Part 6. Ratification of Defective Corporate Actions.

§ 55-1-60. Definitions.

In this Part, the following definitions apply:

(1) Corporate action. – Any action taken by or on behalf of the corporation, including any action taken by the incorporator, the board of directors, a committee, a subcommittee, an officer or agent of the corporation, or the shareholders.

(2) Date of the defective corporate action. – The date the defective corporate action was purported to have been taken or, if the exact date is unknown, the approximate date thereof.

(3) Defective corporate action. – Any corporate action purportedly taken that is, and at the time the corporate action was purportedly taken would have been, within the power of the corporation, but is void or voidable due to a failure of authorization. This term includes an over issue. This term does not include a business combination subject to G.S. 55-9-02, unless the business combination was approved by shareholders in accordance with G.S. 55-9-02.

(4) Failure of authorization. – The (i) failure to authorize, approve, or otherwise effect a corporate action in compliance with the provisions of this Chapter, the articles of incorporation or bylaws of the corporation, a corporate resolution, or any plan or agreement to which the corporation is a party, if and to the extent the failure would render the corporate action void or voidable, or (ii) failure of the board of directors or any officer of the corporation to authorize or approve any act or transaction taken by or on behalf of the corporation that would have required for its due authorization the approval of the board of directors or the officer.

(5) Over issue. – The purported issuance of either of the following:

a. Shares of a class or series in excess of the number of shares of a class or series the corporation has the power to issue under G.S. 55-6-01 at the time of the issuance.

b. Shares of any class or series that is not then authorized for issuance by the articles of incorporation.

(6) Putative shares. – The shares of any class or series of the corporation, including shares issued upon exercise of rights, options, warrants, or other securities convertible into shares of the corporation, or interests with respect thereto, that were created or issued as a result of a defective corporate action, and that satisfy either of the following conditions:

a. Would constitute valid shares but for any failure of authorization.

b. Cannot be determined by the board of directors to be valid shares.

(7) Valid shares. – The shares of any class or series of the corporation that have been duly authorized and validly issued in accordance with this Chapter, including as a result of ratification or validation under this Part.

(8) Validation effective time. – With respect to any defective corporate action ratified under this Part, means the later of (i) the time at which the ratification of the defective corporate action is approved by the shareholders, or if approval of shareholders is not required, the time at which the notice required by G.S. 55-1-64 becomes effective in accordance with G.S. 55-1-41 or (ii) the time at which any articles of validation filed in accordance with G.S. 55-1-66 become effective. The validation effective time shall not be affected by the filing or pendency of a judicial proceeding in accordance with this Chapter or otherwise, unless otherwise ordered by the court. (2018-45, s. 3.)