Must An Officer's Certificate Always State That The Board Approval?

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Recently, I was looking at the form of Officer’s Certificate of Approval of Agreement of Merger on the Secretary of State’s website. Paragraph 2 of the form states:

“The principal terms of the Agreement of Merger in the form attached were duly approved by the board of directors and by the shareholders of the corporation by a vote that equaled or exceeded the vote required.”

Corporations Code Section 1103 provides that after approval of a merger by the board and any approval of the outstanding shares (Section 152) required by Chapter 12 (commencing with Section 1200), the surviving corporation must file a copy of the agreement of merger with an officers’ certificate of each constituent corporation attached stating that:

- the total number of outstanding shares of each class entitled to vote on the merger,
• the principal terms of the agreement in the form attached were approved by that corporation by a vote of a number of shares of each class which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, or

• the merger agreement was entitled to be and was approved by the board alone under the provisions of Section 1201.

If equity securities of a parent of a constituent corporation are to be issued in the merger, the officers’ certificate of that constituent corporation must state either that:

• no vote of the shareholders of the parent was required, or

• the required vote was obtained.

While Corporations Code Section 1200(a) requires board approval of each constituent corporation in a merger reorganization, Section 1103 specifically requires that the officers’ certificate specify board approval only when the merger is entitled to be approved by the board alone.

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