

## CHAPTER 13

### APPRAISAL RIGHTS

#### SUBCHAPTER 1

#### APPRAISAL RIGHTS AND PAYMENT FOR SHARES

##### §1301. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**1. Affiliate.** "Affiliate" means:

A. A person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with another person; or [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

B. A senior executive of a person described in paragraph A. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

For purposes of section 1303, subsection 3, paragraph B, a person is deemed to be an affiliate of its senior executives.

[PL 2011, c. 274, §58 (AMD).]

**2. Beneficial shareholder.** "Beneficial shareholder" means a person who is the beneficial owner of shares held in a voting trust or by a nominee on the beneficial owner's behalf.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**3. Corporation.** "Corporation" means the issuer of the shares held by a shareholder demanding appraisal and, for matters covered in sections 1323 to 1332, includes the surviving entity in a merger.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**4. Fair value.** "Fair value" means the value of a corporation's shares determined:

A. Immediately before the effectuation of the corporate action to which a shareholder objects; [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

B. Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal; and [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

C. Without discounting for lack of marketability or minority status except, if appropriate, for amendments to the corporation's articles of incorporation pursuant to section 1302, subsection 5.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**5. Interest.** "Interest" means interest from the effective date of a corporate action until the date of payment, at the rate of interest on judgments in this State on the effective date of the corporate action.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**5-A. Interested transaction.** "Interested transaction" means a corporate action described in section 1302, subsection 1, other than a merger pursuant to section 1105, involving an interested person in which any of the shares or assets of the corporation are being acquired or converted. For the purposes of this subsection:

A. "Beneficial owner" means any person who, directly or indirectly, through any contract, arrangement or understanding, other than a revocable proxy, has or shares the power to vote, or to direct the voting of, shares; except that a member of a national securities exchange is not considered to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because the member is the record holder of the securities if the member is precluded by the rules of the exchange from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted. When 2 or more persons agree to act together for the purpose of voting their shares of the corporation, each member of the group formed thereby is considered to have acquired beneficial ownership, as of the date of the agreement, of all voting shares of the corporation beneficially owned by any member of the group; [PL 2011, c. 274, §59 (NEW).]

B. "Excluded shares" means shares acquired pursuant to an offer for all shares having voting power if the offer was made within one year prior to the corporate action for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action; and [PL 2011, c. 274, §59 (NEW).]

C. "Interested person" means a person, or an affiliate of a person, who at any time during the one-year period immediately preceding approval by the board of directors of the corporate action:

(1) Was the beneficial owner of 20% or more of the voting power of the corporation, other than as owner of excluded shares;

(2) Had the power, contractually or otherwise, other than as owner of excluded shares, to cause the appointment or election of 25% or more of the directors to the board of directors of the corporation; or

(3) Was a senior executive or director of the corporation or a senior executive of any affiliate thereof and will receive, as a result of the corporate action, a financial benefit not generally available to other shareholders as such, other than:

(a) Employment, consulting, retirement or similar benefits established separately and not as part of or in contemplation of the corporate action;

(b) Employment, consulting, retirement or similar benefits established in contemplation of, or as part of, the corporate action that are not more favorable than those existing before the corporate action or, if more favorable, that have been approved on behalf of the corporation in the same manner as is provided in section 873; or

(c) In the case of a director of the corporation who will, in the corporate action, become a director of the acquiring entity in the corporate action or one of its affiliates, rights and benefits as a director that are provided on the same basis as those afforded by the acquiring entity generally to other directors of the entity or the affiliate. [PL 2011, c. 274, §59 (NEW).]

[PL 2011, c. 274, §59 (NEW).]

**6. Preferred shares.** "Preferred shares" means a class or series of shares whose holders have preference over any other class or series of shares with respect to distributions. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**7. Record shareholder.** "Record shareholder" means a person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with the corporation. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**8. Senior executive.** "Senior executive" means a chief executive officer, chief operating officer, chief financial officer and anyone in charge of a principal business unit or function.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**9. Shareholder.** "Shareholder" means both a record shareholder and a beneficial shareholder.  
[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

#### SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF). PL 2011, c. 274, §§58, 59 (AMD).

#### §1302. Appraisal rights

A shareholder is entitled to appraisal rights and to obtain payment of the fair value of that shareholder's shares in the event of any of the following corporate actions: [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**1. Merger to which corporation is party.** Consummation of a merger to which a corporation is a party if:

A. Shareholder approval is required for the merger by section 1104, except that appraisal rights are not available to any shareholder of the corporation with respect to shares of any class or series that remain outstanding after consummation of the merger; or [PL 2011, c. 274, §60 (AMD).]

B. The corporation is a subsidiary and the merger is governed by section 1105; [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]  
[PL 2011, c. 274, §60 (AMD).]

**2. Share exchange to which corporation is party.** Consummation of a share exchange to which the corporation is a party as the corporation whose shares will be acquired, except that appraisal rights are not available to any shareholder of the corporation with respect to any class or series of shares of the corporation that are not exchanged;  
[PL 2011, c. 274, §61 (AMD).]

**3. Disposition of assets.** Consummation of a disposition of assets pursuant to section 1202, except that appraisal rights are not available to a shareholder of the corporation with respect to shares of a class or series if:

A. Under the terms of the corporate action approved by the shareholders, there is to be distributed to shareholders in cash the corporation's net assets, in excess of a reasonable amount reserved to meet claims of the type described in sections 1407 and 1408:

(1) Within one year after the shareholders' approval of the action; and

(2) In accordance with the shareholders' respective interests determined at the time of distribution; and [PL 2011, c. 274, §62 (NEW).]

B. The disposition of assets is not an interested transaction; [PL 2011, c. 274, §62 (NEW).]  
[PL 2011, c. 274, §62 (RPR).]

**4. Fractional shares.** An amendment of the corporation's articles of incorporation with respect to a class or series of shares that reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or right to repurchase the fractional share so created;  
[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**5. Other amendment.** Any other amendment to the corporation's articles of incorporation, merger, share exchange or disposition of assets to the extent provided by the articles of incorporation, bylaws or a resolution of the corporation's board of directors;  
[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**6. Domestication.** Consummation of a domestication if the shareholder does not receive shares in the foreign corporation resulting from the domestication that have terms as favorable to the shareholder

in all material respects and represent at least the same percentage interest of the total voting rights of the outstanding shares of the corporation as the shares held by the shareholder before the domestication; [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**7. Conversion to nonprofit status.** Consummation of a conversion of the corporation to nonprofit status pursuant to chapter 9, subchapter 2; or [PL 2003, c. 344, Pt. B, §106 (AMD).]

**8. Conversion to unincorporated entity.** Consummation of a conversion of the corporation to an unincorporated entity pursuant to chapter 9, subchapter 4. [PL 2003, c. 344, Pt. B, §106 (AMD).]

## SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF). PL 2003, c. 344, §B106 (AMD). PL 2011, c. 274, §§60-62 (AMD).

### §1303. Limitations on appraisal rights

Notwithstanding section 1302, the availability of appraisal rights under section 1302, subsections 1 to 4, 6 and 8 is limited in accordance with this section. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**1. National listing; specific market value.** Appraisal rights are not available for the holders of shares of any class or series of shares that:

A. Is a covered security under Section 18(b)(1)(A) or (B) of the federal Securities Act of 1933, as amended; [PL 2007, c. 289, §32 (AMD).]

B. Is traded in an organized market and has at least 2,000 shareholders and the outstanding shares of such class or series have a market value of at least \$20,000,000 exclusive of the value of such shares held by a corporation's subsidiaries, senior executives, directors and beneficial shareholders owning more than 10% of such shares; or [PL 2007, c. 289, §32 (AMD).]

C. Is issued by an open end management investment company registered with the United States Securities and Exchange Commission under the federal Investment Company Act of 1940 and may be redeemed at the option of the holder at net asset value. [PL 2007, c. 289, §32 (NEW).]  
[PL 2007, c. 289, §32 (AMD).]

**2. Date of determination.** The applicability of subsection 1 is determined as of:

A. The record date fixed to determine the shareholders entitled to receive notice of the meeting of shareholders to act upon a corporate action requiring appraisal rights; or [PL 2011, c. 274, §63 (AMD).]

B. The day before the effective date of a corporate action that requires appraisal rights if there is no meeting of shareholders. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

[PL 2011, c. 274, §63 (AMD).]

**3. Exception.** Notwithstanding subsection 1, appraisal rights are available pursuant to section 1302 for the shareholders of any class or series of shares:

A. Who are required by the terms of a corporate action requiring appraisal rights to accept for such shares anything other than cash or shares of any class or any series of shares of a corporation, or any other proprietary interest of any other entity, that satisfies the standards set forth in subsection 1 at the time the corporate action becomes effective; [PL 2011, c. 274, §64 (RPR).]

B. In the case of the consummation of a disposition of assets pursuant to section 1202, the cash, shares or proprietary interests under paragraph A are, under the terms of the corporate action

approved by the shareholders, to be distributed to the shareholders as part of the distribution to shareholders of the net assets of the corporation in excess of a reasonable amount to meet claims of the type described in sections 1407 and 1408:

- (1) Within one year after the shareholders' approval of the action; and
- (2) In accordance with their respective interests determined at the time of the distribution; or [PL 2011, c. 274, §64 (RPR).]

C. When any of the shares or assets of a corporation are being acquired or converted, whether by merger, share exchange or otherwise, pursuant to a corporate action that is an interested transaction. [PL 2011, c. 274, §64 (RPR).]

[PL 2011, c. 274, §64 (RPR).]

#### SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF). PL 2005, c. 302, §§4,5 (AMD). PL 2007, c. 289, §32 (AMD). PL 2011, c. 274, §§63, 64 (AMD).

#### **§1304. Limitation or elimination of appraisal rights in articles of incorporation**

Notwithstanding section 1302 or 1303, the articles of incorporation of a corporation as originally filed or any amendment thereto may limit or eliminate appraisal rights for any class or series of preferred shares, except that: [PL 2011, c. 274, §65 (RPR).]

**1. Class or series.** No such limitation or elimination is effective if the class or series does not have the right to vote separately as a voting group, alone or as part of a group, on the action or if the action is a nonprofit conversion under chapter 9, subchapter 2, a conversion to an unincorporated entity under chapter 9, subchapter 4 or a merger having a similar effect; and [PL 2011, c. 274, §65 (NEW).]

**2. Appraisal rights.** Any limitation or elimination contained in an amendment to the articles of incorporation that limits or eliminates appraisal rights for any of those shares that are outstanding immediately prior to the effective date of that amendment or that the corporation is or may be required to issue or sell after the effective date of the amendment pursuant to any conversion, exchange or other right existing immediately before the effective date of that amendment does not apply to any corporate action that becomes effective within one year of that date if that action would otherwise afford appraisal rights.

[PL 2011, c. 274, §65 (NEW).]

#### SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF). PL 2011, c. 274, §65 (RPR).

#### **§1305. Challenge by shareholder**

**(REPEALED)**

#### SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF). PL 2003, c. 344, §B107 (AMD). PL 2011, c. 274, §66 (RP).

#### **§1306. Assertion of appraisal rights**

**1. Record shareholder assert appraisal rights.** A record shareholder may assert appraisal rights as to fewer than all the shares registered in the record shareholder's name but owned by a beneficial shareholder only if the record shareholder objects with respect to all shares of the class or series owned by the beneficial shareholder and notifies the corporation in writing of the name and address of each beneficial shareholder on whose behalf appraisal rights are being asserted. The rights of a record shareholder who asserts appraisal rights for only part of the shares held of record in the record

shareholder's name under this subsection must be determined as if the shares as to which the record shareholder objects and the record shareholder's other shares were registered in the names of different record shareholders.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**2. Beneficial shareholder; appraisal rights.** A beneficial shareholder may assert appraisal rights as to shares of any class or series held on behalf of the shareholder only if the shareholder:

A. Submits to the corporation the record shareholder's written consent to the assertion of the rights no later than the date referred to in section 1323, subsection 2, paragraph B, subparagraph (2); and [PL 2005, c. 302, §6 (AMD).]

B. Does so with respect to all shares of the class or series that are beneficially owned by the beneficial shareholder. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).] [PL 2005, c. 302, §6 (AMD).]

#### SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF). PL 2005, c. 302, §6 (AMD).

### SUBCHAPTER 2

#### PROCEDURE FOR EXERCISE OF APPRAISAL RIGHTS

##### §1321. Notice of appraisal rights

**1. Meeting notice.** If a proposed corporate action described in section 1302 is to be submitted to a vote at a shareholders' meeting, the meeting notice must state that the corporation has concluded that shareholders are, are not or may be entitled to assert appraisal rights under this chapter. If the corporation concludes that appraisal rights are or may be available, a copy of this chapter must accompany the meeting notice sent to those record shareholders entitled to exercise appraisal rights.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**2. Notice of corporate action.** In a merger pursuant to section 1105, the parent corporation shall notify in writing all record shareholders of the subsidiary who are entitled to assert appraisal rights that a corporate action became effective. The notice must be sent within 10 days after the corporate action became effective and include the materials described in section 1323.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**3. Action by written consent.** If a corporate action specified in section 1302 is to be approved by written consent of the shareholders pursuant to section 704:

A. Written notice that appraisal rights are, are not or may be available must be sent to each record shareholder from whom a consent is solicited at the time consent of such shareholder is first solicited and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of this chapter; and [PL 2011, c. 274, §67 (AMD).]

B. Written notice that appraisal rights are, are not or may be available must be delivered together with the notice to nonconsenting voting and nonvoting shareholders as required by section 704, subsections 4 and 5, may include the materials described in section 1323 and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of this chapter. [PL 2007, c. 289, §33 (NEW).]

[PL 2011, c. 274, §67 (AMD).]

#### SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF). PL 2007, c. 289, §33 (AMD). PL 2011, c. 274, §67 (AMD).

### **§1322. Notice of intent to demand payment**

**(REPEALED)**

#### SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF). PL 2007, c. 289, §34 (RP).

### **§1322-A. Notice of intent to demand payment**

**1. Preservation of appraisal rights if action taken at a meeting.** If a proposed corporate action requiring appraisal rights under sections 1302 to 1304 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

A. Shall deliver to the corporation before the vote is taken written notice of the shareholder's intent to demand payment if the proposed action is effectuated; and [PL 2007, c. 289, §35 (NEW).]

B. May not vote, or cause or permit to be voted, any shares of the class or series in favor of the proposed action. [PL 2007, c. 289, §35 (NEW).]

[PL 2007, c. 289, §35 (NEW).]

**2. Preservation of appraisal rights if action taken by consent.** If a corporate action specified in section 1302 is to be approved by less than unanimous written consent, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares may not sign a consent in favor of the proposed action with respect to that class or series of shares.

[PL 2011, c. 274, §68 (AMD).]

**3. Effect of failure to preserve.** A shareholder who fails to satisfy the requirements of subsection 1 or 2 is not entitled to payment under this chapter.

[PL 2007, c. 289, §35 (NEW).]

#### SECTION HISTORY

PL 2007, c. 289, §35 (NEW). PL 2011, c. 274, §68 (AMD).

### **§1323. Appraisal notice and form**

**1. Written appraisal notice; form.** If a proposed corporate action requiring appraisal rights under section 1302 becomes effective, a corporation must send a written appraisal notice and the form required by subsection 2, paragraph A to all shareholders who satisfied the requirements of section 1322-A. In the case of a merger under section 1105, the parent shall send an appraisal notice and form to all record shareholders who may be entitled to assert appraisal rights.

[PL 2011, c. 274, §69 (AMD).]

**2. Appraisal notice.** The appraisal notice required by subsection 1 must be delivered no earlier than the date a corporate action became effective and no later than 10 days after that date and must:

A. Supply a form that specifies the first date of any announcement to shareholders, made prior to the date the corporate action became effective, of the principal terms of the proposed corporate action, if any. If such announcement was made the form must:

(1) Require the shareholder asserting appraisal rights to certify whether beneficial ownership of those shares for which appraisal rights are asserted was acquired before that date; and

(2) Require the shareholder asserting appraisal rights to certify that the shareholder did not vote for or consent to the transaction; [PL 2007, c. 289, §37 (RPR).]

B. Include the following information:

(1) Where the form must be sent and where certificates for certificated shares must be deposited and the date by which those certificates must be deposited, which date may not be earlier than the date for receiving the required form under subparagraph (2);

(2) A date by which the corporation must receive the form, which date may not be fewer than 40 nor more than 60 days after the date the appraisal notice is sent, and a statement that the shareholder has waived the right to demand appraisal with respect to the shares unless the form is received by the corporation by the specified date;

(3) A corporation's estimate of the fair value of the shares;

(4) That, if requested in writing, a corporation will provide, to the shareholder so requesting, within 10 days after the date specified in subparagraph (2) the number of shareholders who return the forms by the specified date and the total number of shares owned by those shareholders; and

(5) The date by which the notice to withdraw under section 1324 must be received, which date must be within 20 days after the date specified in subparagraph (2); and [PL 2011, c. 274, §70 (AMD).]

C. Be accompanied by a copy of this chapter. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

[PL 2011, c. 274, §70 (AMD).]

**3. Notice accompanied by financial statements.** When corporate action described in section 1302, subsection 1 is proposed, or a merger pursuant to section 1105 is effected, the notice referred to in subsection 1, if the corporation concludes that appraisal rights are or may be available, and in subsection 2 must be accompanied by:

A. The annual financial statements specified in section 1620, subsection 1 of the corporation that issued the shares that may be subject to appraisal, whether or not a close corporation, which must be as of a date ending not more than 16 months before the date of the notice and must comply with section 1620, subsection 2. If such annual financial statements are not reasonably available, the corporation shall provide reasonably equivalent financial information; and [PL 2007, c. 289, §38 (NEW).]

B. The latest available quarterly financial statements of such corporation, if any. [PL 2007, c. 289, §38 (NEW).]

[PL 2007, c. 289, §38 (NEW).]

#### SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF). PL 2007, c. 289, §§36-38 (AMD). PL 2011, c. 274, §§69, 70 (AMD).

#### §1324. Perfection of rights; right to withdraw

**1. Perfection of rights.** A shareholder who receives notice pursuant to section 1323 and who wishes to exercise appraisal rights shall sign and return the form sent by the corporation and, in the case of certificated shares, deposit the shareholder's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to section 1323, subsection 2, paragraph B, subparagraph (2) and certify whether the beneficial owner of the shares acquired beneficial ownership of the shares before the date required to be set forth in the notice pursuant to section 1323, subsection 2, paragraph A. If a shareholder fails to make this certification, the corporation may elect to treat the shareholder's shares as after-acquired shares under section 1326. A shareholder who wishes to exercise appraisal rights shall execute and return the form and, in the case of certificated shares, deposit the shareholder's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to section 1323, subsection 2, paragraph B, subparagraph (2). Once a shareholder deposits that

shareholder's certificates or, in the case of uncertificated shares, returns the executed forms, that shareholder loses all rights as a shareholder, unless the shareholder withdraws pursuant to subsection 2.

[PL 2007, c. 289, §39 (AMD).]

**2. Withdraw from appraisal process.** A shareholder who has complied with subsection 1 may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by notifying the corporation in writing by the date set forth in the appraisal notice pursuant to section 1323, subsection 2, paragraph B, subparagraph (5). A shareholder who fails to withdraw from the appraisal process may not thereafter withdraw without the corporation's written consent.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**3. Failure to execute and return form; nonpayment.** A shareholder who does not execute and return the form and, in the case of certificated shares, deposit that shareholder's share certificates where required, each by the date set forth in the notice described in section 1323, subsection 2, is not entitled to payment under this chapter.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

#### SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF). PL 2007, c. 289, §39 (AMD).

#### §1325. Payment

**1. Fair value.** Except as provided in section 1326, within 30 days after the form required by section 1323, subsection 2, paragraph B, subparagraph (2) is due, a corporation shall pay in cash to those shareholders who complied with section 1324, subsection 1 the amount the corporation estimates to be the fair value of their shares, plus interest.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**2. Additional information.** The payment to each shareholder pursuant to subsection 1 must be accompanied by:

A. Annual financial statements specified in section 1620, subsection 1 of the corporation that issued the shares to be appraised, whether or not a close corporation, that must be as of a date ending not more than 16 months before the date of payment and must comply with section 1620, subsection 2. If such annual financial statements are not reasonably available, the corporation shall provide reasonably equivalent financial information; [PL 2007, c. 289, §40 (AMD).]

B. A statement of the corporation's estimate of the fair value of the shares, which estimate must equal or exceed the corporation's estimate given pursuant to section 1323, subsection 2, paragraph B, subparagraph (3); [PL 2007, c. 289, §40 (AMD).]

C. A statement that shareholders described in subsection 1 have the right to demand further payment under section 1327 and that if any such shareholder does not do so within the time period specified in section 1327, that shareholder is deemed to have accepted the payment in full satisfaction of the corporation's obligations under this chapter; and [PL 2007, c. 289, §40 (AMD).]

D. The latest available quarterly financial statements of the corporation, if any. [PL 2007, c. 289, §40 (NEW).]

[PL 2007, c. 289, §40 (AMD).]

#### SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF). PL 2007, c. 289, §40 (AMD).

#### §1326. After-acquired shares

**1. Withhold payment.** A corporation may elect to withhold payment required by section 1325 from any shareholder who did not certify that beneficial ownership of all of the shareholder's shares for which appraisal rights are asserted was acquired before the date set forth in the appraisal notice sent pursuant to section 1323, subsection 2, paragraph A.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**2. Notify shareholders.** If a corporation elected to withhold payment under subsection 1, the corporation shall, within 30 days after the date by which the corporation must receive the form is given as required by section 1323, subsection 2, paragraph B, subparagraph (2) is due, notify all shareholders who are described in subsection 1:

A. Of the information required by section 1325, subsection 2, paragraph A; [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

B. Of the corporation's estimate of fair value pursuant to section 1325, subsection 2, paragraph B; [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

C. That the shareholders may accept the corporation's estimate of fair value, plus interest, in full satisfaction of their demands or demand appraisal under section 1327; [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

D. That those shareholders who wish to accept the offer pursuant to paragraph B must notify the corporation of their acceptance of the corporation's offer within 30 days after receiving the offer pursuant to paragraph B; and [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

E. That those shareholders who do not satisfy the requirements for demanding appraisal under section 1327 are deemed to have accepted the corporation's offer pursuant to paragraph B. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]  
[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**3. Shareholders who accept offer.** Within 10 days after receiving the shareholder's acceptance pursuant to subsection 2, a corporation must pay in cash the amount it offered under subsection 2, paragraph B to each shareholder who agreed to accept the corporation's offer in full satisfaction of the shareholder's demand.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**4. Shareholders deemed to accept offer; payment.** Within 40 days after sending the notice described in subsection 2, a corporation shall pay in cash the amount the corporation offered to pay under subsection 2, paragraph B to each shareholder described in subsection 2, paragraph E.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

## SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF).

### §1327. Procedure if shareholder dissatisfied with payment or offer

**1. Notification; demand.** A shareholder paid pursuant to section 1325 who is dissatisfied with the amount of the payment shall notify the corporation in writing of that shareholder's estimate of the fair value of the shares and demand payment of that estimate plus interest less any payment under section 1325. A shareholder offered payment under section 1326 who is dissatisfied with that offer must reject the offer and demand payment of the shareholder's stated estimate of the fair value of the shares plus interest.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**2. Failure to notify corporation in writing.** A shareholder who fails to notify a corporation in writing of that shareholder's demand to be paid the shareholder's stated estimate of the fair value plus interest under subsection 1 within 30 days after receiving the corporation's payment or offer of payment

under section 1325 or 1326 waives the right to demand payment under this section and is entitled only to the payment made or offered pursuant to those sections.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

#### SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF).

### SUBCHAPTER 3

## JUDICIAL APPRAISAL OF SHARES

#### §1331. Court action

**1. Commence proceeding.** If a shareholder makes demand for payment under section 1327 that remains unsettled, a corporation shall commence a proceeding within 60 days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the 60-day period, the corporation shall pay in cash to each shareholder the amount the shareholder demanded pursuant to section 1327 plus interest.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**2. Appropriate court.** A corporation shall commence the proceeding under subsection 1 in the appropriate court of the county where the corporation's principal office is located or, if there is no principal office, in Kennebec County. If the corporation is a foreign corporation, the corporation shall commence the proceeding in the county in this State where the principal office of the domestic corporation merged with the foreign corporation was located or, if the domestic corporation did not have its principal office in this State at the time of the transaction, in Kennebec County.

[PL 2009, c. 415, Pt. A, §9 (AMD).]

**3. Shareholders party to proceeding.** A corporation shall make all shareholders whether or not residents of this State whose demands remain unsettled parties to the proceeding as in an action against their shares, and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**4. Jurisdiction; appraisers.** The jurisdiction of the court in which the proceeding is commenced under subsection 2 is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers have the powers described in the order appointing them or in any amendment to the order. The shareholders demanding appraisal rights under this chapter are entitled to the same discovery rights as parties in other civil proceedings. Shareholders demanding appraisal rights under this chapter do not have a right to a jury trial.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**5. Shareholder entitled to judgment.** Each shareholder made a party to the proceeding under subsection 1 is entitled to judgment for the:

A. Amount, if any, by which the court finds the fair value of the shareholder's shares, plus interest, exceeds the amount paid by a corporation to the shareholder for the shares; or [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

B. Fair value, plus interest, of the shareholder's shares for which a corporation elected to withhold payment under section 1326. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**SECTION HISTORY**

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF). PL 2007, c. 323, Pt. C, §17 (AMD). PL 2007, c. 323, Pt. G, §4 (AFF). PL 2009, c. 415, Pt. A, §9 (AMD).

**§1332. Court costs and counsel fees**

**1. Court costs.** The court in an appraisal proceeding commenced under section 1331 shall determine all court costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the court costs against a corporation, except that the court may assess court costs against all or some of the shareholders demanding appraisal, in amounts the court finds equitable, to the extent the court finds the shareholders acted arbitrarily, vexatiously or not in good faith with respect to the rights provided by this chapter. [PL 2007, c. 289, §41 (AMD).]

**2. Court-assessed expenses.** The court in an appraisal proceeding under section 1331 may also assess the expenses for the respective parties, in amounts the court finds equitable:

A. Against a corporation and in favor of any or all shareholders demanding appraisal if the court finds the corporation did not substantially comply with the requirements of section 1321, 1323, 1325 or 1326; or [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

B. Against either a corporation or a shareholder demanding appraisal, in favor of any other party, if the court finds that the party against whom the expenses are assessed acted arbitrarily, vexatiously or not in good faith with respect to the rights provided by this chapter. [PL 2007, c. 289, §41 (AMD).]

[RR 2007, c. 1, §6 (COR).]

**3. Fees awarded from settlement.** If the court in an appraisal proceeding under section 1331 finds that the expenses incurred by any shareholder were of substantial benefit to other shareholders similarly situated and that those expenses should not be assessed against the corporation, the court may direct that those expenses be paid out of the amounts awarded the shareholders who were benefitted. [PL 2007, c. 289, §41 (AMD).]

**4. Corporation fails to make payment.** To the extent a corporation fails to make a required payment pursuant to section 1325, 1326 or 1327, a shareholder may sue directly for the amount owed and, to the extent successful, is entitled to recover from the corporation all expenses of the suit. [PL 2007, c. 289, §41 (AMD).]

**SECTION HISTORY**

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF). RR 2007, c. 1, §6 (COR). PL 2007, c. 289, §41 (AMD).

**SUBCHAPTER 4****OTHER REMEDIES****§1341. Other remedies limited**

**1. Limitation on proposed or completed corporate actions.** The legality of a proposed or completed corporate action described in section 1302 may not be contested nor may the corporate action be enjoined, set aside or rescinded in a legal or equitable proceeding by a shareholder after the shareholders have approved the corporate action. [PL 2011, c. 274, §71 (NEW).]

**2. Exceptions.** Subsection 1 does not apply to a corporate action that:

- A. Was not authorized and approved in accordance with the applicable provisions of:
- (1) Chapter 9, 10, 11 or 12;
  - (2) The articles of incorporation or bylaws; or
  - (3) The resolution of the board of directors authorizing the corporate action; [PL 2011, c. 274, §71 (NEW).]
- B. Was procured as a result of fraud, a material misrepresentation or an omission of a material fact necessary to make statements made, in light of the circumstances in which they were made, not misleading; [PL 2011, c. 274, §71 (NEW).]
- C. Is an interested transaction, unless it has been recommended by the board of directors in the same manner as is provided in section 873 and has been approved by the shareholders in the same manner as is provided in section 874 as if the interested transaction were a director's conflicting-interest transaction; or [PL 2011, c. 274, §71 (NEW).]
- D. Is approved by less than unanimous consent of the voting shareholders pursuant to section 704 if:
- (1) The challenge to the corporate action is brought by a shareholder who did not consent and as to whom notice of the approval of the corporate action was not effective at least 10 days before the corporate action was effected; and
  - (2) The proceeding challenging the corporate action is commenced within 10 days after notice of the approval of the corporate action is effective as to the shareholder bringing the proceeding. [PL 2011, c. 274, §71 (NEW).]

[PL 2011, c. 274, §71 (NEW).]

#### SECTION HISTORY

PL 2011, c. 274, §71 (NEW).

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