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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/27/2019	.	
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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