

# Changes in the Model Business Corporation Act— Proposed Amendments to Sections 6.04 and 6.25 Relating to Bearer Shares and Scrip

*By the Corporate Laws Committee, ABA Business Law Section\**

The Corporate Laws Committee of the ABA Business Law Section (the “Committee”) develops and proposes changes in the Model Business Corporation Act (the “Model Act”). **The Committee has approved, on second reading, proposed amendments to sections 6.04 and 6.25 (the “Amendments”), relating to bearer shares and scrip, and invites comments from interested persons. Comments should be addressed to Steven M. Haas, Chair, Corporate Laws Committee, Hunton Andrews Kurth LLP, 951 E. Byrd Street, Richmond, VA 23219, or sent to him by e-mail at shaas@hunton.com. Comments should be received by December 15, 2022, in order to be considered by the Committee before adoption of the Amendments on third reading.**

## BACKGROUND

The Corporate Transparency Act (“CTA”), enacted on January 1, 2021, prohibits corporations from issuing “a certificate in bearer form evidencing either a whole or fractional interest in the entity.”<sup>1</sup> The Committee is proposing amendments to sections 6.04 and 6.25 to conform with the CTA’s provisions. In particular, because scrip can provide the holder with the rights of a shareholder, the Committee is proposing that section 6.04(b) of the Model Act be amended to prohibit the issuance of scrip in bearer form. The Committee is also proposing an amendment to section 6.25(a) to clarify that, consistent with section 6.25(b)(2), and as currently required by section 6.25, share certificates cannot be issued in bearer form.

The Committee is also proposing amendments to sections 6.04(a) and (b) to allow scrip to be issued in uncertificated form, subject to requirements similar to those for fractional and whole shares in uncertificated form.

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\* Chair, Steven M. Haas.

1. 31 U.S.C. § 5336(f) (2018).

## PROPOSED AMENDMENTS

The Committee proposes changes to sections 6.04 and 6.25 of the Model Act as set forth below. Changes to the existing provisions are marked with deletions shown by ~~strikeout~~ and additions by double underscoring.

### § 6.04. FRACTIONAL SHARES

- (a) A corporation may issue fractions of a share or in lieu of doing so may:
- (1) pay in cash the value of fractions of a share;
  - (2) issue scrip in ~~registered~~ certificated or ~~bearer~~ uncertificated form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share; or
  - (3) ~~arrange for disposition~~ dispose of the fractional shares ~~by~~ and pay the proceeds to the holders of ~~such~~ those shares.
- (b) Each certificate representing scrip must be conspicuously labeled “scrip” and must contain the information required by section 6.25(b). A corporation may not issue scrip certificates in bearer form. Within a reasonable time after the issuance or transfer of scrip without certificates, the corporation shall deliver to the scripholder a written statement of the information required on certificates by section 6.25(b) and the terms of the scrip.
- (c) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the rights to vote, to receive dividends, and to receive distributions upon dissolution. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.
- (d) The board of directors may authorize the issuance of scrip subject to any condition, including that:
- (1) the scrip will become void if not exchanged for full shares before a specified date; and
  - (2) the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders.

## CROSS-REFERENCES

Form and content of certificates, see § 6.25.

Issuance of shares, see § 6.21.

Shares without certificates, see § 6.26.

## OFFICIAL COMMENT

Fractional shares may arise from a share dividend that, as applied to a particular holder, does not produce an even multiple of shares. They may also result

from other corporate actions, such as fractional stock splits, reverse splits, and reclassifications and mergers. Although corporations are authorized to issue fractional shares, which are vested proportionately with the same rights as full shares, the creation of fractional shares may create administrative difficulties, particularly for voting and dividend purposes.

Section 6.04 authorizes handling fractional shares in the following ways:

- The corporation may pay in cash the value of the fractional shares.
- The corporation may issue scrip instead of fractional shares. Unless otherwise specified in the scrip, scrip confers none of the substantive rights of shareholders, but only authorizes holders to combine scrip ~~certificates~~ in amounts aggregating a full share and then to exchange them for a full share. This aggregation must occur within the time and subject to the conditions set initially by the board of directors and stated in the scrip certificate or, for uncertificated scrip, in the written statement of information delivered by the corporation to the scrip holder. To protect shareholders against forfeiture of their interest, it is usually provided that the shares represented by scrip ~~certificates~~ not exchanged by the expiration date are to be sold and the proceeds held, either indefinitely or for a stated period, for the benefit of the scripholders and paid to ~~them~~ such scripholders on surrender of their scrip ~~certificates~~.
- The Corporation may authorize the immediate sale of all fractional share interests, typically by an agent on behalf of the holders, thereby avoiding the expense and delay of other methods of dealing with fractional shares. Although this procedure denies shareholders the benefit of any subsequent rise in the market price of the shares, it protects them against any subsequent decline and ensures them of recognition based on market prices at the time of the transaction.

Under section 6.04, fractional shares may be certificated or uncertificated. There is no difference in treatment of certificated or uncertificated shares for this purpose. See sections 6.25 and 6.26.

## § 6.25. FORM AND CONTENT OF CERTIFICATES

- (a) Shares may, but need not, be represented by certificates. Share certificates may not be issued in bearer form. Unless this Act or another statute expressly provides otherwise, the rights and obligations of shareholders are identical regardless of whether their shares are represented by certificates.
- (b) At a minimum each share certificate must state on its face:
  - (1) the name of the corporation and that it is organized under the law of this state;
  - (2) the name of the person to whom issued; and

- (3) the number and class of shares and the designation of the series, if any, the certificate represents.
- (c) If the corporation is authorized to issue different classes of shares or series of shares within a class, the front or back of each certificate must summarize (i) the preferences, rights, and limitations applicable to each class and series, (ii) any variations in preferences, rights, and limitations among the holders of the same class or series, and (iii) the authority of the board of directors to determine the terms of future classes or series. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.
- (d) Each share certificate must be signed by two officers designated in the bylaws.
- (e) If the person who signed a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.

## CROSS-REFERENCES

Certificateless shares, see § 6.26.

Classes and series of shares, see §§ 6.01 and 6.02.

“Conspicuous” defined, see § 1.40.

Descriptions of classes, see § 6.01.

Fractional shares, see § 6.04.

Officers, see § 8.40.

Share transfer restrictions, see § 6.27.

## OFFICIAL COMMENT

Section 6.25 sets forth the minimum requirements for share certificates. Shares without certificates are permitted under section 6.25(a) upon compliance with section 6.26. There are no differences in the rights and obligations of shareholders by reason of shares being represented by certificates or not being represented by certificates, other than mechanical differences, such as the means by which instructions for transfer are communicated to the issuer, necessitated by the use or nonuse of certificates. All signatures on a share certificate may be facsimiles. See the definition of “sign” in section 1.40. This recognizes that a purchaser of publicly traded shares will rarely be in a position to determine whether a manual signature on a stock certificate is in fact the authorized signature of an officer or the transfer agent or registrar.