



California Corporate & Securities Law

Approval By The Outstanding Shares – When California’s Default Rule Doesn’t Apply

By Keith Paul Bishop on November 10, 2011

My posts this week have been dedicated to voting issues. On Monday, I [wrote](#) about California’s default rule for shareholder action – California Corporations Code § 602(a). This is a default rule because it is subject to a *greater* vote requirement imposed by the General Corporation Law or the Articles of Incorporation.

In numerous cases, the GCL requires what it calls “approval by the outstanding shares”. This phrase is defined in Section 152 as “approved by the affirmative vote of a majority of the outstanding shares entitled to vote.” This approval includes the affirmative vote of a majority of the outstanding shares of each class or series entitled to vote as a class or series on the matter and also includes the greater proportion (including all) of the outstanding shares of any class or series if required by the articles or the GCL.

The effect of this provision is that abstentions and broker non-votes have the effect of votes against. To illustrate, suppose a corporation has 1,000 shares issued and outstanding with 1 vote per share. If 600 shares are present or represented at a meeting, 501 affirmative votes are required for approval by the outstanding shares. In contrast, shareholder action under Section 602(a) requires between 251 and 301 affirmative votes. The exact number depends upon how many of the 600 shares present at the meeting are voting (251 affirmative votes is the floor because Section 602(a) requires that the shares voting affirmatively represent at least a majority of the required quorum (500 shares)).

So when does the GCL require approval by the outstanding shares? By my count the GCL requires this approval in at least 14 different circumstances, including amendments to the bylaws; amendments to the articles of incorporation after shares have been issued; share exchange tender offers; and sales of all or substantially all of a corporation’s assets.

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