ANSWER TO QUESTION NO. 2

1. Validity of the proxy from Dan to Carolyn: Michigan law expressly permits shareholders to authorize other persons to act for them by proxy. MCL 450.1421(1). A proxy is generally only valid for 3 years, unless otherwise provided in the proxy. §1421(2). A proxy may be granted by means of "telegram, cablegram, or other means of electronic transmission." §1421(3)(b). If a proxy is granted in such a manner, it must "either set forth or be submitted with information from which it can be determined that the telegram, cablegram, or other electronic transmission was authorized by the shareholder." Additionally, if the electronic transmission is determined to be valid, the inspectors or persons making the validity determination must specify the information upon which they relied. The facts indicate that the e-mail was sent from Dan's personal e-mail, included the notice sent from the corporation to Dan, and specifically authorized Carolyn to vote for the resolution for Dan by proxy. Because the e-mail contains information from which it can be determined that the e-mail was authorized by Dan, his challenge to the validity of the proxy will most likely be unsuccessful.

2. Validity of the shareholder vote: Increasing the aggregate number of shares in a corporation is specifically contemplated as a basis upon which to amend the articles of incorporation under Michigan law. MCL 450.1602(d). The only issue to be determined is whether the proper procedures were followed regarding the amendment of the articles of incorporation.

MCL 450.1611(4) requires that notice be given to each shareholder of record entitled to vote "within the time and in the manner" provided for giving notice of shareholder meetings. MCL 450.1404(1) permits notice "not less than 10 nor more than 60 days" before the date of the shareholder meeting, and specifically permits notice to be given by electronic transmission. The 15-day notice provided to Dan by electronic transmission is sufficient under the statute. However, even if the notice given to shareholders was insufficient, Dan waived any deficiencies in the notice because he was present at the meeting by his authorized representative, holding his proxy. MCL 450.1404(4); *Foote v Greilick*, 166 Mich 636, 642 (1911).

The articles of incorporation are amended if supported by a majority of the outstanding shares entitled to vote. MCL 450.1611(5). This is higher than the general requirement for

shareholder approval, which is a majority of votes cast. MCL 450.1441(2). The voting requirements for amending the articles of incorporation may be subject to even greater requirements as prescribed by law or in the articles of incorporation. MCL 450.1611(5). Once the amendment is approved, a certificate of amendment must be filed with the state. MCL 450.1611(7); MCL 450.1631. Because the facts indicate that the amendment to the articles of incorporation was approved by 58% of the shares entitled to vote, and the appropriate certificate was filed with the state, the amendment to the articles of incorporation is valid.

3. Preemptive Rights: Shareholders in Michigan do not have *any* preemptive rights to acquire a corporation's unissued shares unless such a right is created by (1) the articles of incorporation or (2) an agreement between the corporation and 1 or more shareholders. MCL 450.1343(1). Here, the facts indicate that the articles of incorporation provide for preemptive rights.

If preemptive rights are created by a statement in the articles (or agreement) that the corporation "elects to have preemptive rights," or words of similar import, Michigan law lists several "principles" that apply to the preemptive rights unless otherwise provided. Included among the listed principles is that the shareholders' preemptive rights are "granted on uniform terms and conditions prescribed by the board to provide a fair and reasonable opportunity to exercise the right to acquire proportional amounts of the corporation's unissued shares upon the decision of the board to issue them." MCL 450.1343(2)(a). Here, because the facts indicate that the preemptive rights are mentioned in the articles of incorporation without additional provisions, the principles listed in the statute would be applicable. Thus, in order to challenged the terms established by the board, Dan would have to show that the terms and conditions were not uniform, or that Dan was not provided "a fair and reasonable opportunity" to exercise his right to acquire his share of Rippy stock.

The facts indicate that notice was sent to all shareholders, describing the terms and conditions for shareholders to exercise their preemptive rights. The terms and conditions described appear to be uniform -- all shareholders were offered the opportunity to purchase 5 shares for every share of Rippy stock currently held, for the price of $10 per share. Any unclaimed shares could be purchased by interested stockholders on a lottery basis for the same price. The only remaining question is whether the November 1, 2'010 deadline denied Dan "a fair and reasonable opportunity" to purchase his share of Rippy stock. The facts indicate that the board of directors' notice to all stockholders of record was sent out on August 28, 2010, approximately two months prior to the

November 1, 2010 deadline. Without additional facts, it is unlikely that Dan will be able to show that giving him two months time to claim his preemptive rights denied him "a fair and reasonable opportunity."