

form prescribed by the corporation identifying the number of such shares to be transferred to such transferee and certifying—

(I) that such transferee is or is not a Native or a descendant of a Native;

(II) that such transferee, if not a Native or a descendant of a Native, understands that shares of such alienable common stock shall not carry voting rights so long as such shares are held by the transferee or any subsequent transferee not a Native or a descendant of a Native;

(III) that such transferee, if a purchaser, understands that such acquisition may be subject to section 78m(d) of title 15 and the regulations of the Securities and Exchange Commission promulgated thereunder; and

(IV) whether such transferee will be the sole beneficial owner of such shares (if not, the transferee must certify as to the identities of all beneficial owners of such shares and whether such owners are Natives or descendants of Natives).

(ii) The statement required by clause (i) shall be prima facie evidence of the matters certified therein and may be relied upon by the corporation in effecting a transfer on its books.

(iii) For purposes of this subparagraph, a beneficial owner of a security includes any person (including a corporation, partnership, trust, association, or other entity) who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares—

(I) voting power, which includes the power to vote, or to direct the voting of, such security; or

(II) investment power, which includes the power to dispose of, or to direct the disposition of, such security.

(iv) Any person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement, or any other contract, arrangement, or device with the purpose or effect of divesting such person of beneficial ownership of a security or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the requirements imposed by this section or section 78m(d) of title 15 shall be deemed for purposes of such sections to be the beneficial owner of such security.

(C) The statement required by subparagraph (B) shall be verified by the transferee before a notary public or other official authorized to administer oaths in accordance with the laws of the jurisdiction of the transferee or in which the transfer is made.

(Pub. L. 92-203, §37, as added Pub. L. 100-241, §8, Feb. 3, 1988, 101 Stat. 1797; amended Pub. L. 101-378, title III, §301, Aug. 17, 1990, 104 Stat. 471; Pub. L. 102-201, title III, §301, Dec. 10, 1991, 105 Stat. 1633.)

#### REFERENCES IN TEXT

Section 16(b) of the Alaska Native Claims Settlement Act Amendments of 1987, referred to in subsec. (d)(2)(B)(iii), is section 16(b) of Pub. L. 100-241, which is set out as a note under section 1601 of this title.

#### AMENDMENTS

1991—Subsec. (a). Pub. L. 102-201 substituted “July 16, 1993: *Provided, however,* That this prohibition shall not

apply to a Native Corporation whose board of directors approves, no later than March 1, 1992, a resolution (certified by the corporate secretary of such corporation) electing to decline the application of such prohibition” for “December 18, 1991”.

1990—Subsec. (d)(1)(A). Pub. L. 101-378, §301(1), inserted before period at end “and such resolution is not validly rescinded pursuant to paragraph (2)(B)(ii)”.

Subsec. (d)(2)(B). Pub. L. 101-378, §301(2), (3), designated existing provisions as cl. (i) and added cls. (ii) and (iii).

### § 1629d. Dissenters rights

#### (a) Coverage

(1) Notwithstanding the laws of the State, if the shareholders of a Native Corporation—

(A) fail to approve an amendment authorized by section 1629c(b) of this title to terminate alienability restrictions, a shareholder who voted for the amendment may demand payment from the corporation for all of his or her shares of Settlement Common Stock; or

(B) approve an amendment authorized by section 1629c(d) of this title to continue alienability restrictions without issuing alienable common stock pursuant to section 1629c(d)(6) of this title, a shareholder who voted against the amendment may demand payment from the corporation for all of his or her shares of Settlement Common Stock.

(2)(A) A demand for payment made pursuant to paragraph (1)(A) shall be honored only if at the same time as the vote giving rise to the demand, the shareholders of the corporation approved a resolution providing for the purchase of Settlement Common Stock from dissenting shareholders.

(B) A demand for payment made pursuant to paragraph (1)(B) shall be honored.

#### (b) Relationship to State procedure

(1) Except as otherwise provided in this section, the laws of the State governing the right of a dissenting shareholder to demand and receive payment for his or her shares shall apply to demands for payment honored pursuant to subsection (a)(2).

(2) The board of directors of a Native Corporation may approve a resolution to provide a dissenting shareholder periods of time longer than those provided under the laws of the State to take actions required to demand and receive payment for his or her shares.

#### (c) Valuation of stock

(1) Prior to a vote described in subsection (a)(1), the board of directors of a Native Corporation may approve a resolution to provide that one or more of the following conditions will apply in the event a demand for payment is honored pursuant to subsection (a)(2)—

(A) the Settlement Common Stock shall be valued as restricted stock; and

(B) the value of—

(i) any land conveyed to the corporation pursuant to section 1613(h)(1) of this title or any other land used as a cemetery; and

(ii) the surface estate of any land that is both—

(I) exempt from real estate taxation pursuant to section 1636(d)(1)(A) of this title, and

(II) used by the shareholders of the corporation for subsistence uses (as defined in section 3113 of title 16); or

(iii) any land or interest in land which the board of directors believes to be only of speculative value;

shall be excluded by the shareholder making the demand for payment, the corporation purchasing the Settlement Common Stock of the shareholder, and any court determining the fair value of the shares of Settlement Common Stock to be purchased.

(2) No person shall have a claim against a Native Corporation or its board of directors based upon the failure of the board to approve a resolution authorized by this subsection.

**(d) Form of payment**

(1) Prior to a vote described in subsection (a)(1), the board of directors of a Native Corporation may approve a resolution to provide that in the event a demand for payment is honored pursuant to subsection (a)(2) payments to each dissenting shareholder shall be made by the corporation through the issuance of a negotiable note in the principal amount of the payment due, which shall be secured by—

(A) a payment bond issued by an insurance company or financial institution;

(B) the deposit in escrow of securities or property having a fair market value equal to at least 125 per centum of the face value of the note; or

(C) a lien upon real property interests of the corporation valued at 125 percent or more of the face amount of the note, except that no such lien shall be applicable to—

(i) land conveyed to the corporation pursuant to section 1613(h)(1) of this title, or any other land used as a cemetery;

(ii) the percentage interest in the corporation's timber resources and subsurface estate that exceeds its percentage interest in revenues from such property under section 1606(i) of this title; or

(iii) the surface estate of land that is both—

(I) exempt from real estate taxation pursuant to section 1636(d)(1)(A) of this title; and

(II) used by the shareholders of the corporation for subsistence uses (as defined in section 3113 of title 16),

unless the Board of Directors<sup>1</sup> of the corporation acts so as to make such lien applicable to such surface estate.

(2) A note issued pursuant to paragraph (1) shall provide that—

(A) interest shall be paid semi-annually, beginning as of the date on which the vote described in subsection (a)(1) occurred, at the rate applicable on such date to obligations of the United States having a maturity date of one year, and

(B) the principal amount and accrued interest on such note shall be payable to the holder at a time specified by the corporation but in

no event later than the date that is five years after the date of the vote described in subsection (a)(1).

**(e) Dividend adjustment**

(1) The cash payment made pursuant to subsection (a) or the principal amount of a note issued pursuant to subsection (d) to a dissenting shareholder shall be reduced by the amount of dividends paid to such shareholder with respect to his or her Settlement Common Stock after the date of the vote described in subsection (a)(1).

(2) Upon receipt of a cash payment pursuant to subsection (a) or a note pursuant to subsection (d), a dissenting shareholder shall no longer have an interest in the shares of Settlement Common Stock or in the Native Corporation.

(Pub. L. 92-203, §38, as added Pub. L. 100-241, §9, Feb. 3, 1988, 101 Stat. 1802.)

**§ 1629e. Settlement Trust option**

**(a) Conveyance of corporate assets**

(1)(A) A Native Corporation may convey assets (including stock or beneficial interests therein) to a Settlement Trust in accordance with the laws of the State (except to the extent that such laws are inconsistent with this section and section 1629b of this title).

(B) The approval of the shareholders of the corporation in the form of a resolution shall be required to convey all or substantially all of the assets of the corporation to a Settlement Trust. A conveyance in violation of this clause shall be void ab initio and shall not be given effect by any court.

(2) No subsurface estate in land shall be conveyed to a Settlement Trust. A conveyance of title to, or any other interest in, subsurface estate in violation of this subparagraph shall be void ab initio and shall not be given effect by any court.

(3) Conveyances made pursuant to this subsection—

(A) shall be subject to applicable laws respecting fraudulent conveyance and creditors rights; and

(B) shall give rise to dissenters rights to the extent provided under the laws of the State only if—

(i) the rights of beneficiaries in the Settlement Trust receiving a conveyance are inalienable; and

(ii) a shareholder vote on such transfer is required by section 1629b(a)(4) of this title.

(4) The provisions of this subsection shall not prohibit a Native Corporation from engaging in any conveyance, reorganization, or transaction not otherwise prohibited under the laws of the State or the United States.

**(b) Authority and limitations of a Settlement Trust**

(1) The purpose of a Settlement Trust shall be to promote the health, education, and welfare of its beneficiaries and preserve the heritage and culture of Natives. A Settlement Trust shall not—

(A) operate as a business;

(B) alienate land or any interest in land received from the settlor Native Corporation

<sup>1</sup> So in original. Probably should not be capitalized.