



The Fein Print

*An Assortment of Observations and Opinions on Shareholder Elections-
Spanning Corporate Governance, Activism, M&A, & Executive Compensation*

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Welcome Relief for Reverse Stock Splits

Last Friday, the Delaware House of Representatives adopted amendments to the Delaware General Corporation Law (DGCL). If signed into law by Delaware's governor, as expected, they will go into effect on August 1, 2023 and will have a meaningful impact on companies seeking stockholder approval of reverse stock splits.

Companies in jeopardy of complying with Nasdaq's minimum bid price listing requirement have historically had to rely on reverse stock splits to regain compliance in the absence of stock price appreciation. Reverse stock splits have no impact on an investor's economics; stockholders simply end up with fewer shares at a commensurately higher price per share.

While the merits of maintaining listing (including enhanced liquidity and greater access to institutional capital) should be compelling enough to encourage requisite stockholder support, gaining approval of reverse stock splits has often been an uphill battle on account of the relatively higher vote standard for such proposals.

Reverse stock splits have historically required the support of a majority of outstanding shares. This vote standard can be particularly challenging for companies with a significant retail stockholder base since such investors are typically apathetic and refrain from voting.

Although reverse stock splits are deemed routine proposals and therefore benefit from discretionary broker voting, some brokers (including Charles Schwab, TD Ameritrade, and Robinhood- which have many retail clients) elect not to cast these votes making stockholder approval even more challenging.

As a result, many companies with substantial retail stockholder bases have had to resort to extensive (and expensive) retail engagement to obtain approval of reverse stock splits. In such circumstances, adjournments may also be necessary to provide additional time for solicitation.

In fact, merely achieving a quorum has become a precarious affair for these companies, prompting many of them to reduce their quorum requirement from a majority of outstanding to one-third of outstanding so they can hold their annual meetings.

In recent years, creative strategies emerged to help companies seeking stockholder approval of reverse stock splits. One tactic entails the creation of a special voting class of stock with out-sized voting power. While this approach has been effective, it also creates added costs and has attracted scrutiny from stockholders and regulators alike.

The latest amendments obviate the need for these companies to establish special voting classes or conduct extensive retail engagement.

Under section 242(d), the voting requirement for reverse stock splits will be decreased from a majority of outstanding shares to a majority of votes cast. While abstentions previously had the same effect as against votes, the lower vote threshold will now make it significantly easier for companies to obtain stockholder approval of reverse stock splits.

The legislators should be applauded for recognizing and addressing this issue. Although they may not have received the spotlight of other issues, reverse stock split proposals have caused many companies to incur significant and avoidable expenses. We are glad to see this unnecessary burden alleviated.

As we celebrate Independence Day and cherish the tenets of democracy, the new vote standard seems fair and appropriate. If stockholders have an issue with reverse stock splits, they can vote against them- but companies should not be penalized on account of retail apathy, brokers not exercising their discretionary voting authority on routine proposals, or an unjust voting standard.

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