) Has ceased doing business and does not intend to
recommence doing business; and

13 (c) Has not made any distributions of cash or property to its
shareholders within the last 24 months and does not intend to
make any distribution following its dissolution.

15 (2) The dissolution of a corporation may be authorized by the
shareholders without a meeting as provided in section 14A:12-3,
by action of the board and the shareholders as provided in section
17 14A:12-4 or by action of a corporate officer as provided below.
The dissolution may be authorized by a corporate officer if the
19 officer has given 30 days prior written notice of his intention to
dissolve the corporation by mail or personal service to all known
21 directors and shareholders at their last known address and no
director or shareholder has objected to the proposed dissolution.
23 The dissolution shall be effected by filing with the Secretary of
State a certificate of dissolution executed on behalf of the
25 corporation by all of the shareholders or any officer of the
corporation setting forth the following:

27 (a) The name of the corporation;

29 (b) The name and address of the shareholders executing the
certificate, or the name, address and title of the officer
executing the certificate;

31 (c) That the corporation has no assets, has ceased doing
business and does not intend to recommence doing business, and
33 has not made any distributions of cash or property to its
shareholders within the last 24 months and does not intend to
35 make any distribution following its dissolution;

37 (d) That (i) the shareholders have authorized the dissolution by
signing the certificate of dissolution in person or by proxy, or (ii)
the board and the shareholders have authorized the dissolution as
39 provided in section 14A:12-4, or (iii) 30 days prior written notice

1 of the dissolution has been mailed to or personally served upon all
known directors and shareholders at their last known addresses
3 and no one of them has objected to the dissolution; and

(e) That the shareholders executing the certificate believe, or
5 the officer executing the certificate believes, that all of the
statements in the certificate are true under penalty of perjury.

7 (3) Notwithstanding the provisions of sections 14A:2-2 and
14A:15-2, and section 3 of P.L. 1973, c. 367 (C. 54:50-14) or any
9 other provisions of law,

(a) The Secretary of State shall accept for filing a certificate
11 of dissolution pursuant to the provisions of this section

(i) without payment of any filing fee; and

13 (ii) without the filing with the Secretary of State of the
certificate of the Director of the Division of Taxation
15 evidencing the payment, or provision for the payment, by
the corporation of taxes, fees, penalties, and interest; and

17 (b) The name of the corporation shall be available immediately
for corporate use upon the filing of a certificate of dissolution
19 pursuant to the provisions of this section.

69. N.J.S. 14A:12-7 is amended to read as follows:

21 14A:12-7. Involuntary dissolution; other remedies.

(1) The Superior Court, in an action brought under this section,
23 may appoint a custodian, appoint a provisional director, order a
sale of the corporation's stock as provided below, or enter a
25 judgment dissolving the corporation, upon proof that

(a) The shareholders of the corporation are so divided in voting
27 power that, for a period which includes the time when two
consecutive annual meetings were or should have been held, they
29 have failed to elect successors to directors whose terms have
expired or would have expired upon the election and qualification
31 of their successors; or

(b) The directors of the corporation, or the person or persons
33 having the management authority otherwise in the board, if a
provision in the corporation's certificate of incorporation
35 contemplated by subsection 14A:5-21(2) is in effect, are unable
to effect action on one or more substantial matters respecting
37 the management of the corporation's affairs; or

(c) In the case of a corporation having 25 or less shareholders,
39 the directors or those in control have acted fraudulently or

1 illegally, mismanaged the corporation, or abused their authority
as officers or directors or have acted oppressively or unfairly
3 toward one or more minority shareholders in their capacities as
shareholders, directors, officers, or employees.

5 (2) An action may be brought under this section by one or more
directors or by one or more shareholders. In such action, in the
7 case of appointment of a custodian or a provisional director, the
court may proceed in a summary manner or otherwise.

9 (3) One or more provisional directors may be appointed if it
appears to the court that such an appointment may be in the best
11 interests of the corporation and its shareholders, notwithstanding
any provisions in the corporation's by-laws, certificate of
13 incorporation, or any resolutions adopted by the board or
shareholders. A provisional director shall have all the rights and
15 powers of a duly elected director of the corporation, including
the right to notice of and to vote at meetings of directors, until
17 such time as he shall be removed by order of the court or, unless
otherwise ordered by the court, by a vote or written consent of a
19 majority of the votes entitled to be cast by the holders of shares
entitled to vote to elect directors.

21 (4) A custodian may be appointed if it appears to the court that
such an appointment may be in the best interests of the
23 corporation and its shareholders, notwithstanding any provisions
in the corporation's by-laws, certificate of incorporation, or any
25 resolutions adopted by the shareholders or the board. Subject to
any limitations which the court imposes, a custodian shall be
27 entitled to exercise all of the powers of the corporation's board
and officers to the extent necessary to manage the affairs of the
29 corporation in the best interests of its shareholders and creditors,
until such time as he shall be removed by order of the court or,
31 unless otherwise ordered by the court, by the vote or written
consent of a majority of the votes entitled to be cast by the
33 holders of shares entitled to vote to elect directors. Such powers
may be exercised directly or through, or in conjunction with, the
35 corporation's board or officers, in the discretion of the custodian
or as the court may order. If so provided in the order appointing
37 him, a custodian shall have the fact-determining powers of a
receiver as provided in subsections 14A:14-5 (e) and (f).

39 (5) Any custodian or provisional director shall be an impartial

1 person who is neither a shareholder nor a creditor of the
corporation or of any subsidiary or affiliate of the corporation.

3 (6) Any custodian or provisional director shall report from time
to time to the court concerning the matter complained of, or the
5 status of the deadlock, if any, and of the status of the
corporation's business, as the court shall direct. In addition, he
7 shall submit to the court, if so directed, his recommendations as
to the appropriate disposition of the action. If, after the
9 appointment of a custodian or provisional director, the court
determines that a judgment of dissolution is in the best interests
11 of the shareholders of the corporation, such a judgment shall be
entered. The court may continue any custodian or provisional
13 director in such office subsequent to the entry of a judgment of
dissolution and until such time as the affairs of the corporation
15 are wound up, or it may appoint such person or another as
receiver, as provided in section 14A:12-15.

17 (7) In any proceeding under this section, the court shall allow
reasonable compensation to the custodian or provisional director
19 for his services and reimbursement or direct payment of his
reasonable costs and expenses which amounts shall be paid by the
21 corporation.

(8) Upon motion of the corporation or [a holder or holders of 50
23 per cent or more of the outstanding voting shares of the
corporation, before or after the appointment of a custodian or
25 provisional director] any shareholder who is a party to the
proceeding, the court may order the sale [by the plaintiff or
27 plaintiffs] of all shares of the corporation's stock held by [them]
any other shareholder who is a party to the proceeding to either
29 the corporation or the moving shareholder or shareholders,
whichever is specified in the motion, if the court determines in
31 its discretion that such an order would be fair and equitable to all
parties under all of the circumstances of the case.

33 (a) The purchase price of any shares so sold shall be their fair
value as of the date of the commencement of the action or such
35 earlier or later date deemed equitable by the court, plus or minus
any adjustments deemed equitable by the court if the action was
37 brought in whole or in part under paragraph 14A:12-7(1)(c).

(b) Within five days after the entry of any such order, the
39 corporation shall provide each selling shareholder with the

1 information it is required to provide a dissenting shareholder
under section 14A:11-6, and within 10 days after entry of the
3 order the purchasing party shall make a written offer to
purchase at a price deemed by the purchasing party to be the fair
5 value of the shares.

(c) If the parties are unable to agree on fair value within 40
7 days of entry of the order, the court shall make the
determination of the fair value, and the provisions of sections
9 14A:11-8 through 14A:11-11 shall be followed insofar as they are
applicable.

11 (d) Interest may be allowed at the rate and from the date
determined by the court to be equitable, and if the court finds
13 that the refusal of the shareholder to accept any offer of
payment was arbitrary, vexatious, or otherwise not in good faith,
15 no interest shall be allowed. If the court finds that the action
was maintainable under paragraph 14A:12-7(1)(c), the court in its
17 discretion may award to the selling shareholder or shareholders
reasonable fees and expenses of counsel and of any experts,
19 including accountants, employed by them.

(e) The purchase price shall be paid [in cash] by the delivery of
21 cash, notes, or other property, or any combination thereof within
30 days after the court has determined the fair value of the
23 shares. The court shall, in its discretion, determine the method
of payment of the purchase price. Whenever practicable, the
25 purchase price shall be paid entirely in cash. If the court
determines that an all cash payment is not practicable, it shall
27 determine the amount of the cash payment, the kind and amount
of any property, whether any note shall be secured, and other
29 appropriate terms, including the interest rate of any note.

(f) Upon entry of an order for the sale of shares under this
31 subsection, and provided the corporation or the moving
shareholders post a bond in adequate amount with sufficient
33 sureties or otherwise satisfy the court that the full purchase
price of the shares, plus [such] whatever additional costs,
35 expenses, and fees as may be awarded, will be paid when due and
payable, the selling shareholders shall no longer have any rights
37 or status as shareholders, officers, or directors, except the right
to receive the fair value of their shares plus [such] whatever
39 other amounts as [might] may be awarded. In such event, the

1 court may remove any custodian or provisional director who may
have been appointed.

3 (9) In determining whether to enter a judgment of dissolution in
an action brought under this section, the court shall take into
5 consideration whether the corporation is operating profitably and
in the best interests of its shareholders, but shall not deny entry
7 of such a judgment solely on that ground.

(10) If the court determines that any party to an action brought
9 under this section has acted arbitrarily, vexatiously, or otherwise
not in good faith, it may in its discretion award reasonable
11 expenses, including counsel fees incurred in connection with the
action, to the injured party or parties.

13 (cf: P.L. 1973, c. 366, s. 67)

¹[70. (New section) Section 14A:15-4 is added to the New
15 Jersey Statutes as follows:

14A:15-4. Fees for filing documents by telecopy and other
17 electronic means.

The Secretary of State may establish, by rule or regulation
19 pursuant to the "Administrative Procedure Act," P.L. 1968, c.
410 (C. 52:14B-1 et seq.), reasonable fees for the filing of
21 documents by telecopy and other electronic processes. The fees
for filing certificates and other papers by telecopy or other
23 electronic means shall be in addition to the regular fees for filing
documents. The Secretary of State may require persons utilizing
25 telecopy or other electronic filing services to pay by means of a
prepaid deposit account, credit card or other form of payment.]¹

27 70. N.J.S. 14A:15-3 is amended to read as follows:

14A:15-3. Additional corporate filing fees. The Secretary of
29 State shall also charge and collect for:

- (1) filing an application to reserve a specified
31 corporate name and issuing a certificate of
reservation \$50.00
33 if application is for the first name available
for corporate use among not more than three specified
35 names \$50.00
- (2) filing a notice of transfer of a reserved
37 corporate name \$25.00
- (3) filing an application by a foreign
39 corporation to register its corporate name
..... \$50.00

- 1 (4) filing an application by a foreign
 corporation to renew the registration of its
 3 corporate name \$50.00
 (5) filing a statement of cancellation of shares
 5 \$50.00
 (6) filing a statement of reduction of stated
 7 capital \$50.00
 (7) filing a certificate as to the acquisition
 9 of the shares or a class of shares of a domestic
 corporation \$50.00
 11 (8) issuing a certificate of standing, including
 registered agent and registered office \$25.00
 13 (9) issuing a certificate of standing, same as
 above, but including incorporators, officers and
 15 directors, and authorized shares \$25.00
 (10) issuing a certificate of standing, listing
 17 charter documents \$25.00
 (11) issuing a certificate of availability of
 19 corporate name (one to three names) \$25.00
 (12) filing a certificate of registration of
 21 ¹[fictitious] alternate¹ name \$50.00
 (13) filing a certificate of renewal of
 23 registration of ¹[fictitious] alternate¹ name \$25.00
 (14) filing a certificate of correction, in
 25 addition to any applicable license fee \$10.00
 (15) filing and issuing a reinstatement of
 27 charter \$50.00
 (16) corporate status reports--per name \$5.00
 29 (17) accepting service of process against
 corporation pursuant to N.J.S. 2A:15-26 et seq. .. \$25.00
 31 (18) filing a termination of alternate name ... \$50.00

(cf: P.L. 1987, c. 435, s. 10.)

- 33 71. The following are repealed:
 N.J.S. 14A:1-2
 35 N.J.S. 14A:6-7
 N.J.S. 14A:7-8
 37 N.J.S. 14A:7-14
 N.J.S. 14A:7-17
 39 N.J.S. 14A:7-19 and N.J.S. 14A:7-20

1 N.J.S. 14A:8-2 through N.J.S. 14A:8-6 inclusive
N.J.S. 14A:10-4
N.J.S. 14A:10-5
P.L. 1977, c. 59 (C. 14A:2-2a and C. 14A:2-2b)
P.L. 1969, c. 102, s. 12 (C. 14A:8-1.1).

72. This act shall take effect on the first day of the calendar
7 month following the 90th day after enactment.

9 COMMERCE AND INDUSTRY
Corporations

11 Makes various changes in Title 14A of the New Jersey Statutes
13 pursuant to recommendations contained in the Final Report of
the Corporation Law Revision Commission, dated February 1,
15 1986.

1 pursuant to the "Administrative Procedure Act," P.L. 1968, c.
 2 410 (C. 52:14B-1 et seq.), reasonable fees for the filing of
 3 documents by telecopy and other electronic processes. The fees
 4 for filing certificates and other papers by telecopy or other
 5 electronic means shall be in addition to the regular fees for filing
 6 documents. The Secretary of State may require persons utilizing
 7 telecopy or other electronic filing services to pay by means of a
 8 prepaid deposit account, credit card or other form of payment.

9 71. The following are repealed:

10 N.J.S. 14A:1-2
 11 N.J.S. 14A:6-7
 12 N.J.S. 14A:7-8
 13 N.J.S. 14A:7-14
 14 N.J.S. 14A:7-17
 15 N.J.S. 14A:7-19 and N.J.S. 14A:7-20
 16 N.J.S. 14A:8-2 through N.J.S. 14A:8-6 inclusive
 17 N.J.S. 14A:10-4
 18 N.J.S. 14A:10-5
 19 P.L. 1977, c. 59 (C. 14A:2-2a and C. 14A:2-2b)
 20 P.L. 1969, c. 102, s. 12 (C. 14A:8-1.1).

21 72. This act shall take effect on the first day of the calendar
 22 month following the 90th day after enactment.

23

25

Sponsor STATEMENT

27 This bill is based upon proposals made in the Final Report of
 28 the Corporation Law Revision Commission, dated February 1,
 29 1986. That report and the accompanying Comments of the
 30 Commission are incorporated in this statement by reference.

31

33

~~COMMERCE AND INDUSTRY~~
~~Corporations~~

35

37

Makes various changes in Title 14A of the New Jersey Statutes
 pursuant to recommendations contained in the Final Report of
 the Corporation Law Revision Commission, dated February 1,

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 2115

with Senate committee amendments

STATE OF NEW JERSEY

DATED: MAY 9, 1988

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 2115.

This bill revises the N.J. Business Corporation Act, N.J.S.A. 14A:1-1 et seq. based on the recommendations of the Corporation Law Revision Commission.

Many of the amendments proposed in the bill are of a technical nature and are intended to eliminate ambiguities in Title 14A and to reflect technological advances in communication and data retrieval.

The following is a list of the major substantive changes found in the bill:

1. Clarifies that the filing date for documents recorded under Title 14 will be the date of receipt by the Secretary of State and not as was prior practice, upon processing by the Secretary of State. This change is necessary because backlogs in the Secretary of State's office sometimes cause a delay in processing papers.

2. Clarifies that any notice required to be given by mail under Title 14A may also be given any personal delivery.

3. Permits the Secretary of State to adopt the modern practice of rejecting a proposed corporate name only if the names will cause confusion for administrative purposes.

4. Clarifies that Title 14A grants no proprietary rights to a corporate name and that the word "company" or "limited" may be used in a corporate name.

5. Requires a unanimous vote of all shareholders to authorize a corporate guarantee which is not in furtherance of the business interests of the corporation. Prior law required a two-thirds vote.

6. Clarifies that a corporation may contribute property of any nature for a charitable purpose. The prior law could have been interpreted to only permit cash contributions.

7. Provides that when the registered agent of a corporation resigns, the agent advise the corporation of the penalties which will be imposed if a new agent is not appointed.

8. Requires both domestic and foreign corporations to provide the Secretary of State with the address of their main business or headquarters office.

9. Authorizes the Secretary of State to revoke the certificate of any corporation which does not file an annual report for two years.

10. Permits shareholder lists to be maintained by means of microfilm or any other equipment which permits visual display.

11. Provides that a provision in a certificate of incorporation requiring a "super majority" for the election of board members will be enforced.

12. Eliminates the three year limitation on duration of a stock proxy.

13. Clarifies that agreements between shareholders concerning how stocks are to be voted are enforceable.

14. Clarifies that the certificate of incorporation may grant shareholders of a class or series of stock the right to elect one or more directors upon the happening of certain specified events like the failure to pay dividends on preferred shares.

15. Permits the board to fill new directorships occurring by reason of an increase in the size of the board unless the certificate of incorporation denies the board this power. Prior law gave this power to fill new directorships to the shareholders unless provided otherwise.

16. Permits shareholders to remove directors "without cause" unless removal is prohibited by the certificate of incorporation. Under prior law, shareholders could not remove directors "without cause" unless specifically authorized.

17. Permits the certificate of incorporation to authorize the election of directors who would have more than one vote.

18. Provides that a corporate transaction is not voidable because of a director's conflict of interest if any one of the following conditions are met: (a) the transaction was fair at the time it was authorized; (b) disclosure of the conflict was made to the directors and disinterested directors approved or (c) disclosure was made to the shareholders and the shareholders approved.

19. Allows a director the right to participate in a board meeting by telephone.

20. Authorizes corporate loans to a director as long as disinterested directors believe that the loan is a benefit to the corporation.

21. Eliminates the implication that removal of a corporate officer for cause would prejudice his contract rights. Whether removal would prejudice contract rights would be governed by the terms of the employee's contract.

22. Provides that all shares of stocks will be no par value unless otherwise stated in the certificate and authorizes the issuance of shares in accordance with a formula or at not less than a minimum price fixed by the board of directors.

23. Permits corporations to issue shares of stock for personal notes or future services. Prior law had provided that future services could not constitute "valid consideration" for the issuance of stock.

24. Eliminates present requirement that corporation with more than 25 shareholders could not issue securities redeemable at the option of the holder.

25. Eliminates the concept of stated capital (capital contributed by stockholders) as a requirement for incorporation.

26. Authorizes corporation to use uncertificated shares of stocks.

27. With regard to distribution to shareholders, permits any distribution, whether in the form of a dividend or a repurchase of shares, so long as the corporation is not insolvent. The concept of paying dividends only out of surplus is discarded and the "balance sheet" test for insolvency is substituted for the "surplus" test.

28. Treats "treasury shares" (stock issued by a company but later re-acquired) the same as other authorized but not issued stock and eliminates the requirement of filing a certificate when treasury shares are cancelled.

29. Eliminates any restrictions on adoption of employee benefits plans.

30. With regard to corporate merger, provides that shareholders in the corporation surviving after the merger need not approve of the merger unless the number of voting and participating shares of the surviving corporation would exceed by more than 40%, the total number of shares outstanding before the merger.

31. Requires that a certificate of merger specify the names of the merging corporations and the dates of the approval of the merger by each corporation.

32. Permits a corporate acquisition by means of a share exchange. Under prior law, in order for one corporation to acquire another corporation and continue to hold the corporation as a

separate subsidiary, it was necessary for the acquiring corporation to form an acquisition subsidiary and merge the acquired corporation with or into the acquisition subsidiary.

33. Permits a corporation without assets to dissolve without paying any filing fees or obtaining a tax clearance certificate. Under prior law, such a corporation was unable to dissolve unless its shareholders were willing to contribute the additional funds necessary to pay the fees and tax involved. Instead, these corporations forced the State to dissolve them through a costly forfeiture proceeding.

The committee adopted amendments to the bill as follows:

1. Requires all filings under Title 14A, business corporations to be typed or printed. This is to facilitate copying of documents by the Secretary of State.

2. Under present law, a business name used by a corporation, other than its actual name, was referred to as "fictitious". It was felt that the word "fictitious" suggested that the use of such a name was false or misleading. Therefore, as drafted, the bill would have referred to such names as "trade names" in the case of domestic corporations or "assumed names" in the case of foreign corporations. In order to prevent confusion with trade name filings by partnership and other corporate entities, the amendments change the phrase "trade name" to "alternate name".

3. Clarifies that in order for the name of a corporation to be accepted for filing, the name be such that it is distinguishable from the names of business entities on file with the Secretary of State.

4. Allows annual report to be signed by the corporation's agent.

5. Deletes language allowing for filings via telecopy.

6. Provides a filing fee for termination of a corporate name.

7. Deletes language which would have required a shareholder to show a proper purpose in order to inspect the list of corporate shareholders. The committee felt that the burden should be on the corporation to show that the reason a shareholder sought access to a shareholders list was not proper.