



California Corporate & Securities Law

No Voting Rights?

By Keith Paul Bishop on December 29, 2011

In this recent [post](#), I wrote about California's definition of "common shares" in Corporations Code § 159. These are shares that have no preference over any other shares with respect to distribution of assets on liquidation or with respect to payment of dividends. Is it possible to have common shares with no voting rights?

In California, the answer is yes. California Corporations Code § 400(a) provides that a corporation may issue one or more classes or series of shares (or both) with full, limited or no voting rights.

There are a few catches, however. Under the statute, no denial or limitation of voting rights is effective unless at the time one or more classes or series of outstanding shares or debt securities, singly or in the aggregate, are entitled to full voting rights. Moreover, non-voting shares may have the right to vote in some instances. For example, Section 903 requires that a proposed amendment to the articles of incorporation must be approved by the outstanding shares of a class, "whether or not such class is entitled to vote thereon by the provisions of the articles," if the amendment would have specified effects such as changing the rights, preferences, privileges or restrictions on the shares of that class.

Some confusion may exist about the validity of non-voting common because Commissioner's Rule 260.140.1 provides that "Common shares and similar equity securities should normally carry equal voting rights on all matters where such vote is permitted by applicable law". However, this rule only establishes a guideline for exercise of the Commissioner's discretion relating to the qualification of the offer and sale of securities. As such, it is not relevant when securities are being offered and sold pursuant to an exemption from qualification.

Ille et Nefasto

This is my last post for 2011 and I'll close with a brief reflection on the Roman calendar.

It may come as no surprise that ancient Rome had its court days and its holidays. The Roman calendar, like ours, consists of 12 months. However, each day was designated as being *fastus*, *nefastus*, or *comitialis* (there are some more precise designations, such as permitted or not permitted before noon, but I'll leave those intricacies to the scholars). Thus, each day was marked with an "F",

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“N” or “C”. A day marked *fastus* (F) was a day on which courts could sit and work could be done. These activities were not supposed to occur on a day marked *nefastus* (N). A day marked with a “C” was considered particularly felicitous and that is when assemblies could meet. Eventually, N days were considered unlucky. You can catch a glimpse of the Roman calendar in the opening scenes of the HBO series *Rome*.

The poet Horace thought it to be a *dies nefastus* (unlucky day) when a tree was planted that fell on him and nearly killed him:

Ille et nefasto te posuit die,
Quicumque primum, et sacrilega manu
Produxit, arbos, in nepotum
Perniciem opprobriumque pagi.

Horace, Book II, Ode 13. My translation:

He, whoever it was who first planted you on an unlucky day,
Produced by sacrilegious hand, O tree,
the ruin of grandchildren and the destruction of the neighborhood.

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