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Certificate of Incorporation for a New York Close Corporation: A Form—An Addendum

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CERTIFICATE OF INCORPORATION FOR A
NEW YORK CLOSE CORPORATION:
A FORM—AN ADDENDUM

ROBERT A. KESSLER

AS indicated in the December, 1965 issue of the *Fordham Law Review*,¹ the New York Department of State raised certain objections to the author's form certificate of incorporation which was proposed earlier in the *Review*.² After consultation with the Department, it has agreed to accept certificates of incorporation following the form,³ if they are otherwise in proper legal form, subject, if the particular paragraph is used, to the following:

Art. 4, Section 5,⁴ for words after "paid", substitute: "upon any of such shares, until the provisions of this paragraph are complied with."

Art. 4, Section 6,⁵ add at beginning of first sentence: "To the extent permitted by law,". Delete the second sentence.

Art. 4, Section 7,⁶ substitute: "to the extent permitted by law, the aforesaid price fixed by the by-laws of the Corporation" for the words "conclusively presumed to be . . . for his shares".

Art. 4, Section 8,⁷ add at end of first sentence: "until the provisions of Section 4 of this Article are complied with."

Art. 10, Section 1,⁸ last line, substitute: "transferee" for "holder".

Art. 11,⁹ introductory paragraph should read, in full, as follows: "The certificate, or certificates, evidencing shares shall bear conspicuously on the face or back thereof the following notice:".

Art. 11, second sentence from the end,¹⁰ after "parties", add: "having knowledge thereof".

As to forms set forth in footnotes, the beginning phrase of the form for mandatory dividends¹¹ should read: "Subject to the limitations of § 513

1. Addendum, 34 *Fordham L. Rev.* 268 (1965).

2. Kessler, *Certificate of Incorporation for a New York Close Corporation: A Form*, 33 *Fordham L. Rev.* 541 (1965).

3. Letter From New York Department of State, Division of Corporations and State Records, to Robert A. Kessler, Sept. 6, 1966.

4. Kessler, *supra* note 2, at 558-59.

5. *Id.* at 559.

6. *Id.* at 559-60.

7. *Id.* at 560.

8. *Id.* at 577.

9. *Id.* at 579.

10. *Id.* at 580.

11. *Id.* at 580 n.93.

of the Business Corporation Law, annual dividends on the common stock will be declared by the Corporation as follows”

Since the above obviously represent merely minor changes in verbiage, which, in the author's opinion, do not destroy the substance of the form as originally drafted, it does not seem appropriate to prolong this note with a defense of the language originally used. However, since changes are to be made in the form certificate, the author will prolong this note somewhat by proposing the following additional change, which was not occasioned by any objection from the Department:

Art. 6, Section 11,¹² add the following after the word “repurchase” in the fifth line: “the acceptance of any offer under Section 7 of this Article or Section 4 of Article 7, or the making of any request under Section 5 of Article 4 or Section 3 of Article 10, in which case (a majority) (all) of the directors then in office shall also constitute a quorum for the transaction of the items of business enumerated under this Section.”. One of the parenthetical expressions should be chosen.

As to footnote 95 of the original article,¹³ N.Y. Sess. Laws 1965, ch. 609, added the following to N.Y. Bus. Corp. Law section 104(d), effective September 1, 1965, after publication of the original article: “In lieu of being signed and verified or acknowledged, the certificate may be subscribed by such person and affirmed by him as true under the penalties of perjury.”

12. *Id.* at 567-68.

13. *Id.* at 582.