



BUSINESS LAW SECTION

CORPORATIONS COMMITTEE

THE STATE BAR OF CALIFORNIA

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CHANGES TO PERMIT HOUSEHOLDING

LEGISLATIVE PROPOSAL (BLS-2009-02)

TO: Office of Governmental Affairs
FROM: W. Derrick Britt, Vice Chair, Legislation
Business Law Section (the "Section"), Corporations Committee (the "Committee")
DATE: July 18, 2008
RE: Proposal to Amend Sections 601(b) and 1501(a) of the California Corporations Code

SECTION ACTION AND CONTACTS

Date of Approval by Section Executive Committee: July 18, 2008

Approval Vote:

For: 13 Against: 0

Date of Approval by the Committee: April 4, 2008

Approval Vote:

For: 16 Against: 0

Date of Approval by Committee Drafting Committee: July 9, 2008

Approval Vote:

For: 2 Against: 0

Executive Committee Contact:¹	Committee Contact:¹
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¹ Contact information is as of the date submitted. Contact information for the 2008-09 State Bar year is contained in the Supplemental Contacts Information sheet at the end of this document.

HISTORY, DIGEST AND PURPOSE

The mission statement of the Corporations Committee (the “Committee”) of the Business Law Section (the “Section”) provides that it shall study, consider, and take a position on and advocate that position with respect to, among other things, “Needed changes to the California Corporations Code” and, “Other statutory changes that would promote efficiency or effectiveness in practice if made . . .” The Committee has concluded that it is consistent with this mission to propose amendment of Sections 601(b) and 1501(a) of the California Corporations Code (the “Code”) to conform their requirements to the current proxy rules under the Securities Exchange Act of 1934, as amended (the “Exchange Act”) (17 C.F.R. Section 240.14a-1 et seq.).

History.

Section 601 was enacted as part of the General Corporation Law (the “GCL”) adopted in 1975 that became effective on January 1, 1977 (Stats. 1975, ch. 682). Section 601 also was amended in 1976 (Stats. 1976, ch. 641), 1977 (Stats. 1977, ch. 235), 1978 (Stats. 1978, ch. 370), and 1980 (Stats. 1980, ch. 501), none of which amendments affect the subject or substance of this proposal. The first sentence of Section 601(b), the subject of this proposal, requires that a corporation give notice of a shareholders’ meeting or any report by various means, addressed to the shareholder at the address of the shareholder appearing on the corporation’s books or given by the shareholder to the corporation for the purpose of notice.

Section 1501 was enacted as part of the GCL. That provision requires the board of directors of a corporation and a foreign corporation having its principal executive office in California or customarily holding meetings of its board of directors in California to cause an annual report to be sent to shareholders. Section 1501 was amended in 1976 (Stats. ch. 641), 1977 (Stats. 1977, ch. 235), 1978 (Stats. 1978, ch. 370), 1982 (Stats. 1982, ch. 36), 1984 (Stats. 1984, ch. 335), 2004 (Stats. 2004, ch. 254), and 2006 (Stats. 2006, ch.214). None of these amendments affect the substance of this proposal.

Section 185 was enacted as part of the GCL and defines a “shareholder” as a holder of record of shares.

Relevant Existing Code Sections.

Section 601(b): Section 601(b) of the Code requires that notice of a shareholders’ meeting or any report required to be provided under the Code be given by various means, addressed to the shareholder at the address of the shareholder appearing on the corporation’s books or given by the shareholder to the corporation for the purpose of notice.

Section 1501(a): Except in the case of a corporation with fewer than 100 holders of record of its shares that waives the requirement in its bylaws, Section 1501(a) of the Code requires the board of directors of certain corporations (as further clarified in the following

paragraph of this proposal) to cause an annual report meeting the requirements of Section 1501 of the Code to be sent to shareholders.

Sections 1501(g) and 2115: Section 1501(g) of the Code provides that Section 1501(a) applies to any domestic corporation and also to a foreign corporation having its principal executive office in California or customarily holding meetings of its board in California. In addition, Section 1501 applies to quasi-domestic corporations pursuant to Section 2115.

Section 185: Section 185 of the Code defines a “shareholder” as a holder of record of shares.

Proposal.

As a result of ownership of securities by individuals through different types of accounts, such as brokerage accounts, individual retirement accounts and custodial accounts for minors, duplicate copies of these documents often are delivered to a single household. The proposed revisions to Section 601(b) of the Code would expressly permit one set of meeting notices and reports to be sent under the Code to record shareholders who share an address if such shareholders’ implied or express consent is obtained. The proposed revisions make such consent revocable at the election of the record shareholders. The proposed revisions only affect the manner of delivery of the required notices and reports and would not affect the content of the notices or reports or otherwise change the requirements of Section 601.

The proposed revisions to Section 1501(a) of the Code would expressly permit a corporation to satisfy its obligation to provide an annual report by giving record shareholders who share an address one annual report if such shareholders’ implied or express consent is obtained. The proposed revisions make such consent revocable at the election of any of the record shareholders. The proposed revisions only affect the manner of delivery of the annual report and would not affect the content of the annual report or otherwise change the requirements of Section 1501.

Reasons for the Proposal.

The Securities and Exchange Commission (the “SEC”) has adopted proxy rules under the Exchange Act that allow issuers to furnish one set of proxy materials, including the proxy statement, information statement, annual report, meeting notice and notice of internet availability of proxy materials, to record shareholders who share an address (“householding”) and consent to householding. Additionally, shareholders may request householding. Consent may be in writing or implied and must be revocable.

In California, many corporations routinely mail hundreds of thousands of shareholder notice packages each year at great cost to corporations because the Code lacks the clarity of the federal rules and those of several other states. The SEC’s proxy rules allow corporations to reduce the volume of duplicate information sent to a single household and thereby the cost of

preparing and mailing duplicate materials. Sending one set of materials to a consenting record shareholder's household address shared with other consenting record shareholders would appear to meet the requirement of Section 601(b) that the materials be addressed to the shareholder at the shareholder's address appearing on the corporation's books and of Section 1501(a) that the annual report be sent to record shareholders. This is not expressly permitted, however, as it is, for example, in other states such as Delaware. (See, for example, Delaware General Corporation Law Section 233.)

Absent the proposed amendments to Sections 601(b) and 1501(a), the lack of express authority for householding in Sections 601(b) and 1501(a) of the Code leads corporations that might otherwise avail themselves of the SEC's householding rules to print greater numbers of shareholder communications, which imposes unnecessary costs on corporations and the needless waste of natural resources. This lack of express authority may deter persons from incorporating their businesses in California or foreign corporations from establishing headquarters in California. We therefore believe that Sections 601(b) and 1501(a) of the Code should be clarified to provide clear guidance that such sections permit householding.

Corporations that are not covered by the SEC proxy rules but are covered by Sections 601(b) and 1501(a) also would benefit from householding by reducing the volume of duplicate information sent to a household and thereby the cost of preparing and mailing duplicate materials and waste of natural resources.

The proposed amendments would provide that a record shareholder could revoke such shareholder's consent to householding at any time, so that shareholders who wanted duplicate notices or reports could obtain them without difficulty.

APPLICATION

If adopted, the proposed amendments to Sections 601(b) and 1501(a) would become effective January 1, 2010.

PENDING LITIGATION

None to our knowledge.

LIKELY SUPPORT AND OPPOSITION

We anticipate that the proposed amendments to Sections 601(b) and 1501(a) would receive the strong support of California corporations, corporations operating in California, investors and corporate law practitioners as well as conservation and environmental groups. Despite the ability of shareholders to request individual copies of the proxy materials, some opposition from shareholder rights advocates may be possible.

FISCAL IMPACT

No negative fiscal impact is expected. Providing incentive for corporations to incorporate or remain incorporated in California, or establish headquarters or remain headquartered in California, would have a positive fiscal impact and the proposed amendments are intended to serve that function.

GERMANENESS

The subject matter of the proposed amendment of Sections 601(b) and 1501(a) is one in which the members of the Section (and, in particular, the members of the Committee) have special experience since they prepare the various reports covered by this proposal and advise corporations on the legal requirements associated with the printing, distribution and mailing of those reports to shareholders. The subject matter requires the special knowledge, training, experience, and technical expertise of the Section. In addition, the proposed amendment would promote clarity, consistency, and comprehensiveness of the law.

TEXT OF PROPOSAL

SECTION 1. Section 601(b) of the Corporations Code is amended to read:

§ 601

(b) Notice of a shareholders' meeting or any report shall be given personally, by electronic transmission by the corporation, or by first-class mail, or, in the case of a corporation with outstanding shares held of record by 500 or more persons (determined as provided in Section 605) on the record date for the shareholders' meeting, notice may also be sent third-class mail, or other means of written communication, addressed to the shareholder at the address of that shareholder appearing on the books of the corporation or given by the shareholder to the corporation for the purpose of notice; or if no address appears or is given, at the place where the principal executive office of the corporation is located or by publication at least once in a newspaper of general circulation in the county in which the principal executive office is located. *Without limiting the manner by which notices of a shareholders' meeting and any other required reports may be given, notices or reports to two or more shareholders that have the same address on the books of the corporation may be given by the corporation by means of a single notice or report delivered to such shareholders at that address if consented to or requested by such shareholders. Any shareholder who affirmatively consents in writing, or who fails to object in writing or by telephone to the corporation within 60 days of having been given written notice by the corporation of its intention to send a single notice or report, shall be deemed to have consented to receiving such single notice or report. Any such consent or request shall be revocable by a shareholder by written or telephonic notice to the corporation in the manner provided by the corporation for such purpose.* The notice or report shall be deemed to have been given at the time when delivered personally, sent by electronic transmission by the corporation, deposited in the mail, or sent by other means of written communication. An affidavit of mailing

or electronic transmission by the corporation of any notice or report in accordance with the provisions of this division, executed by the secretary, assistant secretary or any transfer agent, shall be prima facie evidence of the giving of the notice or report.

If any notice or report addressed to the shareholder at the address of that shareholder appearing on the books of the corporation is returned to the corporation by the United States Postal Service marked to indicate that the United States Postal Service is unable to deliver the notice or report to the shareholder at that address, all future notices or reports shall be deemed to have been duly given without further mailing if the same shall be available for the shareholder upon written demand of the shareholder at the principal executive office of the corporation for a period of one year from the date of the giving of the notice or report to all other shareholders.

Notice given by electronic transmission by the corporation under this subdivision shall be valid only if it complies with Section 20. Notwithstanding the foregoing, notice shall not be given by electronic transmission by the corporation under this subdivision after either of the following:

(1) The corporation is unable to deliver two consecutive notices to the shareholder by that means.

(2) The inability to so deliver the notices to the shareholder becomes known to the secretary, any assistant secretary, the transfer agent, or other person responsible for the giving of the notice.

SECTION 2. Section 1501(a) of the Corporations Code is amended to read:

§ 1501

(a) The board shall cause an annual report to be sent to the shareholders not later than 120 days after the close of the fiscal year, unless in the case of a corporation with less than 100 holders of record of its shares (determined as provided in Section 605) this requirement is expressly waived in the bylaws. Unless otherwise provided by the articles or bylaws and if approved by the board of directors, that report and any accompanying material sent pursuant to this section may be sent by electronic transmission by the corporation (Section 20). *Without limiting the manner by which annual reports otherwise may be sent, the obligation to send an annual report to two or more shareholders that have the same address on the books of the corporation shall be satisfied if the corporation sends a single annual report to that address if consented to or requested by such shareholders. Any shareholder who affirmatively consents in writing, or who fails to object in writing or by telephone to the corporation within 60 days of having been given written notice by the corporation of its intention to send a single annual report, shall be deemed to have consented to receiving such single report. Any such consent or request shall be revocable by a shareholder by written or telephonic notice to the corporation in the manner provided by the corporation for such purpose.* This report shall contain a balance sheet as of the end of that fiscal year and an income statement and a statement of cashflows for

that fiscal year, accompanied by any report thereon of independent accountants or, if there is no report, the certificate of an authorized officer of the corporation that the statements were prepared without audit from the books and records of the corporation.

Unless so waived, the report shall be sent to the shareholders at least 15 (or, if sent by third-class mail, 35) days prior to the annual meeting of shareholders to be held during the next fiscal year, but this requirement shall not limit the requirement for holding an annual meeting as required by Section 600.

Notwithstanding Section 114, the financial statements of any corporation with fewer than 100 holders of record of its shares (determined as provided in Section 605) required to be furnished by this subdivision and subdivision (c) are not required to be prepared in conformity with generally accepted accounting principles if they reasonably set forth the assets and liabilities and the income and expense of the corporation and disclose the accounting basis used in their preparation.

SUPPLEMENTAL CONTACTS INFORMATION
(2008-09 STATE BAR YEAR)

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