

# House File 651 - Reprinted

HOUSE FILE \_\_\_\_\_  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 76)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to business corporations, by providing for  
2 information required to be filed with the secretary of state  
3 and providing for shareholder voting.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
5 TLSB 1075HV 82  
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1 1 DIVISION I  
1 2 GENERAL REVISIONS  
1 3 Section 1. Section 490.120, Code 2007, is amended by  
1 4 adding the following new subsection:  
1 5 NEW SUBSECTION. 12. Whenever a provision of this chapter  
1 6 permits any of the terms of a plan or a filed document to be  
1 7 dependent on facts objectively ascertainable outside of the  
1 8 plan or filed document, all of the following provisions apply:  
1 9 a. The manner in which the facts will operate upon the  
1 10 terms of the plan or filed document shall be set forth in the  
1 11 plan or filed document.  
1 12 b. The facts may include, but are not limited to any of  
1 13 the following:  
1 14 (1) Any of the following that is available in a nationally  
1 15 recognized news or information medium either in print or  
1 16 electronically: statistical or market indices, market prices  
1 17 of any security or group of securities, interest rates,  
1 18 currency exchange rates, or similar economic or financial  
1 19 data.  
1 20 (2) A determination or action by any person or body,  
1 21 including the corporation or any other party to a plan or  
1 22 filed document.  
1 23 (3) The terms of, or actions taken under, an agreement to  
1 24 which the corporation is a party, or any other agreement or  
1 25 document.  
1 26 c. As used in this subsection:  
1 27 (1) "Filed document" means a document filed with the  
1 28 secretary of state under any provision of this chapter except  
1 29 division XV or section 490.1622.  
1 30 (2) "Plan" means a plan of merger or share exchange.  
1 31 d. The following provisions of a plan or filed document  
1 32 may not be made dependent on facts outside the plan or filed  
1 33 document:  
1 34 (1) The name and address of any person required in a filed  
1 35 document.  
2 1 (2) The registered office of any entity required in a  
2 2 filed document.  
2 3 (3) The registered agent of any entity required in a filed  
2 4 document.  
2 5 (4) The number of authorized shares and designation of  
2 6 each class or series of shares.  
2 7 (5) The effective date of a filed document.  
2 8 (6) Any required statement in a filed document of the date  
2 9 on which the underlying transaction was approved or the manner  
2 10 in which that approval was given.  
2 11 e. If a provision of a filed document is made dependent on  
2 12 a fact ascertainable outside of the filed document, and that  
2 13 fact is not ascertainable by reference to a source described  
2 14 in paragraph "b", subparagraph (1), or a document that is a  
2 15 matter of public record, or the affected shareholders have not  
2 16 received notice of the fact from the corporation, then the  
2 17 corporation shall file with the secretary of state articles of

2 18 amendment setting forth the fact promptly after the time when  
2 19 the fact referred to is first ascertainable or thereafter  
2 20 changes. Articles of amendment under this paragraph are  
2 21 deemed to be authorized by the authorization of the original  
2 22 filed document to which they relate and may be filed by the  
2 23 corporation without further action by the board of directors  
2 24 or the shareholders.

2 25 Sec. 2. Section 490.140, Code 2007, is amended by adding  
2 26 the following new subsection:

2 27 NEW SUBSECTION. 11A. The phrase "facts objectively  
2 28 ascertainable" outside of a filed document or plan is defined  
2 29 in section 490.120, subsection 12.

2 30 Sec. 3. Section 490.202, Code 2007, is amended by adding  
2 31 the following new subsection:

2 32 NEW SUBSECTION. 4. Provisions of the articles of  
2 33 incorporation may be made dependent upon facts objectively  
2 34 ascertainable outside the articles of incorporation in  
2 35 accordance with section 490.120.

3 1 Sec. 4. Section 490.601, Code 2007, is amended to read as  
3 2 follows:

3 3 490.601 AUTHORIZED SHARES.

3 4 1. The articles of incorporation must ~~prescribe the set~~  
3 5 ~~forth any classes of shares and series of shares within a~~  
3 6 ~~class, and the number of shares of each class and series, that~~  
3 7 the corporation is authorized to issue. If more than one  
3 8 class ~~or series~~ of shares is authorized, the articles of  
3 9 incorporation must prescribe a distinguishing designation for  
3 10 each class, ~~or series~~ and ~~must describe~~, prior to the issuance  
3 11 of shares of a class ~~or series~~, the ~~terms, including the~~  
3 12 ~~preferences, rights, and limitations, and relative rights of~~  
3 13 ~~that class must be described in the articles of incorporation~~  
3 14 ~~of that class or series. All Except to the extent varied as~~  
3 15 ~~permitted by this section, all shares of a class or series~~  
3 16 ~~must have terms, including preferences, rights, and~~  
3 17 ~~limitations, and relative rights that are identical with those~~  
3 18 ~~of other shares of the same class except to the extent~~  
3 19 ~~otherwise permitted by section 490.602 or series.~~

3 20 2. The articles of incorporation must authorize ~~both all~~  
3 21 of the following:

3 22 a. One or more classes ~~or series~~ of shares that together  
3 23 have unlimited voting rights.

3 24 b. One or more classes ~~or series~~ of shares, which may be  
3 25 the same class or classes as those with voting rights, that  
3 26 together are entitled to receive the net assets of the  
3 27 corporation upon dissolution.

3 28 3. The articles of incorporation may authorize one or more  
3 29 classes ~~or series~~ of shares that have any of the following  
3 30 qualities:

3 31 a. Have special, conditional, or limited voting rights, or  
3 32 no right to vote, except to the extent ~~prohibited otherwise~~  
3 33 ~~provided by this chapter.~~

3 34 b. Are redeemable or convertible as specified in the  
3 35 articles of incorporation in any of the following ways:

4 1 (1) At the option of the corporation, the ~~shareholders~~  
4 2 ~~shareholder~~, or another person or upon the occurrence of a  
4 3 ~~designated~~ specified event.

4 4 (2) For cash, indebtedness, securities, or other property.

4 5 (3) ~~In a designated amount or in an amount At prices and~~  
4 6 ~~in amounts specified, or determined in accordance with a~~  
4 7 ~~designated formula or by reference to extrinsic data or~~  
4 8 ~~events.~~

4 9 c. Entitle the holders to distributions calculated in any  
4 10 manner, including dividends that may be cumulative,  
4 11 noncumulative, or partially cumulative.

4 12 d. Have preference over any other class ~~or series~~ of  
4 13 shares with respect to distributions, including ~~dividends and~~  
4 14 distributions upon the dissolution of the corporation.

4 15 4. ~~The terms of shares may be made dependent upon facts~~  
4 16 ~~objectively ascertainable outside the articles of~~  
4 17 ~~incorporation in accordance with section 490.120, subsection~~  
4 18 ~~12.~~

4 19 5. ~~The terms of shares may vary among holders of the same~~  
4 20 ~~class or series so long as such variations are expressly set~~  
4 21 ~~forth in the articles of incorporation.~~

4 22 6. The description of the ~~designations~~, preferences,  
4 23 ~~rights, and limitations, and relative rights~~ of ~~share~~ classes  
4 24 ~~or series of shares~~ in subsection 3 is not exhaustive.

4 25 Sec. 5. Section 490.602, Code 2007, is amended by striking  
4 26 the section and inserting in lieu thereof the following:

4 27 490.602 TERMS OF CLASS OR SERIES DETERMINED BY BOARD OF  
4 28 DIRECTORS.

4 29 1. If the articles of incorporation so provide, the board  
4 30 of directors is authorized, without shareholder approval, to  
4 31 do any of the following:

4 32 a. Classify any unissued shares into one or more series  
4 33 within a class.

4 34 b. Reclassify any unissued shares of any class into one or  
4 35 more classes or into one or more series within one or more  
5 1 classes.

5 2 c. Reclassify any unissued shares of any series of any  
5 3 class into one or more classes or into one or more series  
5 4 within a class.

5 5 2. If the board of directors acts pursuant to subsection  
5 6 1, it must determine the terms, including the preferences,  
5 7 rights, and limitations, to the same extent permitted under  
5 8 section 490.601, of any of the following:

5 9 a. Any class of shares before the issuance of any shares  
5 10 of that class.

5 11 b. Any series within a class before the issuance of any  
5 12 shares of that series.

5 13 3. Before issuing any shares of a class or series created  
5 14 under this section, the corporation must deliver to the  
5 15 secretary of state for filing articles of amendment setting  
5 16 forth the terms determined under subsection 1.

5 17 Sec. 6. Section 490.624, Code 2007, is amended to read as  
5 18 follows:

5 19 490.624 SHARE OPTIONS.

5 20 1. A corporation may issue rights, options, or warrants  
5 21 for the purchase of shares or other securities of the  
5 22 corporation. The board of directors shall determine (i) the  
5 23 terms upon which the rights, options, or warrants are issued,  
~~5 24 their form and content, and the consideration for which the~~  
~~5 25 shares are to be issued, and (ii) the terms, including the~~  
5 26 consideration for which the shares or other securities are to  
5 27 be issued. The authorization by the board of directors for  
5 28 the corporation to issue such rights, options, or warrants  
5 29 constitutes authorization of the issuance of the shares or  
5 30 other securities for which the rights, options, or warrants  
5 31 are exercisable.

5 32 2. The terms and conditions of such rights, options, or  
5 33 warrants, including those outstanding on the effective date of  
5 34 this section, may include, without limitation, restrictions,  
5 35 or conditions that do any of the following:

6 1 a. Preclude or limit the exercise, transfer, or receipt of  
6 2 such rights, options, or warrants by any person or persons  
6 3 owning or offering to acquire a specified number or percentage  
6 4 of the outstanding shares or other securities of the  
6 5 corporation or by any transferee or transferees of any such  
6 6 person or persons.

6 7 b. Invalidate or void such rights, options, or warrants  
6 8 held by any such person or persons or any such transferee or  
6 9 transferees.

6 10 Sec. 7. Section 490.1005, subsection 8, Code 2007, is  
6 11 amended to read as follows:

6 12 8. To make any change expressly permitted by section  
6 13 490.602, subsection ~~4~~ 1 or 2, to be made without shareholder  
6 14 approval.

6 15 Sec. 8. Section 490.1006, Code 2007, is amended to read as  
6 16 follows:

6 17 490.1006 ARTICLES OF AMENDMENT.

6 18 After an amendment to the articles of incorporation has  
6 19 been adopted and approved in the manner required by this  
6 20 chapter and by the articles of incorporation, the corporation  
6 21 shall deliver to the secretary of state, for filing, articles  
6 22 of amendment, which shall set forth all of the following:

6 23 1. The name of the corporation.

6 24 2. The text of each amendment adopted, or the information  
6 25 required by section 490.120, subsection 12, paragraph "e".

6 26 3. If an amendment provides for an exchange,  
6 27 reclassification, or cancellation of issued shares, provisions  
6 28 for implementing the amendment, if not contained in the  
6 29 amendment itself, which may be made dependent upon facts  
6 30 objectively ascertainable outside the articles of amendment in  
6 31 accordance with section 490.120, subsection 12.

6 32 4. The date of each amendment's adoption.

6 33 5. ~~If an amendment was adopted by the incorporators or~~  
~~6 34 board of directors without shareholder approval, a statement~~  
~~6 35 that the amendment was duly approved by the incorporators or~~  
7 1 by the board of directors, as the case may be, and that  
7 2 shareholder approval was not required.;

7 3 6. ~~a. If an amendment required~~ Required approval by the  
7 4 shareholders, a statement that the amendment was duly approved

7 5 by the shareholders in the manner required by this chapter and  
7 6 by the articles of incorporation.

7 7 b. Is being filed pursuant to section 490.120, subsection  
7 8 12, a statement to that effect.

7 9 Sec. 9. Section 490.1102, subsection 4, Code 2007, is  
7 10 amended to read as follows:

7 11 4. ~~The terms described in subsection 3, paragraphs "b" and~~  
7 12 ~~"c", of a plan of merger may be made dependent on facts~~  
7 13 ~~objectively ascertainable outside the plan of merger, provided~~  
7 14 ~~that those facts are objectively ascertainable in accordance~~  
7 15 ~~with section 490.120, subsection 12. The term "facts"~~  
7 16 ~~includes, but is not limited to, the occurrence of any event,~~  
7 17 ~~including a determination or action by any person or body,~~  
7 18 ~~including the corporation.~~

7 19 Sec. 10. Section 490.1103, subsection 4, Code 2007, is  
7 20 amended to read as follows:

7 21 4. ~~The terms described in subsection 3, paragraphs "b" and~~  
7 22 ~~"c", of a share exchange may be made dependent on facts~~  
7 23 ~~objectively ascertainable outside the plan of share exchange,~~  
7 24 ~~provided that those facts are objectively ascertainable in~~  
7 25 ~~accordance with section 490.120, subsection 12. The term~~  
7 26 ~~"facts" includes, but is not limited to, the occurrence of any~~  
7 27 ~~event, including a determination or action by any person or~~  
7 28 ~~body, including the corporation.~~

7 29 Sec. 11. Section 490.1104, subsection 7, paragraph c, Code  
7 30 2007, is amended to read as follows:

7 31 c. Each shareholder of the corporation whose shares were  
7 32 outstanding immediately before the effective date of the  
7 33 merger or share exchange will hold the same number of shares,  
7 34 with identical preferences, ~~limitations, and relative rights,~~  
7 35 ~~and limitations~~ immediately after the effective date of  
8 1 change.

8 2 Sec. 12. Section 490.1601, subsection 5, unnumbered  
8 3 paragraph 1, Code 2007, is amended to read as follows:

8 4 A corporation shall keep a copy of the following records at  
8 5 its principal office:

8 6 Sec. 13. Section 490.1601, subsection 5, paragraph a, Code  
8 7 2007, is amended to read as follows:

8 8 a. Its articles or restated articles of incorporation, ~~and~~  
8 9 ~~all amendments to them currently in effect, and any notices to~~  
8 10 ~~shareholders referred to in section 490.120, subsection 12,~~  
8 11 ~~paragraph "e", regarding facts on which a filed document is~~  
8 12 ~~dependent.~~

#### DIVISION II

#### WRITTEN CONSENT

8 15 Sec. 14. Section 490.701, subsection 1, Code 2007, is  
8 16 amended to read as follows:

8 17 1. ~~Unless directors are elected by written consent in~~  
8 18 ~~lieu of an annual meeting as permitted by section 490.704, a~~  
8 19 ~~corporation shall hold annually, at a time stated in or fixed~~  
8 20 ~~in accordance with the bylaws, a meeting of shareholders;~~  
8 21 ~~provided, however, that if a corporation's articles of~~  
8 22 ~~incorporation authorize shareholders to cumulate their votes~~  
8 23 ~~when electing directors pursuant to section 490.728, directors~~  
8 24 ~~shall not be elected by less than unanimous consent.~~

8 25 Sec. 15. Section 490.703, subsection 1, paragraph a, Code  
8 26 2007, is amended to read as follows:

8 27 a. On application of any shareholder of the corporation  
8 28 entitled to participate in an annual meeting if an annual  
8 29 meeting was not held ~~or action by written consent in lieu~~  
8 30 ~~thereof did not become effective~~ within the earlier of six  
8 31 months after the end of the corporation's fiscal year or  
8 32 fifteen months after its last annual meeting.

8 33 Sec. 16. Section 490.704, subsections 2 through 6, Code  
8 34 2007, are amended to read as follows:

8 35 2. ~~The articles of incorporation may provide that any~~  
9 1 ~~action required or permitted by this chapter to be taken at a~~  
9 2 ~~shareholders' meeting may be taken without a meeting, and~~  
9 3 ~~without prior notice, if consents in writing setting forth the~~  
9 4 ~~action so taken are signed by the holders of outstanding~~  
9 5 ~~shares having not less than the minimum number of votes that~~  
9 6 ~~would be required to authorize or take the action at a meeting~~  
9 7 ~~at which all shares entitled to vote on the action were~~  
9 8 ~~present and voted. The written consent shall bear the date of~~  
9 9 ~~signature of each shareholder who signs the consent and no be~~  
9 10 ~~delivered to the corporation for inclusion in the minutes or~~  
9 11 ~~filing with the corporate records.~~

9 12 3. ~~If not otherwise fixed under section 490.707, and if~~  
9 13 ~~prior board action is not required respecting the action to be~~  
9 14 ~~taken without a meeting, the record date for determining the~~  
9 15 ~~shareholders entitled to take action without a meeting shall~~

9 16 be the first date on which a signed written consent is  
9 17 delivered to the corporation. If not otherwise fixed under  
9 18 section 490.707 and if prior board action is required  
9 19 respecting the action to be taken without a meeting, the  
9 20 record date shall be the close of business on the day the  
9 21 resolution of the board taking such prior action is adopted.  
9 22 No written consent is effective to take the corporate action  
9 23 referred to in the consent unless, within sixty days of the  
9 24 earliest dated consent delivered in the manner required by  
9 25 this section to the corporation, written consents signed by a  
9 26 sufficient number of holders to take action are delivered to  
9 27 the corporation. A written consent may be revoked by a  
9 28 writing to that effect received by the corporation prior to  
9 29 the receipt by the corporation of unrevoked written consents  
9 30 sufficient in number to take corporate action.  
9 31 ~~3. If not otherwise fixed under section 490.703 or~~  
~~9 32 490.707, the record date for determining shareholders entitled~~  
~~9 33 to take action without a meeting is the date the first~~  
~~9 34 shareholder signs the consent under subsection 1.~~  
9 35 4. A consent signed under this section has the effect of a  
10 1 meeting vote and may be described as such in any document.  
10 2 ~~Unless the articles of incorporation, bylaws, or a resolution~~  
10 3 ~~of the board of directors provides for a reasonable delay to~~  
10 4 ~~permit tabulation of written consents, the action taken by~~  
10 5 ~~written consent shall be effective when written consents~~  
10 6 ~~signed by the holders of shares having sufficient votes to~~  
10 7 ~~take the action are delivered to the corporation.~~  
10 8 5. If this chapter requires that notice of a proposed  
10 9 action be given to ~~nonvoting~~ shareholders ~~not entitled to vote~~  
10 10 and the action is to be taken by ~~written~~ consent of the voting  
10 11 shareholders, the corporation must give ~~all its nonvoting~~  
10 12 shareholders written notice of the ~~proposed~~ action ~~at least~~  
10 13 ~~not more than~~ ten days ~~before~~ ~~after~~ (i) written consents to  
10 14 ~~take the action is taken, or~~ (ii) such later date that  
10 15 tabulation of consents is completed pursuant to an  
10 16 authorization under subsection 4. The notice must ~~reasonably~~  
10 17 ~~describe the action taken and~~ contain or be accompanied by the  
10 18 same material that, under this chapter, would have been  
10 19 required to be sent to shareholders not entitled to vote in a  
10 20 notice of meeting at which the proposed action would have been  
10 21 submitted to the shareholders for action.  
10 22 6. ~~Prompt notice of the taking of corporate action without~~  
~~10 23 a meeting by less than unanimous written consent shall be~~  
~~10 24 given to those shareholders who have not consented in writing.~~  
10 25 ~~If the action is taken by less than unanimous written consent~~  
10 26 ~~of the voting shareholders, the corporation must give its~~  
10 27 ~~nonconsenting voting shareholders written notice of the action~~  
10 28 ~~not more than ten days after~~ (i) written consents sufficient  
10 29 to take the action have been delivered to the corporation, or  
10 30 (ii) such later date that tabulation of consents is completed  
10 31 pursuant to an authorization under subsection 4. The notice  
10 32 must reasonably describe the action taken and contain or be  
10 33 accompanied by the same material that, under any provision of  
10 34 this chapter, would have been required to be sent to voting  
10 35 shareholders in a notice of a meeting at which the action  
11 1 would have been submitted to the shareholders for action. If  
11 2 the taking of that corporate action requires the giving of  
11 3 notice under section 490.1320, subsection 2, the notice of the  
11 4 action shall set forth the matters described in section  
11 5 490.1322.  
11 6 7. The notice requirements in subsections 5 and 6 shall  
11 7 not delay the effectiveness of actions taken by written  
11 8 consent, and a failure to comply with such notice requirements  
11 9 shall not invalidate actions taken by written consent,  
11 10 provided that this subsection shall not be deemed to limit  
11 11 judicial power to fashion any appropriate remedy in favor of a  
11 12 shareholder adversely affected by a failure to give such  
11 13 notice within the required time period.  
11 14 8. An electronic transmission may be used to consent to an  
11 15 action if the electronic transmission contains or is  
11 16 accompanied by information from which the corporation can  
11 17 determine the date on which the electronic transmission was  
11 18 signed and that the electronic transmission was authorized by  
11 19 the shareholder, the shareholder's agent, or the shareholder's  
11 20 attorney-in-fact.  
11 21 9. Delivery of a written consent to the corporation under  
11 22 this section is delivery to the corporation's registered agent  
11 23 at its registered office or to the secretary of the  
11 24 corporation at its principal office.  
11 25 Sec. 17. Section 490.1320, subsection 1, Code 2007, is  
11 26 amended to read as follows:

11 27 1. ~~If~~ Where any proposed corporate action described in  
11 28 section 490.1302, subsection 1, is to be submitted to a vote  
11 29 at a shareholders' meeting, the meeting notice must state that  
11 30 the corporation has concluded that the shareholders are, are  
11 31 not, or may be entitled to assert appraisal rights under this  
11 32 part. If the corporation concludes that appraisal rights are  
11 33 or may be available, a copy of this part must accompany the  
11 34 meeting notice sent to those record shareholders entitled to  
11 35 exercise appraisal rights.

12 1 Sec. 18. Section 490.1320, Code 2007, is amended by adding  
12 2 the following new subsection:

12 3 NEW SUBSECTION. 3. Where any corporate action specified  
12 4 in section 490.1302, subsection 1, is to be approved by  
12 5 written consent of the shareholders pursuant to section  
12 6 490.704 all of the following shall apply:

12 7 a. Written notice that appraisal rights are, are not, or  
12 8 may be available must be given to each record shareholder from  
12 9 whom a consent is solicited at the time consent of such  
12 10 shareholder is first solicited and, if the corporation has  
12 11 concluded that appraisal rights are or may be available, must  
12 12 be accompanied by a copy of this chapter.

12 13 b. Written notice that appraisal rights are, are not, or  
12 14 may be available must be delivered together with a notice to  
12 15 nonconsenting and nonvoting shareholders required by section  
12 16 490.704, subsections 5 and 6, may include materials described  
12 17 in section 490.1322 and, if the corporation has concluded that  
12 18 appraisal rights are or may be available, must be accompanied  
12 19 by a copy of this chapter.

12 20 Sec. 19. Section 490.1321, subsection 1, unnumbered  
12 21 paragraph 1, Code 2007, is amended to read as follows:

12 22 ~~If proposed a corporate action requiring appraisal rights~~  
12 23 ~~under specified in section 490.1302 is submitted to a vote at~~  
12 24 a shareholders' meeting, a shareholder who wishes to assert  
12 25 appraisal rights with respect to any class or series of shares  
12 26 must do all of the following:

12 27 Sec. 20. Section 490.1321, subsection 2, Code 2007, is  
12 28 amended to read as follows:

12 29 2. If a corporate action specified in section 490.1302,  
12 30 subsection 1, is to be approved by less than unanimous written  
12 31 consent, a shareholder who wishes to assert appraisal rights  
12 32 with respect to any class or series of shares must not execute  
12 33 a consent in favor of the proposed corporate action with  
12 34 respect to that class or series of shares.

12 35 3. A shareholder who does not satisfy the requirements of  
13 1 subsection 1 or 2 is not entitled to payment under this part.

13 2 Sec. 21. Section 490.1322, subsection 2, unnumbered  
13 3 paragraph 1, Code 2007, is amended to read as follows:

13 4 The appraisal notice must be sent no earlier than the date  
13 5 the corporate action specified in section 490.1302, subsection  
13 6 1, became effective and no later than ten days after such date  
13 7 and must do all of the following:

13 8 Sec. 22. Section 490.1322, subsection 2, paragraph a, Code  
13 9 2007, is amended to read as follows:

13 10 a. Be accompanied by a form that (i) specifies the date of  
13 11 the first announcement to shareholders of the principal terms  
13 12 of the proposed corporate action, if any, and (ii) if such  
13 13 announcement was made, requires the shareholder asserting  
13 14 appraisal rights to certify whether or not beneficial  
13 15 ownership of those shares for which appraisal rights are  
13 16 asserted was acquired before that date, and that, as to these  
13 17 shares, the shareholder did not vote for or consent to the  
13 18 transaction.

13 19 Sec. 23. Section 490.1323, subsection 1, Code 2007, is  
13 20 amended to read as follows:

13 21 1. A shareholder who receives notice pursuant to section  
13 22 490.1322 and who wishes to exercise appraisal rights must  
13 23 certify on sign and return the form sent by the corporation  
13 24 and, in the case of certificated shares, deposit the  
13 25 shareholder's certificates in accordance with the terms of the  
13 26 notice by the date referred to in the notice pursuant to

13 27 section 490.1322, subsection 2, paragraph "b", subparagraph  
13 28 (2). In addition, if applicable, the shareholder must certify

13 29 on the form whether the beneficial owner of such shares  
13 30 acquired beneficial ownership of the shares before the date  
13 31 required to be set forth in the notice pursuant to section  
13 32 490.1322, subsection 2, paragraph "a". If a shareholder fails  
13 33 to make this certification, the corporation may elect to treat  
13 34 the shareholder's shares as after-acquired shares under  
13 35 section 490.1325. In addition, a shareholder who wishes to  
14 1 exercise appraisal rights must execute and return the form  
14 2 and, in a case of certificated shares, deposit the

14 3 shareholder's certificates in accordance with the terms of the  
14 4 notice by the date referred to in the notice pursuant to  
14 5 section 490.1322, subsection 2, paragraph "b", subparagraph  
14 6 (2). Once a shareholder deposits that shareholder's  
14 7 certificates or, in the case of uncertificated shares, returns  
14 8 the executed forms, that shareholder loses all rights as a  
14 9 shareholder, unless the shareholder withdraws pursuant to  
14 10 subsection 2.

14 11 Sec. 24. Section 490.1325, subsection 1, Code 2007, is  
14 12 amended to read as follows:

14 13 1. A corporation may elect to withhold payment required by  
14 14 section 490.1324 from any shareholder who was required to but  
14 15 did not certify that beneficial ownership of all of the  
14 16 shareholder's shares for which appraisal rights are asserted  
14 17 was acquired before the date set forth in the appraisal notice  
14 18 sent pursuant to section 490.1322, subsection 2, paragraph  
14 19 "a".

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