

Further Update on Validating Defective Corporate Actions

WRITTEN BY

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Following our [February 24 post](#), we learned that representatives of accounting firms sought advice from the SEC on whether they can rely solely on Section 205 Orders to confirm valid issuance of outstanding shares as to which there is uncertainty. We understand that they were informed by the SEC Chief Accountant that a Section 205 Order would not be sufficient and that they should request an opinion of counsel as to the shares being valid as of the time of their issuance.

We believe that should be unnecessary when the Section 205 Order itself states, as authorized by DGCL section 205(b)(8) and as those issued so far to address the *Boxed* uncertainty do, that the corporate actions and share issuances are validated as of the time they took place or the amendment authorizing the share increase was filed with the Delaware Secretary of State. We are hopeful that when the nature and effectiveness of the Section 205 Orders are made clear to the SEC and the accounting firms they will recognize that legal opinions add nothing to the Section 205 Orders issued by the Delaware Court of Chancery and are unnecessary.

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