IMARX THERAPEUTICS INC
Form DEF 14A
June 28, 2010

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a)
of the Securities Exchange Act of 1934
(Amendment No.)

Filed by the Registrant x

Filed by a Party other than the Registrant ¨

Check the appropriate box:

o Preliminary Proxy Statement
x Definitive Proxy Statement
¨ Definitive Additional Materials
¨ Soliciting Material Pursuant to §240.14a-12
¨ Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))

ImaRx Therapeutics, Inc.
(Name of Registrant as Specified in its Charter)

_____
(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

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Table of Contents

ImaRx Therapeutics, Inc.
6860 Lexington Avenue
Los Angeles, California 90038

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS
TO BE HELD ON JULY 9, 2010

Dear ImaRx Stockholder:

NOTICE IS HEREBY GIVEN that a Special Meeting of Stockholders of ImaRx Therapeutics, Inc., a Delaware corporation (the "Company") will be held on July 9, 2010 at the Company's offices located at 6860 Lexington Avenue, Los Angeles, CA 90038, at 10:00 a.m., local time, for the following purposes:

1. To approve the reincorporation of the Company in the State of Nevada.

2. To consider and vote on any proposal to adjourn the special meeting to a later date or time, if necessary, to permit the further solicitation of proxies in the event that there are not sufficient votes at the time of the special meeting or adjournment or postponement thereof to approve the reincorporation.

3. To consider and transact such other business as may properly come before the special meeting or any adjournment or postponement of the special meeting.

The Company will transact no other business at the special meeting except such business as may properly be brought before the special meeting or any adjournment or postponement of the special meeting.

All members of our board of directors present at a duly called meeting unanimously approved the reincorporation and the transactions contemplated thereby, and determined that the reincorporation and the transactions contemplated thereby are advisable to and in the best interests of the Company and its stockholders. The Company's board of directors recommends that you vote "FOR" the adoption of the reincorporation and "FOR" the approval of any adjournments of the special meeting, if necessary, for the purpose of soliciting additional proxies.

Only stockholders of record as of the close of business on June 16, 2010 are entitled to notice of and to vote at the special meeting or at any adjournment or postponement of the special meeting. All stockholders of record are cordially invited to attend the special meeting in person.

The approval of the reincorporation requires the affirmative vote of the holders of a majority of the outstanding shares of Common Stock entitled to vote thereon. Accordingly, regardless of the number of shares that you own, your vote is important. Even if you plan to attend the special meeting in person, we request that you complete, sign, date and return, as promptly as possible, the enclosed proxy card in the accompanying reply envelope to ensure that your shares will be represented at the special meeting if you are unable to attend. If you fail to attend the special meeting in person or by proxy, your shares will not be counted for purposes of determining whether a quorum is present at the meeting and it will have the same effect as a vote against the approval of the reincorporation, but will not affect the outcome of the vote regarding the proposal to adjourn the special meeting, if necessary, for the purpose of soliciting additional proxies.

You may revoke your proxy at any time prior to its exercise by delivering a properly executed, later-dated proxy, by filing a written revocation of your proxy with our Secretary at our address set forth above or by voting in person at the special meeting.

WHETHER OR NOT YOU PLAN TO ATTEND THE SPECIAL MEETING, PLEASE COMPLETE, DATE, SIGN AND RETURN, AS PROMPTLY AS POSSIBLE, THE ENCLOSED PROXY CARD IN THE ACCOMPANYING REPLY ENVELOPE. STOCKHOLDERS WHO ATTEND THE MEETING MAY REVOKE THEIR PROXIES AND VOTE IN PERSON.

By order of the Board of Directors,

/s/ Edward Sylvan
Edward Sylvan
Chief Executive Officer

Los Angeles, CA
June 24 , 2010

Table of Contents

TABLE OF CONTENTS

Table of Contents

IMARX THERAPEUTICS, INC.

PROXY STATEMENT

General

This proxy statement is first being mailed to stockholders on or about June 24 , 2010 in connection with the solicitation of proxies by the Board of Directors to be used at a special meeting of stockholders of ImaRx Therapeutics, Inc., a Delaware corporation (the "Company"), to be held on Friday, July 9, 2010 at 6860 Lexington Avenue, Los Angeles, CA 90038 at 10:00 a.m., (local time), and any adjournments thereof.

Accompanying this proxy statement is a Notice of Special Meeting of Stockholders and a form of Proxy for such meeting. All proxies which are properly filled in, signed and returned to the Company in time will be voted in accordance with the instructions thereon. Such proxies may be revoked by any stockholder prior to the exercise thereof and stockholders who are present at the meeting may withdraw their proxies and vote in person if they so desire. The Board of Directors has fixed the close of business on June 16, 2010 as the record date for the determination of stockholders who are entitled to notice of, and to vote at, the meeting or any adjournment thereof. If no selections are made, the proxies will be voted FOR approval of the reincorporation of the Company in Nevada.

The expense of preparing, assembling, printing and mailing the form of proxy and the material used in solicitation of proxies will be borne by the Company. In addition to the solicitation of proxies by use of the mails, the Company may utilize the services of some of its officers and regular employees (who will receive no additional compensation therefore) to solicit proxies personally, and by telephone and other communication mediums. The Company has requested banks, brokers and other custodians, nominees and fiduciaries to forward copies of the proxy material to their principals and to request authority for the execution of proxies and may reimburse such persons for their services in doing so.

Vote Required

The presence, in person or by proxy, of the holders of a majority of the outstanding shares of Common Stock of the Company is necessary to constitute a quorum at the meeting.

As of the record date, the Company had 91,042,468 shares of its Common Stock issued and outstanding, the holders of which are entitled to one vote per share.

Shares represented in person or by proxy (including shares which abstain or do not vote with respect to one or more of the matters presented for stockholder approval) will be counted for purposes of determining whether a quorum exists at the meeting.

The affirmative vote of a majority of the outstanding shares held by the holders of Common Stock entitled to vote in person or by proxy at the meeting is required for approval of the reincorporation of the Company in Nevada.

An abstaining vote counts towards establishing a quorum, but its effect on the actual vote counts differs depending on the subject matter of the vote. A broker non-vote counts towards establishing a quorum. A broker “non-vote” occurs when a nominee holding shares for a beneficial owner does not vote on a particular matter because the nominee does not have discretionary voting power for that particular matter and has not received instructions from the beneficial owner. In the proposal for the approval of the reincorporation of the Company in Nevada, abstentions and broker

“non-votes” resulting from a broker’s inability to vote a client’s shares on non-discretionary matters will have the same effect as votes against the approval of the reincorporation in Nevada.

Voting Procedures

You may vote by granting a proxy or, for shares held through a broker, bank or other nominee, by submitting voting instructions to your broker, bank or other nominee. You can also vote in person at the special meeting. You can vote by the following methods:

Table of Contents

Proxies

If you hold shares in record name, you may submit your proxy by mail by signing and dating your proxy card and mailing it in the enclosed pre-addressed envelope. Proxy cards properly executed, duly returned to us and not revoked will be voted in accordance with the specifications made in the proxy card.

Voting Instruction Cards

If you hold your shares through a broker, bank or other nominee, you should follow the directions provided by your broker, bank or other nominee regarding how to instruct your broker, bank or other nominee to vote your shares.

In Person at the Special Meeting

We will pass out written ballots to anyone who wants to vote at the special meeting. If your shares are held in “street name” and you wish to attend and vote at the special meeting, you must notify your broker, bank or other nominee and obtain the proper documentation to vote your shares at the special meeting.

Revocability of Proxies

You can change your vote at any time before proxies are voted at the special meeting. Proxies may be revoked by any of the following actions:

- delivering a written notice to Edward Sylvan, our Chief Executive Officer, at 6860 Lexington Avenue, Los Angeles, California 90038, that you are revoking your proxy;
- submitting new voting instructions using the methods described above; or
- attending the special meeting and voting in person (although attendance at the special meeting will not, by itself, revoke a proxy).

If your shares are held in “street name” by your broker, bank or other nominee, you must submit new voting instructions to your broker, bank or other nominee, or obtain the proper documentation from your broker, bank or other nominee to vote your shares at the special meeting.

PROPOSALS TO BE VOTED ON

PROPOSAL 1

REINCORPORATION VIA MERGER IN NEVADA

To accomplish the proposed change in the Company's state of incorporation from Delaware to Nevada, the Board of Directors has unanimously adopted an Agreement and Plan of Merger (the “Merger Agreement”) between the Company and its newly formed, wholly-owned subsidiary, Sycamore Entertainment Group, Inc. ("Sycamore Entertainment Group"). Under the Merger Agreement, the Company, a Delaware corporation, will be merged with and into Sycamore Entertainment Group, a Nevada corporation, and every two (2) shares of the Company’s Common Stock, par value $.0001 per share, will automatically be converted into one (1) share of common stock, par value $.001 per share, of Sycamore Entertainment Group (the "Merger"). No fractional shares of common stock of Sycamore Entertainment Group shall be issued. If a stockholder is entitled to a fractional share of Sycamore Entertainment Group common stock, the number of shares of Sycamore Entertainment Group common stock to be issued to that stockholder will be

rounded up to the nearest whole share of Sycamore common stock. The number of additional shares to be issued as a result of fractional shares being rounded up is less than .001% of the total shares outstanding of the Company's Common Stock. Upon completion of the Merger, the name of the surviving company will be " Sycamore Entertainment Group, Inc" and the situs of incorporation will be Nevada.

A copy of the Merger Agreement is attached as Appendix A to this Proxy Statement. A Copy of the Articles of Merger to be filed with the Nevada Secretary of State is attached as Appendix B to this Proxy Statement. Sycamore Entertainment Group was recently formed by the Company under Chapter 78 of the Nevada Revised Statutes (the "NRS") for the purpose of effecting the Merger. If the Merger is approved by the stockholders and the Merger is completed, the NRS and the Articles of Incorporation and By-laws of Sycamore Entertainment Group (the "Nevada Charter Documents") will govern the rights of stockholders in the surviving entity. A copy of the Articles of Incorporation of Sycamore Entertainment Group is attached as Appendix C to this Proxy Statement. A copy of the Bylaws of Sycamore Entertainment Group is attached as Appendix D to this Proxy Statement. See "Comparative Rights of Stockholders of the Company and Sycamore Entertainment Group."

Table of Contents

Principal Features of the Merger

Upon the approval of the Merger by the Company's stockholders, the Company's Board of Directors will, as promptly as practicable, cause the Merger to be consummated on the Effective Date. Upon the consummation of the Merger, the separate existence of the Company will cease, and Sycamore Entertainment Group, to the extent permitted by law, will succeed to all business, properties, assets and liabilities of the Company. Every two (2) shares of Common Stock of the Company issued and outstanding immediately prior to the consummation of the merger will, by virtue of the Merger, be converted into one (1) share of common stock of Sycamore Entertainment Group. Upon the consummation of the Merger, stock certificates which immediately prior to the Merger represented Common Stock of the Company will be deemed for all purposes to represent shares of common stock of Sycamore Entertainment Group. Stockholders will not be required to exchange their existing stock certificates for stock certificates of Sycamore Entertainment Group. However, following the Effective Date of the Merger, if any stock certificates of the Company are submitted to Sycamore Entertainment Group or to its transfer agent for transfer, or if any stockholder so requests, a new stock certificate representing the applicable number of Sycamore Entertainment Group shares will be delivered to the transferee or holder of such shares. This exchange of securities will be exempt from the registration requirements of the Federal securities laws.

Approval of the Merger Agreement and consummation of the Merger will not result in any change in the business, management, assets or liabilities of the Company. The directors of Sycamore Entertainment Group following the Merger will be the same individuals serving as directors of the Company immediately prior to approval of the Merger Agreement, namely, Donald J. Scotti, Joseph R. Takats, Edward Sylvan, Terry Sylvan and Michael Doban. On the Effective Date, the Sycamore Entertainment Group common stock will be eligible for trading on the Over-the-Counter Bulletin Board, where the Common Stock of the Company is currently traded.

Pursuant to the terms of the Merger Agreement, each option and warrant to purchase shares of Common Stock of the Company outstanding immediately prior to the Effective Date of the Merger will become an option or warrant to purchase half the number of shares of Sycamore Entertainment Group common stock, subject to the same terms and conditions as set forth in the agreement pursuant to which such option or warrant was granted.

If approved by the Company's stockholders, it is anticipated that the reincorporation by means of the Merger will be completed as soon as practicable after such vote. However, the Merger may be abandoned, and the Merger Agreement may be amended, either before or after stockholder approval if circumstances arise which, in the opinion of the boards of directors, make such action advisable, although subsequent to stockholder approval none of the principal terms may be amended without further stockholder approval.

The Merger does not require the approval of any Federal or state regulatory agency.

Purpose of Reincorporation via Merger

Primarily, the reincorporation of the Company from Delaware to Nevada would eliminate our obligation to pay the annual Delaware franchise tax which would result in significant savings to us over the long term. For tax year 2009, we only paid $3100. In previous years when our net assets were greater we paid many times more than that. As we grow we anticipate that our potential franchise fees owing in Delaware will increase significantly. When we reincorporate in the State of Nevada, our current annual tax filing fee in the State of Nevada would be in the hundreds of dollars rather than the thousands.

In addition, reincorporation in Nevada may help us attract and retain qualified management by reducing the risk of lawsuits being filed against the Company and its directors. We believe that for the reasons described below, in

general, Nevada law provides greater protection to our directors and the Company than Delaware law. The increasing frequency of claims and litigation directed towards directors and officers has greatly expanded the risks facing directors and officers in general of public companies in exercising their duties. The amount of time and money required to respond to these claims and to defend this type of litigation can be substantial. Delaware law provides that every person becoming a director of a Delaware corporation consents to the personal jurisdiction of the Delaware courts in connection with any action concerning the corporation. Accordingly, a director can be personally sued in Delaware, even though the director has no other contacts with the state. Nevada law has no similar consent provisions and, accordingly, a plaintiff must show the minimum contacts generally required of the director in Nevada for a state to have jurisdiction over a non-resident director. Also, Nevada law allows a company and its officers and directors, if personally sued, to petition the court to order a plaintiff to post a bond to cover their costs of defense. This motion can be based upon lack of reasonable possibility that the complaint will benefit the Company or a lack of participation by the individual defendant in the conduct alleged.

Reincorporation in Nevada will also limit the personal liability of directors of the Company. Delaware law permits a corporation to adopt provisions limiting or eliminating the liability of a director to a company and its stockholders for monetary damages for breach of fiduciary duty as a director, provided that the liability does not arise from certain proscribed conduct, including breach of the duty of loyalty, acts or omissions not in good faith or

Table of Contents

which involve intentional misconduct or a knowing violation of law. By contrast, Nevada law permits a broader exclusion of liability of both officers and directors to the Company and its stockholders, providing for an exclusion of all monetary damages for breach of fiduciary duty unless they arise from acts or omissions which involve intentional misconduct, fraud or a knowing violation of law. The reincorporation will result in the elimination of any liability of an officer or director for a breach of the duty of loyalty unless arising from intentional misconduct, fraud, or a knowing violation of law. There is currently no known pending claim or litigation against any of the directors. The directors have an interest in the reincorporation to the extent that they will be entitled to such elimination of liability.

Operating the Company as a Nevada corporation will not interfere with, or differ substantially from, our present corporate activities. As a Nevada corporation, the Company will be governed by Nevada corporate law, while the Company is presently governed by Delaware law. Nevada law may constitute a comprehensive, flexible legal structure under which to operate. However, because of differences in the laws of these states, your rights as stockholders will change in several material respects as a result of the reincorporation. These matters are discussed in greater details immediately below.

The reincorporation is not being effected to prevent a change in control, nor is it in response to any present attempt known to our Board to acquire control of the Company or obtain representation on our Board. Nevertheless, certain effects of the proposed reincorporation may be considered to have anti-takeover implications simply by virtue of being subject to Nevada law. For example, in responding to an unsolicited bidder, the Nevada Revised Statutes authorizes directors to consider not only the interests of shareholders, but also the interests of employees, suppliers, creditors, customers, the economy of the state and nation, the interests of the community and society in general, and the long-term as well as short-term interests of the corporation and its stockholders , including the possibility that these interests may be best served by the continued independence of the corporation. For a discussion of these and other differences between the laws of Delaware and Nevada, see “Comparative rights of Stockholders of the Company and Sycamore Entertainment Group” below.

Potential Disadvantages of Reincorporation

A potential disadvantage of reincorporating from Delaware to Nevada is that Delaware for many years has followed a policy of encouraging incorporation in that state and, in furtherance of that policy, has adopted comprehensive, modern and flexible corporate laws that Delaware periodically updates and revises to meet changing business needs. Because of Delaware’s prominence as a state of incorporation for many large corporations, the Delaware courts have developed considerable expertise in dealing with corporate issues and a substantial body of case law has developed construing Delaware law and establishing public policies with respect to Delaware corporations. Because Nevada case law concerning the governing and effects of its statutes and regulations is more limited, the Company and its stockholders may experience less predictability with respect to legality of corporate affairs and transactions and stockholders’ rights to challenge them.

Comparative Rights of Stockholders of the Company and Sycamore Entertainment Group

Upon consummation of the Merger, the outstanding shares of the Company's Common Stock will be converted into shares of Sycamore Entertainment Group common stock. Consequently, the Company's stockholders, whose rights as stockholders are currently governed by the DGCL and the Company's Certificate of Incorporation and By-laws (the "Delaware Charter Documents"), will become stockholders of Sycamore Entertainment Group whose rights will be governed by the NRS and Sycamore Entertainment Group’ Nevada Charter Documents. Copies of the Nevada Charter Documents which are proposed to be in effect upon the consummation of the Merger appear in this Proxy Statement as Appendices C and D. A copy of the certificate of merger to be filed with the Delaware Secretary of State appears in this Proxy Statement has Appendix E.

The approval of the Merger will result in Sycamore Entertainment Group having 715,000,000 shares of authorized common stock and 35,000,000 shares of authorized preferred stock. The Delaware Charter Documents authorize 100,000,000 shares of Common Stock and 5,000,000 shares of preferred stock for the Company.

In most respects, the rights of holders of Sycamore Entertainment Group' common stock will be similar to those of the Company. Certain aspects of the rights of holders of the Company's Common Stock and Sycamore Entertainment Group common stock are discussed below. The following summary does not purport to be a complete statement of the rights of stockholders under applicable Nevada law and the Nevada Charter Documents as compared to the DGCL and the Delaware Charter Documents and is qualified in its entirety by reference to the DGCL and the NRS.

Authorized Capital Stock. The Company's authorized capital stock currently consists of 100,000,000 shares of Common Stock, par value $.0001 per share, and 5,000,000 shares of preferred stock, par value $.0001 per share. Sycamore Entertainment Group' authorized capital stock consists of 715,000,000 shares of common stock, par value $.001 per share, and 35,000,000 shares of preferred stock, par value $.001 per share.

Table of Contents

Charter. The DGCL and NRS law require the approval of the holders of a majority of all outstanding shares entitled to vote (with, in each case, each stockholder being entitled to one vote for each share so held) to approve a proposed amendment to a corporation's charter.

The Nevada Charter Documents do not impose any requirements for shareholder approval of amendments to the Articles of Incorporation of Sycamore Entertainment Group in excess of the approval of a majority of all outstanding shares entitled to vote.

Neither state requires stockholder approval for the board of directors of a corporation to fix the voting powers, designation, preferences, limitations, restrictions and rights of a class of stock provided that the corporation's charter documents grant such power to its board of directors. In each state, the holders of the outstanding shares of a particular class are entitled to vote as a class on a proposed amendment if the amendment would alter or change the power, preferences or special rights of one or more series of any class so to affect them adversely.

Amendment to Bylaws. Under the Delaware Charter Documents, the Board of Directors has the authority to adopt, repeal, alter, amend or rescind the bylaws of the Company, subject to the power of stockholders to adopt, repeal, amend or rescind the bylaws. Under the NRS the board of directors has the authority to adopt, repeal, alter, amend or rescind the bylaws of the corporation. The Sycamore Entertainment Group bylaws will provide that both the board of directors and the shareholders has the authority to adopt, repeal, alter, amend or rescind the bylaws of the corporation.

Stockholder Approval of Certain Business Combinations. Both the NRS and the DGCL provide certain protections to stockholders in connection with certain business combinations. These protections can be found in Sections 78.411 to 78.444 of the NRS and Section 203 of the DGCL.

Under Section 203 of the DGCL, certain "business combinations" with "interested stockholders" of the Company are subject to a three-year moratorium unless specified conditions are met. For purposes of Section 203, the term "business combination" is defined broadly to include (i) mergers with or caused by the interested stockholder; (ii) sales or other dispositions to the interested stockholder (except proportionately with the corporation's other stockholders) of assets of the corporation or a subsidiary equal to ten percent or more of the aggregate market value of the corporation's consolidated assets or its outstanding stock; (iii) the issuance or transfer by the corporation or a subsidiary of stock of the corporation or such subsidiary to the interested stockholder (except for transfers in a conversion or exchange or a pro rata distribution or certain other transactions, none of which increase the interested stockholder's proportionate ownership of any class or series of the corporation's or such subsidiary's stock); or (iv) receipt by the interested stockholder (except proportionately as a stockholder), directly or indirectly, of any loans, advances, guarantees, pledges or other financial benefits provided by or through the corporation or a subsidiary.

The three-year moratorium imposed on business combinations by Section 203 of the DGCL does not apply if: (i) prior to the time on which such stockholder becomes an interested stockholder the board of directors approves either the business combination or the transaction which resulted in the person becoming an interested stockholder; (ii) the interested stockholder owns 85 percent of the corporation's voting stock upon consummation of the transaction which made him or her an interested stockholder (excluding from the 85 percent calculation shares owned by directors who are also officers of the target corporation and shares held by employee stock plans which do not permit employees to decide confidentially whether to accept a tender or exchange offer); or (iii) at or after the time on which such stockholder becomes an interested stockholder, the board approves the business combination and it is also approved at a stockholder meeting by two-thirds (66-2/3%) of the voting stock not owned by the interested stockholder.

Sections 78.411 to 78.444 of the NRS regulate combinations more stringently. First, an interested stockholder is defined as a beneficial owner of 10% or more of the voting power. Second, the three-year moratorium can be lifted

only by advance approval by a corporation's board of directors, as opposed to Delaware's provision that allows interested stockholder combinations at the time of the transaction with stockholder approval. Finally, after the three-year period, combinations remain prohibited unless (i) they are approved by the board of directors, the disinterested stockholders or a majority of the outstanding voting power not beneficially owned by the interested party or (ii) the interested stockholders satisfy certain fair value requirements.

Companies are entitled to opt-out of the business combination provisions of the DGCL and NRS. The Company has not opted out of the business combination provisions of Section 203 of the DGCL. The Articles of Incorporation of Sycamore Entertainment Group provides that it will opt-out of Sections 78.411 to 78.444 of the NRS and thus Sycamore Entertainment Group will not be governed by Sections 78.411 to 78.444 of the NRS based by a determination by the board of directors of Sycamore Entertainment Group that such regulation of business combinations is not in the best interests of shareholders to maximize the value of the shareholders' common stock.

Classified Board of Directors. The DGCL permits any Delaware corporation to classify its board of directors into as many as three classes with staggered terms of office. If this were done, the stockholders would elect only one class each year and each class would have a term of office of three years. The Delaware Charter Documents do not provide for a classified board of directors, and thus all directors are elected each year for one-year terms.

Table of Contents

The NRS also permit corporations to classify boards of directors provided that at least one-fourth of the directors is elected annually. The Nevada Charter Documents of Sycamore Entertainment Group also do not provide for a classified board of directors, and thus all directors are elected each year for one-year terms.

Cumulative Voting. Cumulative voting for directors entitles each stockholder to cast a number of votes that is equal to the number of voting shares held by such stockholder multiplied by the number of directors to be elected and to cast all such votes for one nominee or distribute such votes among up to as many candidates as there are positions to be filled. Cumulative voting may enable a minority stockholder or group of stockholders to elect at least one representative to the board of directors where such stockholders would not be able to elect any directors without cumulative voting.

The NRS permit cumulative voting in the election of directors as long as certain procedures are followed. Although the DGCL does not generally grant stockholders cumulative voting rights, a Delaware corporation may provide for cumulative voting in the corporation's certificate of incorporation.

The Company's current Delaware Charter Documents do not provide for cumulative voting in the election of directors. Similarly, the Articles of Incorporation for Sycamore Entertainment Group do not provide for cumulative voting.

Vacancies. Under both the DGCL and the NRS, vacancies on the board of directors during the year shall be filled by the affirmative vote of a majority of the remaining directors then in office, even if less than a quorum. Any director so appointed shall hold office for the remainder of the term of the director no longer on the board.

Removal of Directors. Under the DGCL, the holders of a majority of voting shares of each class entitled to vote at an election of directors may vote to remove any director or the entire board without cause unless (i) the board is a classified board, in which case directors may be removed only for cause, or (ii) the corporation has cumulative voting, in which case if less than the entire board is to be removed no director may be removed without cause if the vote cast against his removal would be enough to elect him. Thus, under the DGCL, a director of a corporation that does not have a classified board or permit cumulative voting, such as the Company, may be removed, without cause, by the affirmative vote of a majority of the outstanding shares entitled to vote at an election of directors.

The NRS require at least two-thirds of the majority of voting shares or class entitled to vote at an election of directors to remove a director. Furthermore, the NRS do not make a distinction between removals for cause and removals without cause.

Actions by Written Consent of Stockholders. The DGCL and the NRS each provide that any action required or permitted to be taken at a meeting of the stockholders may be taken without a meeting if the holders of outstanding stock having at least the minimum number of votes that would be necessary to authorize or take such action at a meeting consents to the action in writing. In addition, the DGCL requires the corporation to give prompt notice of the taking of corporate action without a meeting by less than unanimous written consent to those stockholders who did not consent in writing. The Delaware Charter Documents prohibit the taking of action by written consent of the stockholders. The Nevada Charter Documents will permit the taking of action by written consent of the stockholders.

Stockholder Vote for Mergers and Other Corporate Transactions. Unless the certificate or articles of incorporation specifies a higher percentage, both jurisdictions require authorization by a majority of outstanding shares entitled to vote, as well as approval by the board of directors with respect to the terms of a merger or a sale of substantially all of the assets of the corporation. Neither the NRS nor the DGCL requires approval by the stockholders of a surviving corporation in a merger or consolidation as long as the surviving corporation issues no more than 20% of its voting stock in the transaction.