S T A T E O F N E W Y O R K

1567

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. BRODSKY, KAVANAGH -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the business corporation law, in relation to attendance of a meeting of shareholders by remote communication

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Paragraphs (b), (c) and (d) of section 602 of the business corporation law are relettered paragraphs (c), (d) and (e) and a new paragraph (b) is added to read as follows:

(B)(I) EVERY CORPORATION WHOSE SHARES ARE TRADED ON A STOCK EXCHANGE OR IN THE OVER-THE-COUNTER MARKET SHALL: (1) IMPLEMENT REASONABLE MEASURES TO PROVIDE SHAREHOLDERS NOT PHYSICALLY PRESENT AT A SHAREHOLDERS' MEETING A REASONABLE OPPORTUNITY TO WITNESS THE PROCEEDINGS OF THE MEETING SUBSTANTIALLY CONCURRENTLY WITH SUCH PROCEEDINGS; AND (2) PROVIDE REASONABLE MEANS TO ENABLE SHAREHOLDERS TO VOTE OR CAST PROXIES WITH RESPECT TO MATTERS SUBMITTED TO THE SHAREHOLDERS AT A SHAREHOLDERS' MEETING BY MEANS OF ELECTRONIC COMMUNICATION.

(II) THIS PARAGRAPH MAY ALSO APPLY TO OTHER CORPORATIONS IF THE BOARD OF DIRECTORS HAS ELECTED TO BE SUBJECT TO THIS PARAGRAPH.

(III) NOTHING REQUIRED IN SUBPARAGRAPHS (I) AND (II) OF THIS PARAGRAPH SHALL LIMIT, RESTRICT OR SUPERSEDE OTHER FORMS OF VOTING AND PARTICIPATION.

(IV) FOR PURPOSES OF THIS PARAGRAPH, "REASONABLE MEASURES" WITH RESPECT TO WITNESSING PROCEEDINGS SHALL INCLUDE, BUT NOT BE LIMITED TO AUDIO WEBCAST OR OTHER BROADCAST OF THE MEETING AND FOR VOTING SHALL INCLUDE BUT NOT BE LIMITED TO TELEPHONIC AND INTERNET VOTING.

S 2. Section 605 of the business corporation law, as amended by chapter 746 of the laws of 1963, paragraph (a) as amended by chapter 498 of the laws of 1998, is amended to read as follows:

S 605. Notice of meetings of shareholders.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD04811-02-9

(a) Whenever under the provisions of this chapter shareholders are required or permitted to take any action at a meeting, notice shall be given stating the place, date and hour of the meeting, THE MEANS OF REMOTE COMMUNICATIONS, IF ANY, BY WHICH SHAREHOLDERS AND PROXYHOLDERS MAY WITNESS THE PROCEEDINGS OF THE MEETING AND VOTE OR CAST PROXIES AT SUCH MEETING and, unless it is the annual meeting, indicating that it is being issued by or at the direction of the person or persons calling the meeting. Notice of a special meeting shall also state the purpose or purposes for which the meeting is called. Notice of any meeting of shareholders may be written or electronic. If, at any meeting, action is proposed to be taken which would, if taken, entitle shareholders fulfilling the requirements of section 623 (Procedure to enforce shareholder's right to receive payment for shares) to receive payment for their shares, the notice of such meeting shall include a statement of that purpose and to that effect and shall be accompanied by a copy of section 623 or an outline of its material terms. Notice of any meeting shall be given not fewer than ten nor more than sixty days before the date of the meeting, provided, however, that such notice may be given by third class mail not fewer than twenty-four nor more than sixty days before the date of the meeting, to each shareholder entitled to vote at such meeting. If mailed, such notice is given when deposited in the United States mail, with postage thereon prepaid, directed to the shareholder at the shareholder's address as it appears on the record of shareholders, or, if the shareholder shall have filed with the secretary of the corporation a request that notices to the shareholder be mailed to some other address, then directed to him at such other address. If transmitted electronically, such notice is given when directed to the shareholder's electronic mail address as supplied by the shareholder to the secretary of the corporation or as otherwise directed pursuant to the shareholder's authorization or instructions. An affidavit of the secretary or other person giving the notice or of a transfer agent of the corporation that the notice required by this section has been given shall, in the absence of fraud, be prima facie evidence of the facts therein stated.

(b) When a meeting is adjourned to another time or place, it shall not be necessary, unless the by-laws require otherwise, to give any notice of the adjourned meeting if the time and place to which the meeting is adjourned AND THE MEANS OF REMOTE COMMUNICATIONS, IF ANY, BY WHICH SHAREHOLDERS AND PROXYHOLDERS MAY WITNESS THE PROCEEDINGS OF THE MEETING AND VOTE OR CAST PROXIES AT THE MEETING are announced at the meeting at which the adjournment is taken, and at the adjourned meeting any business may be transacted that might have been transacted on the original date of the meeting. However, if after the adjournment the board fixes a new record date for the adjourned meeting, a notice of the adjourned meeting shall be given to each shareholder of record on the new record date entitled to notice under paragraph (a).

(C) NOTHING REQUIRED IN PARAGRAPHS (A) AND (B) OF THIS SECTION SHALL LIMIT, RESTRICT OR SUPERSEDE OTHER FORMS OF VOTING AND PARTICIPATION.

S 3. This act shall take effect immediately.