§ 5005. Transferable rights to purchase shares; imposition of restrictions or conditions thereon. 1. Except as otherwise provided in this section or in the organization certificate, a corporation may create and issue, whether or not in connection with the issue and sale of any of its capital notes, debentures or shares, rights or options entitling the holders thereof to purchase from the corporation, upon such consideration, terms and conditions as may be fixed by the board, shares of any class or series, whether authorized but unissued shares, treasury shares or shares to be purchased or acquired.

2. (a) In the case of a corporation that has a class of voting stock registered pursuant to section twelve of the Exchange Act, the terms and conditions of such rights or options may include, without limitation, restrictions or conditions that preclude or limit the exercise, transfer or receipt of such rights or options by an interested shareholder or any transferee of any such interested shareholder or that invalidate or void such rights or options held by any such interested shareholder or any such transferee. For the purposes of this subdivision, the terms "voting stock", "Exchange Act" and "interested shareholder" shall have the same respective meanings as are set forth in section nine hundred twelve of the business corporation law except that for this purpose references in said section of the business corporation law to a "resident business corporation" shall be read instead to refer to a "corporation" as defined by section one thousand one of this chapter.

(b) Determinations of the board of directors whether to impose, enforce or waive or otherwise render ineffective such limitations or conditions as are permitted by paragraph (a) of this subdivision shall be subject to judicial review in an appropriate proceeding in which the courts formulate or apply appropriate standards in order to insure that such limitations or conditions are imposed, enforced or waived in the best long-term interests and short-term interests of the corporation and its stockholders considering, without limitation, the prospects for potential growth, development, productivity and profitability of the corporation.

3. The consideration for shares to be purchased under any such right or option shall comply with the requirements of section five thousand

four of this chapter.

4. The terms and conditions of such rights or options, including the time or times at or within which and the price or prices at which they may be exercised and any limitations upon transferability, shall be set forth or incorporated by reference in the instrument or instruments evidencing such rights or options.

5. If there is shareholder approval for the issue of rights and options, such approval may provide that the board is authorized by certificate of amendment under section eight thousand five of this chapter to increase the authorized shares of any class or series to such number as will be sufficient, when added to the previously authorized but unissued shares of such class or series, to satisfy any such rights or options entitling the holders thereof to purchase from the corporation authorized but unissued shares of such class or series.

6. In the absence of fraud in the transaction, the judgment of the board shall be conclusive as to the adequacy of the consideration, tangible or intangible, received or to be received by the corporation for the issue of rights or options for the purchase from the corporation of its shares.

7. The provisions of this section are inapplicable to the rights of the holders of convertible shares, capital notes or debentures to acquire shares upon the exercise of conversion privileges under section five thousand sixteen of this chapter.

8. The provisions of this section are inapplicable to the rights of officers, directors and employees of a corporation who have been issued options to purchase authorized and unissued shares of its capital stock under or by reference to section one hundred forty-a of this chapter.