**RATIFICATION OF DEFECTIVE CORPORATE ACTIONS**

§ 607.0145. Definitions.

As used in ss. 607.0145-607.0152:

(1) “Corporate action” means any action taken by or on behalf of the corporation, including any action taken by the incorporator, the board of directors, a committee of the board of directors, an officer or agent of the corporation or the shareholders.

(2) “Date of the defective corporate action” means the date, or the approximate date, if the exact date is unknown, the defective corporate action was purported to have been taken.

(3) “Defective corporate action” means:

(a) Any corporate action purportedly taken that is, and at the time such corporate action was purportedly taken would have been, within the power of the corporation, but is void or voidable due to a failure of authorization, and

(b) An overissue.

(4) “Failure of authorization” means the failure to authorize, approve or otherwise effect a corporate action in compliance with the provisions of this chapter, the articles of incorporation or bylaws, a corporate resolution or any plan or agreement to which the corporation is a party, if and to the extent such failure would render such corporate action void or voidable.

(5) “Overissue” means the purported issuance of:

(a) Shares of a class or series in excess of the number of shares of the class or series the corporation has the power to issue under s. 607.0601 at the time of such issuance; or

(b) Shares of any class or series that is not then authorized for issuance by the articles of incorporation.

(6) “Putative shares” means the shares of any class or series, including shares issued upon exercise of rights, options, warrants or other securities convertible into shares of the corporation, or interests with respect to such shares, that were created or issued as a result of a defective corporate action, that (i) but for any failure of authorization would constitute valid shares, or (ii) cannot be determined by the board of directors to be valid shares.

(7) “Valid shares” means the shares of any class or series that have been duly authorized and validly issued in accordance with this Act, including as a result of ratification or validation under ss. 607.0145-607.0152.

(8) “Validation effective time” with respect to any defective corporate action ratified under ss. 607.0145-607.0152 means the later of:

(a) The time at which the ratification of the defective corporate action is approved by the shareholders, or if approval of shareholders is not required, the time at which the notice required by s. 607.0149 becomes effective in accordance with s. 607.0141; and

(b) The time at which any articles of validation filed in accordance with s. 607.0151 become effective.

The validation effective time will not be affected by the filing or pendency of a judicial proceeding under s. 607.0152 or otherwise, unless otherwise ordered by the court.

**MBCA Official Comment to s. 1.45**

The definitions of “corporate action,” “defective corporate action” and “failure of authorization” are intentionally broad so as to permit ratification of any corporate action purportedly taken that would have been within the power granted to a corporation under the Act [ss. 607.0145-607.0152].

The term “defective corporate action” includes an “overissue” of shares and other defects in share issuances that could cause shares to be treated as void. For purposes of determining which shares are overissued, only those shares issued in excess of the number of shares permitted to be issued under section 6.01 [s. 607.0601] of the Act would be deemed overissued shares. If it cannot be determined from the records of the corporation which shares were issued before others, all shares included in an issuance that is or results in an overissue would be overissued shares.

**Florida commentary to s. 607.0145**

§ 607.0146 Defective Corporate Actions.

1. A defective corporate action will not be void or voidable if:
2. Ratified in accordance with the requirements of s. 607.0147, including the filing, if required, of Articles of Validation under s. 607.0151, or
3. Validated in accordance with s. 607.0152.

(2) Ratification under s. 607.0147 or validation under s. 607.0152 shall not be deemed to be the exclusive means of ratifying or validating any defective corporate action, and the absence or failure of ratification in accordance with ss. 607.0145-607.0152 will not, in and of itself, affect the validity or effectiveness of any corporate action properly ratified under common law or otherwise, nor will it create a presumption that any such corporate action is or was a defective corporate action or void or voidable.

(3) In the case of an overissue, putative shares will be valid shares effective as of the date originally issued or purportedly issued upon:

(a) The effectiveness under ss. 607.0145-607.0152 and under ss. 607.1001 – 607.1009 of an amendment to the articles of incorporation authorizing, designating or creating such shares; or

(b) The effectiveness of any other corporate action under ss. 607.0145-607.0152 ratifying the authorization, designation or creation of such shares.

**MBCA Official Comment to s. 1.46**

Subchapter E [ss. 607.0145-607.0152] provides a statutory ratification procedure for corporate actions that may not have been properly authorized and shares that may have been improperly issued. The statutory ratification procedure is designed to supplement common law ratification. Corporate actions ratified under this subchapter remain subject to equitable review.

Examples of defective corporate actions subject to ratification include the failure of the incorporator to validly appoint an initial board of directors, corporate action taken in the absence of board resolutions authorizing the action, the failure to obtain the requisite shareholder approval of a corporate action, issuance of shares in the absence of evidence that consideration payable to the corporation for shares was received, the failure to comply with appraisal requirements and the issuance of shares without complying with preemptive rights. The ratification procedure is intended to be available only where there is objective evidence that a corporate action was defectively implemented. For example, subchapter E would permit ratification of shares previously issued but subsequently determined to have been issued improperly. It would not permit the corporation to issue shares retroactively as of an earlier date, however, where there is no objective evidence that those shares had previously been issued. Objective evidence may include resolutions, issuance of share certificates, subscription or share purchase agreements, entries in a share ledger or other correspondence indicating that shares were issued or intended to have been issued.

Section 1.46(a) [s. 607.0146(1)] does not distinguish between void and voidable actions. Instead it provides that any defective corporate action that is ratified in accordance with section 1.47 [s. 607.0147] or validated under section 1.52 [s. 607.0152] shall not be void or voidable. Section 1.47 [s. 607.0147] is not the exclusive means by which a defective corporate action may be ratified. Thus, the general common law doctrine of ratification, as applied to a board of directors’ adoption of actions taken by officers who may not have had the actual authority to take such actions, continues to be an effective mode of ratification. Section 1.46(b)[s. 607.0146(2)] makes clear that the corporation’s ratification of a defective corporate action that is voidable but not void using common law methods of ratification rather than under section 1.47 [s. 607.0147] will not, standing alone, affect the validity of the action or create a presumption that the action is not valid. In addition, ratification under subchapter E is distinct from correction of an already filed document under section 1.24 [s. 607.0124].

Section 1.46(c) [s. 607.0146(3)] provides that an overissue can be remedied by the adoption of articles of amendment or other corporate action that has the effect of authorizing, designating or creating shares of a series or class, such that the putative shares that resulted in the overissue are deemed to be validly issued from the date of original issuance. This provision enables a corporation to cure an overissue occurring when shares have been duly authorized but are issued before articles of amendment are filed. It also permits a corporation to remedy an overissue even if it cannot specifically identify the putative shares.

**Florida Commentary to s. 607.0146**

Under subsection (1), effectiveness of the ratification of a defective corporate action in accordance with the requirements of s. 607.0147 requires compliance not only with that provision, but also requires the filing of Articles of Validation if such filing is required under s. 607.0151.

§ 607.0147 Ratification of Defective Corporate Actions.

(1) To ratify a defective corporate action under this section, other than the ratification of an election of the initial board of directors under subsection (2), the board of directors must take action ratifying the action in accordance with s. 607.0148, stating:

(a) The defective corporate action to be ratified and, if the defective corporate action involved the issuance of putative shares, the number and type of putative shares purportedly issued;

(b) The date of the defective corporate action;

(c) The nature of the failure of authorization with respect to the defective corporate action to be ratified; and

(d) That the board of directors approves the ratification of the defective corporate action.

(2) In the event that a defective corporate action to be ratified relates to the election of the initial board of directors of the corporation under s. 607.0205(1)(b), a majority of the persons who, at the time of the ratification, are exercising the powers of directors may take an action stating:

(a) The name of the person or persons who first took action in the name of the corporation as the initial board of directors of the corporation;

(b) The earlier of the date on which such persons first took such action or were purported to have been elected as the initial board of directors; and

(c) That the ratification of the election of such person or persons as the initial board of directors is approved.

(3) If any provision of this chapter, the articles of incorporation or bylaws, any corporate resolution or any plan or agreement to which the corporation is a party in effect at the time action under subsection (1) is taken requires shareholder approval or would have required shareholder approval at the date of the occurrence of the defective corporate action, the ratification of the defective corporate action approved in the action taken by the directors under subsection (1) must be submitted to the shareholders for approval in accordance with s. 607.0148.

(4) Unless otherwise provided in the action taken by the board of directors under subsection (1), after the action by the board of directors has been taken and, if required, approved by the shareholders, the board of directors may abandon the ratification at any time before the validation effective time without further action of the shareholders.

**MBCA Official Comment to s. 1.47**

The information required by section 1.47(a)(1)[s. 607.0147(1)(a)] regarding the listing of putative shares may be satisfied by attaching a table, including a capitalization table, listing the putative shares. Section 1.47(b) [s. 607.0147(2)] permits the ratification of the initial election of the board of directors by the persons who are acting as the current board of directors, recognizing that if the corporation’s initial board of directors was defectively appointed, there may be no effective method of ratification because a duly elected board of directors does not exist.

**Florida Commentary to s. 607.0147**

§ 607.0148 Action on Ratification.

(1) The quorum and voting requirements applicable to a ratifying action by the board of directors under s. 607.0147(1) will be the quorum and voting requirements applicable to the corporate action proposed to be ratified at the time such ratifying action is taken.

(2) (a) If the ratification of the defective corporate action requires approval by the shareholders under s. 607.0147(3), and if the approval is to be given at a meeting, the corporation must notify each holder of valid and putative shares, regardless of whether entitled to vote, as of the record date for notice of the meeting, and as of the date of the occurrence of the defective corporate action, provided that notice will not be required to be given to holders of valid or putative shares whose identities or addresses for notice cannot be determined from the records of the corporation. The notice must state that the purpose, or one of the purposes, of the meeting, is to consider ratification of a defective corporate action.

(b) If the defective corporate action is to be ratified by written consent, the corporation must notify each holder of valid and putative shares, regardless of whether entitled to vote, as of the record date for the action by written consent, and as of the date of the occurrence of the defective corporate action, provided that notice will not be required to be given to holders of valid or putative shares whose identities or addresses for notice cannot be determined from the records of the corporation. The notice must state that the purpose, or one of the purposes, of the written consent was to consider ratification of a defective corporate action.

(c) The notice must be accompanied by:

(a) Either a copy of the action taken by the board of directors in accordance with s. 607.0147(1) or the information required by ss. 607.0147(1)(a) through (1)(d), and

(b) A statement that any claim asserting that the ratification of such defective corporate action, and any putative shares issued as a result of such defective corporate action, should not be effective, or should only be effective on certain conditions, must be brought, if at all, within 120 days from the applicable validation effective time.

(3) Except as provided in subsection (4) with respect to the voting requirements to ratify the election of a director, any quorum and the voting requirements applicable to the approval by the shareholders required by s. 607.0147(3) will be the quorum and voting requirements applicable, at the time of such shareholder approval, to the corporate action proposed to be ratified.

(4) The approval by shareholders at a meeting to ratify the election of a director requires that the votes cast within the voting group favoring such ratification exceed the votes cast opposing such ratification of the election at a meeting at which a quorum is present. The approval by shareholders by written consent to ratify the election of a director requires that the consents given within the voting group favoring such ratification represent a majority of the shares of the voting group.

(5) Putative shares on the record date for determining the shareholders entitled to vote on any matter submitted to shareholders under s. 607.0147(3), and without giving effect to any ratification of putative shares that becomes effective as a result of such vote, will neither be entitled to vote nor counted for quorum purposes in any vote to approve the ratification of any defective corporate action. Putative shares on the record date for the action by written consent, and without giving effect to any ratification of putative shares that becomes effective as a result of such written consent, will not be entitled to be counted in any written consent to approve the ratification of any defective corporate action.

(6) If the approval under this section of putative shares would result in an overissue, in addition to the approval required by s. 607.0147, approval of an amendment to the articles of incorporation under ss. 607.1001 – 607.1009 to increase the number of shares of an authorized class or series or to authorize the creation of a class or series of shares so there would be no overissue will also be required.

**MBCA Official Comment to s. 1.48**

Notwithstanding the shareholder notice required by section 1.48(b)[s. 607.0148(2)], only valid shares are entitled to vote on the ratification action or counted for quorum purposes. The retroactive effect of a ratification of putative shares does not invalidate the quorum, the voting result of the ratification.

For matters other than the election of directors, the quorum and voting requirements applicable to shareholder approval of ratification are the quorum and voting requirements applicable to the corporate action being ratified at the time of such approval. For example, if the defective corporate action being ratified is an amendment to the articles of incorporation, whether in connection with an overissue or otherwise, the vote required would be governed by section 10.03 [s. 607.1003]. If the defective corporate action involves a merger, the vote required would be the vote required by section 11.04 [s. 607.1103].

**Florida Commentary to s. 607.0148**

Consistent with both Subchapter E of the MBCA and Section 204 of the Delaware General Corporation Law, or DGCL, notice is required to be provided to the holders of all shares, whether voting or non-voting. Further, consistent with both Subchapter E of the MBCA and Section 204 of the DGCL, notice of the meeting or notice of the written consent, as the case may be, must be provided to both current shareholders of the corporation and shareholders who held shares as of the date of the occurrence of the defective corporate action. However, notice is not required to be given to persons who are no longer shareholders of the corporation at the time that the corporation is seeking ratification of the defective corporate acts but did not own their shares at the time of the defective corporate action (i.e., those who first acquired shares after the time of the defective corporate action, but disposed of all their shares by the time the corporation is seeking ratification of the defective corporate acts).

Subsection (2) requires notice to be given to shareholders whether the defective act is to be ratified at a meeting or by written consent. If the defective corporate action is to be approved at a meeting, notice must be given to each person who is a holder of valid and putative shares, regardless of whether entitled to vote, as of the record date for notice of the meeting, and each person who is a holder of valid and putative shares, regardless of whether entitled to vote, as of the date of the occurrence of the defective corporate action, and if the defective corporate action is to be ratified by written consent, the corporation must notify each person who is a holder of valid and putative shares, regardless of whether entitled to vote, as of the record date for the action by written consent, and each person who is a holder of valid and putative shares, regardless of whether entitled to vote, as of the date of the occurrence of the defective corporate action, In both cases, the information required to be provided is the same.

The Subcommittee, after consulting with Delaware lawyers regarding DGCL ss. 204 and 205 and representatives of the Corporate Laws Committee of the Business Law Section of the American Bar Associations, believes that the failure of the corollary DGCL and MBCA provisions to address ratification by written consent in those statutes did not intend to eliminate the right to ratify a defective corporate act by written consent.

§607.0149 Notice Requirements.

(1) Unless shareholder approval is required under s. 607.0147(3), [within 10 days after the action is taken/prompt] notice of an action taken by the board of directors under s. 607.0147 must be given to each holder of valid and putative shares, regardless of whether entitled to vote, that is a holder of valid and putative shares as of:

 (a) The date of the action by the board of directors taken under s. 607.0147; and

 (b) The date of the occurrence of the defective corporate action being ratified;

 provided that notice will not be required to be given to holders of valid and putative shares whose identities or addresses for notice cannot be determined from the records of the corporation.

(2) The notice must contain:

(a) Either:

1. A copy of the action taken by the board of directors in accordance with s 607.0147(1); or

2. The information required by ss. 607.0147(1)(a) through (1)(d) or ss. 607.0147(2)(a) through (2)(c), as applicable; and

(b) A statement that, in order to be considered, any claim asserting that the ratification of the defective corporate action and any putative shares issued as a result of such defective corporate action should not be effective, or should be effective only on certain conditions, must be brought, if at all, within 120 days from the applicable validation effective time.

(3) No notice under this section is required with respect to any action required to be submitted to shareholders for approval under s. 607.0147(3) if notice is given in accordance with s. 607.0148(2).

(4) A notice required by this section may be given in any manner permitted by s. 607.0141 and, for any corporation subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, may be given by means of a filing or furnishing of such notice with the United States Securities and Exchange Commission.

**MBCA Official Comment to s. 1.49**

No official comment.

**Florida commentary to s. 607.0149**

The corollary MBCA provision contemplates ["prompt"] notice to shareholders following the ratification of a corporate action by the Board of Directors. [This proposal requires the notice to be delivered within 10 days after the action is taken]. However, unlike other sections of the FBCA, this provision does not state that the failure to provide the notice does not invalidate the action taken.

§ 607.0150 Effect of Ratification.

From and after the validation effective time, and without regard to the 120-day period during which a claim may be brought under s. 607.0152:

(1) Each defective corporate action ratified in accordance with s. 607.0147 will not be void or voidable as a result of the failure of authorization set forth and identified in the action taken under s. 607.0147(1) or (2) and will be deemed a valid corporate action effective as of the date of the defective corporate action;

(2) The issuance of each putative share or fraction of a putative share purportedly issued pursuant to a defective corporate action identified in the action taken under s. 607.0147 will not be void or voidable, and each such putative share or fraction of a putative share will be deemed to be an identical share or fraction of a valid share as of the time it was purportedly issued; and

(3) Any corporate action taken subsequent to the defective corporate action ratified in accordance with ss. 607.0145 – 607.0152 in reliance on such defective corporate action having been validly effected, and any subsequent defective corporate action resulting directly or indirectly from such original defective corporate action, will be valid as of the respective time such corporate action was taken.

**MBCA Official Comment to s. 1.50**

Ratification is effective as of the validation effective time and is not dependent on the expiration of the 120-day time period in which an action challenging the ratification must be brought. The ratification of a defective corporate action has the additional effect of ratifying corporate actions that are defective as a result of the original defective corporate action. For example, an overissue which results in subsequent director elections being invalid calls into question all actions by the invalidly elected board members. The ratification of the overissue, however, would cure any such additional defects.

**Florida commentary to s. 607.0150**

Under subsection (2), ratification means that the putative share, or a fraction of a putative share, will be considered valid as of the date on which the putative share or fraction of a putative share was purportedly issued (as if it were issued back when it was originally purportedly issued).

§ 607.0151 Filings.

(1) If the defective corporate action ratified under ss. 607.0145 – 607.0152 would have required under any other section of this chapter a filing in accordance with this chapter, and either:

(a) any previous filing requires any change to the filing to give effect to the defective corporate act in accordance with this section (including a change to the date and time of the effectiveness of such filing); or

(b) a filing was not previously filed in respect of the defective corporate act,

then, in lieu of a filing otherwise required by this chapter, the corporation must file articles of validation in accordance with this section, and such articles of validation will serve to amend or be a substitute for any other filing with respect to such defective corporate action required by this chapter.

(2) The articles of validation must set forth:

(a) The defective corporate action that is the subject of the articles of validation, including, in the case of any defective corporate action involving the issuance of putative shares, the number and type of putative shares issued and the date or dates upon which such putative shares were purported to have been issued[[1]](#footnote-1);

(b) The date of the defective corporate action;

(c) The nature of the failure of authorization in respect of the defective corporate action;

(d) A statement that the defective corporate action was ratified in accordance with s. 607.0147, including the date on which the board of directors ratified such defective corporate action and the date, if any, on which the shareholders approved the ratification of such defective corporate action; and

(e) The information required by subsection (3).

(3) The articles of validation must also contain the following information:

(a) If a filing was previously made in respect of the defective corporate action and such filing requires any change to give effect to the ratification of such defective corporate action in accordance with s. 607.0147, the articles of validation must set forth:

1. The name, title and filing date of the filing previously made and any articles of correction to that filing;

2. A statement that a filing containing all of the information required to be included under the applicable section or sections of this chapter to give effect to such defective corporate action is attached as an exhibit to the articles of validation; and

3. The date and time that such filing is deemed to have become effective; or

(b) If a filing was not previously made in respect of the defective corporate action and the defective corporate action ratified under s. 607.0147 would have required a filing under any other section of this chapter, the articles of validation must set forth:

1. A statement that a filing containing all of the information required to be included under the applicable section or sections of this chapter to give effect to such defective corporate action is attached as an exhibit to the articles of validation; and

2. The date and time that such filing is deemed to have become effective.

**MBCA Official Comment to s. 1.51**

Section 1.51 [s. 607.0151] requires that in the event any filing is or would have been required under the Act to effect the defective corporate action, such filing (if no filing was previously made), such corrected filing (if correction to a previous filing is required), or such original filing (if no correction to a previous filing is required) be attached as an exhibit to the articles of validation.

This is intended to provide a clear public record of the actions relating to the ratification.

**Florida commentary to s. 607.0151**

This proposal eliminates the required filing of Articles of Validation if the previous filing made with the department does not require changes for it to be accurate. The MBCA does not eliminate that requirement. However, corollary changes to DGCL s. 204 have been proposed to eliminate that requirement, and the Subcommittee believes that these changes should be included in this statutory provision.

§ 607.0152 Judicial proceedings regarding validity of corporate actions.

(1) Subject to subsection (4) of this section, upon application by the corporation, any successor entity to the corporation, a director of the corporation, any shareholder, beneficial shareholder or unrestricted voting trust beneficial owner of the corporation, including any such shareholder, beneficial shareholder or unrestricted voting trust beneficial owner as of the date of the defective corporate action ratified under s. 607.0147, or any other person claiming to be substantially and adversely affected by a ratification under s. 607.0147, the circuit court in the applicable county may:

(a) Determine the validity and effectiveness of any corporate action or defective corporate action ratified pursuant to s. 607.0147;

(b) Determine the validity and effectiveness of any ratification of any defective corporate action under s. 607.0147;

(c) Determine the validity and effectiveness of any defective corporate action not ratified or not ratified effectively under s. 607.0147;

(d) Determine the validity of any putative shares; and

(e) Modify or waive any of the procedures specified in s 607.0147 or s. 607.0148 to ratify a defective corporate action.

(2) In connection with an action under this section, the court may make such findings or orders, and take into account any factors or considerations, regarding such matters as it deems proper under the circumstances. Factors that may be taken into account by the court in connection with an action under this section include those set forth in subsection (5) and a non-exclusive list of findings or orders that the court may take under this section is included in subsection (6).

(3) Service of process of the application under subsection (1) on the corporation may be made in any manner provided by chapter 48 for service on the corporation, and no other party need be joined in order for the court to adjudicate the matter. In an action filed by the corporation, the court may require notice of the action be provided to other persons specified by the court and permit such other persons to intervene in the action.

(4) Notwithstanding any other provision of this section or otherwise under applicable law, any action asserting that the ratification of any defective corporate action, including any putative shares issued as a result of such defective corporate action, should not be effective, or should be effective only on certain conditions, must be brought, if at all, within 120 days of the validation effective time.

(5) In connection with the resolution of matters pursuant to subsection (2), the court may consider the following:

(a) Whether the defective corporate act was originally approved or effectuated with the belief that the approval or effectuation was in compliance with the provisions of this title, the articles of incorporation or the bylaws of the corporation;

(b) Whether the corporation and board of directors has treated the defective corporate act as a valid act or transaction and whether any person has acted in reliance on the public record that such defective corporate act was valid;

(c) Whether any person will be or was harmed by the ratification or validation of the defective corporate act, excluding any harm that would have resulted if the defective corporate act had been valid when approved or effectuated;

(d) Whether any person will be harmed by the failure to ratify or validate the defective corporate act; and

(e) Any other factors or considerations the court deems just and equitable.

(6) In connection with an action under this section, the court may:

(a) Declare that a ratification in accordance with and pursuant to s. 607.0146 is not effective or shall only be effective at a time or upon conditions established by the court;

(b) Validate and declare effective any defective corporate act or putative stock and impose conditions upon such validation by the court;

(c) Require measures to remedy or avoid harm to any person substantially and adversely affected by a ratification pursuant to s. 607.0146 or from any order of the court pursuant to this section, excluding any harm that would have resulted if the defective corporate act had been valid when approved or effectuated;

(d) Order the department to accept an instrument for filing with an effective time specified by the court, which effective time may be prior or subsequent to the time of such order, provided that the filing date of such instrument shall be determined in accordance with s. 607.0123;

(e) Approve a stock ledger for the corporation that includes any stock ratified or validated in accordance with this section or s. 607.0146;

(f) Declare that shares of putative stock are shares of valid stock or require a corporation to issue and deliver shares of valid stock in place of any shares of putative stock;

(g) Order that a meeting of holders of valid stock or putative stock be held and exercise such powers that it deems appropriate with respect to such a meeting;

(h) Declare that a defective corporate act validated by the court shall be effective as of the time of the defective corporate act or at such other time as the court shall determine;

(i) Declare that putative stock validated by the court shall be deemed to be an identical share or fraction of a share of valid stock as of the time originally issued or purportedly issued or at such other time as the court shall determine; and

(10) Make such other orders regarding such matters as it deems proper under the circumstances.

**MBCA Official Comment to s. 1.52**

Section 1.52 [s. 607.0152] confers plenary jurisdiction on a designated court to hear and determine claims regarding the validity of any corporate action or any shares, rights, options or warrants. The court’s jurisdiction is not limited to reviewing corporate actions ratified or purportedly ratified under section 1.47 [s. 607.0147], and includes the ability of a corporation or other permitted person to obtain a declaration regarding the validity of any corporate actions or shares that are potentially defective.

In determining the validity of a corporate action or reviewing a corporate action ratified under section 1.47 [s. 607.0147], the court may consider any factors or considerations it deems proper under the circumstances. These might include whether the person originally taking the defective corporate action believed that the action complied with corporate requirements, whether the corporation and board of directors has treated the defective corporate action as a valid action, whether any person has acted in reliance on the public record that such defective corporate action was valid and whether any person will be or was harmed by the ratification of the defective corporate action or will be harmed by the failure to ratify or validate the defective corporate action.

**Florida commentary to s. 607.0152**

Subsection 2 of s. 607.0152 provides that the court may make such findings or orders, and take into account any factors or considerations regarding such matters as it deems proper under the circumstances. DGCL Section 205 provides (i) an enumerated list of the factors the court may wish to consider (subsection(d)) and (ii) the remedies the court may wish to grant (subsection (b)). Consistent with the DGCL approach, this proposal includes in the text of s. 607.0152 a list of factors a court may wish to consider (in subsection 5) and the remedies a court may wish to grant (in subsection (6). As noted in this section, there is a catch-all under both lists for any other factors or considerations the court deems just and equitable and for any such orders regarding such matters as the court deems proper under the circumstances. It is intended that the court shall have broad equitable powers in that regard.

The Subcommittee believes that if litigation is filed challenging a corporate action as defective, and an action is thereafter taken by the corporation to ratify the defective corporate action, the ratification will cure the potential technical validity of the corporate act, but will not eliminate a claim in the pending lawsuit that the defective action was inequitable to the claimant or caused damages to the claimant.

1. Proposed changes to DGCL s. 204 would eliminate the requirement that the articles of validation describe the putative shares being validated. This draft does not eliminate that requirement. [↑](#footnote-ref-1)