

CHAPTER 5-CORPORATE FINANCE

501. AUTHORIZED SHARES

(a) Every corporation shall have power to create and issue the number of shares stated in its certificate of incorporation. Such shares may be all of one class or may be divided into two or more classes. Each class shall consist of either shares with par value or shares without par value, having such designation and such relative voting, dividend, liquidation and other rights, preferences and limitations, consistent with this Code, as shall be stated in the certificate of incorporation. The certificate of incorporation may deny, limit or otherwise define the voting rights and may limit or deny, limit or otherwise define the dividend or liquidation rights of shares of any class, but no such denial, limitation or definition of voting rights shall be effective unless at the time one or more classes of outstanding shares or bonds, singly or in the aggregate, are entitled to full voting rights, and no such limitation or definition of dividend or liquidation rights shall be effective unless at the time one or more classes of outstanding shares, singly or in the aggregate, are entitled to unlimited dividend and liquidation rights.

(b) If the shares are divided into two or more classes, the shares of each class shall be designated to distinguish them from the shares of all other classes. Shares which are entitled to preference in the distribution of dividends or assets shall not be designated as common shares. Shares which are not entitled to preference in the distribution of dividends or assets shall be common shares, even if identified by a class or other designation, and shall not be designated as preferred shares.

(c) Subject to the designations, relative rights, preferences and limitations applicable to separate series and except as otherwise permitted by subparagraph two of paragraph (a) of section five hundred five of this chapter, each share shall be equal to every other share of the same class.

502. ISSUE OF ANY CLASS OF PREFERRED SHARES IN SERIES

(a) If the certificate of incorporation so provides, a corporation may issue any class of preferred shares in series. Shares of each such series when issued, shall be designated to distinguish them from shares of all other series.

(b) The number of shares included in any or all series of any classes of preferred shares and any or all of the designations, relative rights, preferences and limitations of any or all such series may be fixed in the certificate of incorporation, subject to the limitation that, if the stated dividends and amounts payable on liquidation are not paid in full, the shares of all series of the same class shall share ratably in the payment of dividends including accumulations, if any, in accordance with the sums which would be payable on such shares if all dividends were declared and paid in full, and in any distribution of assets other than by way of dividends in accordance with the sums which would be payable on such distribution if all sums payable were discharged in full.

(c) If any such number of shares or any such designation, relative right, preference or limitation of

the shares of any series is not fixed in the certificate of incorporation, it may be fixed by the board, to the extent authorized by the certificate of incorporation.

(d) Before the issue of any shares of a series established by the board, a certificate of amendment under section 805 (Certificate of amendment; contents) shall be delivered to the Nation Clerk. Such certificate shall set forth:

- (1) The name of the corporation, and, if it has been changed, the name under which it was formed.
- (2) The date the certificate of incorporation was filed by the Nation Clerk.
- (3) That the certificate of incorporation is thereby amended by the addition of a provision stating the number, designation, relative rights, preferences, and limitations of the shares of the series as fixed by the board, setting forth in full the text of such provision.

503. SUBSCRIPTION FOR SHARES; TIME OF PAYMENT, FORFEITURE FOR DEFAULT

(a) Unless otherwise provided by the terms of the subscription, a subscription for shares of a corporation to be formed shall be irrevocable, except with the consent of all other subscribers or the corporation, for a period of three months from its date.

(b) A subscription, whether made before or after the formation of a corporation, shall not be enforceable unless in writing and signed by the subscriber.

(c) Unless otherwise provided by the terms of the subscription, subscriptions for shares, whether made before or after the formation of a corporation, shall be paid in full at such time, or in such installments and at such times, as shall be determined by the board. Any call made by the board for payment on subscriptions shall be uniform as to all shares of the same class or of the same series. If a receiver of the corporation has been appointed, all unpaid subscriptions shall be paid at such times and in such installments as such receiver or the court may direct.

(d) In the event of default in the payment of any installment or call when due, the corporation may proceed to collect the amount due in the same manner as any debt due the corporation or the board may declare a forfeiture of the subscriptions. The subscription agreement may prescribe other penalties, not amounting to forfeiture, for failure to pay installments or calls that may become due. No forfeiture of the subscription shall be declared as against any subscriber unless the amount due thereon shall remain unpaid for a period of thirty days after written demand has been made therefore. If mailed, such written demand shall be deemed to be made when deposited in the United States mail in a sealed envelope addressed to the subscriber at his post office address known to the corporation, with postage thereon prepaid. Upon forfeiture of the subscription, if at least fifty percent of the subscription price has been paid, the share subscribed for shall be offered for sale for cash at a price at least sufficient to pay the full balance owed by the delinquent subscriber plus the

expenses incidental to such sale, and any excess of net proceeds realized over the amount owed on such shares shall be paid to the delinquent subscriber or to his legal representative. If no prospective purchaser offers a cash price sufficient to pay the full balance owed by the delinquent subscriber plus the expenses incidental to such sale, or if less than fifty percent of the subscription price has been paid, the shares subscribed for shall be cancelled and restored to the status of authorized but unissued shares and all previous payments thereon shall be forfeited to the corporation and transferred to capital surplus.

504. CONSIDERATION AND PAYMENT FOR SHARES

(a) Consideration for issue of shares shall consist of money or other property, tangible or intangible, or labor or services actually received by or performed for the corporation or for its benefit or in its formation or reorganization, or a combination thereof. In the absence of fraud in the transaction, the judgment of the board or shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive.

(b) Neither obligations of the subscriber for future payments nor future services shall constitute payment or part payment for shares of a corporation.

(c) Shares with par value may be issued for such consideration, not less than the par value thereof, as if fixed from time to time by the board.

(d) Shares without par value may be issued for such consideration as is fixed from time to time by the board unless the certificate of incorporation reserves to the shareholders the right to fix the consideration. If such right is reserved as to any shares, a vote of the shareholders shall either fix the consideration to be received for the shares or authorize the board to fix such consideration.

(e) Treasury shares may be disposed of by a corporation on such terms and conditions as are fixed from time to time by the board.

(f) Upon distribution of authorized but unissued shares to shareholders, that part of the surplus of a corporation which is concurrently transferred to stated capital shall be the consideration for the issue of such shares.

(g) In the event of a conversion of bonds or shares into shares, or in the event of an exchange of bonds or shares for shares, with or without par value, the consideration for the shares so issued in exchange or conversion shall be the sum of (1) either the principal sum of, and accrued interest on, the bonds so exchanged or converted, or the stated capital represented by the shares so exchanged or converted, plus (2) any additional consideration paid to the corporation for the new shares, plus (3) any stated capital not theretofore allocated to any designated class or series which is thereupon allocated to the new shares, plus (4) any surplus thereupon transferred to stated capital and allocated to the new shares.

(h) Certificates for shares may not be issued until the full amount of the consideration therefore has

been paid, except as provided in paragraphs (e) and (f) of section 505 (Rights and options to purchase shares; issue of rights and options to directors, officers and employees).

(i) When the consideration for shares has been paid in full, the subscriber shall be entitled to all the rights and privileges of a holder of such shares and to a certificate representing his shares, and such shares shall be fully paid and nonassessable.

505. RIGHTS AND OPTIONS TO PURCHASE SHARES; ISSUE OF RIGHTS AND OPTIONS TO DIRECTORS, OFFICERS AND EMPLOYEES

(a) (1) Except as otherwise provided in this section or in the certificate of incorporation, a corporation may create and issue, whether or not in connection with the issue and sale of any of its shares or bonds, rights or options entitling the holders thereof to purchase from the corporation, upon such consideration, terms and conditions as may be fixed by the board, shares of any class or series, whether authorized but unissued shares, treasury shares or shares to be purchased or acquired or assets of the corporation.

(2) (i) In the case of a resident domestic corporation that has a class of voting stock registered with the United States Securities and Exchange Commission pursuant to section twelve of the United States Exchange Act, the terms and conditions of such rights or operations may include, without limitation, restrictions or conditions that preclude or limit the exercise, transfer or receipt of such rights or operations by an interested shareholder or any transferee of any such interested shareholder or that invalidate or void such rights or operations held by any such interested shareholder or any such transferee. For the purposes of this subparagraph, the terms "resident domestic corporation", "voting stock", "Exchange Act" and "interested shareholder" shall have the same meanings as set forth in section nine hundred twelve of this Code.

(ii) Determinations of the board of directors whether to impose, enforce or waive or otherwise render ineffective such limitations or conditions as are permitted by clause (i) of this subparagraph shall be subject to judicial review in an appropriate proceeding in which the Nation court formulates or applies appropriate standards in order to insure that such limitations or conditions are imposed, enforced or waived in the best long-term interests and short-term interests of the corporation and its shareholders considering, without limitation, the prospect for potential growth, development, productivity and profitability of the corporation.

(b) The consideration for shares to be purchased under any such right or option shall comply with the requirements of section 504 (Consideration and payment for shares).

(c) The terms and conditions of such rights or options, including the time or times at or within which and the price or prices at which they may be exercised and any limitations upon transferability, shall be set forth or incorporated by reference in the instrument or instruments evidencing such rights or options.

(d) The issue of such rights or options to one or more directors, officers or employees of the corporation or a subsidiary or affiliate thereof, as an incentive to service or continued service with the corporation, a subsidiary or affiliate thereof, or to a trustee on behalf of such directors, officers or employees, shall be authorized at a meeting of shareholders by the vote of the holders of a majority of all outstanding shares entitled to vote thereon, or authorized by and consistent with and adopted by such vote of shareholders. If, under the certificate of incorporation, there are preemptive rights to any of the shares to be thus subject to rights or options to purchase, either such issue or such plan, if any shall also be approved by the vote or written consent of the holders of a majority of the shares entitled to exercise preemptive rights with respect to such shares and such vote or written consent shall operate to release the preemptive rights with respect thereto of the holders of all the shares that were entitled to exercise such preemptive rights. In the absence of preemptive rights, nothing in this paragraph shall require shareholder approval for the issuance of rights or options to purchase shares of the corporation in substitution for, or upon the assumption of, rights or options issued by another corporation, if such substitution or assumption is in connection with such other corporation's merger or consolidation with, or the acquisition of its shares or all or part of its assets by, the corporation or its subsidiary.

(e) A plan adopted by the shareholders for the issue of rights or options to directors, officers or employees shall include the material terms and conditions upon which such rights or options are to be issued, such as, but without limitation thereof, any restrictions on the number of shares that eligible individuals may have the right or option to purchase, the method of administering the plan, the terms and conditions of payment for shares in full or in installments, the issue of certificate for shares to be paid for in installments, any limitations upon the transferability of such shares and the voting and dividend rights to which the holders of such shares may be entitled, though the full amount of the consideration therefore has not been paid; provided that under this section no certificate for shares shall be delivered to a shareholder, prior to full payment therefore, unless the fact that the shares are partly paid is noted conspicuously on the face or back of such certificate.

(f) If there is shareholder approval for the issue of rights or options to individual directors, officers or employees, but not under an approved plan under paragraph (e), the terms and conditions of issue set forth in paragraph (e) shall be permissible except that the grantees of such rights or options shall not be granted voting or dividend rights until the consideration for the shares to which they are entitled under such rights or options has been fully paid.

(g) If there is shareholder approval for the issue of rights and options, such approval may provide

that the board is authorized by certificate of amendment under section 805 (Certificate of amendment; contents) to increase the authorized shares of any class or series to such number as will be sufficient, when added to the previously authorized but unissued shares of such class or series, to satisfy any such rights or options entitling the holders thereof to purchase from the corporation authorized but unissued shares of such class or series.

(h) In the absence of fraud in the transaction, the judgment of the board shall be conclusive as to the adequacy of the consideration, tangible or intangible, received or to be received by the corporation for the issue of rights or options for the purchase from the corporation of its shares.

(i) The provisions of this section are inapplicable to the rights of the holders of convertible shares or bonds to acquire shares upon the exercise of conversion privileges under section 519 (Convertible shares and bonds).

506. DETERMINATION OF STATED CAPITAL

(a) Upon issue by a corporation of shares with a par value, the consideration received therefore shall constitute stated capital to the extent of the par value of such shares.

(b) Upon issue by a corporation of shares without par value, the entire consideration received therefore shall constitute stated capital unless the board within a period of sixty days after issue allocates to surplus a portion, but not all, of the consideration received for such shares. No such allocation shall be made of any portion of the consideration received for shares without par value having a preference in the assets of the corporation upon involuntary liquidation except all or part of the amount, if any, of such consideration in excess of such preference, nor shall such allocation be made of any portion of the consideration for the issue of shares without par value which is fixed by the shareholders pursuant to a right reserved in the certificate of incorporation, unless such allocation is authorized by vote of the shareholders.

(c) The stated capital of a corporation may be increased from time to time by resolution of the board transferring all or part of the surplus of the corporation to stated capital. The board may direct that the amount so transferred shall be stated capital in respect of any designated class or series of shares.

507. COMPENSATION FOR FORMATION, REORGANIZATION AND FINANCING

The reasonable charges and expenses of formation or reorganization of a corporation, and the reasonable expenses of and compensation for the sale or underwriting of its shares may be paid or allowed by the corporation out of the consideration received by it in payment for its shares without thereby impairing the fully paid and nonassessable status of such shares.

508. CERTIFICATES REPRESENTING SHARES

(a) The shares of a corporation shall be represented by certificates or shall be uncertificated shares. Certificates shall be signed by the chairman or a vice-chairman of the board, or the president or a vice-president, and the secretary or an assistant secretary, or the treasurer or an assistant treasurer of the corporation, and may be sealed with the seal of the corporation or a facsimile thereof. The signatures of the officers upon a certificate may be facsimiles if; (1) the certificate is countersigned by a transfer agent or registered by a registrar other than the corporation itself or its employee, or (2) the shares are listed on a registered national security exchange. In case any officer who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer at the date of issue.

(b) Each certificate representing shares issued by a corporation which is authorized to issue shares of more than one class shall set forth upon the face or back of the certificate, or shall state that the corporation will furnish to any shareholder upon request and without charge, a full statement of the designation, relative rights, preferences and limitations of each such series so far as the same have been fixed and the authority of the board to designate and fix the relative rights, preferences and limitations of other series.

(c) Each certificate representing shares shall state upon the face thereof:

- (1) That the corporation is formed under the laws of the Oneida Indian Nation.
- (2) The name of the person or persons to whom issued.
- (3) The number and class of shares, and the designation of the series, if any, which such certificate represents.

(d) Shares shall be transferable in the manner provided by law and in the by-laws.

(e) The corporation may issue a new certificate for shares in place of any certificate theretofore issued by it, alleged to have been lost or destroyed, and the board may require the owner of the lost or destroyed certificate, or his legal representative, to give the corporation a bond sufficient to indemnify the corporation against any claim that may be made against it on account of the alleged loss or destruction of any such certificate or the issuance of any such new certificate.

(f) Unless otherwise provided by the articles of incorporation or by-laws, the board of directors of a corporation may provide by resolution that some or all of any or all classes and series of its shares shall be uncertificated shares, provided that such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Within a reasonable time after the issuance or transfer of uncertified shares, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to paragraphs (b) and (c) of this section. Except as otherwise expressly provided by law,

the rights and obligations of the holders of uncertificated shares and the rights and obligations of the holders of certificates representing shares of the same class and series shall be identical.

509. FRACTIONS OF A SHARE OR SCRIP AUTHORIZED

(a) A corporation may, but shall not be obliged to, issue fractions of a share either represented by a certificate or uncertificated where necessary to effect share transfers, share distributions or reclassification, mergers, consolidations or reorganizations, which shall entitle the holder, in proportion to his fractional holdings, to exercise voting rights, receive dividends and participate in liquidating distributions.

(b) As an alternative, a corporation may pay in cash the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined.

(c) As an alternative, a corporation may issue scrip in registered or bearer form over the manual or facsimile signature of an officer of the corporation or of its agent, exchangeable as therein provided for full shares, but such scrip shall not entitle the holder to any rights of a shareholder except as therein provided. Such scrip may be issued subject to the condition that it shall become void if not exchanged for certificates representing full shares or uncertificated full shares before a specified date, or subject to the condition that the shares for which such scrip is exchangeable may be sold by the corporation and the proceeds thereof distributed to the holders of such scrip, or subject to any other conditions which the board may determine.

(d) A corporation may provide reasonable opportunity for persons entitled to fractions of a share or scrip to sell such fractions of a share or scrip or to purchase such additional fractions of a share or scrip as may be needed to acquire a full share.

510. DIVIDENDS OR OTHER DISTRIBUTIONS IN CASH OR PROPERTY

(a) A corporation may declare and pay dividends or make other distributions in cash or its bonds or its property, including the shares or bonds of other corporations, on its outstanding shares, except when currently the corporation is insolvent or would thereby be made insolvent, or when the declaration, payment or distribution would be contrary to any restrictions contained in the certificate of incorporation.

(b) Dividends may be declared or paid and other distributions may be made out of surplus only, so that the net assets of the corporation remaining after such declaration, payment or distribution shall at least equal the amount of its stated capital; except that a corporation engaged in the exploitation of natural resources or other wasting assets, including patents, or formed primarily for the liquidation of specific assets, may declare and pay dividends or make other distributions in excess of its surplus, computed after taking due account of depletion and amortization, to the extent that the cost of the wasting or specific assets has been recovered by depletion reserves, amortization or sale, if the net assets remaining after such dividends or distributions are sufficient to cover the liquidation preferences of share having such preferences in involuntary liquidation.

(c) When any dividend is paid or any other distribution is made, in whole or in part, from sources other than earned surplus, it shall be accompanied by a written notice (1) disclosing the amounts by which such dividend or distribution affects stated capital, capital surplus and earned surplus, or (2) if such amounts are not determinable at the time of such notice, disclosing the approximate effect of such dividend or distribution upon stated capital, capital surplus and earned surplus and stating that such amounts are not yet determinable.

511. SHARE DISTRIBUTIONS AND CHANGES

(a) A corporation may make pro rata distributions of its authorized but unissued shares to holders of any class or series of its outstanding shares, subject to the following conditions:

- (1) If a distribution of shares having a par value is made, such shares shall be issued at not less than the par value thereof and there shall be transferred to stated capital at the time of such distribution an amount of surplus equal to the aggregate par value of such shares.
- (2) If a distribution of shares without par value is made, the amount of stated capital to be represented by each such share shall be fixed by the board, unless the certificate of incorporation reserves to the shareholders the right to fix the consideration for the issue of such shares, and there shall be transferred to stated capital at the time of such distribution an amount of surplus equal to the aggregate stated capital represented by such shares.
- (3) A distribution of shares of any class or series may be made only to holders of the same class or series of shares unless the certificate of incorporation permits distribution, subject to the preemptive rights of holders of any outstanding shares, to holders of another class or series, or unless such distribution is approved, when there are no outstanding preemptive rights, by the affirmative vote or the written consent of the holders of a majority of the outstanding shares of the class or series to be distributed.

(b) A corporation making a pro rata distribution of authorized but unissued shares to the holders of any class or series of outstanding shares may at its option make an equivalent distribution upon treasury shares of the same class or series, and any shares so distributed shall be treasury shares.

(c) A change of issued shares of any class which increases the stated capital represented by those shares may be made if the surplus of the corporation is sufficient to permit the transfer, and a transfer is concurrently made, from surplus to stated capital, of an amount equal to such increase.

(d) No transfer from surplus to stated capital need be made by a corporation making a distribution of its treasury shares to holders of any class of outstanding shares; nor upon a split up or division of issued shares of any class into greater number of shares of the same class, or a combination of issued shares of any class into a lesser number of shares of the same class, if there is no increase in

the aggregate stated capital represented by them.

(e) Nothing in this section shall prevent a corporation from making other transfers from earned surplus to stated capital or capital surplus in connection with share distributions or otherwise.

(f) Every distribution to shareholders of certificates representing a share distribution or a change of shares which affects stated capital, capital surplus or earned surplus shall be accompanied by a written notice (1) disclosing the amounts by which such distribution or change affects stated capital, capital surplus and earned surplus, or (2) if such amounts are not determinable at the time of such notice, disclosing the approximate effect of such distribution or change upon stated capital, capital surplus and earned surplus and stating that such amounts are not yet determinable.

(g) When issued shares are changed in any manner which affects stated capital, capital surplus or earned surplus, and no distribution to shareholders of certificates representing any shares resulting from such change is made, disclosure of the effect of such change upon the stated capital, capital surplus and earned surplus shall be made in the next financial statement covering the period in which such change is made that is furnished by the corporation to holders of shares of the class or series so changed, or if practicable, in the first notice of dividend or share distribution or change that is furnished to such shareholders between the date of the change of the shares and the next such financial statement, and in any event within six months of the date of such change.

512. REDEEMABLE SHARES

(a) A corporation may provide in its certificate of incorporation for one or more classes or series of shares which are redeemable, in whole or in part, at the option of the corporation or, except as provided in paragraph (b) of this section, at the option of the holder, at such price or prices, within such period or periods and under such conditions as are stated in the certificate of incorporation.

(b) A corporation shall not issue common shares which purport by their terms to grant to any holder thereof the right to compel the corporation to redeem such shares except that an open-end investment company, as defined in the United States "Investment Company Act of 1940", may, if its certificate of incorporation so provides and upon compliance with that act, issue shares which are redeemable at the option of the holder at a price approximately equal to the share's proportionate interest in the net assets of the corporation, and a shareholder may compel redemption of such shares in accordance with their terms.

(c) No redeemable common shares, other than such shares of an investment company or of a member corporation of a securities exchange registered under a statute of the United States such as the Securities Exchange Act of 1934 or of a corporation described in this paragraph, shall be issued or redeemed unless the corporation at the time has outstanding a class of common shares that is not subject to redemption. Any common shares of a corporation which directly or through a subsidiary has a license or franchise from a governmental agency to conduct its business, which license or franchise is conditioned upon some or all of the holders of such corporation's common shares possessing prescribed qualifications, may be made subject to redemption by the corporation to the

extent necessary to prevent the loss of, or to reinstate, such license or franchise.

(d) Nothing in this section shall prevent a corporation from creating sinking funds for the redemption or purchase of its shares to the extent permitted by section 513 (Purchase or redemption by a corporation of its own shares).

513. PURCHASE OR REDEMPTION BY A CORPORATION OF ITS OWN SHARES

(a) A corporation, subject to any restrictions contained in its certificate of incorporation, may purchase its own shares, or redeem its redeemable shares, out of surplus except when currently the corporation is insolvent or would thereby be made insolvent.

(b) A corporation may purchase its own shares out of stated capital unless the corporation is insolvent or would thereby be made insolvent, if the purchase is made for the purpose of:

- (1) Eliminating fractions of shares;
- (2) Collecting or compromising indebtedness to the corporation; or
- (3) Paying shareholders entitled to receive payment for their shares under section 623 (Procedure to enforce shareholder's right to receive payment for shares).

(c) A corporation, subject to any restrictions contained in its certificate of incorporation, may redeem or purchase its redeemable shares out of stated capital unless the corporation is insolvent or would thereby be made insolvent and unless such redemption or purchase would reduce net assets below the stated capital remaining after giving effect to the cancellation of such redeemable shares.

(d) When its redeemable shares are purchased by a corporation within the period of redeemability, the purchase price thereof shall not exceed the applicable redemption price stated in the certificate of incorporation. Upon a call for redemption, the amount payable by the corporation for shares having a cumulative preference on dividends may include the stated redemption price plus accrued dividends to the next dividend date following the date of redemption of such shares.

(e) No resident domestic corporation which is subject to the provisions of section nine hundred twelve of this Code shall purchase or agree to purchase more than ten percent of the stock of the resident domestic corporation from a shareholder for more than the market value thereof unless such purchase or agreement to purchase is approved by the affirmative vote of the board of directors followed by the affirmative vote of the holders of a majority of all outstanding shares entitled to vote thereon at a meeting of shareholders unless the certificate of incorporation requires a greater percentage of the outstanding shares to approve. The provisions of this paragraph (e) shall not apply when the resident domestic corporation offers to purchase shares from all holders of stock or for stock which the holder has been the beneficial owner of for more than two years. The terms "resident domestic corporation", "stock", "beneficial owner", and "market value" shall be as defined in section nine hundred twelve of this Code.

514. AGREEMENTS FOR PURCHASE BY A CORPORATION OF ITS OWN SHARES

- (a) An agreement for the purchase by a corporation of its own shares shall be enforceable by the shareholder and the corporation to the extent such purchase is permitted at the time of purchase by section 513 (Purchase or redemption by a corporation of its own shares).
- (b) The possibility that a corporation may not be able to purchase its shares under section 513 shall not be a ground for denying to either party specific performance of any agreement for the purchase by a corporation of its own shares, if at the time for performance the corporation can purchase all or part of such shares under section 513.

515. REACQUIRED SHARES

- (a) Shares that have been issued and have been purchased, redeemed or otherwise reacquired by a corporation shall be cancelled if they are reacquired out of stated capital, or if they are converted shares, or if the certificate of incorporation requires that such shares be cancelled upon reacquisition.
- (b) Any shares reacquired by the corporation and not required to be cancelled may be either retained as treasury shares or cancelled by the board at the time of reacquisition or at any time thereafter.
- (c) Neither the retention of reacquired shares as treasury shares, nor their subsequent distribution to shareholders or disposition for a consideration shall change the stated capital. When treasury shares are disposed of for a consideration, the capital surplus shall be increased by the full amount of the consideration received unless the corporation exercises the option granted in subparagraph (a)(5) of section 517 (Special provisions relative to surplus and reserves).
- (d) When reacquired shares other than converted shares are cancelled, the stated capital of the corporation is thereby reduced by the amount of stated capital then represented by such shares plus any stated capital not theretofore allocated to any designated class or series which is thereupon allocated to the shares cancelled. The amount by which stated capital has been reduced by cancellation of reacquired shares during a stated period of time shall be disclosed in the next financial statement covering such period that is furnished by the corporation to all its shareholders or, if practicable, in the first notice of dividend or share distribution that is furnished to the holders of each class or series of its shares between the end of the period and the next such financial statement, and in any event to all its shareholders within six months of the date of the reduction of capital.
- (e) Shares cancelled under this section are restored to the status of authorized but unissued shares. However, if the certificate of incorporation prohibits the reissue of any shares required or permitted to be cancelled under this section, the board by certificate of amendment under section 805 (Certificate of amendment; contents) shall reduce the number of authorized shares accordingly.

516. REDUCTION OF STATED CAPITAL IN CERTAIN CASES

(a) Except as otherwise provided in the certificate of incorporation, the board may at any time reduce the stated capital of a corporation by eliminating from stated capital amounts previously transferred by the board from surplus to stated capital and not allocated to any designated class or series of shares, or by eliminating any amount of stated capital represented by issued shares having a par value which exceeds the aggregate par value of such issued shares without par value. However, if the consideration for the issue of shares without par value was fixed by the shareholders under section 504 (Consideration and payment for shares), the board shall not reduce the stated capital represented by such shares except to the extent, if any, that the board was authorized by the shareholders to allocate any portion of such consideration to surplus.

(b) No reduction of stated capital shall be made under this section unless after such reduction the stated capital exceeds the aggregate preferential amounts payable upon involuntary liquidation upon all issued shares having preferential rights in the assets plus the par value of all other issued shares with par value.

(c) When a reduction of stated capital has been effected under this section, the amount of such reduction shall be disclosed in the next financial statement covering the period in which such reduction is made that is furnished by the corporation to all its shareholders or, if practicable, in the first notice of dividend or share of distribution that is furnished to the holders of each class or series of its shares between the date of such reduction and the next such financial statement, and in any event to all its shareholders within six months of the date of such reduction.

517. SPECIAL PROVISIONS RELATIVE TO SURPLUS AND RESERVES

(a) Whenever under this chapter it is necessary for a corporation to determine the amount or availability of its earned surplus, the following rules shall apply:

- (1) The amount of the earned surplus of a corporation may be computed either from the date of formation or from the latest date when a deficit was eliminated as permitted in this section by an application of the corporation's capital surplus provided that:
 - (A) The board of any corporation formed before the effective date of this chapter may determine the amount of the corporation's earned surplus before the declaration of the first dividend after the effective date of this chapter, and such determination if made in good faith shall be conclusive; and
 - (B) After merger, consolidation or combination of two or more corporations by purchase or otherwise, the amount of the earned surplus of the surviving, consolidated or purchasing corporation shall not exceed the aggregate net earned surplus of the component corporations as it existed immediately prior to such merger, consolidation or combination, reduced by such distributions to

shareholders and transfers of earned surplus to stated capital or capital surplus as were made in connection with the issue of shares or otherwise at the time of merger, consolidation or combination.

- (2) All or part of the earned surplus of a corporation may be transferred by the board at any time to capital surplus or to stated capital.
 - (3) Any surplus resulting from reduction of stated capital shall be capital surplus.
 - (4) A corporation may apply any part or all of its capital surplus to the elimination of any deficit in the earned surplus account, upon approval by vote of the shareholders. The application of capital surplus to the elimination of a deficit in the earned surplus account shall be disclosed in the next financial statement covering the period in which such elimination is made that is furnished by the corporation to all its shareholders or, if practicable, in the first notice of dividend or share distribution that is furnished to holders of each class or series of its shares between the date of such elimination and the next such financial statement, and in any event to all its shareholders within six months of the date of such action.
 - (5) When a corporation has applied its earned surplus to the acquisition of treasury shares and such shares are subsequently disposed of for a consideration, the corporation may, at its option restore to earned surplus, out of the consideration received and on an appropriate basis per share, all or part of the amount by which earned surplus was reduced at the time of acquisition of such shares. If the consideration received exceeds the amount by which earned surplus was reduced with respect to such shares, the excess shall be capital surplus.
- (b) Nothing in this section shall prevent a corporation from creating reserves from its earned surplus or capital surplus for any proper purpose or purposes, or from increasing, decreasing or abolishing any such reserve.

518. CORPORATE BONDS

- (a) No corporation shall issue bonds except for money or other property, tangible or intangible, or labor or services actually received by or performed for the corporation or for its benefit or in the formation or reorganization, or a combination thereof. In the absence of fraud in the transaction, the judgment of the board as to the value of the consideration received shall be conclusive.
- (b) If a distribution of its own bonds is made by a corporation to holders of any class or series of its outstanding shares, there shall be concurrently transferred to the liabilities of the corporation in respect of such bonds an amount of surplus equal to the principal amount of, and any accrued interest on, such bonds. The amount of the surplus so transferred shall be the consideration for the issue of such bonds.

(c) A corporation may, in its certificate of incorporation, confer upon the holders of any bonds issued or to be issued by the corporation, rights to inspect the corporate books and records and to vote in the election of directors and on any other matters on which shareholders of the corporation may vote.

519. CONVERTIBLE SHARES AND BONDS

(a) When so provided in the certificate of incorporation, and subject to the restrictions in paragraph (d), a corporation may issue shares convertible,

- (1) at the option of the holder only, into shares of any class or into shares of any series of any class, except into a class of shares having rights or preferences as to dividends or distribution of assets upon liquidation which are prior or superior in rank to those of the shares being converted, and
- (2) if a member corporation of a securities exchange registered under a statute of the United States such as the Security Exchange Act of 1934, at the option of the corporation or upon the happening of a specified event, into shares of any class or into shares of any series of any class or into any other security of the corporation. Authorized shares, whether issued or unissued, may be made so convertible within such period and upon such terms and conditions as are stated in the certificate of incorporation.

(b) Unless otherwise provided in the certificate of incorporation, and subject to the restrictions of paragraph (d), a corporation may issue its bonds convertible into other bonds or into shares of the corporation within such period and upon such terms and conditions as are fixed by the board.

(c) If there is shareholder approval for the issue of bonds or shares convertible into shares of the corporation, such approval may provide that the board is authorized by certificate of amendment under section 805 (Certificate of amendment; contents) to increase the authorized shares of any class or series to such number as will be sufficient, when added to the previously authorized but unissued shares of such class or series, to satisfy the conversion privileges of any such bonds or shares convertible into shares of such class or series.

(d) No issue of bonds or shares convertible into shares of the corporation shall be made unless:

- (1) A sufficient number of authorized but unissued shares of the appropriate class or series are reserved by the board to be issued only in satisfaction of the conversion privileges of such convertible bonds or shares when issued; or
- (2) The aggregate conversion privileges of such convertible bonds or shares when issued do not exceed the aggregate of any shares reserved under subparagraph (1) and any additional shares which may be authorized by the board under paragraph (c).

(e) No conversion of shares shall result in a reduction of stated capital. No privilege of conversion

may be conferred upon, or altered in respect to, any shares or bonds that would result in the receipt by the corporation of less than the minimum consideration required to be received upon the issue of new shares. The consideration for shares issued upon the exercise of a conversion privilege shall be that provided in paragraph (g) of section 504 (Consideration and payment for shares).

(f) When shares have been converted, they shall be cancelled and disclosure of the conversion of shares during a stated period of time and its effect, if any, upon stated capital shall be made in the next financial statement covering such period that is furnished by the corporation to all its shareholders or, if practicable, in the first notice of dividend or share distribution that is furnished to the holders of each class or series of its shares between the end of such period and the next such financial statement, and in any event to all its shareholders within six months of the date of the conversion of shares. When bonds have been converted, they shall be cancelled and not reissued except upon compliance with the provisions governing the issue of convertible bonds.

520. LIABILITY FOR FAILURE TO DISCLOSE REQUIRED INFORMATION

Failure of the corporation to comply in good faith with the notice or disclosure provisions of paragraph (c) of section 510 (Dividends or other distributions in cash or property), or paragraphs (f) and (g) of section 511 (Share distributions and changes), or paragraphs (d) of section 515 (Reacquired shares), or paragraph (c) of section 516 (Reduction of stated capital in certain cases), or subparagraph (a)(4) of section 517 (Special provisions relative to surplus and reserves), or paragraph (f) of section 519 (Convertible shares and bonds), shall make the corporation liable for any damage sustained by any shareholder in consequence thereof.