July 2, 2007

Re: Notice of Action by Written Consent of the Stockholders and Notice of Appraisal Rights

Dear Former Stockholder of Fiberxon, Inc.

In accordance with Section 228(e) of the Delaware General Corporation Law, we hereby advise you that on or about June 28, 2007, the stockholders of Fiberxon, Inc. ("Fiberxon") approved without a meeting, Amendment No. 1 to the Agreement and Plan of Merger, dated as of June 26, 2007, by and among MRV Communications, Inc., a Delaware corporation ("MRV"), Lighthouse Transition Corporation, a Delaware corporation, Lighthouse Acquisition Corporation, a Delaware corporation, Fiberxon, and Yoram Snir, as Stockholder's Agent (the "Amendment"), a copy of which is attached hereto as Exhibit A. The Amendment amends the original Agreement and Plan of Merger, dated January 26, 2007 (the "Agreement"), by providing for a closing date of July 1, 2007, amending certain closing conditions in the Agreement and adding additional terms and conditions to the Agreement. The Amendment and the Agreement together are referred to hereinafter as the "Merger Agreement."

The merger transactions contemplated by the Merger Agreement (the "Mergers") became effective on July 1, 2007. This letter constitutes notice to you as a former stockholder of Fiberxon, Inc. of your appraisal rights. The Mergers have converted each share of the common stock of Fiberxon held by you exclusively to the right to receive the applicable Merger Consideration as described in the Merger Agreement. Any and all other rights that you had as a stockholder of Fiberxon ceased immediately upon the completion of the Mergers, except for your appraisal rights pursuant to Section 262 of the Delaware General Corporation Law. In order to perfect your appraisal rights, you must follow certain procedures prescribed by Section 262. If you comply with such procedures, you potentially will be entitled to a judicial appraisal of the fair value of your shares, exclusive of any element of value arising from the accomplishment or expectation of the Mergers, and to receive payment of the fair value of your shares in cash from MRV. This notice is not intended to be a complete summary of Section 262 and is qualified in its entirely by reference to Section 262, the text of which is included with this notice as Exhibit B pursuant to Delaware law. **We advise you to consult with legal counsel if you are considering demanding appraisal pursuant to Section 262.**

If you elect to exercise your appraisal rights, you must mail or deliver a written demand for appraisal to:

MRV Communications, Inc.
20415 Nordhoff Street
Chatsworth, CA 91311
Attn: Chief Executive Officer

The written demand for appraisal should specify your name and mailing address and the number of shares of Fiberxon common stock covered by the demand, and should state that you are demanding appraisal of your shares in accordance with Section 262.

Please contact MRV with any questions that you may have regarding the contents of this letter.

Sincerely,

Kevin Rubin
MRV Communications, Inc.

LA-183124 v3

AMENDMENT NO. 1 TO AGREEMENT AND PLAN OF MERGER

This Amendment No. 1 (the "Amendment") amends the Agreement and Plan of Merger made and entered into as of June 26, 2007 (the "Agreement") by and among MRV Communications, Inc., a Delaware corporation ("MRV"), Fiberxon, Inc., a Delaware corporation ("Fiberxon"), Lighthouse Transition Corporation, a Delaware corporation ("Submerger"), Lighthouse Acquisition Corporation, a Delaware corporation (the "Survivor"), and, as to Article VIII and Article IX only, Yoram Snir, as Stockholders' Agent. All capitalized terms used in this Amendment and not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

RECITALS:

WHEREAS, the parties do not anticipate delivery of the Fiberxon audited financial statements for the 2004, 2005 and 2006 fiscal years, necessary to fulfill the closing condition set forth in Section 6.3(j) of the Agreement, until a date after the End Date;

WHEREAS, the parties to the Agreement remain committed to proceeding with the transactions contemplated by and set forth in the Agreement;

WHEREAS, the Agreement may be amended only in a written instrument signed by the parties to the Agreement; and

WHEREAS, the parties desire to amend the Agreement to protect and support the interests of the MRV and Fiberxon stockholders alike, and enable a Closing to occur immediately after June 30, 2007.

NOW, THEREFORE, for and in consideration of the promises and mutual covenants contained in the Agreement and herein, and other valuable consideration, the parties to the Agreement hereby amend the terms and conditions of the Agreement as follows:

1. Closing and Effective Dates.

(a) Subsection 1.2 shall be deleted in its entirety and replaced by the following:

> 1.2 The Closing. Upon the terms and subject to the conditions set forth in Article VI of this Agreement, the closing of the transactions contemplated hereby (the "**Closing**") shall take place no earlier than 12:01 a.m. Pacific Time, Sunday, July 1, 2007 (the "**Closing Date**"), at the offices of Kirkpatrick & Lockhart Preston Gates Ellis LLP at 10100 Santa Monica Boulevard, 7th Floor, Los Angeles, California 90067, or at such other time on July 1, 2007, and/or date, time, or location upon which the parties hereto shall mutually agree, and by which time the conditions set forth in Article VI of this Agreement shall have been satisfied or waived (other than those that by their terms are to be satisfied or waived at the Closing).

(b) Subsection 1.3 shall be deleted in its entirety and replaced by the following:

1.3 Effective Time. Subject to the provisions of this Agreement, (a) the parties hereto shall cause the First Merger to be consummated by filing a certificate of merger (the "**First Certificate of Merger**") with the Secretary of State of the State of Delaware, and (b) MRV shall cause the Second Merger to be consummated on the same Business Day as the filing of the First Certificate of Merger, by filing a certificate of merger with the Secretary of State of the State of Delaware for the Second Merger (the "**Second Certificate of Merger**"), in each case, in such form as is required by, and executed and acknowledged in accordance with, the relevant provisions of the DGCL and making all other filings or recordings required under the DGCL. The First Certificate of Merger when duly filed with the Secretary of State of the State of Delaware in accordance with the relevant provisions of the DGCL shall state an effective date for the First Merger of the same date as the Closing Date and the effective time of the First Merger shall be the same time as the time when the Closing has been completed, unless the parties hereto shall mutually agree to a different date and time for filing and effectiveness. The Second Certificate of Merger when duly filed with the Secretary of State of the State of Delaware in accordance with the relevant provisions of the DGCL shall state an effective date for the Second Merger of the same date as the effective date of the First Merger and the effective time for the Second Merger shall be a time that is one minute after the effective time of the First Merger, unless the parties hereto shall mutually agree to a subsequent date and time for filing and effectiveness. The effective time of the First Merger is sometimes referred to herein as the "**Effective Time**."

2. Lock-up Arrangements.

(a) The following shall be inserted in the Merger Agreement as Subsection 1.7(i):

(i) Lock Up Arrangement; Legend and Stop Order.

(i) From the Closing Date until the earlier of (a) the third Business Day following the Financials Receipt Date as defined in the Merger Agreement, (b) on the date that is twelve (12) months after the closing date, or (c) the revocation, suspension, modification or other similar change of material effect to the stop order referenced in Section 6.2(h) (the "**Lock-up Period**"), each former holder of Fiberxon Capital Stock shall not (a) sell, assign, exchange, transfer, pledge, hypothecate, distribute or otherwise dispose of (other than by operation of law where the transferee remains subject to and bound by the provisions of this Agreement applicable during the Lock-Up Period) (i) any Merger Shares, excluding the MRV Common Stock underlying the assumed and converted Fiberxon Options that have been exercised by a holder of such Fiberxon Options following the Closing Date, or (ii) any interest (including, without limitation, an option to buy or sell) in any such Merger Shares, in whole or in part, and no such attempted transfer shall be treated as effective for any purpose, or (b) engage in any transaction in respect to the Merger Shares received by the former holder of Fiberxon Capital Stock pursuant to the Mergers or any interest therein, the intent or effect of which is the

effective economic disposition of such shares (including, but not limited to, engaging in put, call, short-sale, straddle or similar market transactions) (the foregoing restrictions are referred to herein as the "**Lock-Up Restrictions**").

(ii) To effect the Lock-up Restrictions as set forth in this Section 1.7(i), upon Closing, MRV will issue a stop order to its transfer agent with respect to the Merger Shares, excluding any shares of MRV Common Stock issued upon exercise of the assumed and converted Fiberxon Options during the Lock-Up Period, shall bear the legend set forth below; MRV shall instruct its transfer agent to remove the stop order and the legend within three Trading Days of the expiration of the Lock-Up Period.

PURSUANT TO SECTION 1.7(i) OF THAT CERTAIN AGREEMENT AND PLAN OF MERGER BY AND AMONG MRV COMMUNICATIONS, INC. ("MRV"), FIBERXON, INC. ("FIBERXON"), LIGHTHOUSE TRANSITION CORPORATION, LIGHTHOUSE ACQUISITION CORPORATION, AND YORAM SNIR, AS STOCKHOLDERS' AGENT, DATED AS OF JANUARY 26, 2007, AS AMENDED BY AMENDMENT NO. 1 TO AGREEMENT AND PLAN OF MERGER DATED AS OF JUNE 26, 2007 (THE "MERGER AGREEMENT"), THE SHARES REPRESENTED BY THIS CERTIFICATE MAY NOT BE SOLD, ASSIGNED, EXCHANGED, TRANSFERRED, ENCUMBERED, PLEDGED, DISTRIBUTED OR OTHERWISE DISPOSED OF (OTHER THAN BY OPERATION OF LAW WHERE THE TRANSFEREE REMAINS SUBJECT TO AND BOUND BY THE PROVISIONS OF THIS AGREEMENT APPLICABLE DURING THE LOCK-UP PERIOD) PRIOR TO THE EARLIER OF (A) THE THIRD TRADING DAY FOLLOWING THE FINANCIALS RECEIPT DATE AS DEFINED IN THE MERGER AGREEMENT, (B) JULY 1, 2008 OR (C) AS OTHERWISE PROVIDED IN THE MERGER AGREEMENT, AS AMENDED (THE "LOCK-UP PERIOD"). UPON THE EXPIRATION OF THE LOCK-UP PERIOD THIS LEGEND SHALL BE VOID AND OF NO FURTHER EFFECT. THE ISSUER AGREES TO REMOVE THIS RESTRICTIVE LEGEND (AND ANY STOP ORDER PLACED WITH ITS TRANSFER AGENT) UPON THE EXPIRATION OF THE LOCK-UP PERIOD. A COPY OF THE MERGER AGREEMENT IS AVAILABLE FOR REVIEW AT THE PRINCIPAL EXECUTIVE OFFICE OF THE ISSUER.

(b) The following shall be inserted in the Merger Agreement as Subsection 6.2(h):

(h) MRV Lock-up. MRV shall have issued a stop order to its transfer agent restricting the transfer of shares of MRV Common Stock held by its directors and executive officers as of the Closing Date, on the same terms and conditions as applicable to the Merger Shares pursuant to Section 1.7(i) of this Agreement.

3. Supplemental Solicitation of Consent. The following shall be inserted in the Merger Agreement as Subsection 5.4(e):

(e) Upon any material amendment of this Agreement subsequent to the distribution of the Soliciting Materials to the Fiberxon Stockholders, as soon as practical and prior to the Closing Date, and consistent with the terms and conditions of this Section 5.4, Fiberxon shall prepare and distribute supplemental soliciting materials describing the material terms and conditions of such amendment to this Agreement and seeking consent of this Agreement, as amended, from the Fiberxon Support Stockholders (the "**Supplemental Soliciting Materials**").

4. Form S-8.

(a) Subsection 5.10(g) shall be deleted in its entirety and replaced by the following:

(g) [RESERVED.]

(b) Subsection 5.10(i) shall be deleted in its entirety and replaced by the following:

(i) Form S-8. MRV shall take all corporate action necessary to reserve for issuance a sufficient number of shares of MRV Common Stock for delivery upon exercise of the assumed Fiberxon Options and shall use all reasonable efforts to file as soon as practical following the Financials Receipt Date, and no later than seven (7) Business Days thereafter, a registration statement on Form S-8 (or any successor to Form S-8), to the extent available, so as to register the shares of MRV Common Stock subject to such Fiberxon Options, and shall use all reasonable efforts to maintain the effectiveness of such registration statement thereafter for so long as any of such options or other rights remain outstanding.

5. Adjustment of Closing Conditions.

(a) Subsection 6.1(a) shall be deleted in its entirety and replaced by the following:

(a) Solicitation and Approval. Fiberxon shall have sent the Supplemental Soliciting Materials to the Fiberxon Stockholders and this Agreement, as amended, and the First Merger shall have received, in response to such supplemental solicitation of consent, the requisite approval of at least 57% of the outstanding shares of Fiberxon Common Stock, 78% of the Fiberxon Series A Preferred Stock, 67% of the Fiberxon Series B Preferred Stock, 85% of the Fiberxon Series C Preferred Stock, and 76% of the Fiberxon Series B and C Preferred Stock (voting as a single class).

(b) Subsection 6.1(c) shall be deleted in its entirety and replaced by the following:

(c) Permit to Issue Securities.

(i) If Section 5.2(a) applies, the Commissioner shall have issued the California Permit, and the qualification thereunder shall not be the subject of any stop order or proceedings seeking a stop order. If this Agreement shall have been amended subsequent to the issuance of the California Permit, MRV shall have submitted a post-effective amendment to its application for the California Permit and the Commissioner shall have

issued an amended California Permit reflecting receipt of such amendment.

(ii) If Section 5.2(b) applies, the parties are reasonably satisfied that the MRV securities to be issued pursuant to this Agreement may be issued under other exemptions to the Securities Act and have agreed on the process for issuance of such securities.

(c) Subsection 6.3(a) shall be deleted in its entirety and replaced by the following:

(a) Approval. This Agreement, as amended, and the First Merger shall have received, in response to the Supplemental Soliciting Materials, the requisite approval of at least 57% of the outstanding shares of Fiberxon Common Stock, 78% of the Fiberxon Series A Preferred Stock, 67% of the Fiberxon Series B Preferred Stock, 85% of the Fiberxon Series C Preferred Stock, and 76% of the Fiberxon Series B and C Preferred Stock (voting as a single class).

(d) Subsection 6.3(j) shall be deleted in its entirety and subsection 6.3(k) re-numbered accordingly.

6. Timing of Deferred Consideration Payment. Subsection 8.2(a) shall be deleted in its entirety and replaced by the following:

(a) Luminent IPO. Unless it shall have previously become payable as the result of an Acceleration Event, the Deferred Consideration Payment shall become due and payable (i) on the third business day after the closing date of the Luminent IPO or (ii) if the Luminent IPO has not occurred on or prior to such date, on the date that is eighteen (18) months after the Financials Receipt Date (the "IPO Deadline").

7. Additional Definitions. The following shall be inserted in the Merger Agreement in Subsection 10.2:

"Financials Receipt Date" means the date of the receipt by MRV of Fiberxon's consolidated financial statements (including restatements thereof, if applicable) for the periods ended December 31, 2004, 2005 and 2006, for which (as of the date of receipt), together with an opinion or opinions thereon by a firm or firms of independent public accountants registered with the Public Company Accounting Oversight Board which are reasonably acceptable to MRV (which, in making the selection of such auditors, shall consult with, but not necessarily agree with or be bound by, the members of Fiberxon's board of directors in office immediately prior to the effectiveness of the First Merger who are reasonably available therefor), the form and content of which financial statements and opinion(s), with respect to MRV, satisfies, and with respect to Luminent, would satisfy, the provisions of Regulation S-X of the rules and regulations of the SEC (or any successor rule or regulation to Regulation S-X), such opinion(s) with respect to such financial statements is, on receipt and at all times relevant thereafter, in full force and effect and such accountants have not

provided to any of Fiberxon, Luminent or MRV notice that such opinion(s) and related financial statements may not be relied upon.

"Lock-up Period" has the meaning set forth in Section 1.7(i).

"Lock-up Restrictions" has the meaning set forth in Section 1.7(i).

"**SEC Reports**" has the meaning set forth in Section 3.5.

"Supplemental Soliciting Materials" has the meaning set forth in Section 5.4(e).

8. Revised Definitions. The following shall be substituted in the Merger Agreement as the definitions of the listed terms, respectively, in Subsection 10.2:

"**Certificates**" means certificates which immediately prior to the Effective Time represented outstanding shares of Fiberxon Capital Stock as set forth in Section 1.10(c).

"Confidentiality Agreement" has the meaning set forth in Section 5.5(a).

"**DOL**" has the meaning set forth in Section 2.11(a)(iii).

"**Employee**" has the meaning set forth in Section 2.11(a)(iv).

"**End Date**" has the meaning set forth in Section 7.1(b).

"**ERISA Affiliate**" has the meaning set forth in Section 2.11(a)(vi).

"**ERISA**" has the meaning set forth in Section 2.11(a)(v).

"**Excess Payments**" has the meaning set forth in Section 1.9(e).

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended.

"**Fiberxon Balance Sheet**" has the meaning set forth in Section 2.4(c).

"**HSR Act**" has the meaning set forth in Section 2.3(c).

"**IPO Warranty Payment**" has the meaning in Section 9.10.

"**Material Divestiture**" has the meaning set forth in Section 5.8(e).

"Merger Shares" means shares of MRV Common Stock issuable pursuant to Section 1.7, which at the time of issuance as part of the Merger Consideration include the Lock-Up Restrictions.

"MRV Common Stock" means the common stock, $0.0017 par value per share, of MRV; *provided, however*, that solely with respect to the definition of MRV Maximum

Shares in Subsection 10.2, MRV Common Stock means the shares of common stock, $0.0017 par value per share, of MRV outstanding immediately prior to effectiveness of the First Merger; and *provided further, however,* that solely with respect to the provisions of Section 5.10, MRV Common Stock means the shares of common stock, $0.0017 par value per share, of MRV, which at the time of issuance upon exercise of assumed Fiberxon Options exclude the Lock-Up Restrictions.

"**Stockholders' Agent**" means Yoram Snir.

"**US GAAP**" has the meaning set forth in Section 2.4(c).

9. Deleted Definitions. The definitions of the following terms shall be deleted in their entirety from Subsection 10.2: "**MRV Balance Sheet**," "**MRV Financials**," "**MRV Permits,**" "**MRV SEC Reports**".

10. Fees and Expenses. The following shall be inserted in the Merger Agreement as Section 10.15:

10.15 Fees and Expenses of Fiberxon's Financial Statements. The out-of-pocket fees and expenses paid to third parties associated with the preparation and delivery of the Fiberxon consolidated financial statements and opinion(s) of independent registered public accountants thereon contemplated to satisfy the provisions of this Amendment relating to the definition of "Financials Receipt Date" in Section 10.2 and incurred following the Closing, shall be borne one-half by MRV and one-half by offset against the Set-Off Fund or Special Set-Off Fund, as MRV may determine in its discretion, and to extent there are insufficient amounts in either the Set-Off Fund or Special Set-Off Fund against which to satisfy the full amount of the one-half share of such fees and expenses to be satisfied by offset, then both the Set-Off Fund and Special Set-Off Fund may be used for offset to the extent necessary to satisfy the full amount of such fees and expenses to be satisfied by offset. No other fees or expenses associated with the preparation and delivery of the Fiberxon financial statements and related opinions shall be recoverable from the Set-Off Fund or the Special Set-Off Fund. Notwithstanding any provision of the Agreement or this Amendment to the contrary, the procedures specified in Article IX of the Agreement shall not be applicable to the set-off contemplated by this Section 10.15. MRV shall furnish to the Stockholders Agent upon request reasonable documentation supporting the aggregate fees and expenses incurred.

11. Continued Effect of Merger Agreement. All terms and conditions which the parties to the Agreement do not hereby explicitly amend remain unchanged and in full force and effect, and the parties reserve all existing rights thereunder.

12. Counterparts. This Amendment may be executed and delivered in any number of facsimile counterparts, each of which shall be an original, but which together constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed by their duly authorized respective officers, as of the 26th day of June, 2007.

MRV COMMUNICATIONS, INC.

By: _____
Name: ~~Noam Lotan~~ Shlomo Margalit
Title: ~~President and CEO~~ Chairman of the Board

LIGHTHOUSE TRANSITION CORPORATION

By: _____
Name: Kevin Rubin
Title: President and CEO

LIGHTHOUSE ACQUISITION CORPORATION

By: _____
Name: Near Margalit
Title: President and CEO

FIBERXON, INC.

By: _____
Name: Jack Lu
Title: Chief Executive Officer

Solely for purposes of Articles III and IX:
YORAM SNIR, AS STOCKHOLDERS' AGENT

By: _____
Name: Yoram Snir

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Title: President and CEO

LIGHTHOUSE TRANSITION CORPORATION

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Solely for purposes of Articles III and IX:
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By: _____
Name: Yoram Snir

Section 262 of the Delaware General Corporate Law

TITLE 8

Corporations

CHAPTER 1. GENERAL CORPORATION LAW

Subchapter IX. Merger, Consolidation or Conversion

§ 262. Appraisal rights.

(a) Any stockholder of a corporation of this State who holds shares of stock on the date of the making of a demand pursuant to subsection (d) of this section with respect to such shares, who continuously holds such shares through the effective date of the merger or consolidation, who has otherwise complied with subsection (d) of this section and who has neither voted in favor of the merger or consolidation nor consented thereto in writing pursuant to § 228 of this title shall be entitled to an appraisal by the Court of Chancery of the fair value of the stockholder's shares of stock under the circumstances described in subsections (b) and (c) of this section. As used in this section, the word "stockholder" means a holder of record of stock in a stock corporation and also a member of record of a nonstock corporation; the words "stock" and "share" mean and include what is ordinarily meant by those words and also membership or membership interest of a member of a nonstock corporation; and the words "depository receipt" mean a receipt or other instrument issued by a depository representing an interest in one or more shares, or fractions thereof, solely of stock of a corporation, which stock is deposited with the depository.

(b) Appraisal rights shall be available for the shares of any class or series of stock of a constituent corporation in a merger or consolidation to be effected pursuant to § 251 (other than a merger effected pursuant to § 251(g) of this title), § 252, § 254, § 257, § 258, § 263 or § 264 of this title:

(1) Provided, however, that no appraisal rights under this section shall be available for the shares of any class or series of stock, which stock, or depository receipts in respect thereof, at the record date fixed to determine the stockholders entitled to receive notice of and to vote at the meeting of stockholders to act upon the agreement of merger or consolidation, were either (i) listed on a national securities exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc. or (ii) held of record by more than 2,000 holders; and further provided that no appraisal rights shall be available for any shares of stock of the constituent corporation surviving a merger if the merger did not require for its approval the vote of the stockholders of the surviving corporation as provided in subsection (f) of § 251 of this title.

(2) Notwithstanding paragraph (1) of this subsection, appraisal rights under this section shall be available for the shares of any class or series of stock of a constituent corporation if the holders thereof are required by the terms of an agreement of merger or consolidation pursuant to §§ 251, 252, 254, 257, 258, 263 and 264 of this title to accept for such stock anything except:

a. Shares of stock of the corporation surviving or resulting from such merger or consolidation, or depository receipts in respect thereof;

b. Shares of stock of any other corporation, or depository receipts in respect thereof, which shares of stock (or depository receipts in respect thereof) or depository receipts at the effective date of the merger or consolidation will be either listed on a national securities exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc. or held of record by more than 2,000 holders;

c. Cash in lieu of fractional shares or fractional depository receipts described in the foregoing subparagraphs a. and b. of this paragraph; or

d. Any combination of the shares of stock, depository receipts and cash in lieu of fractional shares or fractional depository receipts described in the foregoing subparagraphs a., b. and c. of this paragraph.

(3) In the event all of the stock of a subsidiary Delaware corporation party to a merger effected under § 253 of this title is not owned by the parent corporation immediately prior to the merger, appraisal rights shall be available for the shares of the subsidiary Delaware corporation.

(c) Any corporation may provide in its certificate of incorporation that appraisal rights under this section shall be available for the shares of any class or series of its stock as a result of an amendment to its certificate of incorporation, any merger or consolidation in which the corporation is a constituent corporation or the sale of all or substantially all of the assets of the corporation. If the certificate of incorporation contains such a provision, the procedures of this section, including those set forth in subsections (d) and (e) of this section, shall apply as nearly as is practicable.

(d) Appraisal rights shall be perfected as follows:

(1) If a proposed merger or consolidation for which appraisal rights are provided under this section is to be submitted for approval at a meeting of stockholders, the corporation, not less than 20 days prior to the meeting, shall notify each of its stockholders who was such on the record date for such meeting with respect to shares for which appraisal rights are available pursuant to subsection (b) or (c) hereof that appraisal rights are available for any or all of the shares of the constituent corporations, and shall include in such notice a copy of this section. Each stockholder electing to demand the appraisal of such stockholder's shares shall deliver to the corporation, before the taking of the vote on the merger or consolidation, a written demand for appraisal of such stockholder's shares. Such demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such stockholder's shares. A proxy or vote against the merger or consolidation shall not constitute such a demand. A stockholder electing to take such action must do so by a separate written demand as herein provided. Within 10 days after the effective date of such merger or consolidation, the surviving or resulting corporation shall notify each stockholder of each constituent corporation who has complied with this subsection and has not voted in favor of or consented to the merger or consolidation of the date that the merger or consolidation has become effective; or

(2) If the merger or consolidation was approved pursuant to § 228 or § 253 of this title, then either a constituent corporation before the effective date of the merger or consolidation or the surviving or resulting corporation within 10 days thereafter shall notify each of the holders of any class or series of stock of such constituent corporation who are entitled to appraisal rights of the approval of the merger or consolidation and that appraisal rights are available for any or all shares of such class or series of stock of such constituent corporation, and shall include in such notice a copy of this section. Such notice may, and, if given on or after the effective date of the merger or consolidation, shall, also notify such stockholders of the effective date of the merger or

consolidation. Any stockholder entitled to appraisal rights may, within 20 days after the date of mailing of such notice, demand in writing from the surviving or resulting corporation the appraisal of such holder's shares. Such demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such holder's shares. If such notice did not notify stockholders of the effective date of the merger or consolidation, either (i) each such constituent corporation shall send a second notice before the effective date of the merger or consolidation notifying each of the holders of any class or series of stock of such constituent corporation that are entitled to appraisal rights of the effective date of the merger or consolidation or (ii) the surviving or resulting corporation shall send such a second notice to all such holders on or within 10 days after such effective date; provided, however, that if such second notice is sent more than 20 days following the sending of the first notice, such second notice need only be sent to each stockholder who is entitled to appraisal rights and who has demanded appraisal of such holder's shares in accordance with this subsection. An affidavit of the secretary or assistant secretary or of the transfer agent of the corporation that is required to give either notice that such notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein. For purposes of determining the stockholders entitled to receive either notice, each constituent corporation may fix, in advance, a record date that shall be not more than 10 days prior to the date the notice is given, provided, that if the notice is given on or after the effective date of the merger or consolidation, the record date shall be such effective date. If no record date is fixed and the notice is given prior to the effective date, the record date shall be the close of business on the day next preceding the day on which the notice is given.

(e) Within 120 days after the effective date of the merger or consolidation, the surviving or resulting corporation or any stockholder who has complied with subsections (a) and (d) hereof and who is otherwise entitled to appraisal rights, may file a petition in the Court of Chancery demanding a determination of the value of the stock of all such stockholders. Notwithstanding the foregoing, at any time within 60 days after the effective date of the merger or consolidation, any stockholder shall have the right to withdraw such stockholder's demand for appraisal and to accept the terms offered upon the merger or consolidation. Within 120 days after the effective date of the merger or consolidation, any stockholder who has complied with the requirements of subsections (a) and (d) hereof, upon written request, shall be entitled to receive from the corporation surviving the merger or resulting from the consolidation a statement setting forth the aggregate number of shares not voted in favor of the merger or consolidation and with respect to which demands for appraisal have been received and the aggregate number of holders of such shares. Such written statement shall be mailed to the stockholder within 10 days after such stockholder's written request for such a statement is received by the surviving or resulting corporation or within 10 days after expiration of the period for delivery of demands for appraisal under subsection (d) hereof, whichever is later.

(f) Upon the filing of any such petition by a stockholder, service of a copy thereof shall be made upon the surviving or resulting corporation, which shall within 20 days after such service file in the office of the Register in Chancery in which the petition was filed a duly verified list containing the names and addresses of all stockholders who have demanded payment for their shares and with whom agreements as to the value of their shares have not been reached by the surviving or resulting corporation. If the petition shall be filed by the surviving or resulting corporation, the petition shall be accompanied by such a duly verified list. The Register in Chancery, if so ordered by the Court, shall give notice of the time and place fixed for the hearing of such petition by registered or certified mail to the surviving or resulting corporation and to the stockholders shown on the list at the addresses therein stated. Such notice shall also be given by 1 or more publications at least 1 week before the day of the hearing, in a newspaper of general circulation published in the City of Wilmington, Delaware or such publication as the Court deems advisable. The forms of the notices

by mail and by publication shall be approved by the Court, and the costs thereof shall be borne by the surviving or resulting corporation.

(g) At the hearing on such petition, the Court shall determine the stockholders who have complied with this section and who have become entitled to appraisal rights. The Court may require the stockholders who have demanded an appraisal for their shares and who hold stock represented by certificates to submit their certificates of stock to the Register in Chancery for notation thereon of the pendency of the appraisal proceedings; and if any stockholder fails to comply with such direction, the Court may dismiss the proceedings as to such stockholder.

(h) After determining the stockholders entitled to an appraisal, the Court shall appraise the shares, determining their fair value exclusive of any element of value arising from the accomplishment or expectation of the merger or consolidation, together with a fair rate of interest, if any, to be paid upon the amount determined to be the fair value. In determining such fair value, the Court shall take into account all relevant factors. In determining the fair rate of interest, the Court may consider all relevant factors, including the rate of interest which the surviving or resulting corporation would have had to pay to borrow money during the pendency of the proceeding. Upon application by the surviving or resulting corporation or by any stockholder entitled to participate in the appraisal proceeding, the Court may, in its discretion, permit discovery or other pretrial proceedings and may proceed to trial upon the appraisal prior to the final determination of the stockholder entitled to an appraisal. Any stockholder whose name appears on the list filed by the surviving or resulting corporation pursuant to subsection (f) of this section and who has submitted such stockholder's certificates of stock to the Register in Chancery, if such is required, may participate fully in all proceedings until it is finally determined that such stockholder is not entitled to appraisal rights under this section.

(i) The Court shall direct the payment of the fair value of the shares, together with interest, if any, by the surviving or resulting corporation to the stockholders entitled thereto. Interest may be simple or compound, as the Court may direct. Payment shall be so made to each such stockholder, in the case of holders of uncertificated stock forthwith, and the case of holders of shares represented by certificates upon the surrender to the corporation of the certificates representing such stock. The Court's decree may be enforced as other decrees in the Court of Chancery may be enforced, whether such surviving or resulting corporation be a corporation of this State or of any state.

(j) The costs of the proceeding may be determined by the Court and taxed upon the parties as the Court deems equitable in the circumstances. Upon application of a stockholder, the Court may order all or a portion of the expenses incurred by any stockholder in connection with the appraisal proceeding, including, without limitation, reasonable attorney's fees and the fees and expenses of experts, to be charged pro rata against the value of all the shares entitled to an appraisal.

(k) From and after the effective date of the merger or consolidation, no stockholder who has demanded appraisal rights as provided in subsection (d) of this section shall be entitled to vote such stock for any purpose or to receive payment of dividends or other distributions on the stock (except dividends or other distributions payable to stockholders of record at a date which is prior to the effective date of the merger or consolidation); provided, however, that if no petition for an appraisal shall be filed within the time provided in subsection (e) of this section, or if such stockholder shall deliver to the surviving or resulting corporation a written withdrawal of such stockholder's demand for an appraisal and an acceptance of the merger or consolidation, either within 60 days after the effective date of the merger or consolidation as provided in subsection (e) of this section or thereafter with the written approval of the corporation, then the right of such

stockholder to an appraisal shall cease. Notwithstanding the foregoing, no appraisal proceeding in the Court of Chancery shall be dismissed as to any stockholder without the approval of the Court, and such approval may be conditioned upon such terms as the Court deems just.

(l) The shares of the surviving or resulting corporation to which the shares of such objecting stockholders would have been converted had they assented to the merger or consolidation shall have the status of authorized and unissued shares of the surviving or resulting corporation.