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I N S E N A T E

April 12, 2010

Introduced by Sen. FOLEY -- (at request of the Banking Department) --
read twice and ordered printed, and when printed to be committed to
the Committee on Banks

AN ACT to amend the banking law, in relation to authorized and unissued
shares of banks, trust companies, stock-form savings banks, savings
and loan associations and investment companies and to change the
presumption as to preemptive rights for shareholders of such insti-
tutions

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

1 Section 1. Subdivision 3 of section 4001 of the banking law, as
2 amended by chapter 360 of the laws of 1984, is amended to read as
3 follows:

4 3. The amount of its AUTHORIZED capital stock, the number of shares
5 into which such capital stock shall be divided and the par value of the
6 shares, which capital stock shall amount to not less than the [amounts]
7 MINIMUM AMOUNT prescribed by the banking board, NOR MORE THAN THE AGGRE-
8 GATE OF (A) THE AMOUNT OF CAPITAL STOCK THE CORPORATION EXPECTS TO SELL
9 IN ITS INITIAL OFFERING OF SHARES AND (B) SUCH ADDITIONAL AMOUNT AS MAY
10 BE APPROVED BY THE BANKING BOARD.

11 S 2. Subdivisions 1, 2, 3, 4 and 5 of section 6021 of the banking law,
12 as added by chapter 849 of the laws of 1964, paragraph (b) of subdivi-
13 sion 5 as amended by chapter 315 of the laws of 2008, are amended to
14 read as follows:

15 1. As used in this section, the term:

16 (a) "Unlimited dividend rights" means the right without limitation as
17 to amount either to all or to a share of the balance of current or
18 liquidating dividends after the payment of dividends on any shares enti-
19 tled to a preference.

20 (b) "Equity shares" means shares of any class, whether or not
21 preferred as to dividends or assets, which have unlimited dividend
22 rights.

23 (c) "Voting rights" means the right to vote for the election of one or
24 more directors, excluding a right so to vote which is dependent on the

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

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1 happening of an event specified in the organization certificate which
2 would change the voting rights of any class of shares.

3 (d) "Voting shares" means shares of any class which have voting
4 rights.

5 (e) "Preemptive right" means the right to purchase shares or other
6 securities to be issued, as such right is defined in this section.

7 (F) "NEW SHARES OR SECURITIES" MEANS NEW EQUITY SHARES OF ANY CLASS OR
8 ANY SHARES OR OTHER SECURITIES CONVERTIBLE INTO EQUITY SHARES OF ANY
9 CLASS.

10 2. THE PREEMPTIVE RIGHTS PROVIDED FOR IN SUBDIVISION THREE OF THIS
11 SECTION SHALL NOT APPLY TO NEW SHARES OR SECURITIES OF ANY CORPORATION
12 WHOSE ORGANIZATION CERTIFICATE IS APPROVED ON OR AFTER THE EFFECTIVE
13 DATE OF THIS SUBDIVISION, UNLESS EXPRESSLY PROVIDED FOR IN THE ORGANIZA-
14 TION CERTIFICATE OF SUCH CORPORATION, WHICH MAY INCORPORATE BY REFERENCE
15 THE PREEMPTIVE RIGHTS SET FORTH IN THIS SECTION, OR FURTHER MODIFY SUCH
16 PREEMPTIVE RIGHTS.

17 3. Except as otherwise provided in the organization certificate, and
18 except as provided in this section, [the holders of equity shares of any
19 class,] in case of the proposed issuance by the corporation of [its
20 equity shares of any class or any shares or other securities convertible
21 into its equity shares of any class, shall,] NEW SHARES OR SECURITIES:

22 (A) if the issuance of the [equity shares proposed to be issued or
23 issuable upon conversion of such other securities] NEW SHARES OR SECURI-
24 TIES would adversely affect the unlimited dividend rights of [such] THE
25 holders OF EXISTING EQUITY SHARES OF ANY CLASS, SUCH HOLDERS SHALL have
26 the right during a reasonable time and on reasonable conditions, both to
27 be fixed by the board, to purchase such NEW shares or securities in such
28 proportions as shall be determined as provided in this section[.]; AND

29 [3. Except as otherwise provided in the organization certificate, and
30 except as provided in this section, the holders of voting shares of any
31 class, in case of the proposed issuance by the corporation of its voting
32 shares of any class or any shares or other securities convertible into
33 its voting shares of any class, shall,]

34 (B) if SUCH NEW SHARES OR SECURITIES ARE VOTING SHARES OF ANY CLASS
35 AND the issuance of the [voting shares proposed to be issued or issuable
36 upon conversion of such other securities] NEW SHARES OR SECURITIES would
37 adversely affect the voting rights of [such] THE holders OF EXISTING
38 SHARES OF ANY CLASS, SUCH HOLDERS SHALL have the right during a reason-
39 able time and on reasonable conditions, both to be fixed by the board,
40 to purchase such NEW shares or other securities in such proportions as
41 shall be determined as provided in this section.

42 4. The preemptive right provided for in [subdivisions two and] SUBDI-
43 VISION three OF THIS SECTION shall entitle stockholders having such
44 rights to purchase the shares or other securities to be offered for sale
45 as nearly as practicable in such proportions as would, if such preemp-
46 tive right were exercised, preserve the relative unlimited dividend
47 rights and voting rights of such holders and at a price or prices not
48 less favorable than the price or prices at which such shares or other
49 securities are proposed to be offered for sale to others, without
50 deduction of such reasonable expenses of and compensation for the sale,
51 underwriting or purchase of such shares or other securities by under-
52 writers or dealers as may lawfully be paid by the corporation. In case
53 each of the shares entitling the holders thereof to preemptive rights
54 does not confer the same unlimited dividend right or voting right, the
55 board shall apportion the shares or other securities to be offered for
56 sale among the stockholders having preemptive rights to purchase them in

1 such proportions as in the opinion of the board shall preserve as far as
2 practicable the relative unlimited dividend rights and voting rights of
3 the holders at the time of such offering. The apportionment made by the
4 board shall, in the absence of fraud or bad faith, be binding upon all
5 stockholders.

6 5. Unless otherwise provided in the organization certificate, shares
7 or other securities offered for sale shall not be subject to preemptive
8 rights UNDER SUBDIVISIONS TWO AND THREE OF THIS SECTION if they:

9 (a) Are to be issued by the board to effect a merger or offered for
10 consideration other than cash;

11 (b) Are to be issued or subjected to options under section one hundred
12 forty-a of this chapter;

13 (c) Are to be issued to satisfy conversion rights theretofore granted
14 by the corporation;

15 (d) Are treasury shares; or

16 (e) Are part of the shares or other securities of the corporation
17 authorized in its original organization certificate and are issued, sold
18 or optioned within two years from the date of filing such certificate.

19 S 3. This act shall take effect immediately.