

## Changes in the Model Business Corporation Act— Proposed Amendment to Section 7.22

*By the Corporate Laws Committee, ABA Section of Business Law\**

The Corporate Laws Committee of the ABA Section of Business Law (the “Committee”) develops, and from time to time proposes changes in, the Model Business Corporation Act (the “Act” or “Model Act”).

The Committee has approved the changes described in this report on second reading and invites comments from interested persons. **Comments should be addressed to A. Gilchrist Sparks, III, Chair, Corporate Laws Committee, 1201 N. Market Street, Wilmington, Delaware 19801-1147, or sent to him by e-mail at [asparks@mnat.com](mailto:asparks@mnat.com). Comments should be received by November 30, 2011, in order to be considered by the Committee before adoption of the amendments on third reading.**

The proposed amendment clarifies that, unless it otherwise provides, an appointment of an irrevocable proxy does not terminate upon transfer of the shares, except that a transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when acquiring the shares and the existence of the irrevocable appointment was not noted on the certificate representing the shares or contained in the information statement for uncertified shares.

The proposed amendment is set forth below. Changes to the existing provision are marked to show changes from the current Act, with new language indicated by underscoring and deletions shown by ~~strikeout~~.

### § 7.22. PROXIES

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- (g) Unless it otherwise provides, an appointment made irrevocable under subsection (d) continues in effect after a transfer of the shares and a transferee takes subject to the appointment, except that a transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when acquiring the shares and the existence of the irrevocable appointment was not noted conspicuously on the front or back of the certificate representing

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\* A. Gilchrist Sparks, III, Chair.

the shares or contained in the information statement for shares without certificates.

## OFFICIAL COMMENT

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### 4. IRREVOCABLE PROXIES

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A transferee for value of shares that are subject to an irrevocable appointment takes free of the appointment if (1) the transferee did not know of the existence of the appointment and (2) the existence of the irrevocable appointment was not noted conspicuously on the certificate or information statement. See section 7.22(g). Under this subsection, both the appointment and the irrevocable nature of the appointment must conspicuously appear on the certificate.

Section (g) clarifies the default rule that an irrevocable appointment survives a transfer, but that the grantor may modify that rule. It also clarifies that both the appointment and the irrevocable nature of the appointment must conspicuously appear on the certificate or information statement in order to continue to be irrevocable against a transferee for value that does not know of the existence of the appointment.