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

7444

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 institutions

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

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

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

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

1. As used in this section, the term:

(a) "Unlimited dividend rights" means the right without limitation as to amount either to all or to a share of the balance of current or liquidating dividends after the payment of dividends on any shares entitled to a preference.

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

(c) "Voting rights" means the right to vote for the election of one or 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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happening of an event specified in the organization certificate which would change the voting rights of any class of shares.

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

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

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

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

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

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

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

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

4. The preemptive right provided for in [subdivisions two and] SUBDIVISION three OF THIS SECTION shall entitle stockholders having such rights to purchase the shares or other securities to be offered for sale as nearly as practicable in such proportions as would, if such preemptive right were exercised, preserve the relative unlimited dividend rights and voting rights of such holders and at a price or prices not less favorable than the price or prices at which such shares or other securities are proposed to be offered for sale to others, without deduction of such reasonable expenses of and compensation for the sale, underwriting or purchase of such shares or other securities by underwriters or dealers as may lawfully be paid by the corporation. In case each of the shares entitling the holders thereof to preemptive rights does not confer the same unlimited dividend right or voting right, the board shall apportion the shares or other securities to be offered for sale among the stockholders having preemptive rights to purchase them in

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

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

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

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

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

(d) Are treasury shares; or

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

S 3. This act shall take effect immediately.