Published on *The National Law Review* https://natlawreview.com

A Solution To Yesterday's Problem

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Yesterday, I pointed out that California Corporations Code Section 315(g) creates a seemingly insurmountable hurdle to obtaining shareholder approval of a loan to an officer or director when that officer or director owns more than 50% of the outstanding shares. One solution is to obtain the approval by written consent of the shareholders.

Section 315(g)(1) provides that approval may be obtained by written consent of a majority of the outstanding shares without counting as outstanding or as consenting any shares owned by any director or officer that is eligible to participate in the plan or transaction that is subject to the approval. Thus, the same action that cannot be taken at a meeting due to the lack of a quorum being "otherwise present" can be taken by written consent.

This problem and its solution is, of course, irrelevant to publicly traded companies that are prohibited by Section 402 of the Sarbanes-Oxley Act of 2002 form extending loans to directors or executive officers. Also, it may be possible that no shareholder approval is required by Section 315, but that is a subject for another post.

National Law Review, Volume X, Number 225

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