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LEGISLATIVE ACTION

Senate

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House

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The Committee on Judiciary (Passidomo) recommended the following:

**Senate Amendment (with directory amendment)**

Between lines 5745 and 5746

insert:

(4) The voting requirements set forth in subsection (2) do not apply to a particular affiliated transaction if all of the conditions specified in any one of the following paragraphs are met:

(a) The affiliated transaction has been approved by a majority of the disinterested directors;



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11 (b) The corporation has not had more than 300 shareholders  
12 of record at any time during the 3 years preceding the  
13 announcement date;

14 (c) The interested shareholder has been the beneficial  
15 owner of at least 80 percent of the corporation's outstanding  
16 voting shares for at least 3 ~~5~~ years preceding the announcement  
17 date;

18 (d) The interested shareholder is the beneficial owner of  
19 at least 90 percent of the outstanding voting shares of the  
20 corporation, exclusive of shares acquired directly from the  
21 corporation in a transaction not approved by a majority of the  
22 disinterested directors;

23 (e) The corporation is an investment company registered  
24 under the Investment Company Act of 1940; or

25 (f) In the affiliated transaction, consideration shall be  
26 paid to the holders of each class or series of voting shares and  
27 all of the following conditions shall be met:

28 1. The aggregate amount of the cash and the fair market  
29 value as of the valuation date of consideration other than cash  
30 to be received per share by holders of each class or series of  
31 voting shares in such affiliated transaction are at least equal  
32 to the highest of the following:

33 a. If applicable, the highest per share price, including  
34 any brokerage commissions, transfer taxes, and soliciting  
35 dealers' fees, paid by the interested shareholder for any shares  
36 of such class or series acquired by it within the 2-year period  
37 immediately preceding the announcement date or in the  
38 transaction in which it became an interested shareholder,  
39 whichever is higher;



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40           b. The fair market value per share of such class or series  
41 on the announcement date or on the determination date, whichever  
42 is higher;

43           c. If applicable, the price per share equal to the fair  
44 market value per share of such class or series determined  
45 pursuant to sub-subparagraph b., multiplied by the ratio of the  
46 highest per share price, including any brokerage commissions,  
47 transfer taxes, and soliciting dealers' fees, paid by the  
48 interested shareholder for any shares of such class or series  
49 acquired by it within the 2-year period immediately preceding  
50 the announcement date, to the fair market value per share of  
51 such class or series on the first day in such 2-year period on  
52 which the interested shareholder acquired any shares of such  
53 class or series; and

54           d. If applicable, the highest preferential amount, if any,  
55 per share to which the holders of such class or series are  
56 entitled in the event of any voluntary or involuntary  
57 dissolution of the corporation;~~;~~

58           2. The consideration to be received by holders of  
59 outstanding shares shall be in cash or in the same form as the  
60 interested shareholder has previously paid for shares of the  
61 same class or series, and if the interested shareholder has paid  
62 for shares with varying forms of consideration, the form of the  
63 consideration shall be either cash or the form used to acquire  
64 the largest number of shares of such class or series previously  
65 acquired by the interested shareholder;~~;~~

66           3. During such portion of the 3-year period preceding the  
67 announcement date that such interested shareholder has been an  
68 interested shareholder, except as approved by a majority of the



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69 disinterested directors:

70 a. There shall have been no failure to declare and pay at  
71 the regular date therefor any full periodic dividends, whether  
72 or not cumulative, on any outstanding shares of the corporation;

73 b. There shall have been:

74 (I) No reduction in the annual rate of dividends paid on  
75 any class or series of voting shares, except as necessary to  
76 reflect any subdivision of the class or series; and

77 (II) An increase in such annual rate of dividends as  
78 necessary to reflect any reclassification, including any reverse  
79 stock split, recapitalization, reorganization, or similar  
80 transaction which has the effect of reducing the number of  
81 outstanding shares of the class or series; and

82 c. Such interested shareholder shall not have become the  
83 beneficial owner of any additional voting shares except as part  
84 of the transaction which results in such interested shareholder  
85 becoming an interested shareholder; ~~and~~

86 4. During such portion of the 3-year period preceding the  
87 announcement date that such interested shareholder has been an  
88 interested shareholder, except as approved by a majority of the  
89 disinterested directors, such interested shareholder shall not  
90 have received the benefit, directly or indirectly (except  
91 proportionately as a shareholder), of any loans, advances,  
92 guaranties, pledges, or other financial assistance or any tax  
93 credits or other tax advantages provided by the corporation,  
94 whether in anticipation of or in connection with such affiliated  
95 transaction or otherwise; ~~and~~

96 5. Except as otherwise approved by a majority of the  
97 disinterested directors, a proxy or information statement



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98 describing the affiliated transaction and complying with the  
99 requirements of the Exchange Act and the rules and regulations  
100 thereunder has been mailed to holders of voting shares of the  
101 corporation at least 25 days before the consummation of such  
102 affiliated transaction, whether or not such proxy or information  
103 statement is required to be mailed pursuant to the Exchange Act  
104 or such rules or regulations.

105

106 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

107 And the directory clause is amended as follows:

108       Delete line 5532

109 and insert:

110 subsection (1) and subsections (2), (4), (5), and (6) of section