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STATUTORY SUPPLEMENT TO

CLOSELY HELD BUSINESS ORGANIZATIONS

Cases, Materials, and Problems

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compiled by

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DELAWARE GENERAL CORPORATION LAW

Five bills passed by the Delaware Legislature have made changes to the Delaware General Corporation Law since the Statutory Supplement was published in 2020. The following material identifies and discusses the significance of the changes. The summaries are based on the official Synopses provided by the Delaware Legislature. The five bills follow with a redlined version of the amendments.

Summary of Amendments

H.B. No. 341 (2020)

Section 102(a) has been amended to provide that the name of a corporation must be such as to distinguish it from the name of any registered series of a limited partnership.

Section 102(b)(7) has been amended to authorize a corporation to include in its certificate of incorporation an exculpatory provision that eliminates or limits the liability of directors for monetary damages for certain breaches of duty. The amendment to Section 102(b)(7) clarifies that an exculpatory provision has the effect of eliminating or limiting liability for monetary damages with respect to any act or omission of a director occurring while the exculpatory provision is in effect. Unless the provision provides otherwise at the time of such act or omission, any future amendment, repeal or elimination of that provision will not revoke the elimination or limitation of liability.

Section 108(c) has been amended to permit an incorporator or initial director to rely on Section 116 as a basis to document, sign and deliver a consent by electronic means, unless the use of Section 116 is expressly restricted or prohibited by a provision of the certificate of incorporation.

Section 110 has been amended to clarify the types of events that give rise to the availability of emergency powers and confirm certain of the specific powers relating to stockholders' meetings and dividends that may be exercised during an emergency condition. The amendments to Section 110 are not intended, by implication or otherwise, to limit or eliminate the availability of any powers or emergency actions that are not specifically enumerated with respect to stockholders' meetings, dividends, or other matters that are practical and necessary in connection with the particular emergency, or to affect the validity of any action taken in an emergency situation but not authorized by the amendments or taken in a non-emergency situation.

Section 116(a)(2) has been amended to establish non-exclusive means to sign documents for purposes of chapter 1 of title 8. An amendment to this provision clarifies that a person may "execute" a document (such as agreements of merger and other documents that require execution pursuant to chapter 1 of title 8) by using any type of signature contemplated by Section 116(a)(2).

Section 116(b) has been amended to allow persons to rely on Section 116(a) as a basis for using an electronic transmission to document director, stockholder, member and incorporator consents and for signing and delivering those documents by electronic means. This amendment supplements provisions that already permitted these consents by electronic means before this amendment. A conforming amendment to Section 116(a)(3) requires that the electronic delivery of

stockholder or member consents, and the electronic delivery of documents evidencing a proxy granted by a stockholder or member, must satisfy additional requirements set forth in Section 228(d) (with respect to consents) and Section 212(c) (with respect to proxies). The final sentence of Section 116(b) has been amended to clarify that a provision in the certificate of incorporation or bylaws may restrict or prohibit only the electronic means (but not the manual means) to document an act or transaction and to sign and deliver a document.

Section 132(a)(4) has been amended to remove erroneous references to a foreign "general" partnership.

Section 135 has been amended to reflect the current practice of the Office of the Secretary of State relating to the appointment of a successor registered agent by a registered agent of a corporation.

Section 141(f) has been amended to permit a director to rely on Section 116 as a basis to document, sign and deliver a consent by electronic means, unless the use of Section 116 is expressly restricted or prohibited by a certificate of incorporation or bylaw provision adopted pursuant to Section 116(b).

Section 145(c) has been amended to provide current and former directors and officers a right to indemnification if they are successful (on the merits or otherwise) in defending claims brought against them by reason of their conduct as directors and/or officers. Amended Section 145(c) defines the group of officers who are entitled to this statutory right of indemnification as the officers who are deemed to have consented to the jurisdiction of the State for acts relating to breach of officer duties pursuant to Section 3114(b) of title 10. Section 3114(b) of title 10 does not apply to residents of the State, but amended Section 145(c) treats residents as if they were non-residents to ensure that persons who hold the officer positions identified in Section 3114(b) are entitled to indemnification, whether or not they are residents of the State. The amendment does not define who qualifies as an officer under Section 145(c) for purposes of a right to indemnification for an act or omission occurring on or before December 31, 2020 and does not define who qualifies as an officer for purposes of the other subsections of Section 145.

Section 145(c) has also been amended to add a new subsection (2) that permits (but does not require) a corporation to indemnify other persons who are not current or former directors or officers if they are successful in defense of a proceeding referenced in subsections (a) and (b) of Section 145. A corporation may rely on Section 145(f) to make this permissive indemnification a mandatory right for these other persons, such as pursuant to a provision in the certificate of incorporation, the bylaws, an agreement, or vote of stockholders or disinterested directors. This amendment to Section 145(c) is consistent with case law holding that a corporation lawfully may agree to provide indemnification to a person who is not a director or officer solely based on that person's successful defense of a claim covered by Section 145(a) or (b), without an inquiry into whether such person has met the conduct requirements of Section 145(a) or (b). See, Cochran v. Stifel Financial Corp., Del. Ch. C.A. No. 17350 (Dec. 13, 2000), aff'd in part and reversed in part, both on unrelated grounds, 809 A.2d 555 (Del. 2002). Section 145(f) prohibits the elimination or impairment of a right to indemnification or to advancement by amendment to the certificate of incorporation or the bylaws after the occurrence of the act or omission that is the subject of the civil, criminal, administrative, or investigative action,

suit or proceeding for which indemnification is sought, unless the provision in effect at the time of the act or omission explicitly authorizes such elimination or impairment after such act or omission has occurred. The amendment to Section 145(f) clarifies that such prohibition applies in the case of any repeal or elimination of the certificate of incorporation or the bylaws.

Section 212(c) has been amended to add a new subsection (3), which clarifies that a stockholder or member may rely on Section 116 as basis to document a proxy and to sign and deliver a document evidencing the proxy, unless an express provision of the certificate of incorporation or bylaws adopted in accordance with Section 116(b) prohibits or restricts those actions being taken by electronic means. An amendment to subsection (1) of Section 212(c) simplifies the language but does not enact a substantive change.

Section 213(b) has been amended to eliminate redundant references to where, and to whom, a consent may be delivered.

Section 228(d) has been amended by deleting the provisions on documenting, signing and delivering a consent by electronic means, so that those actions may be effected pursuant to amended Section 116, unless an express provision of the certificate of incorporation or bylaws adopted in accordance with Section 116(b) restricts or prohibits a consent from being documented, signed or delivered electronically. The last sentence of amended Section 228(d)(1) requires certain additional information to be provided to the corporation in connection with delivering a consent electronically. Redundant references to where, and to whom, a consent may be delivered have been deleted from amended Sections 228(a) and (b). References to "written consents" or consents set forth "in writing" have been replaced with a new sentence added to Section 228(c) stating that a consent must be set forth in writing or in an electronic transmission.

Section 232(b) has been amended to clarify that a stockholder's or member's consent is not required in order for a corporation to give the stockholder or member notices by electronic mail pursuant to Section 232(a).

Section 251(g)(7) has been amended to eliminate the requirement, in connection with a merger pursuant to such Section, that the organizational documents of the surviving entity contain provisions identical to the certificate of incorporation of the constituent corporation immediately prior to the merger. This amendment shall not be construed to eliminate the requirement in Section 251(g) that the organizational documents of the surviving entity contain provisions requiring approval of the holding company's stockholders for any act or transaction by the surviving entity that, if taken by the constituent corporation immediately prior to the merger, would have required stockholder approval. This Act also makes clerical changes to Section 251(g)(4). The amendments to Section 251(g) shall be effective with respect to agreements of merger or consolidation consummated pursuant to an agreement entered into on or after their enactment into law.

Section 262(b) has been amended to conform to the amendments to Section 363 relating to public benefit corporations. The amendments to Section 262 shall be effective with respect to a merger or consolidation consummated pursuant to an agreement entered into, or, with respect to a merger consummated pursuant to Section 253, resolutions of the board of directors adopted, on or after their enactment into law.

Section 266 has been amended to reflect the current practice of the Office of the Secretary of State relating to the issuance of a certified copy of a certificate of conversion to non-Delaware entity.

Section 363 has been amended to lower from two-thirds to a majority the stockholder vote required for (1) amendments to a certificate of incorporation that convert a conventional corporation into a public benefit corporation or convert a public benefit corporation into a conventional corporation and (2) mergers that convert shares of conventional corporations into shares of public benefit corporations or shares of public benefit corporations into shares of conventional corporations. Those amendments will also eliminate appraisal rights for (1) amendments to a certificate of incorporation that convert a conventional corporation into a public benefit corporation and (2) mergers that convert shares of conventional corporations into shares of public benefit corporations. The amendments to Section 363(b)(2) shall be effective with respect to a merger or consolidation consummated pursuant to an agreement entered into, or, with respect to a merger consummated pursuant to Section 253, resolutions of the board of directors adopted, on or after their enactment into law. The amendments to Section 365(c)(1) clarify that, for the purposes of Section 365(b), a director will not be interested with respect to a balancing decision due to the director's interest in stock of the corporation, except to the extent that such ownership would create a conflict of interest if the corporation were not a public benefit corporation and (2) provide that any failure to satisfy the balancing requirement shall not constitute an act or omission not in good faith for the purposes of Section 102(b)(7) or Section 145, unless the certificate of incorporation otherwise provides. The amendments to Section 367 clarify that any lawsuit to enforce the balancing requirement to which public benefit corporations are subject must be brought by plaintiffs owning at least 2% of the corporation's outstanding shares or, in the case of certain listed companies, shares with a value of at least $2,000,000 if such number is lower.

Section 377(b) has been amended to conform the process relating to the resignation of a registered agent of a foreign corporation to the process applicable to the resignation of a registered agent of a corporation under Section 136.

Section 391(a)(16) has been amended to include the maximum fee payable to the Secretary of State for a written report of a record search.

S.B. No. 113 (2021)

Section 160(c) has been amended to clarify that shares of a corporation's capital stock held by any other entity (whether a corporation or non-corporate entity) are not entitled to be either voted or counted for quorum purposes if the corporation directly or indirectly holds a majority of such other entity's voting power entitled to vote generally in the election of, or is otherwise entitled to appoint or act as, the governing body of such entity. This amendment to Section 160(c) should not be construed to create any negative implication with respect to the inclusion or exclusion of non-corporate entities in connection with any other section of the DGCL.

Section 145(c) has been amended to correct a typographical error

Section 145(g) has been amended to authorize a corporation to purchase and maintain insurance on behalf of its directors, officers, employees and other indemnifiable persons by or through a "captive insurance company," which, in general, is an insurer directly or indirectly owned, controlled and funded by the corporation. The captive insurer may be licensed in Delaware or another jurisdiction. Like third-party insurance, the captive insurance may provide coverage for liabilities incurred by directors, officers, employees and others whether or not the corporation would have the power to indemnify them under Section 145. Thus, captive insurance could be used to provide coverage for, among other things, amounts paid to satisfy judgments and settlements of claims brought by or in the right of the corporation, even though the corporation would not have the power to indemnify the covered persons against such amounts. Amended Section 145(g) contemplates that captive insurance may be procured pursuant to any "fronting" or other reinsurance arrangement (such as when a corporation obtains insurance from a third-party insurer but, through a reinsurance policy, all or part of the risk of loss is transferred to a captive insurer).

Section 145(g)(1) requires that a captive insurance policy must exclude from coverage, and must provide that the insurer may not make payment in respect, of any loss that arises out of, is based upon or is attributable to any personal profit or financial advantage to which the covered person was not legally entitled (e.g., an undue financial benefit from a self-dealing transaction), any deliberate criminal or deliberate fraudulent act, or any knowing violation of law. Despite these exclusions, directors may be covered under a captive insurance policy for certain liabilities that are not exculpable under Section 102(b)(7), including non-exculpated liability stemming from so-called *Caremark* or oversight claims where there is not otherwise a finding that the directors knowingly caused the corporation to violate the law. The coverage exclusions in Section 145(g)(1) only apply if the proscribed conduct has been established in a final, non-appealable adjudication in the underlying proceeding in respect of the claim. They do not apply if the proscribed conduct has been established in an adjudication in an ancillary proceeding by the insurer or the insured to determine coverage. Because the exclusions in Section 145(g)(1) are invoked only after an adjudication in the underlying proceeding, a captive insurance policy could cover amounts paid in settlement of proceedings that allege conduct referenced in Section 145(g)(1). Amended Section 145(g) makes clear that the conduct of one person insured under the captive policy will not be imputed to any other insured person for purposes of applying the conduct exclusions set forth in Section 145(g)(1). In addition, the exclusions in Section 145(g)(1) do not apply to the extent the corporation would otherwise be entitled to indemnify the covered person under the other provisions of Section 145. A corporation that establishes a captive insurance program may include in the insurance policy limitations or exclusions from coverage that are in addition to those prescribed by statute.

Amended Section 145(g)(2) provides that any determination to make a payment under a captive insurance policy must be made either by a third-party administrator or in accordance with the procedures set forth in paragraphs (d)(1) through (4) of Section 145, to ensure that the persons claiming entitlement to payment under the captive insurance policy are not the same persons making the decision whether to pay claims under the policy.

Amended Section 145(g)(3) provides that if any payment is to be made under the captive insurance policy in connection with the dismissal or compromise of any action, suit or proceeding by or in the right of the corporation as to which notice is required to be given to stockholders, the corporation must include in the notice that a payment is proposed to be made under the captive insurance policy in connection with the dismissal or compromise. Section 145(g)(3) thereby affords the reviewing court and stockholders an opportunity to consider the use of assets of the captive insurance company in connection with a compromise of such actions, suits or proceedings. However, amended Section 145(g) does not require a court to make any specific determinations with respect to payments by a captive insurer.

The amendments to Section 145(g) make clear that a corporation that establishes and maintains a captive insurance company shall not, solely by virtue thereof, be subject to the provisions of Title 18 of the Delaware Code regulating insurance companies. The amendments to Section 145(g) are not intended to prohibit other forms of insurance that would have been permitted under the provisions of Section 145(g) that predated this amendment.

S.B. No. 273 (2022)

The amendment to Section 102(b)(7) authorizes a provision in the certificate of incorporation to eliminate or limit monetary liability of certain corporate officers for breach of fiduciary duty, but it precludes such elimination or limitation with respect to claims brought by or in the right of the corporation, and for the same types of claims with respect to which exculpation of directors is not permissible.

The amendment to Section 103(b)(2) clarifies that the execution of an instrument by a person constitutes an oath or affirmation, under penalties of perjury, that the facts stated therein shall be true at the time such instrument becomes effective.

The amendment to Section 103(c)(5) deletes provisions to the extent they do not reflect current practice.

Sections 152, 153, and 157 have been amended to make these sections consistent so that similar rules apply for the board of directors to delegate to a person or body the authority to enter into transactions to issue stock under Section 152, sell treasury shares under Section 153, and issue rights or options to acquire stock under Section 157.

A board of directors may so delegate this authority by adopting a resolution fixing all of the following:

(1) The maximum number of shares of stock, rights, or options that the delegate may issue or sell.

(2) A time period during which the issuances or sales may occur.

(3) Subject to Section 153, the minimum amount of consideration to be received for the issuances or sales.

For the issuance of rights or options, the board resolutions must fix these delegation parameters for both the rights or options to be issued and the shares of stock issuable on exercise thereof. A person or body to whom authority has been delegated to issue stock, rights, or options may not issue or sell to themselves any stock, rights, or options. Amended Sections 152, 153 and 157 permit delegation to a person or body "in addition to the board of directors", which means in addition to the board of directors and committees that are the equivalent of the board of directors by operation of Section 141(c). Accordingly, the delegation rules set forth in amended Sections 152(b), 153(c), and 157(c) do not apply to delegation by the board of directors to board committees, but a board committee may, if authorized by the board, sub-delegate the committee's authority to issue or sell stock, rights, or options to a person or body by complying with those Sections.

Amended Sections 152, 153 and 157 also clarify when a board resolution providing for the issuance or sale of stock, rights, or options may be made dependent on "facts ascertainable" outside the resolution. Consistent with the pre-amendment Sections 152, 153 and 157, the consideration paid for issuing stock, rights, and options may be set by reference to a formula provided in the board resolution, such as by reference to the trading price of stock on a specific date or an average of trading prices over a time period. In addition, if the board is authorizing the transaction to issue stock, for example, approving a transaction agreement that results in a stock issuance, the consideration received by the corporation and the other terms of the issuance may be made dependent on the provisions in the agreement and on determinations by a person or body, such as an expert who makes determinations that might result in an adjustment to the number of shares issued. However, if the board is delegating to a person or body the authority to enter into a transaction to issue stock, rights, or options, such as authorizing an officer to make stock or option grants to employees or to issue stock in an "at the market offering", then the delegate cannot make the determinations regarding the three parameters in Sections 152(b) and 157(c). If the terms of a right or option are provided for in the certificate of incorporation, such terms may be made dependent on facts ascertainable outside the certificate in accordance with Section 102(d) instead of Section 157(d).

Such "facts ascertainable" provisions included in the amendments to Section 157 replace the more limited form of delegation found in pre-amendment Section 157(c), which requires the board of directors to fix the terms of a right or option, but permits the board of directors to delegate to an officer the authority to determine the recipients of the rights or options and the number of rights or options to be issued to each recipient. A typical delegation under pre-amendment Section 157(c) would likely satisfy the delegation parameters of amended Section 157(c).

Amended Section 157 also eliminates the requirement that the terms of a right or option be set forth or incorporated by reference in an instrument, to clarify that rights or options may be issued in book entry or electronic form.

The amendments to Section 219 eliminate the requirement to make a stocklist available for inspection during a meeting of stockholders. The amendments also clarify how the 10-day period is calculated for purposes of determining when the corporation must make the stocklist available for inspection by stockholders before the meeting date.

Section 222(a) is amended to clarify that a notice of a meeting of stockholders may be given in any manner permitted by Section 232. Section 222(c) is amended to clarify that a "virtual" meeting of stockholders held by means of remote communication may be adjourned in the event of a technical failure to convene or continue the meeting. In such event, notice of when the meeting will reconvene need not be given to stockholders if the electronic network for the meeting, such as the website that stockholders and proxy holders visit to join the meeting, displays the information required by Section 222(c) about when and how the meeting will reconvene or if such information regarding the adjourned meeting is provided for in the notice of meeting.

The amendment to Section 228(c) clarifies and confirms that a person executing a consent that becomes effective at a future time, including a time determined upon the happening of an event, need not be a stockholder or member at the time such consent is executed if the person is a stockholder or member of record as of the applicable record date for determining stockholders or members entitled to consent to the action.

The amendments insert a new Section 262(d)(3) that permits a beneficial owner of stock, as defined in amended Section 262(a), to demand appraisal directly, instead of requiring that the record holder of the stock make the demand on behalf of the beneficial owner. A beneficial owner must comply with the requirements of Section 262(d)(3) to demand appraisal, including its requirement that the beneficial owner who demanded appraisal directly, not the record owner, continuously maintains beneficial ownership of the shares. Conforming changes to the other subsections of Section 262 clarify how a beneficial owner may participate in the appraisal process and an appraisal proceeding.

In connection with the amendments to Section 266, Section 262 is being amended to provide appraisal rights to stockholders in connection with a conversion of the corporation to a foreign corporation or to any other entity, unless appraisal rights are denied pursuant to the "market out" exception set forth in amended Section 262(b).

Section 262(b) is being amended to eliminate appraisal rights in connection with a merger, consolidation or conversion of an entity that has domesticated as a Delaware corporation pursuant to Section 388, if the merger, consolidation or conversion is authorized in accordance with Section 388, as amended. The amendments also clarify how Section 262(b) operates in connection with a merger, consolidation or conversion adopted by stockholder consent in lieu of a meeting. Section 262(b) denies appraisal rights in certain instances for holders of classes or series of stock that are listed on a national securities exchange or held by more than 2,000 record holders. Amended Section 262(b) clarifies that appraisal rights are denied for such holders in connection with mergers, consolidations or conversions adopted by stockholder consent to the same extent that appraisal rights are denied to such holders if one those transactions is adopted at a stockholder meeting.

Amended Section 262(d) provides that, in lieu of including in a notice of appraisal rights a copy of Section 262 (and a copy of Section 114, if 1 of the constituent corporations or the converting corporation is a nonstock corporation), a corporation may instead include in the notice information directing the persons entitled to appraisal to a publicly available electronic resource to access Section 262 (and Section 114, if applicable). An electronic resource would include the website maintained on behalf of the State of Delaware on which those statutes are posted.

Amended Sections 262(j) and (k) clarify how the expenses of a stockholder or beneficial owner who participated in an appraisal proceeding may be charged pro rata against the value of all the shares entitled to an appraisal award, and that an unconditioned dismissal under amended Section 262(k) ends the Court of Chancery's jurisdiction over a person that has demanded appraisal under Section 262. Unless the Court of Chancery orders otherwise, expenses awarded under Section 262(j) are not charged against a person who properly withdraws such person's demand for appraisal or is dismissed from the proceedings under Section 262(k) without a reservation of jurisdiction. Amended Section 262(k) also clarifies that a stockholder or beneficial owner may withdraw a demand for appraisal with respect to less than all of the shares for which such person initially demanded appraisal.

The amendment to Section 265(h) provides that the approval of a conversion of other entities to a corporation in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the converting entity and the conduct of its business or by applicable law, as appropriate, and the approval of the certificate of incorporation by the same authorization required to approve the conversion, are required to occur prior to the time the certificate of conversion to corporation becomes effective.

The amendments to Section 266 change the requirement for stockholder approval of the conversion of a corporation to another entity, from all of the outstanding shares of stock of the corporation to a majority of the outstanding shares of stock entitled to vote on a conversion, and if the corporation is converting to a partnership with one or more general partners, such conversion also requires the approval of each stockholder who will become a general partner of such partnership. The amendments require that a certificate of conversion to be filed with the Secretary of State must contain the agreement of the converting corporation to be served with process in the State of Delaware for any action for enforcement of any obligation of the converted entity arising from the conversion as well as in appraisal proceedings pursuant to Section 262. The amendments also provide that, for any corporation incorporated prior to August 1, 2022, any provision contained in its certificate of incorporation or in a voting trust agreement or other written agreement between or among the corporation and one or more stockholders that restricts, conditions or prohibits consummation of a merger or consolidation is also deemed to apply to a conversion, unless the certificate of incorporation or such agreement expressly provides otherwise.

Former Section 275(f) has been deleted and new Sections 275(f) and 275(g) have been added. Amended Section 275(f) applies to any corporation that has included in its certificate of incorporation a provision limiting the duration of its existence to a specified date in accordance with Section 102(b)(5) and adds a requirement that such corporation file a certificate of dissolution within 90 days before such specified date. Section 275(g) addresses the effective time of the dissolution of corporations. Section 13 of this Act makes similar amendments to Section 276 relating to a nonstock corporation that has included in its certificate of incorporation a provision limiting the duration of its existence to a specified date. Section 14 of this Act amends Section 312(b) by deleting unnecessary language.

The amendments to Section 388 permit a non-United States entity to adopt a plan of domestication setting forth the terms and conditions of the domestication, including the manner of

exchanging or converting the equity interests of the non-United States entity to be domesticated and any other details or provisions deemed desirable. A plan of domestication also may set forth corporate action to be taken by the domesticated corporation in connection with the domestication, each of which must be approved in accordance with the requirements of all applicable non-United States law prior to effectiveness of the domestication. Once so approved, any such corporate action that is within the power of a Delaware corporation under this chapter set forth in the plan of domestication shall be deemed authorized, adopted and approved, as applicable, by the domesticated corporation and its board of directors, stockholders or members, as applicable, and will not require any further action of the board of directors, stockholders or members of the domesticated corporation under this title. The amendments provide that the terms of a plan of domestication may be made dependent upon facts ascertainable outside of such plan if the manner in which such facts operate upon the terms of the plan is clearly and expressly set forth in such plan. The amendments further provide that a certificate of domestication shall certify that, prior to the time the certificate of domestication becomes effective, the domestication shall be approved in accordance with the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the non-United States entity and the conduct of its business or by applicable non-United States law.

Section 502(a)(3) has been amended to clarify that the principal place of business address included in the annual franchise tax report shall not be the address of the registered office in this State unless the corporation maintains its principal place of business in this State and serves as its own registered agent.

Section 503 has been amended to make changes regarding the large corporate filer status and the effectiveness of any re-designation thereof. Section 503(i) has also been amended to delete language relating to generally accepted accounting principles because the relevant figures are those reported to the United States on the relevant tax forms as specified in Section 503(i).

S.B. No. 114 (2023)

Sections 152 and 153 have been amended to clarify that treasury shares may be sold for less than par value. Section 153(c) has been amended to clarify the types of consideration that a corporation may receive for selling treasury shares, and references to "amounts" of minimum consideration have been deleted from Sections 152 and 157 to eliminate redundancy.

Section 157(b) has been amended to clarify that Section 157(c) is the exclusive means to delegate to a person or body the authority to enter into transactions to issue rights or options. A reference in Section 157(b) to permitting the exercise price of a right or option to be determined by formula has been deleted to eliminate redundancy because such formulas are permitted by Section 157(d).

Section 157(c) has been amended to eliminate the requirement that the board of directors, or a board committee, fix a maximum number of rights or options that may be authorized for issuance by a person or body under a Section 157(c) delegation. Section 157(c) also clarifies that the board, or a board committee, may fix two different time periods in a Section 157(c) delegation: a period

during which rights or options may be issued and a different time period during which shares may be issued upon exercise of the rights or options.

Section 160(b) has been amended to clarify that treasury shares resulting from a stock redemption or repurchase may be resold under Section 153(c), unless the treasury shares are retired. Section 160(b) also clarifies that treasury shares may not be resold if the shares are required to be retired by a provision of the certificate of incorporation.

Section 204 has been amended to make the following technical changes: (1) The amendments to Section 204(c)(2), which currently dispenses with the need for a vote of stockholders in circumstances where no valid stock is outstanding and entitled to vote, clarifies that the determination as to whether any shares of valid stock are outstanding and entitled to vote must be made at the time the board adopts the resolutions approving the defective corporate act. (2) The amendment to Section 204(d) similarly applies the time of the board's adoption of the resolutions ratifying the defective corporate act as the time for determining which shares constitute valid stock and which shares constitute putative stock entitled to vote on the adoption of the ratification of a defective corporate act requiring a vote of the holders of valid stock. (3) The amendments to Section 204(e) dispense with the need for filing a certificate of validation in circumstances where the underlying defective corporate act required the filing of a certificate under another section of the Delaware General Corporation Law and such a certificate has been filed and requires no change to give effect to the defective corporate act. (4) The amendments to Section 204(e) also simplify the required contents of a certificate of validation, including eliminating the requirement that certificates of validation describe the underlying defective corporate acts and the nature of the failure of authorization relating to those acts.

Section 228(e) has been amended to simplify the determination of the record date to be used for purposes of identifying the stockholders or members who are entitled to notice of action by consent by stockholders or members. There are three different possibilities for determining the record date for action by consent under Section 213(b), which could differ from the record date for the notice required by Section 228(e). The amendments provide that a notice of action by consent shall be provided to those persons (i) who were stockholders or members as of the record date for the action by consent, (ii) who would have been entitled to notice of the meeting if the action had been taken at a meeting and the record date for the notice of the meeting was the record date for the action by consent, and (iii) who have not consented to the action by consent. The changes to Section 228(e) also provide that a notice that constitutes a notice of internet availability of proxy materials for purposes of the federal Securities Exchange Act will satisfy the notice requirements of Section 228(e) for corporations entitled to use such notices under the relevant regulation promulgated under the Securities Exchange Act.

Section 242 has been amended to add a new subsection (d). Paragraph (d)(1) includes the language that had previously been in paragraph (b)(1) providing that no meeting or vote of stockholders is required to adopt an amendment to the certificate of incorporation that effects only changes described in paragraphs (a)(1) or (a)(7). Paragraph (d)(1) also provides that no meeting or vote of stockholders is required for an amendment to the certificate of incorporation that reclassifies by subdividing the issued shares of a class of stock into a greater number of issued shares, i.e., a forward stock split, provided that such class is the only class of such corporation's capital stock then

outstanding (and is not divided into series). Paragraph (d)(1) also provides that no vote of stockholders is required, in connection with such subdivision, for such amendment to increase the authorized number of shares of such class, up to an amount proportionate to the subdivision. Paragraph (d)(2) provides that a corporation listed on a national securities exchange can amend its certificate of incorporation to reclassify by combining the issued shares of a class into a lesser number of issued shares, i.e., a reverse stock split, without obtaining the vote or votes otherwise required by subsection (b) if (i) the shares are listed on a national exchange immediately before the amendment becomes effective and such corporation meets the listing requirement of such exchange relating to the minimum number of holders immediately after the amendment becomes effective, (ii) at a meeting of stockholders at which a vote is taken for and against the proposed amendment, the votes cast for the amendment exceed the votes cast against the amendment and (iii) if the amendment increases or decreases the number of shares of a class of stock that has not opted out of the class vote pursuant to the last sentence of paragraph (b)(2), the votes cast for the amendment by the holders of such class exceed the votes cast against the amendment by the holders of such class. Under the voting standard set forth in paragraph (d)(2)(B) and (C), abstentions have no effect on whether the required approval is obtained. The addition of subsection (d) does not eliminate the stockholder vote required to change the par value of a class of stock, whether or not in connection with any subdivision or combination. Notably, the "unless otherwise expressly required by the certificate of incorporation" lead-in to subsection (d) permits a corporation to "opt in" to the stockholder votes that otherwise would be required under subsection (b) in connection with any subdivision or combination of the issued shares or increase or decrease in the authorized number of shares contemplated by subsection (d). Any such provision in the certificate of incorporation must expressly state that the stockholder vote otherwise required under subsection (b) is required to adopt any amendment to the certificate of incorporation specified in subsection (d) or must expressly "opt out" of the provisions of subsection (d). A general recitation in the certificate of incorporation of the vote generally required under subsection (b) without a specific reference to the amendments specified in subsection (d) is not sufficient. Section 242(a)(3) is also being amended to require that reclassifications by way of subdividing and combining, i.e., forward stock splits and reverse stock splits, must apply to outstanding shares and shares held in treasury, i.e., all "issued" shares. New subsection (d) also reflects this change.

Section 260 has been amended to confirm the authority of a corporation, following a merger, consolidation, conversion, or domestication, to issue bonds, other obligations, shares of its capital stock, and other securities, and to mortgage its franchise, rights, privileges, and property, in connection with such merger, consolidation, conversion, or domestication.

Section 262 has been amended, in connection with the amendments to Section 390 to provide appraisal rights to stockholders in connection with a transfer, domestication, or continuance of the corporation in a foreign jurisdiction, unless appraisal rights are denied under the "market out" exception set forth in amended Section 262(b). Amended Section 262 eliminates appraisal rights in connection with a merger, consolidation, conversion, or domestication of an entity that has converted to a Delaware corporation under Section 265, if the merger, consolidation, conversion, or domestication is authorized under Section 265 as amended. Conforming changes to the other subsections of Section 262 provide that appraisal rights are available in a domestication in a similar manner as a merger, consolidation, or conversion. Amended Section 262(k) clarifies that an appraisal demand may be withdrawn more than 60 days after the effective date of the transaction

resulting in appraisal rights if the withdrawal is approved by the corporation, but the amendment does not change the existing rule that appraisal rights cease if a petition for appraisal is not filed under Section 262(e).

Sections 265, 266 and 390 have been amended to permit another entity or corporation to adopt a plan of conversion or a plan of domestication setting forth the terms and conditions of the conversion or domestication, including the manner of exchanging or converting the equity interests of the other entity or corporation to be converted or domesticated and any other details or provisions deemed desirable. A plan of conversion, adopted under amended Section 265, also may set forth corporate action to be taken by the converted corporation in connection with the conversion, each of which must be approved in accordance with the requirements of all applicable law before effectiveness of the conversion. Once so approved, any such corporate action that is within the power of a Delaware corporation under Chapter 1 of Title 8 set forth in the plan of conversion shall be deemed authorized, adopted, and approved, as applicable, by the converted corporation and its board of directors, stockholders, or members, as applicable, and does not require any further action of the board of directors, stockholders, or members of the converted corporation. The amendments to Sections 265, 266, and 390 provide that the terms of a plan of conversion or plan of domestication may be made dependent upon facts ascertainable outside of such plan if the manner in which such facts operate upon the terms of the plan is clearly and expressly set forth in such plan. The amendments further provide that a certificate of conversion, certificate of transfer or certificate of transfer and domestic continuance, adopted under Sections 266 or 390, and that a certificate of conversion, adopted under Section 265, shall certify that, prior to the time such certificate becomes effective, the plan of conversion or plan of domestication, as applicable, shall be approved in accordance with Sections 266 or 390 or in accordance with all law applicable to the other entity.

Also, the amendments change the requirement for stockholder approval of the transfer, domestication, or continuance of a corporation in a foreign jurisdiction, from all of the outstanding shares of stock of the corporation to a majority of the outstanding shares of stock entitled to vote on a transfer, domestication, or continuance. If the corporation is transferring, domesticating, or continuing as a partnership with one or more general partners, the transfer, domestication, or continuance also requires the approval of each stockholder that is to become a general partner of the partnership. The amendments require that a certificate of domestication to be filed with the Secretary of State must contain the agreement of the transferring, domesticating or continuing corporation to be served with process in the State of Delaware for any action for enforcement of any obligation of the resulting entity arising from the transfer, domestication, or continuance as well as in appraisal proceedings under Section 262. The amendments also provide that, for any corporation incorporated before August 1, 2023, any provision contained in its certificate of incorporation or in a voting trust agreement or other written agreement between or among the corporation and one or more stockholders in effect on or before August 1, 2023 that restricts, conditions or prohibits consummation of a merger or consolidation is also deemed to apply to a transfer, domestication, or continuance, unless the certificate of incorporation or such agreement expressly provides otherwise with respect to a transfer, domestication, or continuance, or if the certificate of incorporation or such agreement does not so expressly provide, a conversion as contemplated by Section 266(k) in which case such express provision shall be deemed to apply to a transfer, domestication or continuance as if it were a conversion.

Section 272(b) has been amended to add a safe harbor for selling, leasing or exchanging collateral assets that secure a mortgage or pledge without obtaining stockholder approval under Section 271. Amended Section 272(b)(1) clarifies this approval is not required if the secured party can sell the collateral without the corporation's consent (including without the consent of its board of directors and stockholders) under the law governing the mortgage or pledge or other applicable law. If a secured party is entitled to sell the collateral in such circumstances, but wishes not to, Section 272(b)(2) permits the secured party and the board of directors to agree to an alternative transaction (e.g., a strict foreclosure or sale to a third party), without obtaining Section 271 stockholder approval, if the value of the assets is less than or equal to the amount of the liability or obligation being reduced or eliminated as a result of the transaction. A specific type of asset valuation is not prescribed, and a transaction would not fail the asset value test solely because consideration is paid to the corporation or its stockholders. For example, consideration might be paid to those parties in the ordinary course of similar transactions or paid as "nuisance value" to avoid claims in litigation. Amended Section 272(b) is not intended to affect a secured party's obligation to comply with article 9 of a uniform commercial code, real property law or other applicable law. Amended Section 272 does not create a general insolvency exception to Section 271 of the type that the Supreme Court of the State of Delaware declined to adopt in Stream TV Networks, Inc. v. SeeCubic, Inc., 279 A.3d 323 (Del. 2022). The amendments to Section 272 establish safe harbors for when stockholder approval is not required by Section 271. Amended Section 272 does not preclude further case law developments on which transactions constitute a "sale, lease or exchange" of assets for purposes of Section 271, nor is amended Section 272 intended to preclude further development of the quantitative and qualitative analyses used by the Delaware courts to interpret Section 271.

New Section 272(c) provides that, after a transaction is completed, it cannot be invalidated for failure to satisfy the asset value test if the transferee of the assets provided value and acted in good faith (as defined in Section 1-201(b)(20) of Title 6). However, a transaction may be enjoined before consummation, and Section 272(c) does not preclude monetary damages for a claim based on a violation of fiduciary duty by a director, officer or stockholder. New Section 272(c) does not change the fiduciary duties of directors or officers (or, as applicable, stockholders) in connection with a sale, lease or exchange, or the level of judicial scrutiny that will apply to the decision to enter into a sale, lease or exchange, each of which will be determined based on the common law of fiduciary duty, including the duty of loyalty. New Section 272(c) does not eliminate defenses otherwise available, including based on Section 141(e) of Section 102(b)(7). The adoption of Section 272(c) is not intended to preclude application of a similar remedies scheme for a Section 271 violation.

New Section 272(d) provides that a certificate of incorporation provision that requires stockholder authorization of a sale, lease or exchange of assets does not apply to a sale, lease or exchange permitted by Section 272(b) unless the certificate of incorporation expressly so provides. New Section 272(d) applies only to certificate of incorporation provisions that first become effective after August 1, 2023. The amendments to Section 272 apply to nonstock corporations through the translator provisions of Section 114.

Redlined Version of Amendments

DELAWARE 2020 SESSION LAWS

150TH GENERAL ASSEMBLY

H.B. No. 341

AN ACT TO AMEND TITLE 8 OF THE DELAWARE CODE RELATING TO THE GENERAL CORPORATION LAW

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

§ 102. Contents of certificate of incorporation

(a) The certificate of incorporation shall set forth:

(1) The name of the corporation, which (i) shall contain 1 of the words "association," "company," "corporation," "club," "foundation," "fund," "incorporated," "institute," "society," "union," "syndicate," or "limited," (or abbreviations thereof, with or without punctuation), or words (or abbreviations thereof, with or without punctuation) of like import of foreign countries or jurisdictions (provided they are written in roman characters or letters); provided, however, that the Division of Corporations in the Department of State may waive such requirement (unless it determines that such name is, or might otherwise appear to be, that of a natural person) if such corporation executes, acknowledges and files with the Secretary of State in accordance with § 103 of this title a certificate stating that its total assets, as defined in § 503(i) of this title, are not less than $10,000,000, or, in the sole discretion of the Division of Corporations in the Department of State, if the corporation is both a nonprofit nonstock corporation and an association of professionals, (ii) shall be such as to distinguish it upon the records in the office of the Division of Corporations in the Department of State from the names that are reserved on such records and from the names on such records of each other corporation, partnership, limited partnership, limited liability company, registered series of a limited liability company**, registered series of a limited partnership** or statutory trust organized or registered as a domestic or foreign corporation, partnership, limited partnership, limited liability company, registered series of a limited liability company**, registered series of a limited partnership** or statutory trust under the laws of this State, except with the written consent of the person who has reserved such name or such other foreign corporation or domestic or foreign partnership, limited partnership, limited liability company, registered series of a limited liability company**, registered series of a limited partnership** or statutory trust, executed, acknowledged and filed with the Secretary of State in accordance with § 103 of this title, or except that, without prejudicing any rights of the person who has reserved such name or such other foreign corporation or domestic or foreign partnership, limited partnership, limited liability company, registered series of a limited liability company**, registered series of a limited partnership** or statutory trust, the Division of Corporations in the Department of State may waive such requirement if the corporation demonstrates to the satisfaction of the Secretary of State that the corporation or a predecessor entity previously has made substantial use of such name or a substantially similar name, that the corporation has made reasonable efforts to secure such written consent, and that such waiver is in the interest of the State, (iii) except as permitted by § 395 of this title, shall not contain the word "trust," and (iv) shall not contain the word "bank," or any variation thereof, except for the name of a bank reporting to and under the supervision of the State Bank Commissioner of this State or a subsidiary of a bank or savings association (as those terms are defined in the Federal Deposit Insurance Act, as amended, at 12 U.S.C. § 1813), or a corporation regulated under the Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1841 et seq., or the Home Owners' Loan Act, as amended, 12 U.S.C. § 1461 et seq.; provided, however, that this section shall not be construed to prevent the use of the word "bank," or any variation thereof, in a context clearly not purporting to refer to a banking business or otherwise likely to mislead the public about the nature of the business of the corporation or to lead to a pattern and practice of abuse that might cause harm to the interests of the public or the State as determined by the Division of Corporations in the Department of State;

(b) In addition to the matters required to be set forth in the certificate of incorporation by subsection (a) of this section, the certificate of incorporation may also contain any or all of the following matters:

(1) Any provision for the management of the business and for the conduct of the affairs of the corporation, and any provision creating, defining, limiting and regulating the powers of the corporation, the directors, and the stockholders, or any class of the stockholders, or the governing body, members, or any class or group of members of a nonstock corporation; if such provisions are not contrary to the laws of this State. Any provision which is required or permitted by any section of this chapter to be stated in the bylaws may instead be stated in the certificate of incorporation.

(2) The following provisions, in haec verba, (i), for a corporation other than a nonstock corporation, viz:

Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them and/or between this corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this corporation under § 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this corporation under § 279 of Title 8 of the Delaware Code order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this corporation, as the case may be, and also on this corporation; or

(ii) for a nonstock corporation, viz:

Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them and/or between this corporation and its members or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this corporation or of any creditor or member thereof or on the application of any receiver or receivers appointed for this corporation under § 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this corporation under § 279 of Title 8 of the Delaware Code order a meeting of the creditors or class of creditors, and/or of the members or class of members of this corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three fourths in value of the creditors or class of creditors, and/or of the members or class of members of this corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the members or class of members, of this corporation, as the case may be, and also on this corporation;

(3) Such provisions as may be desired granting to the holders of the stock of the corporation, or the holders of any class or series of a class thereof, the preemptive right to subscribe to any or all additional issues of stock of the corporation of any or all classes or series thereof, or to any securities of the corporation convertible into such stock. No stockholder shall have any preemptive right to subscribe to an additional issue of stock or to any security convertible into such stock unless, and except to the extent that, such right is expressly granted to such stockholder in the certificate of incorporation. All such rights in existence on July 3, 1967, shall remain in existence unaffected by this paragraph unless and until changed or terminated by appropriate action which expressly provides for the change or termination;

(4) Provisions requiring for any corporate action, the vote of a larger portion of the stock or of any class or series thereof, or of any other securities having voting power, or a larger number of the directors, than is required by this chapter;

(5) A provision limiting the duration of the corporation's existence to a specified date; otherwise, the corporation shall have perpetual existence;

(6) A provision imposing personal liability for the debts of the corporation on its stockholders to a specified extent and upon specified conditions; otherwise, the stockholders of a corporation shall not be personally liable for the payment of the corporation's debts except as they may be liable by reason of their own conduct or acts;

(7) A provision eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided that such provision shall not eliminate or limit the liability of a director: (i) For any breach of the director's duty of loyalty to the corporation or its stockholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (iii) under § 174 of this title; or (iv) for any transaction from which the director derived an improper personal benefit. No such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provision becomes effective. **An amendment, repeal or elimination of such a provision shall not affect its application with respect to an act or omission by a director occurring before such amendment, repeal or elimination unless the provision provides otherwise at the time of such act or omission.** All references in this paragraph to a director shall also be deemed to refer to such other person or persons, if any, who, pursuant to a provision of the certificate of incorporation in accordance with § 141(a) of this title, exercise or perform any of the powers or duties otherwise conferred or imposed upon the board of directors by this title.

§ 108. Organization meeting of incorporators or directors named in certificate of incorporation

(c) ~~Any~~ **Unless otherwise restricted by the certificate of incorporation, (1) any** action permitted to be taken at the organization meeting of the incorporators or directors, as the case may be, may be taken without a meeting if each incorporator or director, where there is more than 1, or the sole incorporator or director where there is only 1, consents thereto in writing or by electronic transmission **and (2) a consent may be documented, signed and delivered in any manner permitted by § 116 of this title**. Any person (whether or not then an incorporator or director) may provide, whether through instruction to an agent or otherwise, that a consent to action will be effective at a future time (including a time determined upon the happening of an event), no later than 60 days after such instruction is given or such provision is made and such consent shall be deemed to have been given for purposes of this subsection at such effective time so long as such person is then an incorporator or director, as the case may be, and did not revoke the consent prior to such time. Any such consent shall be revocable prior to its becoming effective.

§ 110. Emergency bylaws and other powers in emergency

(a) The board of directors of any corporation may adopt emergency bylaws, subject to repeal or change by action of the stockholders, which**,** ~~shall~~ notwithstanding any different provision elsewhere in this chapter or in Chapters 3 [repealed] and 5 [repealed] of Title 26, or in Chapter 7 of Title 5, or in the certificate of incorporation or bylaws, **shall** be operative during any emergency resulting from an attack on the United States or on a locality in which the corporation conducts its business or customarily holds meetings of its board of directors or its stockholders, or during any nuclear or atomic disaster, or during the existence of any catastrophe, **including, but not limited to, an epidemic or pandemic, and a declaration of a national emergency by the United States government,** or other similar emergency condition, ~~as a result of which~~ **irrespective of whether** a quorum of the board of directors or a standing committee thereof ~~cannot~~ **can** readily be convened for action. **The emergency bylaws contemplated by this section may be adopted by the board of directors or, if a quorum cannot be readily convened for a meeting, by a majority of the directors present.** The emergency bylaws may make any provision that may be practical and necessary for the circumstances of the emergency, including provisions that:

(1) A meeting of the board of directors or a committee thereof may be called by any officer or director in such manner and under such conditions as shall be prescribed in the emergency bylaws;

(2) The director or directors in attendance at the meeting, or any greater number fixed by the emergency bylaws, shall constitute a quorum; and

(3) The officers or other persons designated on a list approved by the board of directors before the emergency, all in such order of priority and subject to such conditions and for such period of time (not longer than reasonably necessary after the termination of the emergency) as may be provided in the emergency bylaws or in the resolution approving the

list, shall, to the extent required to provide a quorum at any meeting of the board of directors, be deemed directors for such meeting.

(b) The board of directors, either before or during any such emergency, may provide, and from time to time modify, lines of succession in the event that during such emergency any or all officers or agents of the corporation shall for any reason be rendered incapable of discharging their duties.

(c) The board of directors, either before or during any such emergency, may, effective in the emergency, change the head office or designate several alternative head offices or regional offices, or authorize the officers so to do.

(d) No officer, director or employee acting in accordance with any emergency bylaws shall be liable except for wilful misconduct.

(e) To the extent not inconsistent with any emergency bylaws so adopted, the bylaws of the corporation shall remain in effect during any emergency and upon its termination the emergency bylaws shall cease to be operative.

(f) Unless otherwise provided in emergency bylaws, notice of any meeting of the board of directors during such an emergency may be given only to such of the directors as it may be feasible to reach at the time and by such means as may be feasible at the time, including publication or radio.

(g) To the extent required to constitute a quorum at any meeting of the board of directors during such an emergency, the officers of the corporation who are present shall, unless otherwise provided in emergency bylaws, be deemed, in order of rank and within the same rank in order of seniority, directors for such meeting.

(h) Nothing contained in this section shall be deemed exclusive of any other provisions for emergency powers consistent with other sections of this title which have been or may be adopted by corporations created under this chapter.

(i) During any emergency condition of a type described in paragraph (a) of this section, the board of directors (or, if a quorum cannot be readily convened for a meeting, a majority of the directors present) may (i) take any action that it determines to be practical and necessary to address the circumstances of such emergency condition with respect to a meeting of stockholders of the corporation notwithstanding anything to the contrary in this chapter or in Chapter 7 of Title 5 or in the certificate of incorporation or bylaws, including, but not limited to, (1) to postpone any such meeting to a later time or date (with the record date for determining the stockholders entitled to notice of, and to vote at, such meeting applying to the postponed meeting irrespective of § 213 of this title), and (2) with respect to a corporation subject to the reporting requirements of § 13(a) or § 15(d) of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder, to notify stockholders of any postponement or a change of the place of the meeting (or a change to hold the meeting solely by means of remote communication) solely by a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to § 13, § 14 or § 15(d) of such Act and such rules and regulations; and (ii) with respect to any dividend that has been declared as to which the record date has not occurred, change each of the record date and payment date to a later date or dates (provided the payment date as so changed is not more than 60 days after the record date as so changed); provided that, in either case, the corporation gives notice of such change to stockholders as promptly as practicable thereafter (and in any event before the record date theretofore in effect), which notice, in the case of a corporation subject to the reporting requirements of § 13(a) or § 15(d) of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder, may be given solely by a document publicly filed with the Securities and Exchange Commission pursuant to § 13, § 14 or § 15(d) of such Act and such rules and regulations. No person shall be liable, and no meeting of stockholders shall be postponed or voided, for the failure to make a stocklist available pursuant to § 219 of this title if it was not practicable to allow inspection during any such emergency condition.

§ 116. Document form, signature and delivery

(a) Except as provided in subsection (b) of this section, without limiting the manner in which any act or transaction may be documented, or the manner in which a document may be signed or delivered:

(1) Any act or transaction contemplated or governed by this chapter or the certificate of incorporation or bylaws may be provided for in a document, and an electronic transmission shall be deemed the equivalent of a written document. "Document" means:

a. Any tangible medium on which information is inscribed, and includes handwritten, typed, printed or similar instruments, and copies of such instruments; and

b. An electronic transmission.

(2) Whenever this chapter or the certificate of incorporation or bylaws requires or permits a signature, the signature may be a manual, facsimile, conformed or electronic signature. "Electronic signature" means an electronic symbol or process that is attached to, or logically associated with, a document and executed or adopted by a person with an intent to **execute,** authenticate or adopt the document. **A person may execute a document with such person's signature.**

(3) Unless otherwise agreed between the sender and recipient **(and in the case of proxies or consents given by or on behalf of a stockholder, subject to the additional requirements set forth in § 212(c)(2) & (3) and § 228(d)(1), respectively, of this title)**, an electronic transmission shall be deemed delivered to a person for purposes of this chapter and the certificate of incorporation and bylaws when it enters an information processing system that the person has designated for the purpose of receiving electronic transmissions of the type delivered, so long as the electronic transmission is in a form capable of being processed by that system and such person is able to retrieve the electronic transmission. Whether a person has so designated an information processing system is determined by the certificate of incorporation, the bylaws or from the context and surrounding circumstances, including the parties' conduct. An electronic transmission is delivered under this section even if no person is aware of its receipt. Receipt of an electronic acknowledgement from an information processing system establishes that an electronic transmission was received but, by itself, does not establish that the content sent corresponds to the content received.

This chapter shall not prohibit 1 or more persons from conducting a transaction in accordance with Chapter 12A of Title 6 so long as the part or parts of the transaction that are governed by this chapter are documented, signed and delivered in accordance with this subsection or otherwise in accordance with this chapter. This subsection shall apply solely for purposes of determining whether an act or transaction has been documented, and the document has been signed and delivered, in accordance with this chapter, the certificate of incorporation and the bylaws.

(b) Subsection (a) of this section shall not apply to:

(1) A document filed with or submitted to the Secretary of State, the Register in Chancery, or a court or other judicial or governmental body of this State;

(2) A document comprising part of the stock ledger;

(3) A certificate representing a security;

(4) Any document expressly referenced as a notice (or waiver of notice) by this chapter, the certificate of incorporation or bylaws;

~~(5) A consent in lieu of a meeting given by a director, stockholder or incorporator;~~

~~(6)~~ **(5)** A ballot to vote on actions at a meeting of stockholders; and

~~(7)~~ **(6)** An act or transaction effected pursuant to § 280 of this title or subchapters III, XIII or XVI of this chapter.

The foregoing shall not create any presumption about the lawful means to document a matter addressed by this subsection, or the lawful means to sign or deliver a document addressed by this subsection. ~~A~~ **No** provision of the certificate of incorporation or bylaws shall ~~not~~ limit the application of subsection (a) of this section ~~unless the provision~~ **except for a provision that** expressly restricts ~~one or more of the means of documenting an act or transaction, or of signing or delivering a document, permitted by subsection (a) of this section~~ **or prohibits the use of an electronic transmission or electronic signature (or any form thereof) or expressly restricts or prohibits the delivery of an electronic transmission to an information processing system**.

§ 132. Registered agent in State; resident agent

(a) Every corporation shall have and maintain in this State a registered agent, which agent may be any of:

(1) The corporation itself;

(2) An individual resident in this State;

(3) A domestic corporation (other than the corporation itself), a domestic partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), a domestic limited liability company or a domestic statutory trust; or

(4) A foreign corporation, a foreign ~~partnership (whether general (including a~~ limited liability partnership~~,) or~~ **a foreign** limited **partnership,** ~~(including~~ a **foreign** limited liability limited partnership~~))~~, a foreign limited liability company or a foreign statutory trust.

§ 135. Resignation of registered agent coupled with appointment of successor

The registered agent of 1 or more corporations may resign and appoint a successor registered agent by filing a certificate with the Secretary of State, stating the name and address of the successor agent, in accordance with § 102(a)(2) of this title. There shall be attached to such certificate a statement of each affected corporation ratifying and approving such change of registered agent. Each such statement shall be executed and acknowledged in accordance with § 103 of this title. Upon such filing, the successor registered agent shall become the registered agent of such corporations as have ratified and approved such substitution and the successor registered agent's address, as stated in such certificate, shall become the address of each such corporation's registered office in this State. ~~The Secretary of State shall then issue a certificate that the successor registered agent has become the registered agent of the corporations so ratifying and approving such change and setting out the names of such corporations.~~

§ 141. Board of directors; powers; number, qualifications, terms and quorum; committees; classes of directors; nonstock corporations; reliance upon books; action without meeting; removal

(f) Unless otherwise restricted by the certificate of incorporation or bylaws, **(1)** any action required or permitted to be taken at any meeting of the board of directors or of any committee thereof may be taken without a meeting if all members of the board or committee, as the case may be, consent thereto in writing, or by electronic transmission**, and (2) a consent may be documented, signed and delivered in any manner permitted by § 116 of this title**. Any person (whether or not then a director) may provide, whether through instruction to an agent or otherwise, that a consent to action will be effective at a future time (including a time determined upon the happening of an event), no later than 60 days after such instruction is given or such provision is made and such consent shall be deemed to have been given for purposes of this subsection at such effective time so long as such person is then a director and did not revoke the consent prior to such time. Any such consent shall be revocable prior to its becoming effective. After an action is taken, the consent or consents relating thereto shall be filed with the minutes of the proceedings of the board of directors, or the committee thereof, in the same paper or electronic form as the minutes are maintained.

§ 145. Indemnification of officers, directors, employees and agents; insurance

(c)**(1)** To the extent that a present or former director or officer of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b) of this section, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith. **For indemnification with respect to any act or omission occurring after December 31, 2020, references to "officer" for purposes of this subsection (c)(1) and (2) shall mean only a person who at the time of such act or omission is deemed to have consented to service by the delivery of process to the registered agent of the corporation pursuant to section 3114(b) of title 10 (for purposes of this sentence only, treating residents of this State as if they were nonresidents to apply section 3114(b) of title 10 to this sentence).**

(2) The corporation may indemnify any other person who is not a present or former director or officer of the corporation against expenses (including attorneys' fees) actually and reasonably incurred by such person to the extent he or she has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b) of this section, or in defense of any claim, issue or matter therein.

(d) Any indemnification under subsections (a) and (b) of this section (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the present or former director, officer, employee or agent is proper in the circumstances because the person has met the applicable standard of conduct set forth in subsections (a) and (b) of this section. Such determination shall be made, with respect to a person who is a director or officer of the corporation at the time of such determination:

(1) By a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum; or

(2) By a committee of such directors designated by majority vote of such directors, even though less than a quorum; or

(3) If there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion; or

(4) By the stockholders.

(e) Expenses (including attorneys' fees) incurred by an officer or director of the corporation in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the corporation as authorized in this section. Such expenses (including attorneys' fees) incurred by former directors and officers or other employees and agents of the corporation or by persons serving at the request of the corporation as directors, officers, employees or agents of another corporation, partnership, joint venture, trust or other enterprise may be so paid upon such terms and conditions, if any, as the corporation deems appropriate.

(f) The indemnification and advancement of expenses provided by, or granted pursuant to, the other subsections of this section shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office. A right to indemnification or to advancement of expenses arising under a provision of the certificate of incorporation or a bylaw shall not be eliminated or impaired by an amendment to **or repeal or elimination of** the certificate of incorporation or the bylaws after the occurrence of the act or omission that is the subject of the civil, criminal, administrative or investigative action, suit or proceeding for which indemnification or advancement of expenses is sought, unless the provision in effect at the time of such act or omission explicitly authorizes such elimination or impairment after such action or omission has occurred.

§ 212. Voting rights of stockholders; proxies; limitations

(c) Without limiting the manner in which a stockholder may authorize another person or persons to act for such stockholder as proxy pursuant to subsection (b) of this section, the following shall constitute a valid means by which a stockholder may grant such authority:

(1) A stockholder**, or such stockholder's authorized officer, director, employee or agent,** may execute a document authorizing another person or persons to act for such stockholder as proxy. ~~Execution may be accomplished by the stockholder or such stockholder's authorized officer, director, employee or agent.~~

(2) A stockholder may authorize another person or persons to act for such stockholder as proxy by transmitting or authorizing the transmission of an electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such transmission must either set forth or be submitted with information from which it can be determined that the transmission was authorized by the stockholder. If it is determined that such transmissions are valid, the inspectors or, if there are no inspectors, such other persons making that determination shall specify the information upon which they relied.

(3) The authorization of a person to act as a proxy may be documented, signed and delivered in accordance with § 116 of this title, provided that such authorization shall set forth, or be delivered with information enabling the corporation to determine, the identity of the stockholder granting such authorization.

§ 213. Fixing date for determination of stockholders of record

(b) In order that the corporation may determine the stockholders entitled to consent to corporate action ~~in writing~~ without a meeting **in accordance with § 228 of this title**, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors, and which date shall not be more than 10 days after the date upon which the resolution fixing the record date is adopted by the board of directors. If no record date has been fixed by the board of directors, the record date for determining stockholders entitled to consent to corporate action ~~in writing~~ without a meeting, when no prior action by the board of directors is required by this chapter, shall be the first date on which a signed ~~written~~ consent setting forth the action taken or proposed to be taken is delivered to the corporation ~~by delivery to its registered office in this State, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested~~ **in accordance with § 228(d) of this title**. If no record date has been fixed by the board of directors and prior action by the board of directors is required by this chapter, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the board of directors adopts the resolution taking such prior action.

§ 228. Consent of stockholders or members in lieu of meeting

(a) Unless otherwise provided in the certificate of incorporation, any action required by this chapter to be taken at any annual or special meeting of stockholders of a corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents ~~in writing~~, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the corporation ~~by delivery to its registered office in this State, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested~~ **in the manner required by this section**.

(b) Unless otherwise provided in the certificate of incorporation, any action required by this chapter to be taken at a meeting of the members of a nonstock corporation, or any action which may be taken at any meeting of the members of a nonstock corporation, may be taken without a meeting, without prior notice and without a vote, if a consent or consents ~~in writing~~, setting forth the action so taken, shall be signed by members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all members having a right to vote thereon were present and voted and shall be delivered to the corporation ~~by delivery to its registered office in this State, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of members are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested~~ **in the manner required by this section**.

(c) **A consent must be set forth in writing or in an electronic transmission.** No ~~written~~ consent shall be effective to take the corporate action referred to therein unless ~~written~~ consents signed by a sufficient number of holders or members to take action are delivered to the corporation in the manner required by this section within 60 days of the first date on which a ~~written~~ consent is so delivered to the corporation. Any person executing a consent may provide, whether through instruction to an agent or otherwise, that such a consent will be effective at a future time (including a time determined upon the happening of an event), no later than 60 days after such instruction is given or such provision is made, if evidence of such instruction or provision is provided to the corporation. Unless otherwise provided, any such consent shall be revocable prior to its becoming effective. **All references to a consent in this section means a consent permitted by this section.**

(d)(1) ~~An electronic transmission consenting to an action to be taken and transmitted by a stockholder, member or proxyholder, or by a person or persons authorized to act for a stockholder, member or proxyholder, shall be deemed to be~~

~~written and signed for the purposes of this section, provided that any such electronic transmission sets forth or is delivered with information from which the corporation can determine (A) that the electronic transmission was transmitted by the stockholder, member or proxyholder or by a person or persons authorized to act for the stockholder, member or proxyholder and (B) the date on which such stockholder, member or proxyholder or authorized person or persons transmitted such electronic transmission. A consent given by electronic transmission is delivered to the corporation upon the earliest of: (i) when the consent enters an information processing system, if any, designated by the corporation for receiving consents, so long as the electronic transmission is in a form capable of being processed by that system and the corporation is able to retrieve that electronic transmission; (ii) when a paper reproduction of the consent is delivered to the corporation's principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders or members are recorded; (iii) when a paper reproduction of the consent is delivered to the corporation's registered office in this State by hand or by certified or registered mail, return receipt requested; or (iv) when delivered in such other manner, if any, provided by resolution of the board of directors or governing body of the corporation. Whether the corporation has so designated an information processing system to receive consents is determined by the certificate of incorporation, the bylaws or from the context and surrounding circumstances, including the conduct of the corporation. A consent given by electronic transmission is delivered under this section even if no person is aware of its receipt. Receipt of an electronic acknowledgement from an information processing system establishes that a consent given by electronic transmission was received but, by itself, does not establish that the content sent corresponds to the content received.~~ **A consent permitted by this section shall be delivered: (i) to the principal place of business of the corporation; (ii) to an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders or members are recorded; (iii) to the registered office of the corporation in this State by hand or by certified or registered mail, return receipt requested; or (iv) subject to the next sentence, in accordance with § 116 of this title to an information processing system, if any, designated by the corporation for receiving such consents. In the case of delivery pursuant to the foregoing clause (iv), such consent must set forth or be delivered with information that enables the corporation to determine the date of delivery of such consent and the identity of the person giving such consent, and, if such consent is given by a person authorized to act for a stockholder or member as proxy, such consent must comply with the applicable provisions of § 212(c)(2) &(3) of this title.**

(2) Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing. **A consent may be documented and signed in accordance with § 116 of this title, and when so documented or signed shall be deemed to be in writing for purposes of this title; provided that if such consent is delivered pursuant to clause (i), (ii) or (iii) of subsection (d)(1) of this section, such consent must be reproduced and delivered in paper form.**

(e) Prompt notice of the taking of the corporate action without a meeting by less than unanimous ~~written~~ consent shall be given to those stockholders or members who have not consented ~~in writing~~ and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for notice of such meeting had been the date that ~~written~~ consents signed by a sufficient number of holders or members to take the action were delivered to the corporation as provided in this section. In the event that the action which is consented to is such as would have required the filing of a certificate under any other section of this title, if such action had been voted on by stockholders or by members at a meeting thereof, the certificate filed under such other section shall state, in lieu of any statement required by such section concerning any vote of stockholders or members, that ~~written~~ consent has been given in accordance with this section.

§ 232. Delivery of notice; notice by electronic transmission

(b) Without limiting the manner by which notice otherwise may be given effectively to stockholders, but subject to subsection (e) of this section, any notice to stockholders given by the corporation under any provision of this chapter, the certificate of incorporation, or the bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice or electronic transmission to the corporation. **A corporation may give a notice by electronic mail in accordance with subsection (a) of this section without obtaining the consent required by this subsection (b).**

§ 251. Merger or consolidation of domestic corporations

(g) Notwithstanding the requirements of subsection (c) of this section, unless expressly required by its certificate of incorporation, no vote of stockholders of a constituent corporation shall be necessary to authorize a merger with or into a single direct or indirect wholly-owned subsidiary of such constituent corporation if:

(1) such constituent corporation and the direct or indirect wholly-owned subsidiary of such constituent corporation are the only constituent entities to the merger;

(2) each share or fraction of a share of the capital stock of the constituent corporation outstanding immediately prior to the effective time of the merger is converted in the merger into a share or equal fraction of share of capital stock of a holding company having the same designations, rights, powers and preferences, and the qualifications, limitations and restrictions thereof, as the share of stock of the constituent corporation being converted in the merger;

(3) the holding company and the constituent corporation are corporations of this State and the direct or indirect wholly-owned subsidiary that is the other constituent entity to the merger is a corporation or limited liability company of this State;

(4) the certificate of incorporation and ~~by-laws~~ **bylaws** of the holding company immediately following the effective time of the merger contain provisions identical to the certificate of incorporation and ~~by-laws~~ **bylaws** of the constituent corporation immediately prior to the effective time of the merger (other than provisions, if any, regarding the incorporator or incorporators, the corporate name, the registered office and agent, the initial board of directors and the initial subscribers for shares and such provisions contained in any amendment to the certificate of incorporation as were necessary to effect a change, exchange, reclassification, subdivision, combination or cancellation of stock, if such change, exchange, reclassification, subdivision, combination, or cancellation has become effective);

(5) as a result of the merger**,** the constituent corporation or its successor becomes or remains a direct or indirect wholly-owned subsidiary of the holding company;

(6) the directors of the constituent corporation become or remain the directors of the holding company upon the effective time of the merger;

(7) the organizational documents of the surviving entity immediately following the effective time of the merger ~~contain provisions identical to the certificate of incorporation of the constituent corporation immediately prior to the effective time of the merger (other than provisions, if any, regarding the incorporator or incorporators, the corporate or entity name, the registered office and agent, the initial board of directors and the initial subscribers for shares, references to members rather than stockholders or shareholders, references to interests, units or the like rather than stock or shares, references to managers, managing members or other members of the governing body rather than directors and such provisions contained in any amendment to the certificate of incorporation as were necessary to effect a change, exchange, reclassification, subdivision, combination or cancellation of stock, if such change, exchange, reclassification, subdivision, combination or cancellation has become effective); provided, however, that (i) if the organizational documents of the surviving entity do not contain the following provisions, they shall be amended in the merger to~~ contain provisions requiring that (A) any act or transaction by or involving the surviving entity, other than the election or removal of directors or managers, managing members or other members of the governing body of the surviving entity, that ~~requires~~**, if taken by the constituent corporation immediately prior to the effective time of the merger, would require,** for its adoption under this chapter or ~~its organizational documents~~ **under the certificate of incorporation or bylaws of the constituent corporation immediately prior to the effective time of the merger,** the approval of the stockholders ~~or members of the surviving entity~~ **of the constituent corporation,** shall, by specific reference to this subsection, require, in addition **to approval of the stockholders or members of the surviving entity**, the approval of the stockholders of the holding company (or any successor by merger), by the same vote as is required by this chapter and/or by the ~~organizational documents of the surviving entity~~ **certificate of incorporation or bylaws of the constituent corporation immediately prior to the effective time of the merger**; provided, however, that for purposes of this clause ~~(i)~~(A), ~~any surviving entity that is not a corporation shall include in such amendment a requirement that the approval of the stockholders of the holding company be obtained for any act or transaction by or involving the surviving entity, other than the election or removal of directors or managers, managing members or other members of the governing body of the surviving entity, which would require the approval of the stockholders of the surviving entity if the surviving entity were a corporation subject to this chapter; (B)~~ any

amendment of the organizational documents of a surviving entity that is not a corporation, which amendment would, if adopted by a corporation subject to this chapter, be required to be included in the certificate of incorporation of such corporation, shall, by specific reference to this subsection, require, in addition, the approval of the stockholders of the holding company (or any successor by merger), by the same vote as is required by this chapter and/or by the ~~organizational documents of the surviving entity~~ **certificate of incorporation or bylaws of the constituent corporation immediately prior to the effective time of the merger**; and ~~(C)~~**(B)** the business and affairs of a surviving entity that is not a corporation shall be managed by or under the direction of a board of directors, board of managers or other governing body consisting of individuals who are subject to the same fiduciary duties applicable to, and who are liable for breach of such duties to the same extent as, directors of a corporation subject to this chapter; and ~~(ii) the organizational documents of the surviving entity may be amended in the merger (A) to reduce the number of classes and shares of capital stock or other equity interests or units that the surviving entity is authorized to issue and (B) to eliminate any provision authorized by § 141(d) of this title; and~~

(8) the stockholders of the constituent corporation do not recognize gain or loss for United States federal income tax purposes as determined by the board of directors of the constituent corporation. Neither paragraph (g)(7)(i) of this section nor any provision of a surviving entity's organizational documents required by paragraph (g)(7)(i) of this section shall be deemed or construed to require approval of the stockholders of the holding company to elect or remove directors or managers, managing members or other members of the governing body of the surviving entity. The term "organizational documents", as used in paragraph (g)(7) of this section and in the preceding sentence, shall, when used in reference to a corporation, mean the certificate of incorporation of such corporation, and when used in reference to a limited liability company, mean the limited liability company agreement of such limited liability company.

As used in this subsection only, the term "holding company" means a corporation which, from its incorporation until consummation of a merger governed by this subsection, was at all times a direct or indirect wholly-owned subsidiary of the constituent corporation and whose capital stock is issued in such merger. From and after the effective time of a merger adopted by a constituent corporation by action of its board of directors and without any vote of stockholders pursuant to this subsection: (i) to the extent the restrictions of § 203 of this title applied to the constituent corporation and its stockholders at the effective time of the merger, such restrictions shall apply to the holding company and its stockholders immediately after the effective time of the merger as though it were the constituent corporation, and all shares of stock of the holding company acquired in the merger shall for purposes of § 203 of this title be deemed to have been acquired at the time that the shares of stock of the constituent corporation converted in the merger were acquired, and provided further that any stockholder who immediately prior to the effective time of the merger was not an interested stockholder within the meaning of § 203 of this title shall not solely by reason of the merger become an interested stockholder of the holding company, (ii) if the corporate name of the holding company immediately following the effective time of the merger is the same as the corporate name of the constituent corporation immediately prior to the effective time of the merger, the shares of capital stock of the holding company into which the shares of capital stock of the constituent corporation are converted in the merger shall be represented by the stock certificates that previously represented shares of capital stock of the constituent corporation and (iii) to the extent a stockholder of the constituent corporation immediately prior to the merger had standing to institute or maintain derivative litigation on behalf of the constituent corporation, nothing in this section shall be deemed to limit or extinguish such standing. If an agreement of merger is adopted by a constituent corporation by action of its board of directors and without any vote of stockholders pursuant to this subsection, the secretary or assistant secretary of the constituent corporation shall certify on the agreement that the agreement has been adopted pursuant to this subsection and that the conditions specified in the first sentence of this subsection have been satisfied, provided that such certification on the agreement shall not be required if a certificate of merger or consolidation is filed in lieu of filing the agreement. The agreement so adopted and certified shall then be filed and become effective, in accordance with § 103 of this title. Such filing shall constitute a representation by the person who executes the agreement that the facts stated in the certificate remain true immediately prior to such filing.

§ 262. Appraisal rights

(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, § 255, § 256, § 257, § 258, § 263 or § 264 of this title:

(1) Provided, however, that~~, except as expressly provided in § 363(b) of this title,~~ 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 the meeting of stockholders to act upon the agreement of merger or consolidation (or, in the case of a merger pursuant to § 251(h), as of immediately prior to the execution of the agreement of merger), were either: (i) listed on a national securities exchange 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 § 251(f) of this title.

(2) Notwithstanding paragraph (b)(1) of this section, 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, 255, 256, 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 held of record by more than 2,000 holders;

c. Cash in lieu of fractional shares or fractional depository receipts described in the foregoing paragraphs (b)(2)a. and b. of this section; 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 paragraphs (b)(2)a., b. and c. of this section.

(3) In the event all of the stock of a subsidiary Delaware corporation party to a merger effected under § 253 or § 267 of this title is not owned by the parent immediately prior to the merger, appraisal rights shall be available for the shares of the subsidiary Delaware corporation.

(4) ~~In the event of an amendment to a corporation's certificate of incorporation contemplated by § 363(a) of this title, appraisal rights shall be available as contemplated by § 363(b) of this title, and the procedures of this section, including those set forth in subsections (d) and (e) of this section, shall apply as nearly as practicable, with the word "amendment" substituted for the words "merger or consolidation," and the word "corporation" substituted for the words "constituent corporation" and/or "surviving or resulting corporation."~~ [**Repealed.]**

§ 266. Conversion of a domestic corporation to other entities

(d) Upon the filing in the Office of the Secretary of State of a certificate of conversion to non-Delaware entity in accordance with subsection (c) of this section or upon the future effective date or time of the certificate of conversion to non-Delaware entity and payment to the Secretary of State of all fees prescribed under this title, ~~the Secretary of State shall certify that the corporation has filed all documents and paid all fees required by this title, and thereupon~~ the corporation shall cease to exist as a corporation of this State at the time the certificate of conversion becomes effective in accordance with § 103 of this title. ~~Such~~ **A copy of the** certificate of **conversion to non-Delaware entity certified by** the Secretary of State shall be prima facie evidence of the conversion by such corporation out of the State of Delaware.

§ 363. ~~Certain amendments and mergers; votes required; appraisal rights~~ Nonprofit nonstock corporations

~~(a) Notwithstanding any other provisions of this chapter, a corporation that is not a public benefit corporation, may not, without the approval of $^{2}/_{3}$ of the outstanding stock of the corporation entitled to vote thereon:~~

~~(1) Amend its certificate of incorporation to include a provision authorized by § 362(a)(1) of this title; or~~

~~(2) Merge or consolidate with or into another entity if, as a result of such merger or consolidation, the shares in such corporation would become, or be converted into or exchanged for the right to receive, shares or other equity interests in a domestic or foreign public benefit corporation or similar entity.~~

~~The restrictions of this section shall not apply prior to the time that the corporation has received payment for any of its capital stock, or in the case of a nonstock corporation, prior to the time that it has members.~~

~~(b) Any stockholder of a corporation that is not a public benefit corporation that holds shares of stock of such corporation immediately prior to the effective time of:~~

~~(1) An amendment to the corporation's certificate of incorporation to include a provision authorized by § 362(a)(1) of this title; or~~

~~(2) A merger or consolidation that would result in the conversion of the corporation's stock into or exchange of the corporation's stock for the right to receive shares or other equity interests in a domestic or foreign public benefit corporation or similar entity;~~

~~and has neither voted in favor of such amendment or such 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; 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 the meeting of stockholders to act upon the agreement of merger or consolidation, or amendment, were either: (i) listed on a national securities exchange or (ii) held of record by more than 2,000 holders, unless, in the case of a merger or consolidation, the holders thereof are required by the terms of an agreement of merger or consolidation to accept for such stock anything except (A) 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 held of record by more than 2,000 holders; (B) cash in lieu of fractional shares or fractional depository receipts described in the foregoing clause (A); or (C) any combination of the shares of stock, depository receipts and cash in lieu of fractional shares or fractional depository receipts described in the foregoing clauses (A) and (B).~~
~~(c) Notwithstanding any other provisions of this chapter, a corporation that is a public benefit corporation may not, without the approval of ⅔ of the outstanding stock of the corporation entitled to vote thereon:~~

~~(1) Amend its certificate of incorporation to delete or amend a provision authorized by § 362(a)(1) or § 366(c) of this title; or~~

~~(2) Merge or consolidate with or into another entity if, as a result of such merger or consolidation, the shares in such corporation would become, or be converted into or exchanged for the right to receive, shares or other equity interests in a domestic or foreign corporation that is not a public benefit corporation or similar entity and the certificate of incorporation (or similar governing instrument) of which does not contain the identical provisions identifying the public benefit or public benefits pursuant to § 362(a) of this title or imposing requirements pursuant to § 366(c) of this title.~~

~~(d) Notwithstanding the foregoing, a~~ **A** nonprofit nonstock corporation may not be a constituent corporation to any merger or consolidation ~~governed by this section~~ **with a public benefit corporation or in which the certificate of incorporation of the surviving corporation is amended to include a provision authorized by § 362 (a)(1) of this title**.

§ 365. Duties of directors

(c) ~~The certificate of incorporation of a public benefit corporation may include a provision that any disinterested failure to satisfy this section shall not~~ **A director's ownership of or other interest in the stock of the public benefit corporation shall not alone, for the purposes of this section, create a conflict of interest on the part of the director with respect to the director's decision implicating the balancing requirement in subsection (a) of this section,**

except to the extent that such ownership or interest would create a conflict of interest if the corporation were not a public benefit corporation. In the absence of a conflict of interest, no failure to satisfy that balancing requirement shall, for the purposes of § 102(b)(7) or § 145 of this title, constitute an act or omission not in good faith, or a breach of the duty of loyalty**, unless the certificate of incorporation so provides**.

§ 367. ~~Derivative suits~~ Suits to enforce the requirements of § 365(a)

~~Stockholders of a public benefit corporation owning~~ **Any action to enforce the balancing requirement of § 365(a) of this title, including any individual, derivative or any other type of action, may not be brought unless the plaintiffs in such action own** individually or collectively, as of the date of instituting such ~~derivative suit~~ **action**, at least 2% of the corporation's outstanding shares or, in the case of a corporation with shares listed on a national securities exchange, the lesser of such percentage or shares of **the corporation with a market value of** at least $2,000,000 ~~in market value, may maintain a derivative lawsuit to enforce the requirements set forth in § 365(a) of this title~~ **as of the date the action is instituted**. **This section shall not relieve the plaintiffs from complying with any other conditions applicable to filing a derivative action including § 327 of this title and any rules of the court in which the action is filed.**

§ 377. Change of registered agent

(b) Any individual or entity designated by a foreign corporation as its registered agent for service of process may resign ~~by filing with the Secretary of State a signed statement that the registered agent is unwilling to continue to act as the registered agent of the corporation for service of process, including in the statement the post-office address of the main or headquarters office of the foreign corporation, but such resignation shall not become effective until 30 days after the statement is filed. The statement shall be acknowledged by the registered agent and shall contain a representation that written notice of resignation was given to the corporation at least 30 days prior to the filing of the statement by mailing or delivering such notice to the corporation at its address given in the statement~~ **in the same manner as provided in § 136(a) of this title**.

§ 391. Amounts payable to Secretary of State upon filing certificate or other paper

(a) The following fees and penalties shall be collected by and paid to the Secretary of State, for the use of the State:

(1) Upon the receipt for filing of an original certificate of incorporation, the fee shall be computed on the basis of $0.02 for each share of authorized capital stock having par value up to and including 20,000 shares, $0.01 for each share in excess of 20,000 shares up to and including 200,000 shares, and 2/5 of a $0.01 for each share in excess of 200,000 shares; $0.01 for each share of authorized capital stock without par value up to and including 20,000 shares, 1/2 of $0.01 for each share in excess of 20,000 shares up to and including 2,000,000 shares, and 2/5 of $0.01 for each share in excess of 2,000,000 shares. In no case shall the amount paid be less than $15. For the purpose of computing the fee on par value stock each $100 unit of the authorized capital stock shall be counted as 1 assessable share.

(2) Upon the receipt for filing of a certificate of amendment of certificate of incorporation, or a certificate of amendment of certificate of incorporation before payment of capital, or a restated certificate of incorporation, increasing the authorized capital stock of a corporation, the fee shall be an amount equal to the difference between the fee computed at the foregoing rates upon the total authorized capital stock of the corporation including the proposed increase, and the fee computed at the foregoing rates upon the total authorized capital stock excluding the proposed increase. In no case shall the amount paid be less than $30.

(3) Upon the receipt for filing of a certificate of amendment of certificate of incorporation before payment of capital and not involving an increase of authorized capital stock, or an amendment to the certificate of incorporation not involving an increase of authorized capital stock, or a restated certificate of incorporation not involving an increase of authorized capital stock, or a certificate of retirement of stock, the fee to be paid shall be $30. For all other certificates relating to corporations, not otherwise provided for, the fee to be paid shall be $5.00. In the case of exempt corporations no fee shall be paid under this paragraph.

(4) Upon the receipt for filing of a certificate of merger or consolidation of 2 or more corporations, the fee shall be an amount equal to the difference between the fee computed at the foregoing rates upon the total authorized capital stock of the corporation created by the merger or consolidation, and the fee so computed upon the aggregate amount of the total authorized capital stock of the constituent corporations. In no case shall the amount paid be less than $75. The

foregoing fee shall be in addition to any tax or fee required under any other law of this State to be paid by any constituent entity that is not a corporation in connection with the filing of the certificate of merger or consolidation.

(5) Upon the receipt for filing of a certificate of dissolution, there shall be paid to and collected by the Secretary of State a fee of:

a. Forty dollars; or

b. Ten dollars in the case of a certificate of dissolution which certifies that:

1. The corporation has no assets and has ceased transacting business; and

2. The corporation, for each year since its incorporation in this State, has been required to pay only the minimum franchise tax then prescribed by § 503 of this title; and

3. The corporation has paid all franchise taxes and fees due to or assessable by this State through the end of the year in which said certificate of dissolution is filed.

(6) Upon the receipt for filing of a certificate of reinstatement of a foreign corporation or a certificate of surrender and withdrawal from the State by a foreign corporation, there shall be collected by and paid to the Secretary of State a fee of $10.

(7) For receiving and filing and/or indexing any certificate, affidavit, agreement or any other paper provided for by this chapter, for which no different fee is specifically prescribed, a fee of $115 in each case shall be paid to the Secretary of State. The fee in the case of a certificate of incorporation filed as required by § 102 of this title shall be $25. For entering information from each instrument into the Delaware Corporation Information System in accordance with § 103(c)(8) of this title, the fee shall be $5.00.

a. A certificate of dissolution which meets the criteria stated in paragraph (a)(5)b. of this section shall not be subject to such fee; and

b. A certificate of incorporation filed in accordance with § 102 of this title shall be subject to a fee of $25.

(8) For receiving and filing and/or indexing the annual report of a foreign corporation doing business in this State, a fee of $125 shall be paid. In the event of neglect, refusal or failure on the part of any foreign corporation to file the annual report with the Secretary of State on or before June 30 each year, the corporation shall pay a penalty of $125.

(9) For recording and indexing articles of association and other papers required by this chapter to be recorded by the Secretary of State, a fee computed on the basis of $0.01 a line shall be paid.

(10) For certifying copies of any paper on file provided by this chapter, a fee of $50 shall be paid for each copy certified. In addition, a fee of $2.00 per page shall be paid in each instance where the Secretary of State provides the copies of the document to be certified.

(11) For issuing any certificate of the Secretary of State other than a certification of a copy under paragraph (a)(10) of this section, or a certificate that recites all of a corporation's filings with the Secretary of State, a fee of $50 shall be paid for each certificate. For issuing any certificate of the Secretary of State that recites all of a corporation's filings with the Secretary of State, a fee of $175 shall be paid for each certificate. For issuing any certificate via the Division's online services, a fee of up to $175 shall be paid for each certificate.

(12) For filing in the office of the Secretary of State any certificate of change of location or change of registered agent, as provided in § 133 of this title, there shall be collected by and paid to the Secretary of State a fee of $50, provided that no fee shall be charged pursuant to § 103(c)(6) and (c)(7) of this title.

(13) For filing in the office of the Secretary of State any certificate of change of address or change of name of registered agent, as provided in § 134 of this title, there shall be collected by and paid to the Secretary of State a fee of $50, plus the same fees for receiving, filing, indexing, copying and certifying the same as are charged in the case of filing a certificate of incorporation.

(14) For filing in the office of the Secretary of State any certificate of resignation of a registered agent and appointment of a successor, as provided in § 135 of this title, there shall be collected by and paid to the Secretary of State a fee of $50.

(15) For filing in the office of the Secretary of State, any certificate of resignation of a registered agent without appointment of a successor, as provided in § 136 and 377 of this title, there shall be collected by and paid to the Secretary of State a fee of $2.00 for each corporation whose registered agent has resigned by such certificate.

(16) For preparing and providing a written report of a record search, a fee of **up to $100** shall be paid.

(17) For preclearance of any document for filing, a fee of $250 shall be paid.

(18) For receiving and filing and/or indexing an annual franchise tax report of a corporation provided for by § 502 of this title, a fee of $25 shall be paid by exempt corporations and a fee of $50 shall be paid by all other corporations.

(19) For receiving and filing and/or indexing by the Secretary of State of a certificate of domestication and certificate of incorporation prescribed in § 388(d) of this title, a fee of $165, plus the fee payable upon the receipt for filing of an original certificate of incorporation, shall be paid.

(20) For receiving, reviewing and filing and/or indexing by the Secretary of State of the documents prescribed in § 389(c) of this title, a fee of $10,000 shall be paid.

(21) For receiving, reviewing and filing and/or indexing by the Secretary of State of the documents prescribed in § 389(d) of this title, an annual fee of $2,500 shall be paid.

(22) Except as provided in this section, the fees of the Secretary of State shall be as provided for in § 2315 of Title 29.

(23) In the case of exempt corporations, the total fees payable to the Secretary of State upon the filing of a Certificate of Change of Registered Agent and/or Registered Office or a Certificate of Revival shall be $5.00 and such filings shall be exempt from any fees or assessments pursuant to the requirements of § 103(c)(6) and (c)(7) of this title.

(24) For accepting a corporate name reservation application, an application for renewal of a corporate name reservation, or a notice of transfer or cancellation of a corporate name reservation, there shall be collected by and paid to the Secretary of State a fee of up to $75.

(25) For receiving and filing and/or indexing by the Secretary of State of a certificate of transfer or a certificate of continuance prescribed in § 390 of this title, a fee of $1,000 shall be paid.

(26) For receiving and filing and/or indexing by the Secretary of State of a certificate of conversion and certificate of incorporation prescribed in § 265 of this title, a fee of $115, plus the fee payable upon the receipt for filing of an original certificate of incorporation, shall be paid.

(27) For receiving and filing and/or indexing by the Secretary of State of a certificate of conversion prescribed in § 266 of this title, a fee of $165 shall be paid.

(28) For receiving and filing and/or indexing by the Secretary of State of a certificate of validation prescribed in § 204 of this title, a fee of $2,500 shall be paid; provided, that if the certificate of validation has the effect of increasing the authorized capital stock of a corporation, an additional fee, calculated in accordance with paragraph (a)(2) of this section, shall also be paid.

DELAWARE 2021 SESSION LAWS

151ST GENERAL ASSEMBLY

S.B. No. 113

AN ACT TO AMEND TITLE 8 OF THE DELAWARE CODE RELATING TO THE GENERAL CORPORATION LAW.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

§ 160. Corporation's powers respecting ownership, voting, etc., of its own stock; rights of stock called for redemption

(c) Shares of ~~its own~~ **a corporation's** capital stock ~~belonging to~~ **shall neither be entitled to vote nor be counted for quorum purposes if such shares belong to (i)** the corporation ~~or to~~**, (ii)** another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly~~, by the corporation, shall neither be entitled to vote nor be counted for quorum purposes.~~ **or (iii) any other entity, if a majority of the voting power of such other entity is held, directly or indirectly, by the corporation or if such other entity is otherwise controlled, directly or indirectly, by the corporation.** Nothing in this section shall be construed as limiting the right of any corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity.

DELAWARE 2022 SESSION LAWS

151ST GENERAL ASSEMBLY

S.B. No. 203

AN ACT TO AMEND TITLE 8 OF THE DELAWARE CODE RELATING TO THE GENERAL CORPORATION LAW.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

§ 145. Indemnification of officers, directors, employees and agents; insurance.

(c) (1) To the extent that a present or former director or officer of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b) of this section, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith. For indemnification with respect to any act or omission occurring after December 31, 2020, references to "officer" for purposes of ~~this~~ paragraphs (c)(1) and (2) of this section shall mean only a person who at the time of such act or omission is deemed to have consented to service by the delivery of process to the registered agent of the corporation pursuant to § 3114(b) of Title 10 (for purposes of this sentence only, treating residents of this State as if they were nonresidents to apply § 3114(b) of Title 10 to this sentence).

(g) A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against such liability under this section. **For purposes of this subsection, insurance shall include any insurance provided directly or indirectly (including pursuant to any fronting or reinsurance arrangement) by or through a captive insurance company organized and licensed in compliance with the laws of any jurisdiction, including any captive insurance company licensed under Chapter 69 of Title 18 of the Delaware Code, provided that the terms of any such captive insurance shall:**

(1) exclude from coverage thereunder, and provide that the insurer shall not make any payment for, loss in connection with any claim made against any person arising out of, based upon or attributable to any (i) personal profit or other financial advantage to which such person was not legally entitled or (ii) deliberate criminal or deliberate fraudulent act of such person, or a knowing violation of law by such person, if (in the case of the foregoing clause (i) or (ii)) established by a final, non-appealable adjudication in the underlying proceeding in respect of such claim (which shall not include an action or proceeding initiated by the insurer or the insured to determine coverage under the policy), unless and only to the extent such person is entitled to be indemnified therefor under this section;

(2) require that any determination to make a payment under such insurance in respect of a claim against a current director or officer (as defined in paragraph (c)(1) of this section) of the corporation shall be made by a independent claims administrator or in accordance with the provisions of paragraphs (d)(1) through (4) of this section; and

(3) require that, prior to any payment under such insurance in connection with any dismissal or compromise of any action, suit or proceeding brought by or in the right of a corporation as to which notice is required to be given to stockholders, such corporation shall include in such notice that a payment is proposed to be made under such insurance in connection with such dismissal or compromise.

For purposes of paragraph (1) of this subsection, the conduct of an insured person shall not be imputed to any other insured person. A corporation that establishes or maintains a captive insurance company that provides

insurance pursuant to this section shall not, solely by virtue thereof, be subject to the provisions of Title 18 of the Delaware Code.

DELAWARE 2022 SESSION LAWS

151ST GENERAL ASSEMBLY

S.B. No. 273

AN ACT TO AMEND TITLE 8 OF THE DELAWARE CODE RELATING TO THE GENERAL CORPORATION LAW.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

§ 102. Contents of certificate of incorporation.

(b) In addition to the matters required to be set forth in the certificate of incorporation by subsection (a) of this section, the certificate of incorporation may also contain any or all of the following matters:

(7) A provision eliminating or limiting the personal liability of a director **or officer** to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director **or officer**, provided that such provision shall not eliminate or limit the liability of ~~a director~~:

(i) ~~For~~ **a director or officer for** any breach of the director's **or officer's** duty of loyalty to the corporation or its stockholders;

(ii) **a director or officer** for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;

(iii) **a director** under § 174 of this title; ~~or~~

(iv) **a director or officer** for any transaction from which the director **or officer** derived an improper personal ~~benefit.~~ **benefit; or**

(v) an officer in any action by or in the right of the corporation.

No such provision shall eliminate or limit the liability of a director **or officer** for any act or omission occurring prior to the date when such provision becomes effective.

An amendment, repeal or elimination of such a provision shall not affect its application with respect to an act or omission by a director **or officer** occurring before such amendment, repeal or elimination unless the provision provides otherwise at the time of such act or omission.

All references in this paragraph to a director shall also be deemed to refer to such other person or persons, if any, who, pursuant to a provision of the certificate of incorporation in accordance with § 141(a) of this title, exercise or perform any of the powers or duties otherwise conferred or imposed upon the board of directors by this title.

All references in this paragraph to an officer shall mean only a person who at the time of an act or omission as to which liability is asserted is deemed to have consented to service by the delivery of process to the registered agent of the corporation pursuant to § 3114(b) of Title 10 (for purposes of this sentence only, treating residents of this State as if they were nonresidents to apply § 3114(b) of Title 10 to this sentence).

§ 103. Execution, acknowledgment, filing, recording and effective date of original certificate of incorporation and other instruments; exceptions.

(b) Whenever this chapter requires any instrument to be acknowledged, such requirement is satisfied by either:

(1) The formal acknowledgment by the person or 1 of the persons signing the instrument that it is such person's act and deed or the act and deed of the corporation, and that the facts stated therein are true. Such acknowledgment shall be made before a person who is authorized by the law of the place of execution to take acknowledgments of deeds. If such person has a seal of office such person shall affix it to the instrument.

(2) The signature, without more, of the person or persons signing the instrument, in which case such signature or signatures shall constitute the affirmation or acknowledgment of the signatory, under penalties of perjury, that the instrument is such person's act and deed or the act and deed of the corporation, and that the facts stated therein ~~are true~~ **shall be true at the time such instrument becomes effective in accordance with this chapter**.

(c) Whenever any instrument is to be filed with the Secretary of State or in accordance with this section or chapter, such requirement means that:

(5) The Secretary of State, acting as agent for the recorders of each of the counties, shall collect and deposit in a separate account established exclusively for that purpose a county assessment fee with respect to each filed instrument and shall thereafter ~~weekly~~ **monthly** remit from such account to the recorder of each of the said counties the amount or amounts of such fees as provided for in paragraph (c)(6) of this section or as elsewhere provided by law. ~~Said fees shall be for the purposes of defraying certain costs incurred by the counties in merging the information and images of such filed documents with the document information systems of each of the recorder's offices in the counties and in retrieving, maintaining and displaying such information and images in the offices of the recorders and at remote locations in each of such counties.~~ In consideration for its acting as the agent for the recorders with respect to the collection and payment of the county assessment fees, the Secretary of State shall retain and pay over to the General Fund of the State an administrative charge of 1 percent of the total fees collected.

§ 152. Issuance of stock; lawful consideration; fully paid stock.

(a) The consideration, as determined pursuant to § 153(a) and (b) of this title, for subscriptions to, or the purchase of, the capital stock to be issued by a corporation shall be paid in ~~such~~ **the** form and in ~~such~~ **the** manner ~~as~~ **that** the board of directors shall determine. The board of directors may authorize capital stock to be issued for consideration consisting of cash, any tangible or intangible property or any benefit to the corporation, or any combination thereof. ~~The resolution authorizing the issuance of capital stock may provide that any stock to be issued pursuant to such resolution may be issued~~ **Stock may be issued** in 1 or more ~~transactions in such numbers and at such~~ **transactions, in the numbers, at the** times **and for the consideration** as ~~are~~ set forth in **a resolution of the board of directors.** ~~or determined by or in the manner set forth in the resolution, which may include a determination or action by any person or body, including the corporation, provided the resolution fixes a maximum number of shares that may be issued pursuant to such resolution, a time period during which such shares may be issued and a minimum amount of consideration for which such shares may be issued. The board of directors may determine the amount of consideration for which shares may be issued by setting a minimum amount of consideration or approving a formula by which the amount or minimum amount of consideration is determined. The formula may include or be made dependent upon facts ascertainable outside the formula, provided the manner in which such facts shall operate upon the formula is clearly and expressly set forth in the formula or in the resolution approving the formula.~~

(b) A resolution of the board of directors may delegate to a person or body, in addition to the board of directors, the authority to enter into 1 or more transactions to issue stock, and with respect to such transactions, shares of stock may be issued in the numbers, at the times and for the consideration as such person or body may determine; provided the resolution fixes (i) a maximum number of shares that may be issued pursuant to such resolution, (ii) a time period during which such shares may be issued and (iii) a minimum amount of consideration for which such shares may be issued. No such resolution shall permit a person or body to issue stock to such person or body.

(c) Any provision of a resolution contemplated by subsection (a) or (b) of this section may be made dependent on facts ascertainable outside the resolution, provided the manner in which such facts shall operate upon the

resolution is clearly and expressly set forth in such resolution. The term "facts," as used in this section, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation; provided that, if the resolution delegates to a person or body the authority to enter into 1 or more transactions to issue stock pursuant to subsection (b) of this section, the provisions contemplated by subsection (b)(i) through (iii) of this section may not be made dependent on a determination or action by such person or body.

(d) In the absence of actual fraud in the transaction, the judgment of the directors as to the value of ~~such~~ **the** consideration **(or minimum amount of consideration) received by the corporation for the issuance of stock** shall be conclusive. The capital stock ~~so~~ issued **in accordance with this section** shall be deemed to be fully paid and nonassessable stock upon receipt by the corporation of such consideration; provided, however, nothing contained herein shall prevent the board of directors from issuing partly paid shares under § 156 of this title.

§ 153. Consideration for stock.

(a) Shares of stock with par value may be issued for such consideration, having a value not less than the par value ~~thereof~~ **of the shares so issued**, as determined from time to time ~~by the board of directors~~ **in accordance with § 152 of this title**, or by the stockholders if the certificate of incorporation so provides.

(b) Shares of stock without par value may be issued for such consideration as is determined from time to time ~~by the board of directors~~ **in accordance with § 152 of this title**, or by the stockholders if the certificate of incorporation so provides.

(c) Treasury shares may be disposed of by the corporation ~~for such consideration as may be determined from time to time by the board of directors~~ **in the same manner that shares of stock are issued pursuant to § 152 of this title**, or **may be disposed of for such consideration as determined** by the stockholders if the certificate of incorporation so provides.

(d) If the certificate of incorporation reserves to the stockholders the right to determine the consideration for the issue of any shares, the stockholders shall, unless the certificate requires a greater vote, do so by a vote of a majority of the outstanding stock entitled to vote thereon.

§ 157. Rights and options respecting stock.

(a) Subject to any provisions in the certificate of incorporation, every corporation may create and issue, whether or not in connection with the issue and sale of any shares of stock or other securities of the corporation, rights or options entitling the holders thereof to acquire from the corporation any shares of its capital stock of any class or classes **of the corporation**~~, such rights or options to be evidenced by or in such instrument or instruments as shall be approved by the board of directors~~.

(b) The terms upon which, including the time or times which may be limited or unlimited in duration, at or within which, and the consideration**,** ~~(~~including a formula by which such consideration may be determined~~)~~**,** for which any such shares may be acquired from the corporation upon the exercise of any such right or option, shall be such as shall be stated in the certificate of incorporation, or in a resolution adopted by the board of directors **or by another person or body authorized pursuant to this section.** ~~providing for the creation and issue of such rights or options, and, in every case, shall be set forth or incorporated by reference in the instrument or instruments evidencing such rights or options. A formula by which such consideration may be determined may include or be made dependent upon facts ascertainable outside the formula, provided the manner in which such facts shall operate upon the formula is clearly and expressly set forth in the formula or in the resolution approving the formula. In the absence of actual fraud in the transaction, the judgment of the directors as to the consideration for the issuance of such rights or options and the sufficiency thereof shall be conclusive.~~

~~(c) The board of directors may, by a resolution adopted by the board, authorize 1 or more officers of the corporation to do 1 or both of the following: (i) designate officers and employees of the corporation or of any of its subsidiaries to be recipients of such rights or options created by the corporation, and (ii) determine the number of such rights or options to be received by such officers and employees; provided, however, that the resolution so authorizing such officer or officers~~

~~shall specify the total number of rights or options such officer or officers may so award. The board of directors may not authorize an officer to designate himself or herself as a recipient of any such rights or options.~~

(c) The board of directors may adopt a resolution to delegate to a person or body, in addition to the board of directors, the authority to enter into 1 or more transactions to issue rights or options, and with respect to such transactions, the rights or options may be issued in such numbers, at such times and for such consideration as such person or body may determine; provided that the resolution fixes (i) the maximum number of rights or options, and the maximum number of shares issuable upon exercise thereof, that may be issued pursuant to such resolution, (ii) a time period during which such rights or options, and during which the shares issuable upon exercise thereof, may be issued, and (iii) a minimum amount of consideration (if any) for which such rights or options may be issued and a minimum amount of consideration for the shares issuable upon exercise thereof. No such resolution shall permit a person or body to issue rights or options to such person or body.

(d) Any provision in a resolution contemplated by subsection (b) or (c) of this section may be made dependent on facts ascertainable outside the resolution, provided the manner in which such facts shall operate upon the resolution is clearly and expressly set forth in such resolution. The term "facts," as used in this section, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation; provided that, if the resolution delegates to a person or body the authority to enter into 1 or more transactions to issue rights or options pursuant to subsection (c) of this section, the provisions contemplated by subsection (c)(i) through (iii) of this section may not be made dependent on a determination or action by such person or body.

~~(d)~~ **(e)** ~~In case the shares of stock of the corporation to be issued upon the exercise of such rights or options shall be shares having a par value, the~~ **The minimum** consideration ~~so~~ to be received ~~therefor~~ **for the shares of stock of the corporation to be issued upon exercise of such rights or options shall be no less than the amount set forth** ~~shall have a value not less than the par value thereof. In case the shares of stock so to be issued shall be shares of stock without par value, the consideration therefor shall be determined in the manner provided~~ in § 153 of this title.

§ 219. List of stockholders entitled to vote; penalty for refusal to produce; stock ledger.

(a) The corporation shall prepare, ~~at least 10 days~~ **no later than the tenth day** before ~~every~~ **each** meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting; provided, however, if the record date for determining the stockholders entitled to vote is less than 10 days before the meeting date, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Nothing contained in this section shall require the corporation to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of ~~at least~~ 10 days ~~prior to~~ **ending on the day before** the meeting **date**: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the corporation. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. ~~If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then such list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.~~

(b) If the corporation, or an officer or agent ~~thereof~~ **of the corporation**, refuses to permit examination of the list by a stockholder, such stockholder may apply to the Court of Chancery for an order to compel the corporation to permit such examination. The burden of proof shall be on the corporation to establish that the examination such stockholder seeks is for a purpose not germane to the meeting. The Court may summarily order the corporation to permit examination of the list upon such conditions as the Court may deem appropriate, and may make such additional orders as may be appropriate, including, without limitation, postponing the meeting or voiding the results of the meeting.

§ 222. Notice of meetings and adjourned meetings.

(a) Whenever stockholders are required or permitted to take any action at a meeting, a notice of the meeting ~~in the form of a writing or electronic transmission~~ shall be given ~~which~~ **in accordance with § 232 of this title, and such notice** shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting, if such date is different from the record date for determining stockholders entitled to notice of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called.

(c) ~~When~~ **Unless the bylaws otherwise require, when** a meeting is adjourned to another time or place, **(including an adjournment taken to address a technical failure to convene or continue a meeting using remote communication),** ~~unless the bylaws otherwise require,~~ notice need not be given of the adjourned meeting if the time, place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are **(i)** announced at the meeting at which the adjournment is taken**, (ii) displayed, during the time scheduled for the meeting, on the same electronic network used to enable stockholders and proxy holders to participate in the meeting by means of remote communication or (iii) set forth in the notice of meeting given in accordance with subsection (a) of this section**. At the adjourned meeting the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the board of directors shall fix a new record date for notice of such adjourned meeting in accordance with § 213(a) of this title, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

§ 228. Consent of stockholders or members in lieu of meeting.

(c) A consent must be set forth in writing or in an electronic transmission. No consent shall be effective to take the corporate action referred to therein unless consents signed by a sufficient number of holders or members to take action are delivered to the corporation in the manner required by this section within 60 days of the first date on which a consent is so delivered to the corporation. Any person executing a consent may provide, whether through instruction to an agent or otherwise, that such ~~a~~ consent will be effective at a future time**,** ~~(~~including a time determined upon the happening of an event~~)~~, ~~no~~ **occurring not** later than 60 days after such instruction is given or such provision is made, if evidence of ~~such~~ **the** instruction or provision is provided to the corporation. **If the person is not a stockholder or member of record when the consent is executed, the consent shall not be valid unless the person is a stockholder or member of record as of the record date for determining stockholders or members entitled to consent to the action.** Unless otherwise provided, any such consent shall be revocable prior to its becoming effective. All references to a "consent" in this section means a consent permitted by this section.

§ 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, **or conversion,** who has otherwise complied with subsection (d) of this section and who has neither voted in favor of the merger ~~or~~**,** consolidation **or conversion** 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 corporation; the words "stock" and "share" mean and include what is ordinarily meant by those words; ~~and~~ the words "depository receipt" mean a receipt or other instrument issued by a depository representing an interest in 1 or more shares, or fractions thereof, solely of stock of a corporation, which stock is deposited with the depository**; the words "beneficial owner" mean a person who is the beneficial owner of shares of stock held either in voting trust or by a nominee on behalf of such person; and the word "person" means any individual, corporation, partnership, unincorporated association or other entity**.

(b) Appraisal rights shall be available for the shares of any class or series of stock of a constituent **or converting** corporation in a merger ~~or~~**,** consolidation **or conversion** to be effected pursuant to § 251 (other than a merger effected

pursuant to § 251(g) of this title), § 252, § 254, § 255, § 256, § 257, § 258, § 263**, §264** or § ~~264~~ **266** of this title title **(other than, in each case and solely with respect to a domesticated corporation, a merger, consolidation or conversion authorized pursuant to and in accordance with the provisions of § 388 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 the meeting of stockholders**, or at the record date fixed to determine the stockholders entitled to consent pursuant to § 228,** to act upon the agreement of merger or consolidation **or the resolution providing for conversion** (or, in the case of a merger pursuant to § 251(h), as of immediately prior to the execution of the agreement of merger), were either: (i) listed on a national securities exchange 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 § 251(f) of this title.

(2) Notwithstanding paragraph (b)(1) of this section, appraisal rights under this section shall be available for the shares of any class or series of stock of a constituent **or converting** corporation if the holders thereof are required by the terms of an agreement of merger or consolidation**, or by the terms of a resolution providing for conversion,** pursuant to §§ 251, 252, 254, 255, 256, 257, 258, 263 ~~and~~**,** 264 **or 266** 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 of the converted entity if such entity is a corporation as a result of the conversion**, 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 **or conversion** will be either listed on a national securities exchange 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 paragraphs (b)(2)a. and b. of this section; 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 paragraphs (b)(2)a., b. and c. of this section.

(3) In the event all of the stock of a subsidiary Delaware corporation party to a merger effected under § 253 or § 267 of this title is not owned by the parent immediately prior to the merger, appraisal rights shall be available for the shares of the subsidiary Delaware corporation.

(4) [Repealed.]

(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 **or a conversion effected pursuant to § 266 of this title**. If the certificate of incorporation contains such a provision, the provisions of this section, including those set forth in subsections (d),(e), and (g) 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 **or conversion** 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 notice of such meeting (or such members who received notice in accordance with § 255(c) of this title) with respect to shares for which appraisal rights are available pursuant to subsection (b) or (c) of this section that appraisal rights are available for any or all of the shares of the constituent corporations **or the converting corporation**, and shall include in such notice **either** a copy of this section **(**and, if 1 of the constituent corporations **or the converting corporation** is a nonstock corporation, a copy of § 114 of this title**) or information directing the stockholders to a publicly available electronic resource at which this section (and, § 114 of this title, if applicable) may be accessed without subscription or cost**. 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 **or conversion**, a written demand for appraisal of such stockholder's shares; provided that a demand may be delivered to the corporation by electronic transmission if directed to an information processing system (if any) expressly designated for that purpose in such notice. 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 **or conversion** 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 **or conversion**, the surviving ~~or,~~ resulting ~~corporation~~ **or converted entity** shall notify each stockholder of each constituent **or converting** corporation who has complied with this subsection and has not voted in favor of or consented to the merger ~~or,~~ consolidation **or conversion, and any beneficial owner who has demanded appraisal under subsection (d)(3) of this section,** of the date that the merger ~~or,~~ consolidation **or conversion** has become effective; or

(2) If the merger ~~or,~~ consolidation **or conversion** was approved pursuant to § 228, § 251(h), § 253, or § 267 of this title, then either a constituent **or converting** corporation before the effective date of the merger ~~or,~~ consolidation **or conversion,** or the surviving ~~or,~~ resulting ~~corporation~~ **or converted entity** within 10 days ~~thereafter~~ **after such effective date,** shall notify each ~~of the holders~~ **stockholder** of any class or series of stock of such constituent **or converting** corporation who ~~are~~ **is** entitled to appraisal rights of the approval of the merger ~~or,~~ consolidation **or conversion** and that appraisal rights are available for any or all shares of such class or series of stock of such constituent **or converting** corporation, and shall include in such notice **either** a copy of this section **(**and, if 1 of the constituent corporations **or the converting corporation** is a nonstock corporation, a copy of § 114 of this title**) or information directing the stockholders to a publicly available electronic resource at which this section (and § 114 of this title, if applicable) may be accessed without subscription or cost**. Such notice may, and, if given on or after the effective date of the merger ~~or,~~ consolidation **or conversion**, shall, also notify such stockholders of the effective date of the merger ~~or,~~ consolidation **or conversion**. Any stockholder entitled to appraisal rights may, within 20 days after the date of giving such notice or, in the case of a merger approved pursuant to § 251(h) of this title, within the later of the consummation of the offer contemplated by § 251(h) of this title and 20 days after the date of giving such notice, demand in writing from the surviving or resulting ~~corporation~~ **entity** the appraisal of such holder's shares; provided that a demand may be delivered to ~~the corporation~~ **such entity** by electronic transmission if directed to an information processing system (if any) expressly designated for that purpose in such notice. Such demand will be sufficient if it reasonably informs ~~the corporation~~ **such entity** 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 **or conversion**, either (i) each such constituent corporation **or the converting corporation** shall send a second notice before the effective date of the merger ~~or,~~ consolidation **or conversion** notifying each of the holders of any class or series of stock of such constituent **or converting** corporation that are entitled to appraisal rights of the effective date of the merger ~~or,~~ consolidation **or conversion** or (ii) the surviving ~~or,~~ resulting ~~corporation~~ **or converted entity** 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 or, in the case of a merger approved pursuant to § 251(h) of this title, later than the later of the consummation of the offer contemplated by § 251(h) of this title and 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 **and any beneficial owner who has demanded appraisal under subsection (d)(3) of this section**. An affidavit of the secretary or assistant secretary or of the transfer agent of the corporation **or entity** 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 or the converting** 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 **or conversion**, 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.

(3) Notwithstanding subsection (a) of this section (but subject to this subsection (d)(3)), a beneficial owner may, in such person's name, demand in writing an appraisal of such beneficial owner's shares in accordance with either subsection (d)(1) or (2) of this section, as applicable; provided that (i) such beneficial owner continuously owns such shares through the effective date of the merger, consolidation or conversion and otherwise satisfies the requirements applicable to a stockholder under the first sentence of subsection (a) and (ii) the demand made by

such beneficial owner reasonably identifies the holder of record of the shares for which the demand is made, is accompanied by documentary evidence of such beneficial owner's beneficial ownership of stock and a statement that such documentary evidence is a true and correct copy of what it purports to be, and provides an address at which such beneficial owner consents to receive notices given by the surviving, resulting or converted entity hereunder and to be set forth on the verified list required by subsection (f) of this section.

(e) Within 120 days after the effective date of the merger ~~or,~~ consolidation **or conversion**, the surviving ~~or,~~ resulting ~~corporation~~ **or converted entity,** or any ~~stockholder~~ **person** who has complied with subsections (a) and (d) of this section hereof and who is otherwise entitled to appraisal rights, may commence an appraisal proceeding by filing 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 **or conversion**, any ~~stockholder~~ **person entitled to appraisal rights** who has not commenced an appraisal proceeding or joined that proceeding as a named party shall have the right to withdraw such ~~stockholder's~~ **person's** demand for appraisal and to accept the terms offered upon the merger ~~or,~~ consolidation **or conversion**. Within 120 days after the effective date of the merger ~~or,~~ consolidation **or conversion**, any ~~stockholder~~ **person** who has complied with the requirements of subsections (a) and (d) of this section hereof, upon request given in writing (or by electronic transmission directed to an information processing system (if any) expressly designated for that purpose in the notice of appraisal), shall be entitled to receive from the ~~corporation~~ surviving ~~the merger or,~~ resulting ~~from the consolidation~~ **or converted entity** a statement setting forth the aggregate number of shares not voted in favor of the merger ~~or,~~ consolidation **or conversion** (or, in the case of a merger approved pursuant to § 251(h) of this title, the aggregate number of shares (other than any excluded stock (as defined in § 251(h)(6)d. of this title)) that were the subject of, and were not tendered into, and accepted for purchase or exchange in, the offer referred to in § 251(h)(2)), and, in either case, with respect to which demands for appraisal have been received and the aggregate number of ~~holders of such shares~~ **stockholders or beneficial owners holding or owning such shares (provided that, where a beneficial owner makes a demand pursuant to paragraph (d)(3) of this section, the record holder of such shares shall not be considered a separate stockholder holding such shares for purposes of such aggregate number)**. Such statement shall be given to the ~~stockholder~~ **person** within 10 days after such ~~stockholder's~~ **person's** request for such a statement is received by the surviving ~~or,~~ resulting ~~corporation~~ **or converted entity** or within 10 days after expiration of the period for delivery of demands for appraisal under subsection (d) of this section hereof, whichever is later. ~~Notwithstanding subsection (a) of this section, a person who is the beneficial owner of shares of such stock held either in a voting trust or by a nominee on behalf of such person may, in such person's own name, file a petition or request from the corporation the statement described in this subsection.~~

(f) Upon the filing of any such petition by ~~a stockholder~~ **any person other than the surviving, resulting or converted entity**, service of a copy thereof shall be made upon ~~the surviving or resulting corporation~~ **such entity**, 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~~ **persons** who have demanded ~~payment~~ **appraisal** for their shares and with whom agreements as to the value of their shares have not been reached by ~~the surviving or resulting corporation~~ **such entity**. If the petition shall be filed by the surviving ~~or,~~ resulting ~~corporation~~ **or converted entity**, 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~~ **or converted entity** and to the ~~stockholders~~ **persons** 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~~ **or converted entity**.

(g) At the hearing on such petition, the Court shall determine the ~~stockholders~~ **persons** who have complied with this section and who have become entitled to appraisal rights. The Court may require the ~~stockholders~~ **persons** 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 ~~stockholders~~ **person** fails to comply with such direction, the Court may dismiss the proceedings as to such ~~stockholder~~ **person**. If immediately before the merger ~~or,~~ consolidation **or conversion** the shares of the class or series of stock of the constituent **or converting** corporation as to which appraisal rights are available were listed on a national securities exchange, the Court shall dismiss the proceedings as to all holders of such shares who are otherwise entitled to appraisal rights unless (1) the total number of shares entitled to appraisal exceeds 1% of the outstanding shares of the class or series eligible for

appraisal, (2) the value of the consideration provided in the merger ~~or,~~ consolidation **or conversion** for such total number of shares exceeds $1 million, or (3) the merger was approved pursuant to § 253 or § 267 of this title.

(h) After the Court determines the ~~stockholders~~ **persons** entitled to an appraisal, the appraisal proceeding shall be conducted in accordance with the rules of the Court of Chancery, including any rules specifically governing appraisal proceedings. Through such proceeding the Court shall determine the fair value of the shares exclusive of any element of value arising from the accomplishment or expectation of the merger ~~or,~~ consolidation **or conversion**, together with 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. Unless the Court in its discretion determines otherwise for good cause shown, and except as provided in this subsection, interest from the effective date of the merger**, consolidation or conversion** through the date of payment of the judgment shall be compounded quarterly and shall accrue at 5% over the Federal Reserve discount rate (including any surcharge) as established from time to time during the period between the effective date of the merger**, consolidation or conversion** and the date of payment of the judgment. At any time before the entry of judgment in the proceedings, the surviving ~~corporation may~~**, resulting or converted entity may** pay to each ~~stockholder~~ **person** entitled to appraisal an amount in cash, in which case interest shall accrue thereafter as provided herein only upon the sum of (1) the difference, if any, between the amount so paid and the fair value of the shares as determined by the Court, and (2) interest theretofore accrued, unless paid at that time. Upon application by the surviving ~~or,~~ resulting ~~corporation~~ **or converted entity** or by any ~~stockholder~~ **person** entitled to participate in the appraisal proceeding, the Court may, in its discretion, proceed to trial upon the appraisal prior to the final determination of the ~~stockholders~~ **persons** entitled to an appraisal. Any ~~stockholder~~ **person** whose name appears on the list filed by the surviving ~~or,~~ resulting ~~corporation~~ **or converted entity** 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~~ **person** 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~~ **or converted entity** to the ~~stockholders~~ **persons** entitled thereto. 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~~ **person upon such terms and conditions as the Court may order**. 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~~ **or converted entity be an entity** 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~~ **person whose name appears on the list filed by the surviving, resulting or converted entity pursuant to subsection (f) of this section who participated in the proceeding and incurred expenses in connection therewith**, the Court may order all or a portion of ~~the~~ **such** 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 **not dismissed pursuant to subsection (k) of this section or subject to such an award pursuant to a reservation of jurisdiction under subsection (k) of this section**.

(k) From and after the effective date of the merger ~~or,~~ consolidation **or conversion**, no ~~stockholder~~ **person** who has demanded appraisal rights **with respect to some or all of such person's shares** as provided in subsection (d) of this section shall be entitled to vote such ~~stock~~ **shares** for any purpose or to receive payment of dividends or other distributions on ~~the stock~~ **such shares** (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 **or conversion**); provided, however, that if no petition for an appraisal ~~shall be~~ **is** filed within the time provided in subsection (e) of this section, or if ~~such stockholder~~ **a person who has made a demand for an appraisal in accordance with this section** shall deliver to the surviving ~~or,~~ resulting ~~corporation~~ **or converted entity** a written withdrawal of such ~~stockholder's~~ **person'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 **respect of some or all of such person's shares in accordance with** subsection (e) of this section ~~or thereafter with the written approval of the corporation~~, then the right of such ~~stockholder~~ **person** to an appraisal **of the shares subject to the withdrawal** shall cease. Notwithstanding the foregoing, no appraisal proceeding in the Court of Chancery shall be dismissed as to any ~~stockholder~~ **person** without the approval of the Court, and such approval may be conditioned upon such terms as the Court deems just**, including without limitation, a reservation of jurisdiction for**

any application to the Court made under subsection (j) of this section; provided, however that this provision shall not affect the right of any ~~stockholder~~ **person** who has not commenced an appraisal proceeding or joined that proceeding as a named party to withdraw such ~~stockholder's~~ **person's** demand for appraisal and to accept the terms offered upon the merger ~~or~~**,** consolidation **or conversion** within 60 days after the effective date of the merger ~~or~~**,** consolidation **or conversion**, as set forth in subsection (e) of this section.

(l) The shares **or other equity interests** of the surviving ~~or~~**,** resulting ~~corporation~~ **or converted entity** to which the shares of ~~such objecting stockholders~~ **stock subject to appraisal under this section** would have ~~been~~ **otherwise** converted ~~had they assented to the merger or consolidation~~ **but for an appraisal demand made in accordance with this section** shall have the status of authorized ~~and unissued~~ **but not outstanding** shares **of stock or other equity interests** of the surviving ~~or~~**,** resulting ~~corporation~~ **or converted entity, unless and until the person that has demanded appraisal is no longer entitled to appraisal pursuant to this section**.

§ 265. Conversion of other entities to a domestic corporation.

(h) Prior to ~~filing~~ **the time** a certificate of conversion to corporation **becomes effective in accordance with § 103 of this title** ~~with the office of the Secretary of State~~, the conversion shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the other entity and the conduct of its business or by applicable law, as appropriate, and a certificate of incorporation shall be approved by the same authorization required to approve the conversion.

§ 266. Conversion of a domestic corporation to other entities.

(b) The board of directors of the corporation which desires to convert under this section shall adopt a resolution approving such conversion, specifying the type of entity into which the corporation shall be converted and recommending the approval of such conversion by the stockholders of the corporation. Such resolution shall be submitted to the stockholders of the corporation at an annual or special meeting. Due notice of the time, and purpose of the meeting shall be given to each holder of stock, whether voting or nonvoting, of the corporation at the address of the stockholder as it appears on the records of the corporation, at least 20 days prior to the date of the meeting. At the meeting, the resolution shall be considered and a vote taken for its adoption or rejection. If ~~all~~ **a majority of the** outstanding shares of stock of the corporation~~, whether voting or nonvoting~~, **entitled to vote thereon** shall be voted for the adoption of the resolution, the conversion shall be authorized**, provided that, if the corporation is converting to a partnership having one or more general partners, then, in addition to the foregoing approval, authorization of the conversion shall require approval of each stockholder of the corporation who will become a general partner of such partnership as a result of the conversion.**

(1)-(4) [Repealed.]

(c) If a corporation shall convert in accordance with this section to another entity organized, formed or created under the laws of a jurisdiction other than the State of Delaware, the corporation shall file with the Secretary of State a certificate of conversion executed in accordance with § 103 of this title, which certifies:

(5) The agreement of the corporation that it may be served with process in the State of Delaware in any action, suit or proceeding for enforcement of any obligation of the corporation arising while it was a corporation of this State**, as well as for enforcement of any obligation of such other entity arising from the conversion, including any suit or other proceeding to enforce the right of any stockholders as determined in appraisal proceedings pursuant to § 262 of this title,** and that it irrevocably appoints the Secretary of State as its agent to accept service of process in any such action, suit or proceeding; and

(k) Any provision of the certificate of incorporation of a corporation incorporated before August 1, 2022, or any provision in any voting trust agreement or other written agreement between or among any such corporation and one or more of its stockholders in effect on or before August 1, 2022, that restricts, conditions or prohibits the consummation of a merger or consolidation shall be deemed to apply to a conversion as if it were a merger or consolidation unless the certificate of incorporation or such agreement expressly provides otherwise.

§ 275. Dissolution generally; procedure.

(f) ~~Upon a certificate of dissolution becoming effective in accordance with § 103 of this title, the corporation shall be dissolved.~~ **If a corporation has included in its certificate of incorporation a provision limiting the duration of its existence to a specified date in accordance with § 102(b)(5) of this title, a certificate of dissolution shall be executed, acknowledged and filed in accordance with § 103 of this title within 90 days before such specified date and shall become effective on such specified date. Such certificate of dissolution shall set forth:**

(1) The name of the corporation;

(2) The date specified in the corporation's certificate of incorporation limiting the duration of its existence;

(3) The names and addresses of the directors and officers of the corporation; and

(4) The date of filing of the corporation's original certificate of incorporation with the Secretary of State.

The failure to timely file a certificate of dissolution pursuant to this subsection with respect to any corporation shall not affect the expiration of such corporation's existence on the date specified in its certificate of incorporation pursuant to § 102(b)(5) of this title and shall not eliminate the requirement to file a certificate of dissolution as contemplated by this subsection. If a certificate of good standing is issued by the Secretary of State after the date specified in a corporation's certificate of incorporation pursuant to § 102(b)(5) of this title, such certificate of good standing shall be of no force or effect.

(g) A corporation shall be dissolved upon the earlier of (1) the date specified in such corporation's certificate of incorporation pursuant to § 102(b)(5) of this title or (2) the effectiveness in accordance with § 103 of this title of a certificate of dissolution filed in accordance with this section.

§ 276. Dissolution of nonstock corporation; procedure.

(c) If a nonstock corporation has included in its certificate of incorporation a provision limiting the duration of its existence to a specified date in accordance with § 102(b)(5) of this title, a certificate of dissolution shall be executed, acknowledged and filed in accordance with § 103 of this title within 90 days before such specified date and shall become effective on such specified date. Such certificate of dissolution shall include the information required by § 275(f) of this title. The failure to timely file a certificate of dissolution pursuant to this subsection with respect to any nonstock corporation shall not affect the expiration of such corporation's existence on the date specified in its certificate of incorporation pursuant to § 102(b)(5) of this title and shall not eliminate the requirement to file a certificate of dissolution as contemplated by this subsection. If a certificate of good standing is issued by the Secretary of State after the date specified in a nonstock corporation's certificate of incorporation pursuant to § 102(b)(5) of this title, such certificate of good standing shall be of no force or effect.

§ 312. Revival of certificate of incorporation.

(b) Any corporation whose certificate of incorporation has become forfeited or void pursuant to this title ~~or whose certificate of incorporation has been revived, but, through failure to comply strictly with the provisions of this chapter, the validity of whose revival has been brought into question,~~ may at any time procure a revival of its certificate of incorporation, together with all the rights, franchises, privileges and immunities and subject to all of its duties, debts and liabilities which had been secured or imposed by its original certificate of incorporation and all amendments thereto, by complying with the requirements of this section. Notwithstanding the foregoing, this section shall not be applicable to a corporation whose certificate of incorporation has been revoked or forfeited pursuant to § 284 of this title.

§ 388. Domestication of non-United States entities.

(c) The certificate of corporate domestication shall certify:

(1) The date on which and jurisdiction where the non-United States entity was first formed, incorporated, created or otherwise came into being;

(2) The name of the non-United States entity immediately prior to the filing of the certificate of corporate domestication;

(3) The name of the corporation as set forth in its certificate of incorporation filed in accordance with subsection (b) of this section; ~~and~~

(4) The jurisdiction that constituted the seat, siege social, or principal place of business or central administration of the non-United States entity or any other equivalent thereto under applicable law, immediately prior to the filing of the certificate of corporate domestication; ~~and~~

(5) That the domestication ~~has been~~ **shall be** approved **prior to the effectiveness of such certificate** in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the non-United States entity and the conduct of its business or by applicable ~~non-Delaware~~ **non-United States** law, as appropriate~~.~~**; and**

(6) If a plan of domestication is adopted in accordance with subsection (l) of this section, that all provisions of the plan of domestication shall be approved prior to the effectiveness of such certificate in accordance with all applicable non-United States law, including any approval required under non-United States law for the authorization of the type of corporate action specified in the plan of domestication.

(h) Prior to the ~~filing of~~ **time** a certificate of corporate domestication ~~with the Secretary of State~~ **becomes effective in accordance with § 103 of this title**, the domestication shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the non-United States entity and the conduct of its business or by applicable ~~non-Delaware~~ **non-United States** law, as appropriate, and the certificate of incorporation shall be approved by the same authorization required to approve the domestication.

(j) Unless otherwise agreed or otherwise required under applicable ~~non-Delaware~~ **non-United States** law, the domesticating non-United States entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the domestication shall not be deemed to constitute a dissolution of such non-United States entity. If, following domestication, a non-United States entity that has become domesticated as a corporation of this State continues its existence in the foreign jurisdiction in which it was existing immediately prior to domestication, the corporation and such non-United States entity shall, for all purposes of the laws of the State of Delaware, constitute a single entity formed, incorporated, created or otherwise having come into being, as applicable, and existing under the laws of the State of Delaware and the laws of such foreign jurisdiction.

(l) In connection with a domestication under this section, a non-United States entity may adopt a plan of domestication that may state: (i) the terms and conditions of the domestication, (ii) the mode of carrying the same into effect, (iii) that the certificate of incorporation of the domesticated corporation shall be as set forth in an attachment to the plan of domestication, (iv) the manner, if any, of exchanging or converting shares of stock, rights or securities of, or interests in, the non-United States entity that is to be domesticated as a corporation of this State, in accordance with subsection (k) of this section, (v) any corporate action to be taken by the domesticated corporation of this State in connection with the domestication of the non-United States entity, each of which shall require approval in accordance with all applicable non-United States law, including any approval required under non-United States law for the authorization of the type of corporate action specified in the plan of domestication; (vi) any details or provisions as are deemed desirable, and (vii) such other provisions or facts as shall be required to be set forth in a plan of domestication by the laws of the jurisdiction under which the non-United States entity is organized. Any of the terms of the plan of domestication may be made dependent upon facts ascertainable outside of such plan, provided that the manner in which such facts shall operate upon the terms of the plan of domestication is clearly and expressly set forth in the plan of domestication. The term "facts," as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the non-United States entity or the domesticated corporation.

(m) Any corporate action to be taken by the domesticated corporation of this State in connection with the domestication of the non-United States entity that is set forth in a plan of domestication approved in the manner provided for by subsection (l) of this section and that is within the power of a corporation under subchapter II of

this chapter shall be deemed authorized, adopted and approved, as applicable, by the domesticated corporation of this State and the board of directors, stockholders or members of the corporation, as applicable, and shall not require any further action of the board of directors, stockholders or members of the corporation under this title. In the event that any such action requires the filing of a certificate under any other section of this title, the certificate shall state that in accordance with this section, no action by the board of directors, stockholders, members or as otherwise required by such other section of this title is required.

§ 502. Annual franchise tax report; contents; failure to file and pay tax; duties of Secretary of State.

(a) Annually on or before March 1, every corporation now existing or hereafter incorporated under Chapter 1 of this title or which has accepted the Constitution of this State, shall make an annual franchise tax report to the Secretary of State. The report shall be made on a form designated by the Secretary of State and shall be signed by the corporation's president, secretary, treasurer or other proper officer duly authorized so to act, or by any of its directors, or if filing an initial report by any incorporator in the event its board of directors shall not have been elected. The fact that an individual's name is signed on the report shall be prima facie evidence that such individual is authorized to certify the report on behalf of the corporation; however, the official title or position of the individual signing the corporate report shall be designated. The report shall contain the following information:

(3) The location of the principal place of business of the corporation, which shall include the street, number, city, state or foreign country **(provided that, unless a corporation maintains its principal place of business in this State and serves as its own registered agent, for purposes of this subsection, the principal place of business address shall not be the address of the registered office of the corporation in this State)**;

§ 503. Rates and computation of franchise tax.

(c) Except as provided in this subsection, in no case shall the tax on any corporation for a full taxable year, computed by paragraph (a)(1) of this section be more than $200,000 nor less than $175; or computed by paragraph (a)(2) of this section be more than $200,000 nor less than $400. ~~In~~ **As of December 1 of** each calendar year, the Secretary of State shall compile a list of each corporation that**,** as of ~~December 1~~**such date, met the criteria of a large corporate filer as follows**:

(1) Had a class or series of stock listed on a national securities exchange; and

(2) Reported in its financial statements prepared in accordance with United States generally accepted accounting principles (GAAP) or International Financial Reporting Standards (IFRS) and included in its most recent annual report filed with the United States Securities and Exchange Commission or any similar agency outside the United States with responsibility for enforcing securities laws or serving as a public repository for the corporation's financial disclosures, both of the following:

a. Consolidated annual gross revenues equal to or greater than $750,000,000 or consolidated assets equal to or greater than $750,000,000; and

b. Consolidated annual gross revenues not less than $250,000,000 and consolidated assets not less than $250,000,000;

provided that if the corporation's financial statements are reported in a currency other than United States dollars, then, for purposes of measuring the amount of revenues and assets set forth therein, such amounts shall be converted into United States dollars using the applicable spot exchange rate for value established by Bloomberg as of the last day of the corporation's most recently completed fiscal year.

(3) As used in this subsection:

a. "Predecessor" means, with respect to any corporation, any other corporation or other entity whose consolidated assets and liabilities, immediately prior to a succession, are substantially the same as the consolidated assets and liabilities of such corporation immediately following such succession; and

b. "Succession" means the direct acquisition of assets and liabilities comprising a going business from a predecessor,

whether by merger, consolidation, purchase or other direct transfer.

(4) Notwithstanding subsection (a) of this section and the first sentence of this subsection, for each corporation satisfying the requirements of paragraphs (c)(1) and (c)(2) of this section for a fiscal year for which its annual franchise tax would otherwise be $200,000 as computed under paragraph (a)(1) or (2) of this section(each, a "large corporate filer"), the Secretary of State shall fix the annual franchise tax for such taxable year at $250,000. If a corporation would otherwise qualify as a large corporate filer but has no filed annual report with the United States Securities and Exchange Commission (or any similar foreign agency), and became listed on a national securities exchange in connection with a succession within the taxable year, then reference must be made to the most recent annual report of the predecessor of such corporation for purposes of determining whether such corporation has satisfied the requirements of paragraphs (c)(2)a. and (c)(2)b. of this section.

Once a corporation is designated by the Secretary of State as a large corporate filer, it will be considered a large corporate filer until it submits evidence to the Secretary of State for any year in which the corporation does not meet the criteria in this subsection. Any such re-designation shall be effective as of the date the evidence of re-designation is received by the Secretary of State and will not retroactively modify the large corporate filer status of any corporation. Except as otherwise authorized by law, no large corporate filer shall be granted a refund of taxes paid due to its failure to comply with the requirements of this section.

(i) As used in subsections (a) and (b) of this section, the term "total assets" and the term "total gross assets" are identical terms and mean all assets of the corporation, net only of allowances for bad debts, accumulated depreciation, accumulated depletion, accumulated amortization of land and accumulated amortization of intangible assets.

Such total assets and total gross assets shall be those "total assets" reported to the United States on U.S. Form 1120 Schedule L, relative to the company's fiscal year ending in the calendar year prior to filing with the Secretary of State pursuant to this section. If such schedule is no longer in use, the Secretary of State shall designate a replacement. The Secretary of State may at any time require a true and correct copy of such schedule to be filed with the Secretary of State's office. If such schedule or its replacement reports on a consolidated basis, the reporting corporation shall submit to the Secretary of State the consolidating ending balance sheets which accompany such schedule as a reconciliation of its reported total assets or total gross assets to the consolidated total assets reported on the schedule.

Interests in entities which are consolidated with the reporting company shall be included within "total assets" and "total gross assets." ~~at a value determined in accordance with generally accepted accounting principles.~~

DELAWARE 2023 SESSION LAWS

152ND GENERAL ASSEMBLY

S.B. No. 114

AN ACT TO AMEND TITLE 8 OF THE DELAWARE CODE RELATING TO THE GENERAL CORPORATION LAW

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

§ 152. Issuance of stock; lawful consideration; fully paid stock.

(a) The ~~consideration, as determined pursuant to § 153(a) and (b) of this title,~~**consideration** for subscriptions to, or the purchase of, the capital stock to be issued by a corporation shall be paid in the form and in the manner that the board of directors shall determine. The board of directors may authorize capital stock to be issued for consideration consisting of cash, any tangible or intangible property or any benefit to the corporation, or any combination thereof. Stock may be issued in 1 or more transactions, in the numbers, at the times and for the consideration as set forth in a resolution of the board of directors.

(b) A resolution of the board of directors may delegate to a person or body, in addition to the board of directors, the authority to enter into 1 or more transactions to issue stock, and with respect to such transactions, shares of stock may be issued in the numbers, at the times and for the consideration as such person or body may determine; provided the resolution fixes (i) a maximum number of shares that may be issued pursuant to such resolution, (ii) a time period during which such shares may be issued and (iii) ~~a~~**the** minimum ~~amount of~~ consideration for which such shares may be issued. No such resolution shall permit a person or body to issue stock to such person or body.

(d) In the absence of actual fraud in the transaction, the judgment of the directors as to the value of the consideration (or minimum ~~amount of~~ consideration) received by the corporation for the issuance of stock shall be conclusive. The capital stock issued in accordance with this section shall be deemed to be fully paid and nonassessable stock upon receipt by the corporation of such consideration; provided, however, nothing contained ~~herein~~**in this subsection** shall prevent the board of directors from issuing partly paid shares under § 156 of this title.

(e) The minimum consideration for which shares of stock may be issued by the corporation may not be less than the consideration (if any) required under § 153 of this title.

§ 153. Consideration for stock.

(c) Treasury shares may be disposed of by the corporation in the same manner that shares of stock are issued pursuant to § 152**(a) through (d)** of this title, or may be disposed of for such consideration as determined by the stockholders if the certificate of incorporation so provides. **The consideration received for treasury shares may have a value greater or less than, or equal to, the par value (if any) of such shares and may consist of cash, any tangible or intangible property or any benefit to the corporation, or any combination thereof.**

§ 157. Rights and options respecting stock.

(b) **Rights and options may be issued in 1 or more transactions, in the numbers, at the times and for the consideration as set forth in a resolution of the board of directors.** The terms upon which, including the time or times which may be limited or unlimited in duration, at or within which, and the ~~consideration, including a formula by which such consideration may be determined,~~**consideration** for which any such shares may be acquired from the corporation upon the exercise of any such right or option, shall be ~~such~~ as ~~shall be~~ stated in the certificate of incorporation, or in a resolution ~~adopted by~~**of** the board of ~~directors or by another person or body authorized pursuant to this section.~~**directors.**

(c) The board of directors may adopt a resolution to delegate to a person or body, in addition to the board of directors,

the authority to enter into 1 or more transactions to issue rights or options, and with respect to such transactions, the rights or options may be issued in such numbers, at such times and for such ~~consideration~~**consideration, and the terms upon which shares may be acquired from the corporation upon the exercise of any such rights or options may be,** as such person or body may determine; provided that the resolution fixes (i) the maximum number of ~~rights or options, and the maximum number of~~ shares issuable upon exercise ~~thereof,~~**of the rights or options** that may be issued pursuant to such resolution, (ii) a time period during which such rights or options, and **a time period** during which the shares issuable upon exercise thereof, may be issued, and (iii) ~~a~~**the** minimum ~~amount of~~ consideration (if any) for which such rights or options may be issued and ~~a~~**the** minimum ~~amount of~~ consideration for the shares issuable upon exercise thereof. No such resolution shall permit a person or body to issue rights or options to such person or body.

(e) The minimum consideration ~~to be received~~ for ~~the~~**which** shares of stock of the corporation ~~to~~**may** be issued upon exercise of such rights or options shall be no less than the ~~amount set forth in~~**consideration (if any) required by** § 153 of this title.

§ 160. Corporation's powers respecting ownership, voting, etc., of its own stock; rights of stock called for redemption.

(b) Nothing in this section limits or affects a corporation's right to ~~resell~~**resell, under § 153(c) of this title,** any of its shares theretofore purchased or redeemed out of surplus and which have not ~~been retired, for such consideration as shall be fixed by the board of directors.~~**been, or are not required by the certificate of incorporation to be, retired.**

§ 204. Ratification of defective corporate acts and stock.

(c) Each defective corporate act ratified pursuant to paragraph (b)(1) of this section shall be submitted to stockholders for approval as provided in subsection (d) of this section, unless:

(1)(A) No other provision of this title, and no provision of the certificate of incorporation or bylaws of the corporation, or of any plan or agreement to which the corporation is a party, would have required stockholder approval of such defective corporate act to be ratified, either at the time of such defective corporate act or at the time the board of directors adopts the resolutions ratifying such defective corporate act pursuant to paragraph (b)(1) of this section; and

(B) Such defective corporate act did not result from a failure to comply with § 203 of this title; or

(2) As of the ~~record date for determining the stockholders entitled to vote on the ratification of such defective corporate act,~~**adoption of the resolutions of the board of directors adopted pursuant to paragraph (b)(1) of this section,** there are no shares of valid stock outstanding and entitled to vote thereon, regardless of whether there then exist any shares of putative stock.

(d)**(1)** If the ratification of a defective corporate act is required to be submitted to stockholders for approval pursuant to subsection (c) of this section, due notice of the time, place, if any, and purpose of the meeting shall be given at least 20 days before the date of the meeting to each holder of valid stock and putative stock, whether voting or nonvoting, at the address of such holder as it appears or most recently appeared, as appropriate, on the records of the corporation.

(2) The notice shall also be given to the holders of record of valid stock and putative stock, whether voting or nonvoting, as of the time of the defective corporate act (or, in the case of any defective corporate act that involved the establishment of a record date for notice of or voting at any meeting of stockholders, for action by written consent of stockholders in lieu of a meeting, or for any other purpose, the record date for notice of or voting at such meeting, the record date for action by written consent, or the record date for such other action, as the case may be), other than holders whose identities or addresses cannot be determined from the records of the corporation.

(3) The notice shall contain a copy of the resolutions adopted by the board of directors pursuant to paragraph (b)(1) of this section or the information required by paragraphs (b)(1)(A) through (E) of this section and a statement that any claim that the defective corporate act or putative stock ratified hereunder is void or voidable due to the failure of authorization, or that the Court of Chancery should declare in its discretion that a ratification in accordance with this section not be effective or be effective only on certain conditions must be brought within 120 days from the applicable validation effective time.

(4) At such meeting, the quorum and voting requirements applicable to ratification of such defective corporate act shall be the quorum and voting requirements applicable to the type of defective corporate act proposed to be ratified at the time of the approval of the ratification, except that:

~~(1)~~**a.** If the certificate of incorporation or bylaws of the corporation, any plan or agreement to which the corporation was a party or any provision of this title in effect as of the time of the defective corporate act would have required a larger number or portion of stock or of any class or series thereof or of specified stockholders for a quorum to be present or to approve the defective corporate act, the presence or approval of such larger number or portion of stock or of such class or series thereof or of such specified stockholders shall be required for a quorum to be present or to approve the ratification of the defective corporate act, as applicable, except that the presence or approval of shares of any class or series of which no shares are then outstanding, or of any person that is no longer a stockholder, shall not be required;

~~(2)~~**b.** The approval by stockholders of the ratification of the election of a director shall require the affirmative vote of the majority of shares present at the meeting and entitled to vote on the election of such director, except that if the certificate of incorporation or bylaws of the corporation then in effect or in effect at the time of the defective election require or required a larger number or portion of stock or of any class or series thereof or of specified stockholders to elect such director, the affirmative vote of such larger number or portion of stock or of any class or series thereof or of such specified stockholders shall be required to ratify the election of such director, except that the presence or approval of shares of any class or series of which no shares are then outstanding, or of any person that is no longer a stockholder, shall not be required; and

~~(3)~~**c.** In the event of a failure of authorization resulting from failure to comply with the provisions of § 203 of this title, the ratification of the defective corporate act shall require the vote set forth in § 203(a)(3) of this title, regardless of whether such vote would have otherwise been required.

(5) Shares of putative stock ~~on~~**as of** the ~~record date for determining stockholders entitled to vote on any matter submitted to stockholders~~**adoption by the board of directors of resolutions** pursuant to ~~subsection (c)~~**paragraph (b)(1)** of this section (and without giving effect to any ratification that becomes effective after such ~~record date)~~**adoption)** shall neither be entitled to vote nor counted for quorum purposes in any vote to ratify any defective corporate act.

(e)**(1)** If a defective corporate act ratified pursuant to this section would have required under any other section of this title the filing of a certificate in accordance with § 103 of this title, ~~then, whether~~**and either (i) such certificate requires any change to give effect to the defective corporate act in accordance with this section (including a change to the date and time of the effectiveness of such certificate)** or **(ii)**~~not~~ a certificate was **not** previously filed **under § 103 of this title** in respect of ~~such~~**the** defective corporate ~~act and~~**act, then,** in lieu of filing the certificate otherwise required by this title, the corporation shall file a certificate of validation with respect to such defective corporate act in accordance with § 103 of this title.

(2) A separate certificate of validation shall be required for each defective corporate act requiring the filing of a certificate of validation under this section, except that (i) 2 or more defective corporate acts may be included in a single certificate of validation if the corporation filed, or to comply with this title would have filed, a single certificate under another provision of this title to effect such acts, and (ii) 2 or more overissues of shares of any class, classes or series of stock may be included in a single certificate of validation, provided that the increase in the number of authorized shares of each such class or series set forth in the certificate of validation shall be effective as of the date of the first such overissue.

(3) The certificate of validation shall set forth:

~~(1)~~**a.** ~~Each~~**That the corporation has ratified one or more** defective corporate ~~act~~**acts** that ~~is~~**would have required** the ~~subject of the~~**filing of a** certificate ~~of validation (including, in the case of any defective corporate act involving the issuance of shares of putative stock, the number and type of shares of putative stock issued and the date or dates upon which such putative shares were purported to have been issued), the date of such defective corporate act, and the nature of the failure of authorization in respect of such defective corporate act;~~**under § 103 of this title;**

~~(2)~~**b.** ~~A statement that~~**That each** such defective corporate act ~~was~~**has been** ratified in accordance with this ~~section,~~

~~including the date on which the board of directors ratified such defective corporate act and the date, if any, on which the stockholders approved the ratification of such defective corporate act;~~**section;** and

~~(3)~~**c.** ~~Information~~**The information** required by 1 of the following paragraphs:

~~a. If a certificate was previously filed under § 103 of this title in respect of such defective corporate act and no changes to such certificate are required to give effect to such defective corporate act in accordance with this section, the certificate of validation shall set forth (x) the name, title and filing date of the certificate previously filed and of any certificate of correction thereto and (y) a statement that a copy of the certificate previously filed, together with any certificate of correction thereto, is attached as an exhibit to the certificate of validation;~~

~~b.~~**1.** If a certificate was previously filed under § 103 of this title in respect of the defective corporate act and such certificate requires any change to give effect to the defective corporate act in accordance with this section (including a change to the date and time of the effectiveness of such certificate), the certificate of validation shall set ~~forth~~**forth:**

~~(x)~~**A.** ~~the~~**The** name, title and filing date of the certificate so previously filed and of any certificate of correction thereto;

~~(y)~~**B.** ~~a~~**A** statement that a certificate containing all of the information required to be included under the applicable section or sections of this title to give effect to the defective corporate act is attached as an exhibit to the certificate of validation; and

~~(z)~~**C.** ~~the~~**The** date and time that such certificate shall be deemed to have become effective pursuant to this section; or

~~c.~~**2.** If a certificate was not previously filed under § 103 of this title in respect of the defective corporate act and the defective corporate act ratified pursuant to this section would have required under any other section of this title the filing of a certificate in accordance with § 103 of this title, the certificate of validation shall set ~~forth~~**forth:**

~~(x)~~**A.** ~~a~~**A** statement that a certificate containing all of the information required to be included under the applicable section or sections of this title to give effect to the defective corporate act is attached as an exhibit to the certificate of validation, and

~~(y)~~**B.** ~~the~~**The** date and time that such certificate shall be deemed to have become effective pursuant to this section.

(4) A certificate attached to a certificate of validation ~~pursuant to paragraph (e)(3)b. or c. of this section~~ need not be separately executed and acknowledged and need not include any statement required by any other section of this title that such instrument has been approved and adopted in accordance with the provisions of such other section.

(g) In respect of each defective corporate act ratified by the board of directors pursuant to subsection (b) of this section, prompt notice of the ratification shall be given to all holders of valid stock and putative stock, whether voting or nonvoting, as of the date the board of directors adopts the resolutions approving such defective corporate act, or as of a date within 60 days after such date of adoption, as established by the board of directors, at the address of such holder as it appears or most recently appeared, as appropriate, on the records of the corporation. The notice shall also be given to the holders of record of valid stock and putative stock, whether voting or nonvoting, as of the time of the defective corporate act, other than holders whose identities or addresses cannot be determined from the records of the corporation. The notice shall contain a copy of the resolutions adopted pursuant to subsection (b) of this section or the information specified in paragraphs (b)(1)(A) through (E) or paragraphs (b)(2)(A) through (C) of this section, as applicable, and a statement that any claim that the defective corporate act or putative stock ratified hereunder is void or voidable due to the failure of authorization, or that the Court of Chancery should declare in its discretion that a ratification in accordance with this section not be effective or be effective only on certain conditions must be brought within 120 days from the later of the validation effective time or the time at which the notice required by this subsection is given. Notwithstanding the foregoing, (i) no such notice shall be required if notice of the ratification of the defective corporate act is to be given in accordance with subsection (d) of this section, and (ii) in the case of a corporation that has a class of stock listed on a national securities exchange, the notice required by this subsection and ~~the second sentence of~~ subsection (d) of this section may be deemed given if disclosed in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to § 13, § 14 or § 15(d) (15 U.S.C. § 78m, § 77n or § 78***o***(d)) of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder, or the corresponding provisions of any

subsequent United States federal securities laws, rules or regulations. If any defective corporate act has been approved by stockholders acting pursuant to § 228 of this title, the notice required by this subsection may be included in any notice required to be given pursuant to § 228(e) of this title and, if so given, shall be sent to the stockholders entitled thereto under § 228(e) and to all holders of valid and putative stock to whom notice would be required under this subsection if the defective corporate act had been approved at a meeting **and the record date for determining the stockholders entitled to notice of such meeting had been the date for determining the stockholders entitled to notice under the first sentence of this subsection** other than any stockholder who approved the action by consent in lieu of a meeting pursuant to § 228 of this title or any holder of putative stock who otherwise consented thereto in writing. Solely for purposes of subsection (d) of this section and this subsection, notice to holders of putative stock, and notice to holders of valid stock and putative stock as of the time of the defective corporate act, shall be treated as notice to holders of valid stock for purposes of §§ 222 and 228, 229, 230, 232 and 233 of this title.

(h) As used in this section and in § 205 of this title only, the term:

(6) "Validation effective ~~time"~~**time",** with respect to any defective corporate act ratified pursuant to this ~~section~~**section,** means the latest of:

a. The time at which the defective corporate act submitted to the stockholders for approval pursuant to subsection (c) of this section is approved by such stockholders or if no such vote of stockholders is required to approve the ratification of the defective corporate act, **immediately following** the time at which the board of directors adopts the resolutions required by paragraph (b)(1) or (b)(2) of this section;

b. Where no certificate of validation is required to be filed pursuant to subsection (e) of this section, the time, if any, specified by the board of directors in the resolutions adopted pursuant to paragraph (b)(1) or (b)(2) of this section, which time shall not precede the time at which such resolutions are adopted; and

c. The time at which any certificate of validation filed pursuant to subsection (e) of this section shall become effective in accordance with § 103 of this title.

§ 228. Consent of stockholders or members in lieu of meeting.

(e) ~~Prompt~~**If an action by consent under subsections (a) or (b) of this section has been taken by stockholders or members by less than unanimous consent, prompt** notice of the taking of ~~the corporate action without a meeting by less than unanimous consent~~**the action by consent** shall be given to those stockholders or members **as of the record date for the action by consent** who have not consented and ~~who, if the action had been taken at a meeting,~~**who** would have been entitled to notice of the meeting if the **action had been taken at a meeting and the** record date for **the** notice of ~~such~~**the** meeting ~~had been the date that consents signed by a sufficient number of holders or members to take the action were delivered to the corporation as provided in this section.~~**were the record date for the action by consent. The notice required by this subsection may be provided by a notice which constitutes a notice of internet availability of proxy materials under rules promulgated under the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq.** In the event that the action which is consented to is such as would have required the filing of a certificate under any other section of this title, if such action had been voted on by stockholders or by members at a meeting thereof, the certificate filed under such other section shall state, in lieu of any statement required by such section concerning any vote of stockholders or members, that consent has been given in accordance with this section.

§ 242. Amendment of certificate of incorporation after receipt of payment for stock; nonstock corporations.

(a) After a corporation has received payment for any of its capital stock, or after a nonstock corporation has members, it may amend its certificate of incorporation, from time to time, in any and as many respects as may be desired, so long as its certificate of incorporation as amended would contain only such provisions as it would be lawful and proper to insert in an original certificate of incorporation filed at the time of the filing of the amendment; and, if a change in stock or the rights of stockholders, or an exchange, reclassification, subdivision, combination or cancellation of stock or rights of stockholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification, subdivision, combination or cancellation. In particular, and without limitation upon such general power of amendment, a corporation may amend its certificate of incorporation, from time to time, so as:

(1) To change its corporate name; or

(2) To change, substitute, enlarge or diminish the nature of its business or its corporate powers and purposes; or

(3) To increase or decrease its authorized capital stock or to reclassify the same, by changing the number, par value, designations, preferences, or relative, participating, optional, or other special rights of the shares, or the qualifications, limitations or restrictions of such rights, or by changing shares with par value into shares without par value, or shares without par value into shares with par value either with or without increasing or decreasing the number of shares, or by subdividing or combining the ~~outstanding~~**issued** shares of any class or series of a class of shares into a greater or lesser number of ~~outstanding~~**issued** shares; or

(4) To cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared; or

(5) To create new classes of stock having rights and preferences either prior and superior or subordinate and inferior to the stock of any class then authorized, whether issued or unissued; or

(6) To change the period of its duration; or

(7) To delete:

a. Such provisions of the original certificate of incorporation which named the incorporator or incorporators, the initial board of directors and the original subscribers for shares; and

b. Such provisions contained in any amendment to the certificate of incorporation as were necessary to effect a change, exchange, reclassification, subdivision, combination or cancellation of stock, if such change, exchange, reclassification, subdivision, combination or cancellation has become effective.

Any or all such changes or alterations may be effected by 1 certificate of amendment.

(b) Every amendment authorized by subsection (a) of this section shall be made and effected in the following manner:

(1) If the corporation has capital stock, its board of directors shall adopt a resolution setting forth the amendment proposed, declaring its advisability, and either calling a special meeting of the stockholders entitled to vote in respect thereof for the consideration of such amendment or directing that the amendment proposed be considered at the next annual meeting of the ~~stockholders; provided, however, that unless otherwise expressly required by the certificate of incorporation, no meeting or vote of stockholders shall be required to adopt an amendment that effects only changes described in paragraph (a)(1) or (7) of this section.~~**stockholders.** Such special or annual meeting shall be called and held upon notice in accordance with § 222 of this title. The notice shall set forth such amendment in full or a brief summary of the changes to be effected thereby unless such notice constitutes a notice of internet availability of proxy materials under the rules promulgated under the Securities Exchange Act of 1934 [15 U.S.C. § 78a et seq.]. At the meeting a vote of the stockholders entitled to vote thereon shall be taken for and against any proposed amendment that requires adoption by stockholders. If no vote of stockholders is required to effect such amendment, or if a majority of the outstanding stock entitled to vote thereon, and a majority of the outstanding stock of each class entitled to vote thereon as a class has been voted in favor of the amendment, a certificate setting forth the amendment and certifying that such amendment has been duly adopted in accordance with this section shall be executed, acknowledged and filed and shall become effective in accordance with § 103 of this title.

(d) Notwithstanding the provisions of subsection (b) of this section, unless otherwise expressly required by the certificate of incorporation:

(1) No meeting or vote of stockholders shall be required to adopt an amendment that (A) affects only changes described in paragraph (a)(1) or (7) of this section; or (B) reclassifies by subdividing the issued shares of a class of stock into a greater number of issued shares of the same class of stock (and, in connection therewith, such amendment may increase the number of authorized shares of such class of stock up to an amount proportionate to the subdivision), provided the corporation has only one class of stock outstanding and such class is not divided

into series; and

(2) An amendment to increase or decrease the authorized number of shares of a class of capital stock or an amendment to reclassify by combining the issued shares of a class of capital stock into a lesser number of issued shares of the same class of stock may be made and effected, without obtaining the vote or votes of stockholders otherwise required by subsection (b) of this section if: (A) the shares of such class are listed on a national securities exchange immediately before such amendment becomes effective and meet the listing requirements of such national securities exchange relating to the minimum number of holders immediately after such amendment becomes effective, (B) at a meeting called in accordance with paragraph (b)(1) of this section, a vote of the stockholders entitled to vote thereon, voting as a single class, is taken for and against the proposed amendment, and the votes cast for the amendment exceed the votes cast against the amendment, and (C) if the amendment increases or decreases the authorized number of shares of a class of capital stock for which no provision has been made pursuant to the last sentence of paragraph (b)(2) of this section, the votes cast for the amendment by the holders of such class exceed the votes cast against the amendment by the holders of such class.

§ 245. Restated certificate of incorporation.

(c) A restated certificate of incorporation shall be specifically designated as such in its heading. It shall state, either in its heading or in an introductory paragraph, the corporation's present name, and, if it has been changed, the name under which it was originally incorporated, and the date of filing of its original certificate of incorporation with the Secretary of State. A restated certificate shall also state that it was duly adopted in accordance with this section. If it was adopted by the board of directors without a vote of the stockholders (unless it was adopted pursuant to § 241 of this title or without a vote of members pursuant to 242(b)(3) of this title), it shall state that it only restates and integrates and does not further amend (except, if applicable, as permitted under § 242(a)(1) and § ~~242(b)(1)~~**242(d)(1)(A)** of this title) the provisions of the corporation's certificate of incorporation as theretofore amended or supplemented, and that there is no discrepancy between those provisions and the provisions of the restated certificate. A restated certificate of incorporation may omit (a) such provisions of the original certificate of incorporation which named the incorporator or incorporators, the initial board of directors and the original subscribers for shares, and (b) such provisions contained in any amendment to the certificate of incorporation as were necessary to effect a change, exchange, reclassification, subdivision, combination or cancellation of stock, if such change, exchange, reclassification, subdivision, combination or cancellation has become effective. Any such omissions shall not be deemed a further amendment

§ 260. Powers of corporation surviving or resulting from merger or ~~consolidation;~~consolidation or upon conversion or domestication; issuance of stock, bonds or other indebtedness.

(a) When 2 or more corporations are merged or consolidated, **or an other entity is converted to, or a non-United States entity becomes domesticated as, a corporation of this State,** the corporation surviving or resulting from the merger **or consolidation or upon conversion or domestication** may issue bonds or other obligations, negotiable or otherwise, and with or without coupons or interest certificates thereto attached, to an amount sufficient with its capital stock to provide for all the payments it will be required to make, or obligations it will be required to assume, in order to effect the ~~merger or consolidation.~~**merger, consolidation, conversion or domestication.**

(b) For the purpose of securing the payment of any ~~such~~ bonds and ~~obligations, it shall be lawful for~~**obligations issued under subsection (a) of this section,** the ~~surviving or resulting~~**surviving, resulting, converted or domesticated** corporation ~~to~~**may** mortgage its corporate franchise, rights, privileges and property, real, personal or mixed.

(c) The ~~surviving or resulting~~**surviving, resulting, converting or domesticated** corporation may ~~issue certificates~~**take any of the following actions in order to effect the merger or consolidation in the manner and on the terms specified in the agreement or in order to effect the conversion or domestication in the manner and on the terms, pursuant to a plan of conversion or plan of domestication, approved by the other entity or the non-United States entity, as applicable:**

(1) Issue shares of its capital stock ~~or uncertificated stock if authorized to do so~~ and other securities ~~to the stockholders of the constituent corporations~~**upon conversion of or** in exchange ~~or payment for the original shares, in such amount as shall be necessary in accordance with the terms of the agreement of merger or consolidation in order to effect such merger or consolidation in the manner and on the terms specified in the agreement.~~**for the shares, rights, or securities**

of or interests in any constituent corporation, converting other entity or domesticating non-United States entity.

(2) Cancel any shares, rights, securities, or interests.

§ 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, consolidation, ~~or~~ conversion, **transfer, domestication or continuance,** who has otherwise complied with subsection (d) of this section and who has neither voted in favor of the merger, ~~consolidation or conversion~~**consolidation, conversion, transfer, domestication or continuance** 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 corporation; the words "stock" and "share" mean and include what is ordinarily meant by those words; the words "depository receipt" mean a receipt or other instrument issued by a depository representing an interest in 1 or more shares, or fractions thereof, solely of stock of a corporation, which stock is deposited with the depository; the words "beneficial owner" mean a person who is the beneficial owner of shares of stock held either in voting trust or by a nominee on behalf of such person; and the word "person" means any individual, corporation, partnership, unincorporated association or other entity.

(b) Appraisal rights shall be available for the shares of any class or series of stock of a ~~constituent or converting~~**constituent, converting, transferring, domesticating or continuing** corporation in a merger, ~~consolidation or conversion~~**consolidation, conversion, transfer, domestication or continuance** to be effected pursuant to § 251 (other than a merger effected pursuant to § 251(g) of this title), § 252, § 254, § 255, § 256, § 257, § 258, § 263, ~~§ 264 or § 266~~**§ 264, § 266 or § 390** of this title (other than, in each case and solely with respect to a **converted or** domesticated corporation, a merger, ~~consolidation or conversion~~**consolidation, conversion, transfer, domestication or** continuance authorized pursuant to and in accordance with the provisions of **§ 265 or** § 388 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 the meeting of stockholders, or at the record date fixed to determine the stockholders entitled to consent pursuant to § 228 of this title, to act upon the agreement of merger or consolidation or the resolution providing for **the**~~conversion~~**conversion, transfer, domestication or continuance** (or, in the case of a merger pursuant to § 251(h) of this title, as of immediately prior to the execution of the agreement of merger), were either: (i) listed on a national securities exchange 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 § 251(f) of this title.

(2) Notwithstanding paragraph (b)(1) of this section, appraisal rights under this section shall be available for the shares of any class or series of stock of a ~~constituent or converting~~**constituent, converting, transferring, domesticating or continuing** corporation if the holders thereof are required by the terms of an agreement of merger or consolidation, or by the terms of a resolution providing for conversion, **transfer, domestication or continuance,** pursuant to § 251, § 252, § 254, § 255, § 256, § 257, § 258, § 263, ~~§ 264 or § 266~~**§ 264, § 266 or § 390** 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 of the converted entity **or the entity resulting from a transfer, domestication or continuance** if such entity is a corporation as a result of the conversion, **transfer, domestication or continuance,** 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, ~~consolidation or conversion~~**consolidation, conversion, transfer, domestication or** continuance will be either listed on a national securities exchange or held of record by more than 2,000 holders;

(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, the sale of all or substantially all of the assets of the corporation or a conversion effected pursuant to § 266 **of this title or a transfer, domestication or continuance effected pursuant to § 390** of this title. If the certificate of incorporation contains such a provision, the provisions of this section, including those set forth in subsections (d), (e), and (g) of this section, shall apply as nearly as is practicable.

(d) Appraisal rights shall be perfected as follows:

(1) If a proposed merger, ~~consolidation or conversion~~**consolidation, conversion, transfer, domestication or continuance** 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 notice of such meeting (or such members who received notice in accordance with § 255(c) of this title) with respect to shares for which appraisal rights are available pursuant to subsection (b) or (c) of this section that appraisal rights are available for any or all of the shares of the constituent corporations or the ~~converting~~**converting, transferring, domesticating or continuing** corporation, and shall include in such notice either a copy of this section (and, if 1 of the constituent corporations or the converting corporation is a nonstock corporation, a copy of § 114 of this title) or information directing the stockholders to a publicly available electronic resource at which this section (and, § 114 of this title, if applicable) may be accessed without subscription or cost. 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, ~~consolidation or~~**consolidation,** conversion, **transfer, domestication or continuance,** a written demand for appraisal of such stockholder's shares; provided that a demand may be delivered to the corporation by electronic transmission if directed to an information processing system (if any) expressly designated for that purpose in such notice. 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, ~~consolidation or conversion~~**consolidation, conversion, transfer, domestication or continuance** 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, ~~consolidation or~~**consolidation,** conversion, **transfer, domestication or continuance,** the surviving, resulting or converted entity shall notify each stockholder of each constituent or ~~converting~~**converting, transferring, domesticating or continuing** corporation who has complied with this subsection and has not voted in favor of or consented to the merger, ~~consolidation or~~**consolidation,** conversion, **transfer, domestication or continuance,** and any beneficial owner who has demanded appraisal under paragraph (d)(3) of this section, of the date that the merger, consolidation or conversion has become effective; or

(2) If the merger, ~~consolidation or conversion~~**consolidation, conversion, transfer, domestication or continuance** was approved pursuant to § 228, § 251(h), § 253, or § 267 of this title, then either a ~~constituent or converting~~**constituent, converting, transferring, domesticating or continuing** corporation before the effective date of the merger, ~~consolidation or~~**consolidation,** conversion, **transfer, domestication or continuance,** or the surviving, resulting or converted entity within 10 days after such effective date, shall notify each stockholder of any class or series of stock of such ~~constituent or converting~~**constituent, converting, transferring, domesticating or continuing** corporation who is entitled to appraisal rights of the approval of the merger, ~~consolidation or conversion~~**consolidation, conversion, transfer, domestication or** continuance and that appraisal rights are available for any or all shares of such class or series of stock of such ~~constituent or converting~~**constituent, converting, transferring, domesticating or continuing** corporation, and shall include in such notice either a copy of this section (and, if 1 of the constituent corporations or the ~~converting~~**converting, transferring, domesticating or continuing** corporation is a nonstock corporation, a copy of § 114 of this title) or information directing the stockholders to a publicly available electronic resource at which this section (and § 114 of this title, if applicable) may be accessed without subscription or cost. Such notice may, and, if given on or after the effective date of the merger, ~~consolidation or~~**consolidation,** conversion, **transfer, domestication or continuance,** shall, also notify such stockholders of the effective date of the merger, ~~consolidation or conversion.~~**consolidation, conversion, transfer, domestication or continuance.** Any stockholder entitled to appraisal rights may, within 20 days after the date of giving such notice or, in the case of a merger approved pursuant to § 251(h) of this title, within the later of the consummation of the offer contemplated by § 251(h) of this title and 20 days after the date of giving such notice, demand in writing from the ~~surviving or~~**surviving,** resulting **or converted** entity the appraisal of such holder's shares; provided that a demand may be delivered to such entity by electronic transmission if directed to an information processing system (if any) expressly designated for that purpose in such notice. Such demand will be sufficient if it reasonably informs such entity 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, ~~consolidation or~~**consolidation,** conversion, **transfer, domestication or continuance,** either (i) each such constituent corporation or the ~~converting~~**converting, transferring, domesticating or continuing** corporation shall send a second notice before the effective date of the merger, ~~consolidation or conversion~~**consolidation, conversion, transfer, domestication or continuance** notifying each of the holders of any class or series of stock of such ~~constituent or converting~~**constituent, converting, transferring, domesticating or continuing** corporation that are entitled to appraisal rights of the effective date of the merger, ~~consolidation or conversion~~**consolidation, conversion, transfer, domestication or continuance** or (ii) the surviving, resulting or converted entity 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 or, in the case of a merger approved pursuant to § 251(h) of this title, later than the later of the consummation of the offer contemplated by § 251(h) of this title and 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 and any beneficial owner who has demanded appraisal under paragraph (d)(3) of this section. An affidavit of the secretary or assistant secretary or of the transfer agent of the corporation or entity 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 or the ~~converting~~**converting, transferring, domesticating or continuing** 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, ~~consolidation or~~**consolidation,** conversion, **transfer, domestication or continuance,** 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.

(3) Notwithstanding subsection (a) of this section (but subject to this paragraph (d)(3)), a beneficial owner may, in such person's name, demand in writing an appraisal of such beneficial owner's shares in accordance with either paragraph (d)(1) or (2) of this section, as applicable; provided that (i) such beneficial owner continuously owns such shares through the effective date of the merger, ~~consolidation or conversion~~**consolidation, conversion, transfer, domestication or continuance** and otherwise satisfies the requirements applicable to a stockholder under the first sentence of subsection (a) of this section and (ii) the demand made by such beneficial owner reasonably identifies the holder of record of the shares for which the demand is made, is accompanied by documentary evidence of such beneficial owner's beneficial ownership of stock and a statement that such documentary evidence is a true and correct copy of what it purports to be, and provides an address at which such beneficial owner consents to receive notices given by the surviving, resulting or converted entity hereunder and to be set forth on the verified list required by subsection (f) of this section.

(e) Within 120 days after the effective date of the merger, ~~consolidation or~~**consolidation,** conversion, **transfer, domestication or continuance,** the surviving, resulting or converted entity, or any person who has complied with subsections (a) and (d) of this section ~~hereof~~ and who is otherwise entitled to appraisal rights, may commence an appraisal proceeding by filing 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, ~~consolidation or~~**consolidation,** conversion, **transfer, domestication or continuance,** any person entitled to appraisal rights who has not commenced an appraisal proceeding or joined that proceeding as a named party shall have the right to withdraw such person's demand for appraisal and to accept the terms offered upon the merger, ~~consolidation or conversion.~~**consolidation, conversion, transfer, domestication or continuance.** Within 120 days after the effective date of the merger, ~~consolidation or~~**consolidation,** conversion, **transfer, domestication or continuance,** any person who has complied with the requirements of subsections (a) and (d) of this ~~section hereof,~~**section,** upon request given in writing (or by electronic transmission directed to an information processing system (if any) expressly designated for that purpose in the notice of appraisal), shall be entitled to receive from the surviving, resulting or converted entity a statement setting forth the aggregate number of shares not voted in favor of the merger, ~~consolidation or conversion~~**consolidation, conversion, transfer, domestication or continuance** (or, in the case of a merger approved pursuant to § 251(h) of this title, the aggregate number of shares (other than any excluded stock (as defined in § 251(h)(6)d. of this title)) that were the subject of, and were not tendered into, and accepted for purchase or exchange in, the offer referred to in § 251(h)(2) of this title)), and, in either case, with respect to which demands for appraisal have been received and the aggregate number of stockholders or beneficial owners holding or owning such shares (provided that, where a beneficial owner makes a demand pursuant to paragraph (d)(3) of this section, the record holder of such shares shall not be considered a separate stockholder holding such shares for purposes of such aggregate number). Such statement shall be given to the person within 10 days after such person's request for such a statement is received by the surviving, resulting or converted entity or within 10 days after expiration of the period for delivery of demands for

appraisal under subsection (d) of this ~~section hereof,~~**section,** whichever is later.

(g) At the hearing on such petition, the Court shall determine the persons who have complied with this section and who have become entitled to appraisal rights. The Court may require the persons 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 person fails to comply with such direction, the Court may dismiss the proceedings as to such person. If immediately before the merger, ~~consolidation or conversion~~**consolidation, conversion, transfer, domestication or continuance** the shares of the class or series of stock of the ~~constituent or converting~~**constituent, converting, transferring, domesticating or continuing** corporation as to which appraisal rights are available were listed on a national securities exchange, the Court shall dismiss the proceedings as to all holders of such shares who are otherwise entitled to appraisal rights unless (1) the total number of shares entitled to appraisal exceeds 1% of the outstanding shares of the class or series eligible for appraisal, (2) the value of the consideration provided in the merger, ~~consolidation or conversion~~**consolidation, conversion, transfer, domestication or continuance** for such total number of shares exceeds $1 million, or (3) the merger was approved pursuant to § 253 or § 267 of this title.

(h) After the Court determines the persons entitled to an appraisal, the appraisal proceeding shall be conducted in accordance with the rules of the Court of Chancery, including any rules specifically governing appraisal proceedings. Through such proceeding the Court shall determine the fair value of the shares exclusive of any element of value arising from the accomplishment or expectation of the merger, ~~consolidation or~~**consolidation,** conversion, **transfer, domestication or continuance,** together with 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. Unless the Court in its discretion determines otherwise for good cause shown, and except as provided in this subsection, interest from the effective date of the merger, ~~consolidation or conversion~~**consolidation, conversion, transfer, domestication or continuance** through the date of payment of the judgment shall be compounded quarterly and shall accrue at 5% over the Federal Reserve discount rate (including any surcharge) as established from time to time during the period between the effective date of the merger, consolidation or conversion and the date of payment of the judgment. At any time before the entry of judgment in the proceedings, the surviving, resulting or converted entity may pay to each person entitled to appraisal an amount in cash, in which case interest shall accrue thereafter as provided herein only upon the sum of (1) the difference, if any, between the amount so paid and the fair value of the shares as determined by the Court, and (2) interest theretofore accrued, unless paid at that time. Upon application by the surviving, resulting or converted entity or by any person entitled to participate in the appraisal proceeding, the Court may, in its discretion, proceed to trial upon the appraisal prior to the final determination of the persons entitled to an appraisal. Any person whose name appears on the list filed by the surviving, resulting or converted entity pursuant to subsection (f) of this section may participate fully in all proceedings until it is finally determined that such person is not entitled to appraisal rights under this section.

(k) ~~From~~**Subject to the remainder of this subsection, from** and after the effective date of the merger, ~~consolidation or~~**consolidation,** conversion, **transfer, domestication or continuance,** no person who has demanded appraisal rights with respect to some or all of such person's shares as provided in subsection (d) of this section shall be entitled to vote such shares for any purpose or to receive payment of dividends or other distributions on such shares (except dividends or other distributions payable to stockholders of record at a date which is prior to the effective date of the merger, ~~consolidation or conversion); provided, however, that if no petition for an appraisal is filed within the time provided in subsection (e) of this section, or if~~**consolidation, conversion, transfer, domestication or continuance). If** a person who has made a demand for an appraisal in accordance with this section shall deliver to the surviving, resulting or converted entity a written withdrawal of such person's demand for an appraisal in respect of some or all of such person's shares in accordance with subsection (e) of this section, **either within 60 days after such effective date or thereafter with the written approval of the corporation,** then the right of such person to an appraisal of the shares subject to the withdrawal shall cease. Notwithstanding the foregoing, ~~no~~**an** appraisal proceeding in the Court of Chancery shall **not** be dismissed as to any person without the approval of the Court, and such approval may be conditioned upon such terms as the Court deems just, including without limitation, a reservation of jurisdiction for any application to the Court made under subsection (j) of this section; provided, however that this provision shall not affect the right of any person who has not commenced an appraisal proceeding or joined that proceeding as a named party to withdraw such person's demand for appraisal and to accept the terms offered upon the merger, ~~consolidation or conversion~~**consolidation, conversion, transfer, domestication or continuance** within 60 days after the effective date of the merger, ~~consolidation or~~**consolidation,** conversion, **transfer, domestication or continuance,** as set forth in subsection (e) of this section. **If a petition for an appraisal is not filed within the time provided in subsection (e) of this section, the right to appraisal**

with respect to all shares shall cease.

§ 265. Conversion of other entities to a domestic corporation.

(c) The certificate of conversion to corporation shall state:

(4) ~~[Repealed.]~~**If a plan of conversion is adopted in accordance with subsection (k) of this section, that all provisions of the plan of conversion shall be approved prior to the effectiveness of such certificate in accordance with all law applicable to the other entity, including any approval required under such applicable law for the authorization of the type of corporate action specified in the plan of conversion.**

(k) In connection with a conversion under this section, the converting other entity may adopt a plan of conversion that may state: (i) the terms and conditions of the conversion, (ii) that the certificate of incorporation of the converted corporation of this State shall be as set forth in attachment to the plan of conversion, (iii) the manner, if any, of exchanging or converting shares of stock, rights or securities of, or interests in, the other entity that is to be converted to a corporation of this State, in accordance with subsection (j) of this section, (iv) any corporate action to be taken by the converted corporation of this State in connection with the conversion of the other entity, each of which shall require approval in accordance with all law applicable to the other entity, including any approval required under such applicable law for the authorization of the type of corporate action specified in the plan of conversion, (v) any details or provisions as are deemed desirable, and (vi) such other provisions or facts as shall be required to be set forth in a plan of conversion by the laws applicable to the other entity. Any of the terms of the plan of conversion may be made dependent upon facts ascertainable outside of such plan, provided that the manner in which such facts shall operate upon the terms of the plan of conversion is clearly and expressly set forth in the plan of conversion. The term "facts," as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the other entity or the converted corporation.

(l) Any corporate action to be taken by the converted corporation of this State in connection with the conversion of the other entity that is set forth in a plan of conversion approved in the manner provided for by subsection (k) of this section and that is within the power of a corporation under subchapter II of this chapter shall be deemed authorized, adopted and approved, as applicable, by the converted corporation of this State and the board of directors, stockholders or members of the corporation, as applicable, and shall not require any further action of the board of directors, stockholders or members of the corporation under this title. In the event that any such action requires the filing of a certificate under any other section of this title, the certificate shall state that in accordance with this section, no action by the board of directors, stockholders, members or as otherwise required by such other section of this title is required.

§ 266. Conversion of a domestic corporation to other entities.

(b) The board of directors of the corporation which desires to convert under this section shall adopt a resolution approving such conversion, specifying the type of entity into which the corporation shall be converted and recommending the approval of such conversion by the stockholders of the corporation. **If a plan of conversion is to be adopted in accordance with subsection (l) of this section, such plan shall be approved together with the resolution approving the conversion.** Such resolution shall be submitted to the stockholders of the corporation at an annual or special meeting. Due notice of the time, and purpose of the meeting shall be given to each holder of stock, whether voting or nonvoting, of the corporation at the address of the stockholder as it appears on the records of the corporation, at least 20 days prior to the date of the meeting. At the meeting, the resolution shall be considered and a vote taken for its adoption or rejection. If a majority of the outstanding shares of stock of the corporation, entitled to vote thereon shall be voted for the adoption of the resolution, the conversion shall be authorized, provided that, if the corporation is converting to a partnership having 1 or more general partners, then, in addition to the foregoing approval, authorization of the conversion shall require approval of each stockholder of the corporation who will become a general partner of such partnership as a result of the conversion.

(c) If a corporation shall convert in accordance with this section to another entity organized, formed or created under the laws of a jurisdiction other than the State of Delaware, the corporation shall file with the Secretary of State a certificate of conversion executed in accordance with § 103 of this title, which certifies:

(7) If a plan of conversion is adopted in accordance with subsection (l) of this section, that all provisions of the plan of conversion shall be approved in accordance with this section.

(g) In connection with a conversion of a domestic corporation to another entity pursuant to this section, shares of ~~stock,~~**stock** of the corporation of this State which is to be converted may be exchanged for or converted into cash, property, **or shares of stock,** rights or securities of, or interests in, the entity to which the corporation of this State is being converted or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, shares of stock, rights or securities of, or interests in, another domestic corporation or other entity or may be cancelled.

(l) In connection with a conversion under this section, the converting corporation may adopt a plan of conversion that may state: (i) the terms and conditions of the conversions, (ii) that the document, instrument, agreement or other writing, as the cause may be, governing the internal affairs of the entity to which the converting corporation is being converted and the conduct of its business shall be as set forth in an attachment to the plan of conversion, (iii) the manner, if any, of exchanging or converting shares of stock of the converting corporation which are to be exchanged for or converted into cash, property, or shares of stock, rights or securities of, or interests in, the entity to which the corporation of this State is being converted or, in addition to or in lieu thereof, cash, property, shares of stock, rights or securities of, or interests in, another domestic corporation or other entity or cancelling such shares, in accordance with subsection (g) of this section, (iv) any details or provisions as are deemed desirable, and (v) such other provisions or facts as shall be required to be set forth in a plan of conversion by the laws applicable to the entity to which the corporation of this State is being converted. Any of the terms of the plan of conversion may be made dependent upon facts ascertainable outside of such plan, provided that the manner in which such facts shall operate upon the terms of the plan of conversion is clearly and expressly set forth in the plan of conversion. The term "facts," as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including determination or action by any person or body, including the entity to which the corporation of this State is being converted or the converting corporation.

§ 272. Mortgage or pledge of assets.

(a) The authorization or consent of stockholders to the mortgage or pledge of a corporation's property and assets shall not be necessary, except to the extent that the certificate of incorporation otherwise provides.

(b) Without limiting the rights of a secured party under applicable law, no resolution by stockholders shall be required by § 271(a) of this title for a sale, lease or exchange of property or assets if such property or assets are collateral that secures a mortgage or are pledged to a secured party and either:

(1) The secured party exercises its rights under the law governing such mortgage or pledge or other applicable law, whether under Article 9 of a Uniform Commercial Code, a real property law or other law, to effect such sale, lease or exchange without the consent of the corporation; or

(2) In lieu of the secured party exercising such rights, the board of directors of the corporation authorizes an alternative sale, lease or exchange of such property or assets, whether with the secured party or with another person, that results in the reduction or elimination of the total liabilities or obligations secured by such property or assets, provided that (i) the value of such property or assets is less than or equal to the total amount of such liabilities or obligations being eliminated or reduced and (ii) such sale, lease or exchange is not prohibited by the law governing such mortgage or pledge. The provision of consideration to the corporation or to its stockholders shall not create a presumption that the value of such property or assets is greater than the total amount of such liabilities or obligations being eliminated or reduced.

(c) A failure to satisfy the proviso in subsection (b)(2)(i) of this section shall not result in the invalidation of a sale, lease or exchange if the transferee of the property or assets provided value therefor (which may include the reduction or elimination of the total liabilities or obligations secured by such property or assets) and acted in good faith (as defined in § 1-201(b)(20) of Title 6). The preceding sentence shall not apply to a proceeding against the corporation and any other necessary parties to enjoin such sale, lease or exchange before the consummation thereof and shall not eliminate any liability for monetary damages for any claim, including a claim in the right of the corporation, based upon a violation of fiduciary duty by a current or former director or officer or

stockholder.

(d) A provision of the certificate of incorporation that requires the authorization or consent of stockholders for a sale, lease or exchange of property or assets shall not apply to a transaction permitted by subsection (b) of this section unless such provision expressly so requires; provided that this subsection (d) shall apply only to certificate of incorporation provisions that first become effective on or after August 1, 2023.

§ 390. Transfer, domestication or continuance of domestic corporations.

(b) The board of directors of the corporation which desires to transfer to or domesticate or continue in a foreign jurisdiction shall adopt a resolution approving such transfer, domestication or continuance specifying the foreign jurisdiction to which the corporation shall be transferred or in which the corporation shall be domesticated or continued and, if applicable, that in connection with such transfer, domestication or continuance the corporation's existence as a corporation of this State is to continue and recommending the approval of such transfer or domestication or continuance by the stockholders of the corporation. **If a plan of transfer, domestication or continuance is to be adopted in accordance with subsection (j) of this section, such plan shall be approved together with the resolution approving the transfer, domestication or continuance.** Such resolution shall be submitted to the stockholders of the corporation at an annual or special meeting. Due notice of the time, place and purpose of the meeting shall be given to each holder of stock, whether voting or nonvoting, of the corporation at the address of the stockholder as it appears on the records of the corporation, at least 20 days prior to the date of the meeting. At the meeting, the resolution shall be considered and a vote taken for its adoption or rejection. If ~~all~~**a majority of the** outstanding shares of stock of the corporation, ~~whether voting or nonvoting,~~**entitled to vote thereon** shall be voted for the adoption of the ~~resolution,~~**resolution (provided that, if the corporation is transferring, domesticating or continuing as a partnership having 1 or more general partners, then, in addition to the foregoing approval, authorization of the transfer, domestication or continuance shall require approval of each stockholder of the corporation who will become a general partner of such partnership as a result of the transfer, domestication or continuance),** the corporation shall file with the Secretary of State a certificate of transfer if its existence as a corporation of this State is to cease or a certificate of transfer and domestic continuance if its existence as a corporation of this State is to continue, executed in accordance with § 103 of this title, which certifies:

(7) If a plan of transfer, domestication or continuance is adopted in accordance with subsection (j) of this section, that all provisions of the plan of transfer, domestication or continuance shall be approved in accordance with this section.

(j) In connection with a transfer, domestication or continuance under this section, the transferring, domesticating or continuing corporation may adopt a plan of transfer, domestication or continuance, as applicable, that may state: (i) the terms and conditions of the transfer, domestication or continuance, (ii) the mode of carrying the same into effect, (iii) that the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the resulting entity and the conduct of its business shall be as set forth in an attachment to the plan, (iv) the manner, if any, of exchanging or converting shares of stock of the corporation of this State which are to be expected for or converted into cash, property, or shares of stock, rights or securities of, or interests in, the resulting entity or, in addition to or in lieu thereof, cash, property, shares of stock, rights or securities of, or interests in, another domestic corporation or other entity or cancelling such shares, in accordance with subsection (g) of this section, (v) any details or provisions as are deemed desirable, and (vi) such other provisions or facts as shall be required to be set forth in a plan of transfer, domestication or continuance, as applicable, by the laws applicable to the resulting entity. Any of the terms of the plan of transfer, domestication or continuance may be made dependent upon facts ascertainable outside of such plan, provided that the manner in which such facts shall operate upon the terms of the plan is clearly and expressly set forth in the plan. The term "facts," as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the resulting entity or the transferring, domesticating or continuing corporation.

(k) Any provision of the certificate of incorporation of a corporation incorporated before August 1, 2023, or any provision in any voting trust agreement or other written agreement between or among any such corporation and 1 or more of its stockholders in effect on or before August 1, 2023, that restricts, conditions or prohibits the consummation of a merger or consolidation shall be deemed to apply to a transfer, domestication or continuance

as if it were a merger or consolidation unless the certificate of incorporation or such agreement expressly provides otherwise with respect to a transfer, domestication or continuance or, if the certificate of incorporation or such agreement does not so expressly provide, a conversion, in which case such express provision shall be deemed to apply to a transfer, domestication or continuance as if it were a conversion.

DELAWARE REVISED UNIFORM LIMITED PARTNERSHIP ACT

Four bills passed by the Delaware Legislature have made changes to the Delaware Revised Limited Partnership Act since the Statutory Supplement was published in 2020. The following material identifies and discusses the significance of the changes. The summaries are based on the official Synopses provided by the Delaware Legislature. The four bills follow with a redlined version of the amendments.

Summary of Amendments

H.B. No. 343 (2020)

Section 17-101(14)b. has been amended to correct a cross-reference.

Section 17-102(3) has been amended to clarify requirements regarding the name of limited partnership in its certificate of limited partnership.

Sections 17-104(a)(2)d. and 17-104(f)(2) have been amended to identify the types of foreign entities that may be a registered agent of a limited partnership.

Sections 17-104(b) and 17-904(c) have been amended to eliminate the requirement that the Secretary of State issue a certified copy of any certificate filed by the registered agent changing the address of the registered office or the name of the registered agent. These sections also amend Sections 17-104(b) and 17- 904(c) to provide that the conversion of the registered agent or a division of the registered agent in which a resulting person succeeds to all of the registered agent business of such registered agent shall be deemed to be a change of name for purposes of these Sections.

Sections 17-104(c) and 17-904(d) have been amended to eliminate the requirement that the Secretary of State issue a certificate in connection with the resignation of the registered agent of a domestic or foreign limited partnership and the appointment of the successor registered agent.

Section 17-113(a)(2) has been amended to clarify that a person may "execute" a document by using any type of signature contemplated by such Section.

Section 17-212 has been amended to confirm that no appraisal rights are available with respect to a partnership interest or another interest in a limited partnership, including in connection with the enumerated transactions unless otherwise provided in the enumerated documents.

Sections 17-216(c), 17-219(f) and 17-223(f) have been amended with regard to certifications provided by the Secretary of State in connection with the filing of a certificate of transfer, a certificate of transfer and domestic continuance, a certificate of conversion to non-Delaware entity and a certificate of conversion of registered series to protected series.

Section 17-220(h) has been amended to provide specifically that flexibility exists to state other information in a certificate of division.

Section 17-221(d)(4) has been amended to confirm that a certificate of registered series shall be promptly amended if the certificate of registered series no longer complies with the requirements of Section 17-221(e)(1) of this title.

Section 17-221(e)(3) has been amended to clarify requirements regarding the name of a registered series in its certificate of registered series.

Section 17-301 has been amended (i) to confirm that a partnership agreement may provide for the admission of limited partners in connection with formation, (ii) to eliminate any statutory requirement that a limited partner's admission after formation is subject to the admission being reflected in the records of the limited partnership, and (iii) to clarify that an assignee of a partnership interest is admitted as a limited partner as provided in Section 17-704(a).

Section 17-305(c) has been amended to confirm that a limited partnership may maintain its books, records and other information in other than paper form (including electronic form) if such form is capable of conversion into paper form within a reasonable time.

Section 17-904(a) has been amended to clarify requirements regarding the name under which a foreign limited partnership may register with the Secretary of State.

Section 17- 904(b)(2)c. has been amended to identify the types of foreign entities that may be a registered agent of a foreign limited partnership.

Section 17-904(e) has been amended to provide that, if a foreign limited partnership has ceased to be registered pursuant to Section 17-1109(g), its registered agent may resign without appointing a successor registered agent. The amendment also adds requirements regarding the content and form of the certificate of resignation filed with the Delaware Secretary of State when the registered agent resigns without appointing a successor, and provides that such information regarding the communications contact that must be included in such a certificate shall not be deemed public.

S.B. No. 116 (2021)

Section 17-106 has been amended to add subsection (e) to provide a safe harbor procedure for ratifying acts or transactions that may be taken by or in respect of a limited partnership under the Act or a limited partnership agreement that are void or voidable and waiving failures to comply with requirements of a partnership agreement that make such acts and transactions void or voidable. New subsection (e) is intended to provide a rule different from the rule applied in Composecure, L.L.C. v. Cardux, LLC, 206 A.3d 807 (Del. 2018), and Absalom Absalom Trust v. Saint Gervais LLC, 2019 WL 2655787 (Del. Ch. June 27, 2019), that acts or transactions determined to be void generally may not be ratified. The penultimate sentence of new subsection (e) confirms that void or voidable actions may be ratified or requirements may be waived by other means permitted by law, and accordingly, new subsection (e) is not intended to preempt or restrict other valid means of ratifying acts or transactions or waiving requirements or to impair the effectiveness of any valid ratification or waiver previously effected.

Section 17-220 has been amended to make a conforming change.

Section 17-305 has been amended to make certain clarifying and conforming changes, and to provide that when a limited partner is entitled to obtain information for a stated purpose (whether pursuant to Section 17-305 or a partnership agreement), the limited partner's right shall be to obtain such information as is necessary and essential to achieving that purpose, unless such right has been expanded or restricted in the partnership agreement. The first sentence of subsection (f) is intended to (i) change current law, as set forth in Murfey v. WHC Ventures, LLC, 236 A.3d 337 (Del. 2020), that the "necessary and essential" test does not apply by default to a limited partner's contractual right to obtain information from a limited partnership for a stated purpose, and (ii) clarify that the "necessary and essential" test applies to a limited partner's right under Section 17-305(a) to obtain information from a limited partnership for a purpose reasonably related to the limited partner's interest as a limited partner.

Section 17-403(c) has been amended to provide that a general partner may delegate any of its rights, powers or duties irrespective of whether it has a conflict of interest with respect to the matter as to which such rights, powers or duties are being delegated, and that the person or persons to whom any such rights, powers or duties are being delegated shall not be deemed conflicted solely by reason of the conflict of interest of the general partner. The amendments to Section 17-403(c) create a different rule than the rule applied in cases such as Wenske v. Bluebell Creameries, Inc., 214 A.3d 958 (Del. Ch. 2019), that a conflicted principal is legally disabled from delegating authority over the subject matter as to which the principal is conflicted even to an independent delegatee.

Section 17-1201 has been amended to clarify the effect of subchapter XII and to provide for the manner in which a limited partnership may become a statutory public benefit limited partnership.

Section 17-1202(a) has been amended to provide that a partnership agreement of a statutory public benefit limited partnership must state that the limited partnership is a statutory public benefit limited partnership and must set forth the specific public benefit or benefits to be promoted by the limited partnership, to provide that the partnership agreement shall control as among the partners and other persons who are party to or otherwise bound by the partnership agreement in the event of any inconsistency between the public benefit(s) as set forth in such agreement and the certificate of limited partnership, to require amendment of the certificate of limited partnership of a statutory public benefit limited partnership in specified circumstances, and to clarify the effect of subchapter XII.

Section 17-1203 has been repealed.

Sections 17-1204 and 17-1205 have been amended to make conforming changes.

S.B. No. 274 (2022)

Section 17-101(14) is amended to confirm that any registered series or protected series of a limited partnership is bound by the partnership agreement of such limited partnership regardless of whether the series executed the partnership agreement. This amendment is not intended to imply

that other references to "limited partnership" in the Act do not include protected series or registered series thereof (to the extent required by the context).

Section 17-101(14) is also amended to insert a new clause c. to confirm that a partnership agreement may include or incorporate multiple documents that may govern the business or affairs of the limited partnership or any of its series.

Section 17-113(b) is amended to confirm that a signature on a certificate of partnership interest may be a manual, facsimile, or electronic signature.

Section 17-204(d) is amended to clarify that the execution of a certificate by a person who is authorized by the Act to execute such certificate constitutes an oath or affirmation that, to the best of such person's knowledge and belief, the facts stated therein shall be true at the time such certificate becomes effective, not at the time such certificate is executed.

Section 17-215(g) is amended to provide that the approval of a limited partnership domestication in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the non-United States entity and the conduct of its business or by applicable non-Delaware law, as appropriate, and the approval of the partnership agreement by the same authorization required to approve the domestication, are required to occur prior to the time a certificate of limited partnership domestication becomes effective.

Section 17-217(h) is amended to provide that the approval of a conversion to a limited partnership in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the other entity and the conduct of its business or by applicable law, as appropriate, and the approval of the partnership agreement by the same authorization required to approve the conversion, are required to occur prior to the time a certificate of conversion to limited partnership becomes effective.

Section 17-1110(b) is amended to make conforming changes.

Section 17-1111 is amended to (i) clarify the effect of the filing of a certificate of revival of limited partnership on any protected series of such limited partnership that are not, at the time of such filing, otherwise terminated and wound up and any registered series of such limited partnership whose certificates of registered series are not, at the time of such filing, otherwise cancelled, and (ii) make other conforming changes.

S.B. No. 112 (2023)

Section 17-204(a) is amended to clarify that certificates required to be filed in the office of the Secretary of State be executed in the manner set forth in Section 17-204(a). Further, this section also amends Section 17-204(a) to provide the manner in which a certificate of amendment to a certificate of division must be signed.

Currently, Section 17-211(g) permits a duly approved agreement of merger or consolidation or plan of merger to effect any amendment to the partnership agreement or effect the adoption of a

new partnership agreement. Section 17-211(g) is amended to confirm that an amendment to a partnership agreement or adoption of a new partnership agreement effected pursuant to Section 17-211(g) may be effected only with respect to the partnership agreement of the surviving or resulting limited partnership and not with respect to the partnership agreement of a constituent limited partnership that is not the surviving or resulting limited partnership.

Each protected or registered series of a Delaware limited partnership must have a general partner associated with it. If a partnership agreement fails to designate an initial general partner associated with such a series, the Limited Partnership Act designates a general partner to be associated with such a series. If a partnership agreement fails to designate a general partner of the limited partnership generally, the Limited Partnership Act designates a general partner of the limited partnership generally. Sections 17-218(b)(1) and 17-221(c)(1) are amended to confirm that the rules for designating a general partner for a limited partnership that has protected or registered series apply only to the designation of an initial general partner and not to subsequent general partners.

Currently, Section 17-806 permits revocation of dissolution of a limited partnership prior to the filing of a certificate of cancellation of the certificate of limited partnership in the office of the Secretary of State; however, the Limited Partnership Act does not currently address revocation of termination of a protected series prior to the completion of the winding up of the protected series. A new Section 17-218(d) permits revocation of termination of a protected series prior to the completion of the winding up of the protected series.

Currently, among other requirements, a certificate of division must state the name and business address of the division contact and the name and address of the division partnership where the plan of division is on file. Because this information may change over time, Section 17-220(h) is amended to permit or require the filing of a certificate of amendment of certificate of division to amend the name or business address of the division contact or the name and address of the division partnership where the plan of division is on file. The requirement to update such information in a certificate of division ends after the expiration of a period of 6 years following the effective date of the division. Section 17-220(l)(1) is also amended to clarify that pursuant to a division, a dividing partnership is divided into distinct and independent division partnerships as such term is used in the LP Act. Finally, under Section 17-220, a dividing partnership does not need to survive a division. Section 17-220(l)(9) is amended to confirm that a dividing partnership need not be a surviving partnership.

Currently, Section 17-806 permits revocation of dissolution of a limited partnership prior to the filing of a certificate of cancellation of the certificate of limited partnership in the office of the Secretary of State; however, the Limited Partnership Act does not currently address revocation of dissolution of a registered series prior to the filing of a certificate of cancellation of the certificate of registered series in the office of the Secretary of State. Section 17-221 is amended to add a new Section 17-221(f) to permit revocation of dissolution of a registered series prior to the filing of a certificate of cancellation of the certificate of registered series in the office of the Secretary of State.

A new Section 17-506 is added to clarify that a subscription for a partnership interest may be irrevocable if the subscription states it is irrevocable to the extent provided by the terms of the subscription.

Section 17-1107(a)(3) is amended to specify the fee payable to the Secretary of State to file a certificate of amendment of certificate of division.

Section 17-1109(j) is amended to acknowledge that certificates of amendment of certificate of division should be accepted for filing by the Secretary of State if at least 1 division partnership is in good standing at the time of such filings.

Redlined Version of Amendments

DELAWARE 2020 SESSION LAWS

150TH GENERAL ASSEMBLY

H.B. No. 343

AN ACT TO AMEND CHAPTER 17, TITLE 6 OF THE DELAWARE CODE RELATING TO THE CREATION, REGULATION, OPERATION AND DISSOLUTION OF DOMESTIC LIMITED PARTNERSHIPS AND THE REGISTRATION AND REGULATION OF FOREIGN LIMITED PARTNERSHIPS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

§ 17–101. Definitions

As used in this chapter unless the context otherwise requires:

(14) "Partnership agreement" means any agreement, written, oral or implied, of the partners as to the affairs of a limited partnership and the conduct of its business. A partner of a limited partnership or an assignee of a partnership interest is bound by the partnership agreement whether or not the partner or assignee executes the partnership agreement. A limited partnership is not required to execute its partnership agreement. A limited partnership is bound by its partnership agreement whether or not the limited partnership executes the partnership agreement. A partnership agreement is not subject to any statute of frauds (including § 2714 of this title). A partnership agreement may provide rights to any person, including a person who is not a party to the partnership agreement, to the extent set forth therein. A written partnership agreement or another written agreement or writing:

b. Shall not be unenforceable by reason of its not having been signed by a person being admitted as a limited partner or becoming an assignee as provided in paragraph ~~(12)a.~~ **(14)a.** of this section, or by reason of its having been signed by a representative as provided in this title.

§ 17–102. Name set forth in certificate

The name of each limited partnership as set forth in its certificate of limited partnership:

(3) Must be such as to distinguish it upon the records in the office of the Secretary of State from the name on such records of any corporation, partnership, limited partnership, statutory trust, limited liability company, registered series of a limited liability company or registered series of a limited partnership reserved, registered, formed or organized under the laws of the State of Delaware or qualified to do business or registered as a foreign corporation, foreign limited partnership, foreign statutory trust, foreign partnership or foreign limited liability company in the State of Delaware; provided, however, that a limited partnership may register under any name which is not such as to distinguish it upon the records in the office of the Secretary of State from the name on such records of any domestic or foreign corporation, partnership, statutory trust, limited liability company, registered series of a limited liability company, registered series of a limited partnership**,** or foreign limited partnership reserved, registered, formed or organized under the laws of the State of Delaware with the written consent of the other corporation, partnership, statutory trust, limited liability company, registered series of a limited liability company, registered series of a limited partnership**,** or foreign limited partnership, which written consent shall be filed with the Secretary of State; provided further, that, if on July 31, 2011, a limited partnership is registered (with the consent of another limited partnership) under a name which is not such as to distinguish it upon the records in the office of the Secretary of State from the name on such records of such other domestic limited partnership, it shall not be necessary for any such limited partnership to amend its certificate of limited partnership to comply with this subsection;

§ 17–104. Registered office; registered agent

(a) Each limited partnership shall have and maintain in the State of Delaware:

(2) A registered agent for service of process on the limited partnership, having a business office identical with such registered office, which agent may be any of

d. A foreign corporation, a foreign ~~partnership (whether general (including a~~ limited liability partnership~~) or~~**, a foreign** limited **partnership** (including a **foreign** limited liability limited partnership)~~)~~, a foreign limited liability company, or a foreign statutory trust.

(b) A registered agent may change the address of the registered office of the limited partnership(s) for which it is registered agent to another address in the State of Delaware by paying a fee as set forth in § 17–1107(a)(2) of this title and filing with the Secretary of State a certificate, executed by such registered agent, setting forth the address at which such registered agent has maintained the registered office for each of the limited partnerships for which it is a registered agent, and further certifying to the new address to which each such registered office will be changed on a given day, and at which new address such registered agent will thereafter maintain the registered office for each of the limited partnerships for which it is a registered agent. Upon the filing of such certificate, ~~the Secretary of State shall furnish to the registered agent a certified copy of the same under the Secretary's hand and seal of office, and thereafter, or~~ until further change of address, as authorized by law, the registered office in the State of Delaware of each of the limited partnerships for which the agent is a registered agent shall be located at the new address of the registered agent thereof as given in the certificate. In the event of a change of name of any person acting as a registered agent of a limited partnership, such registered agent shall file with the Secretary of State a certificate, executed by such registered agent, setting forth the new name of such registered agent, the name of such registered agent before it was changed, and the address at which such registered agent has maintained the registered office for each of the limited partnerships for which it is a registered agent, and shall pay a fee as set forth in § 17–1107(a)(2) of this title. ~~Upon the filing of such certificate, the Secretary of State shall furnish to the registered agent a certified copy of the certificate under his or her hand and seal of office.~~ A change of name of any person acting as a registered agent of a limited partnership as a result of **(i)** a merger or consolidation of the registered agent, with or into another person which succeeds to its assets and liabilities by operation of law**, (ii) the conversion of the registered agent into another person, or (iii) a division of the registered agent in which an identified resulting person succeeds to all of the assets and liabilities of the registered agent related to its registered agent business pursuant to the plan of division, as set forth in the certificate of division**, shall **each** be deemed a change of name for purposes of this section. Filing a certificate under this section shall be deemed to be an amendment of the certificate of limited partnership of each limited partnership affected thereby and each such limited partnership shall not be required to take any further action with respect thereto, to amend its certificate of limited partnership under § 17–202 of this title. Any registered agent filing a certificate under this section shall promptly, upon such filing, deliver a copy of any such certificate to each limited partnership affected thereby.

(c) The registered agent of 1 or more limited partnerships may resign and appoint a successor registered agent by paying a fee as set forth in § 17–1107(a)(2) of this title and filing a certificate with the Secretary of State stating that it resigns and the name and address of the successor registered agent. There shall be attached to such certificate a statement of each affected limited partnership ratifying and approving such change of registered agent. Upon such filing, the successor registered agent shall become the registered agent of such limited partnerships as have ratified and approved such substitution and the successor registered agent's address, as stated in such certificate, shall become the address of each such limited partnership's registered office in the State of Delaware. ~~The Secretary of State shall then issue a certificate that the successor registered agent has become the registered agent of the limited partnerships so ratifying and approving such change and setting out the names of such limited partnerships.~~ Filing of such certificate of resignation shall be deemed to be an amendment of the certificate of limited partnership of each limited partnership affected thereby and each such limited partnership shall not be required to take any further action with respect thereto to amend its certificate of limited partnership under § 17–202 of this title.

(f) Any registered agent, who at any time serves as registered agent for more than 50 entities (a "commercial registered agent"), whether domestic or foreign, shall satisfy and comply with the following qualifications.

(2) A domestic or foreign corporation, a domestic ~~or foreign~~ partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), **a foreign limited liability partnership,** a domestic or foreign limited liability company, or a domestic or foreign statutory trust serving as a commercial registered agent shall:

§ 17–113. Document form, signature and delivery

(a) Except as provided in subsection (b) of this section, without limiting the manner in which any act or transaction may be documented, or the manner in which a document may be signed or delivered:

(2) Whenever this chapter or the partnership agreement requires or permits a signature, the signature may be a manual, facsimile, conformed or electronic signature. "Electronic signature" means an electronic symbol or process that is attached to, or logically associated with, a document and executed or adopted by a person with an intent to **execute,** authenticate or adopt the document. **A person may execute a document with such person's signature.**

§ 17–212. ~~Contractual~~ No statutory appraisal rights

~~A~~ **Unless otherwise provided in a** partnership agreement or an agreement of merger or consolidation or a plan of merger or a plan of division ~~may provide that contractual~~**, no** appraisal rights **shall be available** with respect to a partnership interest or another interest in a limited partnership ~~shall be available for any class or group or series of partners or partnership interests~~**, including** in connection with any amendment of a partnership agreement, any merger or consolidation in which the limited partnership or a registered series of the limited partnership is a constituent party to the merger or consolidation, any division of the limited partnership, any conversion of the limited partnership to another business form, any conversion of a protected series of the limited partnership to a registered series of such limited partnership, any conversion of a registered series of the limited partnership to a protected series of such limited partnership, any transfer to or domestication or continuance in any jurisdiction by the limited partnership, or the sale of all or substantially all of the limited partnership's assets. The Court of Chancery shall have jurisdiction to hear and determine any matter relating to any ~~such~~ appraisal rights **provided in a partnership agreement or an agreement of merger or consolidation or a plan of merger or a plan of division**.

§ 17–216. Transfer or continuance of domestic limited partnerships

(c) Upon the filing in the office of the Secretary of State of the certificate of transfer or upon the future effective date or time of the certificate of transfer and payment to the Secretary of State of all fees prescribed in this chapter, ~~the Secretary of State shall certify that the limited partnership has filed all documents and paid all fees required by this chapter and thereupon~~ the limited partnership shall cease to exist as a limited partnership of the State of Delaware. ~~Such~~ **A copy of the** certificate **of transfer certified by** ~~of~~ the Secretary of State shall be prima facie evidence of the transfer or domestication or continuance by such limited partnership out of the State of Delaware. **A copy of the certificate of transfer and domestic continuance certified by the Secretary of State shall be prima facie evidence of such limited partnership's transfer to or domestication or continuance in another jurisdiction and its continuance as a limited partnership in the State of Delaware.**

§ 17–219. Approval of conversion of a limited partnership

(f) Upon the filing in the office of the Secretary of State of the certificate of conversion to non-Delaware entity or upon the future effective date or time of the certificate of conversion to non-Delaware entity and payment to the Secretary of State of all fees prescribed in this chapter, ~~the Secretary of State shall certify that the limited partnership has filed all documents and paid all fees required by this chapter, and thereupon~~ the limited partnership shall cease to exist as a limited partnership of the State of Delaware. ~~Such~~ **A copy of the** certificate **of conversion to non-Delaware entity certified by** ~~of~~ the Secretary of State shall be prima facie evidence of the conversion by such limited partnership out of the State of Delaware.

§ 17–220. Division of a limited partnership

(h) If a domestic limited partnership divides under this section, the dividing partnership shall file a certificate of division executed by at least 1 general partner of the dividing partnership on behalf of such dividing partnership in the office of

the Secretary of State in accordance with § 17–204 of this title, and a certificate of limited partnership that complies with § 17–201 of this title for each resulting partnership executed by all general partners of such resulting partnership in accordance with § 17–204 of this title. The certificate of division shall state:

(7) That the plan of division is on file at a place of business of such division partnership as is specified therein, and shall state the address thereof; ~~and~~

(8) That a copy of the plan of division will be furnished by such division partnership as is specified therein, on request and without cost, to any partner of the dividing partnership~~.~~**; and**

(9) Any other information the dividing partnership determines to include therein.

§ 17–221. Registered series of limited partners, general partners, partnership interests or assets

(d) In order to form a registered series of a limited partnership, a certificate of registered series must be filed in accordance with this subsection.

(4) A general partner of a registered series who becomes aware that any statement in a certificate of registered series filed with respect to such registered series was false when made, or that any matter described therein has changed making the certificate of registered series false in any material respect **or non-compliant with § 17–221(e)(1)**, shall promptly amend the certificate of registered series.

(e) The name of each registered series as set forth in its certificate of registered series:

(3) Must be such as to distinguish it upon the records in the office of the Secretary of State from the name on such records of any corporation, partnership, limited partnership, statutory trust, limited liability company, registered series of a limited liability company or registered series of a limited partnership reserved, registered, formed or organized under the laws of the State of Delaware or qualified to do business or registered as a foreign corporation, foreign limited partnership, foreign statutory trust, foreign partnership or foreign limited liability company in the State of Delaware; provided, however, that a registered series may register under any name which is not such as to distinguish it upon the records in the office of the Secretary of State from the name on such records of any domestic or foreign corporation, partnership, statutory trust, limited liability company, registered series of a limited liability company, registered series of a limited partnership**,** or foreign limited partnership reserved, registered, formed or organized under the laws of the State of Delaware with the written consent of the other corporation, partnership, statutory trust, limited liability company, registered series of a limited liability company, registered series of a limited partnership**,** or foreign limited partnership, which written consent shall be filed with the Secretary of State;

§ 17–223. Approval of conversion of a registered series of a domestic limited partnership to a protected series of such domestic limited partnership

(f) ~~Upon the filing in the office of the Secretary of State of the certificate of conversion of registered series to protected series or upon the future effective date or time of the certificate of conversion of registered series to protected series and payment to the Secretary of State of all fees prescribed in this chapter, the Secretary of State shall certify that the registered series has filed all documents and paid all fees required by this chapter. Such~~ **A copy of the** certificate **of conversion of registered series to protected series certified by** ~~of~~ the Secretary of State shall be prima facie evidence of the conversion by such registered series to a protected series of such limited partnership.

§ 17–301. Admission of limited partners

(a) In connection with the formation of a limited partnership, a person is admitted as a limited partner of the limited partnership upon the later to occur of:

(1) The formation of the limited partnership; or

(2) The time provided in and upon compliance with the partnership agreement or, if the partnership agreement does not so provide, when the person's admission is reflected in the records of the limited partnership **or as otherwise provided in the partnership agreement**.

(b) After the formation of a limited partnership, a person is admitted as a limited partner of the limited partnership:

(1) In the case of a person who is not an assignee of a partnership interest, including a person acquiring a partnership interest directly from the limited partnership and a person to be admitted as a limited partner of the limited partnership without acquiring a partnership interest in the limited partnership, at the time provided in and upon compliance with the partnership agreement or, if the partnership agreement does not so provide, upon the consent of all partners ~~and when the person's admission is reflected in the records of~~ **or as otherwise provided in** the ~~limited~~ partnership **agreement**;

(2) In the case of an assignee of a partnership interest, as provided in § 17–704(a) of this title ~~and at the time provided in and upon compliance with the partnership agreement or, if the partnership agreement does not so provide, when any such person's permitted admission is reflected in the records of the limited partnership~~;

§ 17–305. Access to and confidentiality of information; records

(c) A limited partnership may maintain its records in other than ~~a written~~ **paper** form, including on, by means of, or in the form of any information storage device, method, or 1 or more electronic networks or databases (including 1 or more distributed electronic networks or databases), if such form is capable of conversion into ~~written~~ **paper** form within a reasonable time.

§ 17–904. Name; registered office; registered agent

(a) A foreign limited partnership may register with the Secretary of State under any name (whether or not it is the name under which it is registered in the jurisdiction of its organization) that includes the words "Limited Partnership" or the abbreviation "L.P." or the designation "LP" and that could be registered by a domestic limited partnership; provided, however, that a foreign limited partnership may register under any name which is not such as to distinguish it upon the records in the Office of the Secretary of State from the name on such records of any domestic or foreign corporation, partnership, statutory trust, limited liability company ~~or~~**,** limited partnership**, registered series of a limited liability company or registered series of a limited partnership** reserved, registered, formed or organized under the laws of the State of Delaware with the written consent of the other corporation, partnership, statutory trust, limited liability company ~~or~~**,** limited partnership, **registered series of a limited liability company or registered series of a limited partnership,** which written consent shall be filed with the Secretary of State.

(b) Each foreign limited partnership shall have and maintain in the State of Delaware:

(2) A registered agent for service of process on the limited partnership, having a business office identical with such registered office, which agent may be any of:

c. A foreign corporation, a foreign ~~partnership (whether general (including a~~ limited liability partnership~~) or~~**, a foreign** limited **partnership** (including a **foreign** limited liability limited partnership)~~)~~ (other than the foreign limited partnership itself), a foreign limited liability company or a foreign statutory trust.

(c) A registered agent may change the address of the registered office of the foreign limited partnership(s) for which the agent is registered agent to another address in the State of Delaware by paying a fee as set forth in § 17–1107(a)(7) of this title and filing with the Secretary of State a certificate, executed by such registered agent, setting forth the address at which such registered agent has maintained the registered office for each of the foreign limited partnerships for which it is a registered agent, and further certifying to the new address to which each such registered office will be changed on a given day, and at which new address such registered agent will thereafter maintain the registered office for each of the foreign limited partnerships for which it is a registered agent. Upon the filing of such certificate, ~~the Secretary of State shall furnish to the registered agent a certified copy of the same under the Secretary's hand and seal of office, and thereafter, or~~ until further change of address, as authorized by law, the registered office in the State of Delaware of each

of the foreign limited partnerships for which the agent is a registered agent shall be located at the new address of the registered agent thereof as given in the certificate. In the event of a change of name of any person acting as a registered agent of a foreign limited partnership, such registered agent shall file with the Secretary of State a certificate, executed by such registered agent, setting forth the new name of such registered agent, the name of such registered agent before it was changed and the address at which such registered agent has maintained the registered office for each of the foreign limited partnerships for which it is a registered agent, and shall pay a fee as set forth in § 17–1107(a)(7) of this title. ~~Upon the filing of such certificate, the Secretary of State shall furnish to the registered agent a certified copy of the certificate under the Secretary of State's own hand and seal of office.~~ A change of name of any person acting as a registered agent of a foreign limited partnership as a result of **(i)** a merger or consolidation of the registered agent with or into another person which succeeds to its assets and liabilities by operation of law**, (ii) the conversion of the registered agent into another person, or (iii) a division of the registered agent in which an identified resulting person succeeds to all of the assets and liabilities of the registered agent related to its registered agent business pursuant to the plan of division, as set forth in the certificate of division,** shall **each** be deemed a change of name for purposes of this section. Filing a certificate under this section shall be deemed to be an amendment of the application of each foreign limited partnership affected thereby and each such foreign limited partnership shall not be required to take any further action with respect thereto to amend its application under § 17–905 of this title. Any registered agent filing a certificate under this section shall promptly, upon such filing, deliver a copy of any such certificate to each foreign limited partnership affected thereby.

(d) The registered agent of 1 or more foreign limited partnerships may resign and appoint a successor registered agent by paying a fee as set forth in § 17–1107(a)(7) of this title and filing a certificate with the Secretary of State stating that it resigns and the name and address of the successor registered agent. There shall be attached to such certificate a statement of each affected foreign limited partnership ratifying and approving such change of registered agent. Upon such filing, the successor registered agent shall become the registered agent of such foreign limited partnerships as have ratified and approved such substitution and the successor registered agent's address, as stated in such certificate, shall become the address of each such foreign limited partnership's registered office in the State of Delaware. ~~The Secretary of State shall then issue a certificate that the successor registered agent has become the registered agent of the foreign limited partnerships so ratifying and approving such change and setting out the names of such foreign limited partnerships.~~ Filing of such certificate of resignation shall be deemed to be an amendment of the application of each foreign limited partnership affected thereby and each such foreign limited partnership shall not be required to take any further action with respect thereto to amend its application under § 17–905 of this title.

(e) The registered agent of ~~1 or more~~ **a** foreign limited partnership~~s~~**, including a foreign limited partnership that has ceased to be registered as a foreign limited partnership in the State of Delaware pursuant to § 17–1109(g) of this title,** may resign without appointing a successor registered agent by paying a fee as set forth in § 17–1107(a)(7) of this title and filing a certificate of resignation with the Secretary of State, but such resignation shall not become effective until 30 days after the certificate is filed. The certificate shall contain a statement that written notice of resignation was given to ~~each affected~~ **the** foreign limited partnership at least 30 days prior to the filing of the certificate by mailing or delivering such notice to the foreign limited partnership at its address last known to the registered agent and shall set forth the date of such notice. **The certificate shall include such information last provided to the registered agent pursuant to Section 17–104(g) of this title for a communications contact for the foreign limited partnership. Such information regarding the communications contact shall not be deemed public. A certificate filed pursuant to this subsection must be on the form prescribed by the Secretary of State.** After receipt of the notice of the resignation of its registered agent, the foreign limited partnership for which such registered agent was acting shall obtain and designate a new registered agent to take the place of the registered agent so resigning. If such foreign limited partnership fails to obtain and designate a new registered agent as aforesaid prior to the expiration of the period of 30 days after the filing by the registered agent of the certificate of resignation, such foreign limited partnership shall not be permitted to do business in the State of Delaware and its registration shall be canceled. After the resignation of the registered agent shall have become effective as provided in this section and if no new registered agent shall have been obtained and designated in the time and manner aforesaid, service of legal process against each foreign limited partnership for which the resigned registered agent had been acting shall thereafter be upon the Secretary of State in accordance with § 17–911 of this title.

DELAWARE 2021 SESSION LAWS

151ST GENERAL ASSEMBLY

S.B. No. 116

AN ACT TO AMEND CHAPTER 17, TITLE 6 OF THE DELAWARE CODE RELATING TO THE CREATION, REGULATION, OPERATION AND DISSOLUTION OF DOMESTIC LIMITED PARTNERSHIPS AND THE REGISTRATION AND REGULATION OF FOREIGN LIMITED PARTNERSHIPS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

§ 17–106. Nature of business permitted; powers

(e) Any act or transaction that may be taken by or in respect of a limited partnership under this chapter or a limited partnership agreement, but that is void or voidable when taken, may be ratified (or the failure to comply with any requirements of the partnership agreement making such act or transaction void or voidable may be waived) by the partners or other persons whose approval would be required under the partnership agreement (i) for such act or transaction to be validly taken, or (ii) to amend the partnership agreement in a manner that would permit such act or transaction to be validly taken, in each case at the time of such ratification or waiver; provided, that if the void or voidable act or transaction was the issuance or assignment of any partnership interests, the partnership interests purportedly issued or assigned shall be deemed not to have been issued or assigned for purposes of determining whether the void or voidable act or transaction was ratified or waived pursuant to this subsection (e). Any act or transaction ratified, or with respect to which the failure to comply with any requirements of the partnership agreement is waived, pursuant to this subsection (e) shall be deemed validly taken at the time of such act or transaction. If an amendment to the partnership agreement to permit any such act or transaction to be validly taken would require notice to any partners or other persons under the partnership agreement and the ratification or waiver of such act or transaction is effectuated pursuant to this subsection (e) by the partners or other persons whose approval would be required to amend the partnership agreement, notice of such ratification or waiver shall be given following such ratification or waiver to the partners or other persons who would have been entitled to notice of such an amendment and who have not otherwise received notice of, or participated in, such ratification or waiver. The provisions of this subsection (e) shall not be construed to limit the accomplishment of a ratification or waiver of a void or voidable act by other means permitted by law. Upon application of the limited partnership, any partner or any person claiming to be substantially and adversely affected by a ratification or waiver pursuant to this subsection (e) (excluding any harm that would have resulted if such act or transaction had been valid when taken), the Court of Chancery may hear and determine the validity and effectiveness of the ratification of, or waiver with respect to, any void or voidable act or transaction effectuated pursuant to this subsection (e), and in any such application, the limited partnership shall be named as a party and service of the application upon the registered agent of the limited partnership shall be deemed to be service upon the limited partnership, and no other party need be joined in order for the Court to adjudicate the validity and effectiveness of the ratification or waiver, and the Court may make such order respecting further or other notice of such application as it deems proper under these circumstances; provided, that nothing herein limits or affects the right to serve process in any other manner now or hereafter provided by law, and this sentence is an extension of and not a limitation upon the right otherwise existing of service of legal process upon nonresidents.

§ 17–220. Division of a limited partnership

(a) As used in this section and §§ 17–203~~,~~ **and** 17–301 ~~and 17–1203~~:

§ 17–305. Access to and confidentiality of information; records

(a) Each limited partner, in person or by attorney or other agent, has the right, subject to such reasonable standards (including standards governing what information **(including books, records** and **other** documents**) is** ~~are~~ to be furnished, at what time and location and at whose expense) as may be set forth in the partnership agreement or otherwise

established by the general partners, to obtain from the general partners from time to time upon reasonable demand for any purpose reasonably related to the limited partner's interest as a limited partner:

(c) A limited partnership may maintain its **books,** records **and other documents** in other than paper form, including on, by means of, or in the form of any information storage device, method, or 1 or more electronic networks or databases (including 1 or more distributed electronic networks or databases), if such form is capable of conversion into paper form within a reasonable time.

(e) Any action to enforce any right arising under this section shall be brought in the Court of Chancery. If a general partner refuses to permit a limited partner, or attorney or other agent acting for the limited partner, to obtain from the general partner the information described in subsection (a) of this section or does not reply to the demand that has been made within 5 business days (or such shorter or longer period of time as is provided for in a partnership agreement but not longer than 30 business days) after the demand has been made, the limited partner may apply to the Court of Chancery for an order to compel such disclosure. The Court of Chancery is hereby vested with exclusive jurisdiction to determine whether or not the person seeking such information is entitled to the information sought. The Court of Chancery may summarily order the general partner to permit the limited partner to obtain the information described in subsection (a) of this section and to make copies or abstracts therefrom, or the Court of Chancery may summarily order the general partner to furnish to the limited partner the information described in subsection (a) of this section on the condition that the limited partner first pay to the limited partnership the reasonable cost of obtaining and furnishing such information and on such other conditions as the Court of Chancery deems appropriate. When a limited partner seeks to obtain the information described in subsection (a) of this section, the limited partner shall first establish: (1) that the limited partner has complied with the provisions of this section respecting the form and manner of making demand for obtaining such information, and (2) that the information the limited partner seeks is reasonably related to the limited partner's interest as a limited partner. The Court of Chancery may, in its discretion, prescribe any limitations or conditions with reference to the obtaining of information, or award such other or further relief as the Court of Chancery may deem just and proper. The Court of Chancery may order books, **records and other** documents ~~and records~~, pertinent extracts therefrom, or duly authenticated copies thereof, to be brought within the State of Delaware and kept in the State of Delaware upon such terms and conditions as the order may prescribe.

(f) **If a limited partner is entitled to obtain information under this chapter or a partnership agreement for a purpose reasonably related to the limited partner's interest as a limited partner or other stated purpose, the limited partner's right shall be to obtain such information as is necessary and essential to achieving that purpose.** The rights of a limited partner to obtain information as provided in this section may be **expanded or** restricted in an original partnership agreement or in any subsequent amendment approved or adopted by all of the partners or in compliance with any applicable requirements of the partnership agreement. The provisions of this subsection shall not be construed to limit the ability to ~~impose restrictions on~~ **expand or restrict** the rights of a limited partner to obtain information by any other means permitted ~~under this chapter~~ **by law**.

§ 17–403. General powers and liabilities

(c) Unless otherwise provided in the partnership agreement, a general partner of a limited partnership has the power and authority to delegate to 1 or more other persons any or all of the general partner's rights, powers and duties to manage and control the business and affairs of the limited partnership**, which delegation may be made irrespective of whether the general partner has a conflict of interest with respect to the matter as to which its rights, powers or duties are being delegated, and the person or persons to whom any such rights, powers or duties are being delegated shall not be deemed conflicted solely by reason of the conflict of interest of the general partner**. Any such delegation may be to agents, officers, and employees of the general partner or the limited partnership and by a management agreement or another agreement with, or otherwise to, other persons**, including a committee of 1 or more persons**. Unless otherwise provided in the partnership agreement, such delegation by a general partner of a limited partnership shall be irrevocable if it states that it is irrevocable. Unless otherwise provided in the partnership agreement, such delegation by a general partner of a limited partnership shall not cause the general partner to cease to be a general partner of the limited partnership or cause the person to whom any such rights, powers and duties have been delegated to be a general partner of the limited partnership. No other provision of this chapter **or other law** shall be construed to restrict a general partner's power and authority to delegate any or all of its rights, powers, and duties to manage and control the business and affairs of the limited partnership.

§ 17–1201. Law applicable to statutory public benefit limited partnerships; how formed

This subchapter applies to all statutory public benefit limited partnerships, as defined in § 17–1202**(a)** of this title. If a limited partnership **is formed as or** elects to become a statutory public benefit limited partnership ~~under this subchapter~~ in the manner prescribed in this ~~subchapter~~ **section**, it shall be subject in all respects to the provisions of this chapter, except to the extent this subchapter imposes additional or different requirements, in which case such **additional or different** requirements shall apply, and notwithstanding § 17–1101 of this title or any other provision of this title, such **additional or different** requirements imposed by this subchapter may not be altered in the partnership agreement. **If a limited partnership is not formed as a statutory public benefit limited partnership, it may become a statutory public benefit limited partnership in the manner specified in its partnership agreement or by amending its partnership agreement and certificate of limited partnership to comply with the requirements of this subchapter.**

§ 17–1202. Statutory public benefit limited partnership defined; contents of certificate of limited partnership and partnership agreement

(a) A "statutory public benefit limited partnership" is a for-profit limited partnership formed under and subject to the requirements of this chapter that is intended to produce a public benefit or public benefits and to operate in a responsible and sustainable manner. To that end, a statutory public benefit limited partnership shall be managed in a manner that balances the partners' pecuniary interests, the best interests of those materially affected by the limited partnership's conduct, and the public benefit or public benefits set forth **in its partnership agreement and** in its certificate of limited partnership. A statutory public benefit limited partnership shall state **in its partnership agreement and** in the heading of its certificate of limited partnership that it is a statutory public benefit limited partnership and shall set forth **in its partnership agreement and in its certificate of limited partnership** 1 or more specific public benefits to be promoted by the limited partnership ~~in its certificate of limited partnership. The partnership agreement~~**. In the event of any inconsistency between the public benefit or benefits to be promoted by the limited partnership as set forth in its partnership agreement and in its certificate of limited partnership, the partnership agreement shall control as among the partners and other persons who are party to or otherwise bound by the partnership agreement. A general partner who becomes aware that the specific public benefit or benefits to be promoted by the limited partnership as set forth in its partnership agreement are inaccurately set forth in its certificate of limited partnership, shall promptly amend the certificate of limited partnership. Any provision in the partnership agreement or certificate of limited partnership** of a statutory public benefit limited partnership ~~may not contain any provision~~ **that is** inconsistent with this subchapter **shall not be effective to the extent of such inconsistency**.

§ 17–1203. [Repealed and Reserved]

§ 17–1204. Duties of general partners or other persons

(a) The general partners or other persons with authority to manage or direct the business and affairs of a statutory public benefit limited partnership shall manage or direct the business and affairs of the statutory public benefit limited partnership in a manner that balances the pecuniary interests of the partners, the best interests of those materially affected by the limited partnership's conduct, and the specific public benefit or public benefits set forth in its **partnership agreement and** certificate of limited partnership. Unless otherwise provided in a partnership agreement, no general partner or other person with authority to manage or direct the business and affairs of the statutory public benefit limited partnership shall have any liability for monetary damages for the failure to manage or direct the business and affairs of the statutory public benefit limited partnership as provided in this subsection.

(b) A general partner of a statutory public benefit limited partnership or any other person with authority to manage or direct the business and affairs of the statutory public benefit limited partnership shall not, by virtue of the public benefit provisions or § 17–1202(a) of this title, have any duty to any person on account of any interest of such person in the public benefit or public benefits set forth in its **partnership agreement and** certificate of limited partnership or on account of any interest materially affected by the limited partnership's conduct and, with respect to a decision implicating the balance requirement in subsection (a) of this section, will be deemed to satisfy such person's fiduciary duties to limited partners and the limited partnership if such person's decision is both informed and disinterested and not such that no person of ordinary, sound judgment would approve.

§ 17–1205. Periodic statements and third-party certification

A statutory public benefit limited partnership shall no less than biennially provide its limited partners with a statement as to the limited partnership's promotion of the public benefit or public benefits set forth in its **partnership agreement and** certificate of limited partnership and as to the best interests of those materially affected by the limited partnership's conduct. The statement shall include:

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151ST GENERAL ASSEMBLY

S.B. No. 274

AN ACT TO AMEND CHAPTER 17, TITLE 6 OF THE DELAWARE CODE RELATING TO THE CREATION, REGULATION, OPERATION AND DISSOLUTION OF DOMESTIC LIMITED PARTNERSHIPS AND THE REGISTRATION AND REGULATION OF FOREIGN LIMITED PARTNERSHIPS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

§ 17-101. Definitions.

As used in this chapter unless the context otherwise requires:

(14) "Partnership agreement" means any agreement, written, oral or implied, of the partners as to the affairs of a limited partnership and the conduct of its business. A partner of a limited partnership or an assignee of a partnership interest is bound by the partnership agreement whether or not the partner or assignee executes the partnership agreement. A limited partnership **(including any protected series or registered series thereof)** is not required to execute its partnership agreement. A limited partnership **(including any protected series or registered series thereof)** is bound by its partnership agreement whether or not the limited partnership **(or any protected series or registered series thereof)** executes the partnership agreement. A partnership agreement is not subject to any statute of frauds (including § 2714 of this title). A partnership agreement may provide rights to any person, including a person who is not a party to the partnership agreement, to the extent set forth therein. A written partnership agreement or another written agreement or writing:

a. May provide that a person shall be admitted as a limited partner of a limited partnership, or shall become an assignee of a partnership interest or other rights or powers of a limited partner to the extent assigned (i) if such person (or a representative authorized by such person orally, in writing or by other action such as payment for a partnership interest) executes the partnership agreement or any other writing evidencing the intent of such person to become a limited partner or assignee, or (ii) without such execution, if such person (or a representative authorized by such person orally, in writing or by other action such as payment for a partnership interest) complies with the conditions for becoming a limited partner or assignee as set forth in the partnership agreement or any other writing; ~~and~~

b. Shall not be unenforceable by reason of its not having been signed by a person being admitted as a limited partner or becoming an assignee as provided in paragraph (14)a. of this section, or by reason of its having been signed by a representative as provided in this ~~title~~ **title; and**

c. May consist of 1 or more agreements, instruments or other writings and may include or incorporate one or more schedules, supplements or other writings containing provisions as to the conduct of the business and affairs of the limited partnership or any series thereof.

§ 17-113. Document form, signature and delivery.

(b) Subsection (a) of this section shall not apply to:

(1) A document filed with or submitted to the Secretary of State, the Register in Chancery, or a court or other judicial or governmental body of this State;

(2) A certificate of partnership interest**, except that a signature on a certificate of partnership interest may be a manual, facsimile, or electronic signature**; and

(3) An act or transaction effected pursuant to § 17-104, § 17-105, or § 17-109 of this title or subchapter IX or X of this

chapter.

The foregoing shall not create any presumption about the lawful means to document a matter addressed by this subsection, or the lawful means to sign or deliver a document addressed by this subsection. A provision of the partnership agreement shall not limit the application of subsection (a) of this section unless the provision expressly restricts 1 or more of the means of documenting an act or transaction, or of signing or delivering a document, permitted by subsection (a) of this section.

§ 17-204. Execution.

(d) The execution of a certificate by a person who is authorized by this chapter to execute such certificate constitutes an oath or affirmation, under the penalties of perjury in the third degree, that, to the best of such person's knowledge and belief, the facts stated therein ~~are true~~ **shall be true at the time such certificate becomes effective as provided in this chapter**.

§ 17-215. Domestication of non-United States entities.

(g) Prior to the ~~filing of~~ **time** a certificate of limited partnership domestication ~~with the office of the Secretary of State~~ **becomes effective as provided in this chapter**, the domestication shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the non-United States entity and the conduct of its business or by applicable non-Delaware law, as appropriate, and a partnership agreement shall be approved by the same authorization required to approve the domestication; provided that, in any event, such approval shall include the approval of any person who, at the effective date or time of the domestication, shall be a general partner of the limited partnership.

§ 17-217. Conversion of certain entities to a limited partnership.

(h) Prior to ~~filing~~ **the time** a certificate of conversion to limited partnership ~~with the office of the Secretary of State~~ **becomes effective as provided in this chapter**, the conversion shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the other entity and the conduct of its business or by applicable law, as appropriate, and a partnership agreement shall be approved by the same authorization required to approve the conversion; provided, that in any event, such approval shall include the approval of any person who, at the effective date or time of the conversion, shall be a general partner of the limited partnership.

§ 17-1110. Cancellation of certificate of limited partnership or certificate of registered series for failure to pay annual tax.

(b) The certificate of registered series **of a registered series** shall be canceled if the annual tax due under § 17-1109 of this title **for the registered series** is not paid for a period of 3 years from the date it is due, such cancellation to be effective on the third anniversary of such due date.

§ 17-1111. Revival of domestic limited partnership.

(a) A domestic limited partnership whose certificate of limited partnership has been canceled pursuant to § 17-104(d) ~~or~~**,§ 17-104**(i)(4) or § 17-1110(a) of this title may be revived by filing in the office of the Secretary of State a certificate of revival **of limited partnership** accompanied by the payment of the fee required by § 17-1107(a)(3) of this title and payment of the annual tax due under § 17-1109 of this title and all penalties and interest thereon due at the time of the cancellation of its certificate of limited partnership. The certificate of revival **of limited partnership** shall set forth:

(1) The name of the limited partnership at the time its certificate of limited partnership was canceled and, if such name is not available at the time of revival, the name under which the limited partnership is to be revived;

(2) The date of filing of the original certificate of limited partnership of the limited partnership;

(3) The address of the limited partnership's registered office in the State of Delaware and the name and address of the

limited partnership's registered agent in the State of Delaware;

(4) A statement that the certificate of revival **of limited partnership** is filed by 1 or more general partners of the limited partnership authorized to execute and file ~~the~~ **such** certificate of revival to revive the limited partnership; and

(5) Any other matters the general partner or general partners executing the certificate of revival **of limited partnership** determine to include therein.

(b) The certificate of revival **of limited partnership** shall be deemed to be an amendment to the certificate of limited partnership of the limited partnership, and the limited partnership shall not be required to take any further action to amend its certificate of limited partnership under § 17-202 of this title with respect to the matters set forth in ~~the~~ **such** certificate of revival.

(c) Upon the filing of a certificate of revival **of limited partnership**, a limited partnership ~~and all~~**, each** registered series thereof ~~that have been formed and~~ whose certificate of registered series has ~~not~~ been cancelled ~~prior to~~ **as a result of** the cancellation of the certificate of limited partnership **of the limited partnership pursuant to § 17-104(d), § 17-104(i)(4) or § 17-1110(a) of this title, and each protected series thereof that has not been terminated and wound up,** shall be revived with the same force and effect as if ~~its~~ **the** certificate of limited partnership **of the limited partnership** had not been canceled pursuant to § 17-104(d), § 17-104(i)(4) or § 17-1110(a) of this title. Such revival shall validate all contracts, acts, matters and things made, done and performed by the limited partnership~~, its~~**, any protected series or registered series thereof, or by the** partners, employees and agents **of the limited partnership or such series** during the time when ~~its~~ **the** certificate of limited partnership **of the limited partnership** was canceled pursuant to § 17-104(d), § 17-104(i)(4) or § 17-1110(a) of this title, with the same force and effect and to all intents and purposes as if the certificate of limited partnership **of the limited partnership** had remained in full force and effect. All real and personal property, and all rights and interests, which belonged to the limited partnership **or any protected series or registered series thereof** at the time ~~its~~ **the** certificate of limited partnership **of the limited partnership** was canceled pursuant to § 17-104(d), § 17-104(i)(4) or § 17-1110(a) of this title, or which were acquired by the limited partnership **or any protected series or registered series thereof** following the cancellation of ~~its~~ **the** certificate of limited partnership **of the limited partnership** pursuant to § 17-104(d), § 17-104(i)(4) or § 17-1110(a) of this title, and which were not disposed of prior to the time of ~~its~~ **the limited partnership's** revival, shall be vested in the limited partnership **or the applicable protected series or registered series** after ~~its~~ **the** revival **of the limited partnership** as fully as they were held by the limited partnership **or such series** at, and after, as the case may be, the time ~~its~~ **the** certificate of limited partnership **of the limited partnership** was canceled pursuant to § 17-104(d), § 17-104(i)(4) or § 17-1110(a) of this title. After ~~its revival,~~ **the revival of** the limited partnership**, the limited partnership and any protected series or registered series thereof** and ~~its~~ **the** partners **of the limited partnership or such series** shall have the same liability for all contracts, acts, matters and things made, done or performed in the ~~limited partnership's name and on its behalf~~ **name of and on behalf of the limited partnership or such series** by its partners, employees and agents as the limited partnership**, such series** and ~~its~~ **the** partners **of the limited partnership or such series** would have had if the limited partnership's certificate of limited partnership had at all times remained in full force and effect.

DELAWARE 2023 SESSION LAWS

152ND GENERAL ASSEMBLY

S.B. No. 112

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO THE CREATION, REGULATION, OPERATION, AND DISSOLUTION OF DOMESTIC LIMITED PARTNERSHIPS AND THE REGISTRATION AND REGULATION OF FOREIGN LIMITED PARTNERSHIPS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

§ 17–204. Execution.

(a) Each certificate required by this ~~subchapter~~ **chapter** to be filed in the Office of the Secretary of State shall be executed in the following manner:

(12) A certificate of cancellation of certificate of registered series must be signed by all general partners associated with such series or, if such general partners are not winding up the registered series' affairs, then by all liquidating trustees of such registered series; provided, however, that if the limited partners of such registered series are winding up such series' affairs, the certificate of cancellation of certificate of registered series shall be signed by limited partners of such registered series who own more than 50% of the then current percentage or other interest in the profits of such registered series owned by all of the limited partners of such series; ~~and~~

(13) A certificate of revival of registered series must be signed by at least 1 general partner associated with such registered ~~series.~~ **series; and**

(14)a. Unless otherwise provided in the plan of division or the certificate of division, each certificate of amendment of certificate of division must be executed as follows:

1. If the dividing partnership is a surviving partnership, by at least 1 general partner on behalf of the dividing partnership acting on behalf of the division partnership to which the certificate of amendment of certificate of division relates.

2. If the dividing partnership is not a surviving partnership or no longer exists as a limited partnership, by at least 1 general partner on behalf of a resulting partnership acting on behalf of the division partnership to which the certificate of amendment of certificate of division relates.

b. Each division partnership is deemed to have consented to the execution of a certificate of amendment of certificate of division under paragraph (a)(14)a. of this section.

§ 17-211. Merger and consolidation.

(g) An agreement of merger or consolidation or a plan of merger approved in accordance with subsection (b) of this section may (1) effect any amendment to the partnership agreement or (2) effect the adoption of a new partnership ~~agreement~~ **agreement, in either case,** for a limited partnership if it is the surviving or resulting limited partnership in the merger or consolidation. Any amendment to a partnership agreement or adoption of a new partnership agreement made pursuant to the foregoing sentence shall be effective at the effective time or date of the merger or consolidation and shall be effective notwithstanding any provision of the partnership agreement relating to amendment or adoption of a new partnership agreement, other than a provision that by its terms applies to an amendment to the partnership agreement or the adoption of a new partnership agreement, in either case, in connection with a merger or consolidation. The provisions of this subsection shall not be construed to limit the accomplishment of a merger or of any of the matters referred to herein by any other means provided for in a partnership agreement or other agreement or as otherwise permitted by law, including that the partnership agreement of any constituent limited partnership to the merger or consolidation (including a limited partnership formed for the purpose of consummating a merger or consolidation) shall be the partnership

agreement of the surviving or resulting limited partnership. Unless otherwise provided in a partnership agreement, a limited partnership whose original certificate of limited partnership was filed with the Secretary of State and effective on or prior to July 31, 2005, shall continue to be governed by this subsection as in effect on July 31, 2005.

§ 17-218. Series of limited partners, general partners, partnership interests or assets.

(b) A series established in accordance with the following sentence is a protected series. Notwithstanding anything to the contrary set forth in this chapter or under other applicable law, in the event that a partnership agreement establishes or provides for the establishment of 1 or more series, and to the extent the records maintained for any such series account for the assets associated with such series separately from the other assets of the limited partnership, or any other series thereof, and if the partnership agreement so provides, and if notice of the limitation on liabilities of a series as referenced in this subsection is set forth in the certificate of limited partnership, then the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to such series shall be enforceable only against the assets of such series or the general partners associated with such series and not against the assets of the limited partnership generally, any other series thereof, or any general partner not associated with such series, and, unless otherwise provided in the partnership agreement, none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the limited partnership generally or any other series thereof shall be enforceable against the assets of such series or the general partners associated with such series who are not also general partners of the limited partnership generally or general partners associated with the other series, as the case may be. Neither the preceding sentence nor any provision pursuant thereto in a partnership agreement or certificate of limited partnership shall (i) restrict a protected series or limited partnership on behalf of a protected series or a general partner associated with a protected series from agreeing in the partnership agreement or otherwise that any or all of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the limited partnership generally or any other series thereof shall be enforceable against the assets of such series or such general partner associated with such series, (ii) restrict a limited partnership from agreeing in the partnership agreement or otherwise that any or all of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a protected series shall be enforceable against the assets of the limited partnership generally, or (iii) restrict a general partner of the limited partnership from agreeing in the partnership agreement or otherwise that any or all of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a protected series shall be enforceable against the assets of such general partner. A partnership agreement does not need to use the term protected when referencing series or refer to this section. Assets associated with a protected series may be held directly or indirectly, including in the name of such series, in the name of the limited partnership, through a nominee or otherwise. Records maintained for a protected series that reasonably identify its assets, including by specific listing, category, type, quantity, computational or allocational formula or procedure (including a percentage or share of any asset or assets) or by any other method where the identity of such assets is objectively determinable, will be deemed to account for the assets associated with such series separately from the other assets of the limited partnership, or any other series thereof. Notice in a certificate of limited partnership of the limitation on liabilities of a protected series as referenced in this subsection shall be sufficient for all purposes of this subsection whether or not the limited partnership has established any protected series when such notice is included in the certificate of limited partnership, and there shall be no requirement that (i) any specific protected series of the limited partnership be referenced in such notice, or (ii) such notice use the term protected when referencing series or include a reference to this section. The fact that a certificate of limited partnership that contains notice of the limitation on liabilities of a protected series is on file in the office of the Secretary of State shall constitute notice of such limitation on liabilities of a protected series. As used in this chapter, a reference to assets of a protected series includes assets associated with such series and a reference to assets associated with a protected series includes assets of such series, a reference to limited partners or general partners of a protected series includes limited partners or general partners associated with such series, and a reference to limited partners or general partners associated with a protected series includes limited partners or general partners of such series. The following shall apply to a protected series:

(1) A limited partnership governed by a partnership agreement that establishes or provides for the establishment of 1 or more series shall have at least 1 general partner of the partnership generally and at least 1 general partner associated with each of its protected series. If a partnership agreement does not designate ~~a~~ **an initial** general partner of a particular protected series, then each general partner of the limited partnership generally shall be deemed to be a general partner associated with such series. If a partnership agreement does not designate ~~a~~ **an initial** general partner of the limited partnership generally, then each general partner of the limited partnership not associated with a protected series or a registered series shall be deemed to be a general partner of the limited partnership generally, but if there is no such

general partner, then each general partner of the limited partnership shall be deemed to be a general partner of the limited partnership generally. General partners of the limited partnership generally and general partners associated with a protected series are general partners of the limited partnership under this chapter. Limited partners of the limited partnership generally and limited partners associated with a protected series are limited partners of the limited partnership under this chapter. The same person may be a general partner of the limited partnership generally and be associated with any or all protected series thereof. The same person may be a limited partner of the limited partnership generally and be associated with any or all protected series thereof.

§ 17-218. Series of limited partners, general partners, partnership interests or assets.

(d) If a partnership agreement provides the manner in which a termination of a protected series may be revoked, it may be revoked in that manner and, unless the limited partnership has dissolved and such dissolution has not been revoked or the partnership agreement prohibits revocation of termination of a protected series, then notwithstanding the occurrence of an event set forth in paragraph (b)(10)a., b., c., or d. of this section, the protected series shall not be terminated and its affairs shall not be wound up if, prior to the completion of the winding up of the protected series, the business of the protected series is continued, effective as of the occurrence of such event:

(1) In the case of termination effected by the vote or consent of the partners associated with the protected series or other persons, pursuant to such vote or consent (and the approval of any partners associated with the protected series or other persons whose approval is required under the partnership agreement to revoke a termination contemplated by this paragraph);

(2) In the case of termination under paragraph (b)(10)a. or b. of this section (other than a termination effected by the vote or consent of the partners associated with the protected series or other persons or an event of withdrawal of a general partner associated with the protected series), pursuant to such vote or consent that, pursuant to the terms of the partnership agreement, is required to amend the provision of the partnership agreement effecting such termination (and the approval of any partners associated with the protected series or other persons whose approval is required under the partnership agreement to revoke a termination contemplated by this paragraph); and

(3) In the case of termination effected by an event of withdrawal of a general partner associated with the protected series, pursuant to the vote or consent of:

a. All remaining general partners associated with the protected series; and

b. Limited partners associated with the protected series who own more than 2/3 of the then-current percentage or other interest in the profits of such series owned by all of the limited partners associated with such series, or if there is no limited partner associated with such series, the assignee of all of the limited partners' partnership interests in such series (and the approval of any partners associated with the protected series or other persons whose approval is required under the partnership agreement to revoke a termination contemplated by this paragraph); provided, however, if there is no remaining general partner associated with the protected series and no limited partner associated with such series or assignee of all of the limited partners' partnership interests in such series, the business of such series is continued, effective as of the occurrence of such event, pursuant to the vote or consent of the personal representative of the last remaining general partner associated with such series or the assignee of all of the general partners' partnership interests in such series (and the approval of any partners associated with the protected series or other persons whose approval is required under the partnership agreement to revoke a termination contemplated by this paragraph).

If termination is revoked pursuant to paragraph (d)(3) of this section and there is no remaining general partner associated with the protected series, 1 or more general partners associated with such series shall be appointed, effective as of the date of withdrawal of the last remaining general partner associated with such series, by the vote or consent of the limited partners associated with such series who own more than 2/3 of the then-current percentage or other interest in the profits of such series owned by all of the limited partners associated with such series, or if there is no limited partner associated with such series, the assignee of all of the limited partners' partnership interests in such series. If termination is revoked pursuant to paragraph (d)(3) of this section and

there is no remaining general partner associated with such series and no limited partner associated with such series or assignee of all of the limited partners' partnership interests in such series, 1 or more general partners associated with such series shall be appointed, effective as of the date of withdrawal of the last remaining general partner associated with such series, by the vote or consent of the personal representative of the last remaining general partner associated with such series or the assignee of all of the general partners' partnership interests associated with such series.

If the dissolution of the limited partnership under § 17-801 of this title results in the termination of a protected series under this section, unless the partnership agreement prohibits revocation of termination of such series, the termination of such series shall be automatically revoked upon any revocation of dissolution of the limited partnership in accordance with § 17-806 of this title provided there is at least 1 general partner associated with such series. If an event of withdrawal of a general partner who was both the last remaining general partner of the limited partnership and the last remaining general partner associated with a protected series results in both the dissolution of the limited partnership under § 17-801 of this title and the termination of such series under this section, unless the partnership agreement prohibits revocation of termination of such series, the termination of such series shall be automatically revoked upon any revocation of dissolution of the limited partnership in accordance with § 17-806 of this title, and the general partner of the limited partnership appointed pursuant to § 17-806 of this title shall also be the general partner associated with such series effective as of the date of withdrawal of the last remaining general partner associated with such series.

The provisions of this subsection shall not be construed to limit the accomplishment of a revocation of termination of a protected series by other means permitted by law.

§ 17-220. Division of a limited partnership.

(h) If a domestic limited partnership divides under this section, the dividing partnership shall file a certificate of division executed by at least 1 general partner of the dividing partnership on behalf of such dividing partnership in the office of the Secretary of State in accordance with § 17-204 of this title, and a certificate of limited partnership that complies with § 17-201 of this title for each resulting partnership executed by all general partners of such resulting partnership in accordance with § 17-204 of this title.

(1) The certificate of division shall state:

~~(1)~~ **a.** The name of the dividing partnership and, if it has been changed, the name under which its certificate of limited partnership was originally filed and whether the dividing partnership is a surviving partnership;

~~(2)~~ **b.** The date of filing of the dividing partnership's original certificate of limited partnership with the Secretary of State;

~~(3)~~ **c.** The name of each division partnership;

~~(4)~~ **d.** The name and business address of the division contact required by paragraph (g)(3) of this section;

~~(5)~~ **e.** The future effective date or time (which shall be a date or time certain) of the division if it is not to be effective upon the filing of the certificate of division;

~~(6)~~ **f.** That the division has been approved in accordance with this section;

~~(7)~~ **g.** That the plan of division is on file at a place of business of such division partnership as is specified therein, and shall state the address thereof;

~~(8)~~ **h.** That a copy of the plan of division will be furnished by such division partnership as is specified therein, on request and without cost, to any partner of the dividing partnership; and

~~(9)~~ **i.** Any other information the dividing partnership determines to include therein.

(2) A certificate of division may be amended to change the name or business address of the division contact in a certificate of division or to change information in the certificate of division required by paragraph (h)(1)g. of this section. A certificate of division is amended by filing a certificate of amendment thereto for each division partnership that exists as a limited partnership in the office of the Secretary of State. Each certificate of amendment of certificate of division must include all of the following:

a. The name of the dividing partnership and, if the name has been changed, the name under which the dividing partnership's certificate of limited partnership was originally filed.

b. The name of the division partnership to which the amendment to the certificate of division relates.

c. The amendment to the certificate of division.

(3) If the dividing partnership is a surviving partnership, a general partner of the dividing partnership who becomes aware that the name or business address of the division contact, or information in the certificate of division required by paragraph (h)(1)g. of this section, in a certificate of division was false when made, or that the name or business address of the division contact, or information in the certificate of division required by paragraph (h)(1)g. of this section, in a certificate of division has changed, must promptly amend the certificate of division. If the dividing partnership is not a surviving partnership or no longer exists as a limited partnership, a general partner of any resulting partnership who becomes aware that the name or business address of the division contact, or information in the certificate of division required by paragraph (h)(1)g. of this section, in a certificate of division was false when made, or that the name or business address of the division contact, or information in the certificate of division required by paragraph (h)(1)g. of this section, in a certificate of division has changed, must promptly amend the certificate of division. This subsection does not apply after the expiration of a period of 6 years following the effective date of the division.

(4) Unless otherwise provided in this chapter or unless a later effective date or time (which shall be a date or time certain) is provided for in the certificate of amendment of certificate of division, a certificate of amendment of certificate of division is effective at the time of its filing with the Secretary of State.

(5) Subject to this chapter, the Secretary of State shall accept the filing of certificates of amendment of certificate of division for all division partnerships resulting from the same certificate of division if at least 1 division partnership is in good standing at the time of such filings.

(l) Upon the division of a domestic limited partnership becoming effective:

(1) The dividing partnership shall be divided into the distinct and independent ~~resulting~~ **division** partnerships named in the plan of division, and, if the dividing partnership is not a surviving partnership, the existence of the dividing partnership shall cease.

(9) Any action or proceeding pending against a dividing partnership may be continued against the surviving ~~partnership~~ **partnership, if any,** as if the division did not occur, but subject to paragraph (l)(4) of this section, and against any resulting partnership to which the asset, property, right, series, debt, liability or duty associated with such action or proceeding was allocated pursuant to the plan of division by adding or substituting such resulting partnership as a party in the action or proceeding. Any action or proceeding pending against a general partner of a dividing partnership may be continued against such general partner as if the division did not occur and against the general partner of any resulting partnership to which the asset, property, right, series, debt, liability or duty associated with such action or proceeding was allocated pursuant to the plan of division by adding or substituting such general partner as a party in the action or proceeding.

§ 17-221. Registered series of limited partners, general partners, partnership interests or assets.

(c) Notwithstanding anything to the contrary set forth in this chapter or under other applicable law, to the extent the records maintained for a registered series account for the assets associated with such series separately from the other assets of the limited partnership, or any other series thereof, then the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to such series shall be enforceable against the assets of such series or the

general partners associated with such series only, and not against the assets of the limited partnership generally, any other series thereof, or any general partner not associated with such series, and, unless otherwise provided in the partnership agreement, none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the limited partnership generally or any other series thereof shall be enforceable against the assets of such series or the general partners associated with such series who are not also general partners of the limited partnership generally or general partners associated with the other series, as the case may be. Neither the preceding sentence nor any provision pursuant thereto in a partnership agreement, certificate of limited partnership or certificate of registered series shall (i) restrict a registered series or limited partnership on behalf of a registered series or a general partner associated with a registered series from agreeing in the partnership agreement or otherwise that any or all of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the limited partnership generally or any other series thereof shall be enforceable against the assets of such series or such general partner associated with such registered series, (ii) restrict a limited partnership from agreeing in the partnership agreement or otherwise that any or all of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a registered series shall be enforceable against the assets of the limited partnership generally or (iii) restrict a general partner of the limited partnership from agreeing in the partnership agreement or otherwise that any or all of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a registered series shall be enforceable against the assets of such general partner. Assets associated with a registered series may be held directly or indirectly, including in the name of such series, in the name of the limited partnership, through a nominee or otherwise. Records maintained for a registered series that reasonably identify its assets, including by specific listing, category, type, quantity, computational or allocational formula or procedure (including a percentage or share of any asset or assets) or by any other method where the identity of such assets is objectively determinable, will be deemed to account for the assets associated with such series separately from the other assets of the limited partnership, or any other series thereof. As used in this chapter, a reference to assets of a registered series includes assets associated with such series and a reference to assets associated with a registered series includes assets of such series, a reference to limited partners or general partners of a registered series includes limited partners or general partners associated with such series, and a reference to limited partners or general partners associated with a registered series includes limited partners or general partners of such series. The following shall apply to a registered series:

(1) A limited partnership governed by a partnership agreement that establishes or provides for the establishment of 1 or more series shall have at least 1 general partner of the partnership generally and at least 1 general partner associated with each of its registered series. If a partnership agreement does not designate ~~a~~ **an initial** general partner of a particular registered series, then each general partner of the limited partnership generally shall be deemed to be a general partner associated with such series. If a partnership agreement does not designate ~~a~~ **an initial** general partner of the limited partnership generally, then each general partner of the limited partnership not associated with a registered series or a protected series shall be deemed to be a general partner of the limited partnership generally, but if there is no such general partner, then each general partner of the limited partnership shall be deemed to be a general partner of the limited partnership generally. General partners of the limited partnership generally and general partners associated with a registered series are general partners of the limited partnership under this chapter. Limited partners of the limited partnership generally and limited partners associated with a registered series are limited partners of the limited partnership under this chapter. The same person may be a general partner of the limited partnership generally and be associated with any or all registered series thereof. The same person may be a limited partner of the limited partnership generally and be associated with any or all registered series thereof.

§ 17-221. Registered series of limited partners, general partners, partnership interests or assets.

(f) If a partnership agreement provides the manner in which a dissolution of a registered series may be revoked, it may be revoked in that manner and, unless the limited partnership has dissolved and such dissolution has not been revoked or the partnership agreement prohibits revocation of dissolution of a registered series, then notwithstanding the occurrence of an event set forth in paragraph (c)(10)a., b., c., or d. of this section, the registered series shall not be dissolved and its affairs shall not be wound up if, prior to the filing of a certificate of cancellation of the certificate of registered series in the office of the Secretary of State, the business of the registered series is continued, effective as of the occurrence of such event:

(1) In the case of dissolution effected by the vote or consent of the partners associated with the registered series or other persons, pursuant to such vote or consent (and the approval of any partners associated with the registered

series or other persons whose approval is required under the partnership agreement to revoke a dissolution contemplated by this paragraph);

(2) In the case of dissolution under paragraph (c)(10)a. or b. of this section (other than a dissolution effected by the vote or consent of the partners associated with the registered series or other persons or an event of withdrawal of a general partner associated with the registered series), pursuant to such vote or consent that, pursuant to the terms of the partnership agreement, is required to amend the provision of the partnership agreement effecting such dissolution (and the approval of any partners associated with the registered series or other persons whose approval is required under the partnership agreement to revoke a dissolution contemplated by this paragraph); and

(3) In the case of dissolution effected by an event of withdrawal of a general partner associated with the registered series, pursuant to the vote or consent of:

a. All remaining general partners associated with the registered series; and

b. Limited partners associated with the registered series who own more than 2/3 of the then-current percentage or other interest in the profits of such series owned by all of the limited partners associated with such series, or if there is no limited partner associated with such series, the assignee of all of the limited partners' partnership interests in such series (and the approval of any partners associated with the registered series or other persons whose approval is required under the partnership agreement to revoke a dissolution contemplated by this paragraph); provided, however, if there is no remaining general partner associated with the registered series and no limited partner associated with such series or assignee of all of the limited partners' partnership interests in such series, the business of such series is continued, effective as of the occurrence of such event, pursuant to the vote or consent of the personal representative of the last remaining general partner associated with such series or the assignee of all of the general partners' partnership interests in such series (and the approval of any partners associated with the registered series or other persons whose approval is required under the partnership agreement to revoke a dissolution contemplated by this paragraph).

If dissolution is revoked pursuant to paragraph (f)(3) of this section and there is no remaining general partner associated with the registered series, 1 or more general partners associated with such series shall be appointed, effective as of the date of withdrawal of the last remaining general partner associated with such series, by the vote or consent of the limited partners associated with such series who own more than 2/3 of the then-current percentage or other interest in the profits of such series owned by all of the limited partners associated with such series, or if there is no limited partner associated with such series, the assignee of all of the limited partners' partnership interests in such series. If dissolution is revoked pursuant to paragraph (f)(3) of this section and there is no remaining general partner associated with such series and no limited partner associated with such series or assignee of all of the limited partners' partnership interests in such series, 1 or more general partners associated with such series shall be appointed, effective as of the date of withdrawal of the last remaining general partner associated with such series, by the vote or consent of the personal representative of the last remaining general partner associated with such series or the assignee of all of the general partners' partnership interests associated with such series.

If the dissolution of the limited partnership under § 17-801 of this title results in the dissolution of a registered series under this section, unless a certificate of cancellation of the certificate of registered series with respect to such series has been filed in the office of the Secretary of State or the partnership agreement prohibits revocation of dissolution of such series, the dissolution of such series shall be automatically revoked upon any revocation of dissolution of the limited partnership in accordance with § 17-806 of this title provided there is at least 1 general partner associated with such series. If an event of withdrawal of a general partner who was both the last remaining general partner of the limited partnership and the last remaining general partner associated with a registered series results in both the dissolution of the limited partnership under § 17-801 of this title and the dissolution of such series under this section, unless a certificate of cancellation of the certificate of registered series with respect to such series has been filed in the office of the Secretary of State or the partnership agreement prohibits revocation of dissolution of such series, the dissolution of such series shall be automatically revoked upon any revocation of dissolution of the limited partnership in accordance with § 17-806 of this title, and the general partner of the limited partnership appointed pursuant to § 17-806 of this title shall also be the general

partner associated with such series effective as of the date of withdrawal of the last remaining general partner associated with such series.

The provisions of this subsection shall not be construed to limit the accomplishment of a revocation of dissolution of a registered series by other means permitted by law.

§ 17-506. Irrevocability of subscription.

For all purposes of the laws of the State of Delaware, a subscription for a partnership interest, whether submitted in writing, by means of electronic transmission, or as otherwise permitted by applicable law, is irrevocable if the subscription states that it is irrevocable to the extent provided by the terms of the subscription.

§ 17-1107. Fees.

(a) No document required to be filed under this chapter shall be effective until the applicable fee required by this section is paid. The following fees shall be paid to and collected by the Secretary of State for the use of the State of Delaware:

(3) Upon the receipt for filing of a certificate of limited partnership domestication under § 17-215 of this title, a certificate of transfer or a certificate of transfer and domestic continuance under § 17-216 of this title, a certificate of conversion to limited partnership under § 17-217 of this title, a certificate of conversion to a non-Delaware entity under § 17-219 of this title, a certificate of limited partnership under § 17-201 of this title, a certificate of registered series under § 17-221 of this title, a certificate of amendment under ~~§ 17-202~~ **§ 17-202, § 17-220(h)(2),** or § 17-221(d)(3) of this title, (except as otherwise provided in paragraph (a)(11) of this section) a certificate of cancellation under § 17-203 or § 17-221(d)(8) of this title, a certificate of merger or consolidation or a certificate of ownership and merger under § 17-211 of this title, a restated certificate of limited partnership or a restated certificate of registered series under § 17-210 of this title, a certificate of amendment of a certificate with a future effective date or time under § 17-206(c) of this title, a certificate of termination of a certificate with a future effective date or time under § 17-206(c) of this title, a certificate of correction under § 17-213 of this title, a certificate of division under § 17-220 of this title, a certificate of conversion of protected series to registered series under § 17-222 of this title, a certificate of conversion of registered series to protected series under § 17-223 of this title, a certificate of merger or consolidation of registered series under § 17-224 of this title or a certificate of revival under § 17-1111 or § 17-1112 of this title, a fee in the amount of $200, plus, in the case of a certificate of cancellation under § 17-203 of this title, a fee in the amount of $50 for each registered series of the limited partnership named in the certificate of cancellation.

§ 17-1109. Annual tax of domestic limited partnership and foreign limited partnership and registered series.

(j) A domestic limited partnership that has ceased to be in good standing by reason of the limited partnership's neglect, refusal or failure to pay an annual tax shall remain a domestic limited partnership formed under this chapter, and each registered series thereof shall remain a registered series formed under this chapter, and each protected series thereof shall remain a protected series established under this chapter. A registered series that has ceased to be in good standing by reason of the registered series' neglect, refusal or failure to pay an annual tax shall remain a registered series formed under this chapter. The Secretary of State shall not accept for filing any certificate (except a certificate of resignation of a registered agent when a successor registered agent is not being appointed **and certificates of amendment of certificate of division as required by § 17-220(h)(5) of this title**) required or permitted by this chapter to be filed in respect of any domestic limited partnership, registered series or foreign limited partnership if such domestic limited partnership, registered series or foreign limited partnership has neglected, refused or failed to pay an annual tax, and shall not issue any certificate of good standing with respect to such domestic limited partnership, registered series or foreign limited partnership, unless and until such domestic limited partnership, registered series or foreign limited partnership shall have been restored to and have the status of a domestic limited partnership or registered series in good standing or a foreign limited partnership duly registered in the State of Delaware.

DELAWARE LIMITED LILABILITY COMPANY ACT

Four bills passed by the Delaware Legislature have made changes to the Delaware Limited Liability Company Act since the Statutory Supplement was published in 2020. The following material identifies and discusses the significance of the changes. The summaries are based on the official Synopses provided by the Delaware Legislature. The four bills follow with a redlined version of the amendments.

Summary of Amendments

H.B. No. 344 (2020)

Section 18-101(9)b. has been amended to correct a cross-reference.

Section 18-102(3) has been amended to clarify requirements regarding the name of a limited liability company in its certificate of formation.

Sections 18-104(a)(2)d. and 18-104(f)(2) have been amended to identify the types of foreign entities that may be a registered agent of a limited liability company.

Sections 18-104(b) and 18-904(c) have been amended to eliminate the requirement that the Secretary of State issue a certified copy of any certificate filed by the registered agent changing the address of the registered office or the name of the registered agent. Sections 18-104(b) and 18-904(c) have also been amended to provide that the conversion of the registered agent or a division of the registered agent in which a resulting person succeeds to all of the registered agent business of such registered agent shall be deemed to be a change of name for purposes of these Sections.

Sections 18-104(c) and 18-904(d) have been amended to eliminate the requirement that the Secretary of State issue a certificate in connection with the resignation of the registered agent of a domestic or foreign limited liability company and the appointment of the successor registered agent.

Section 18-113(a)(2) has been amended to clarify that a person may "execute" a document by using any type of signature contemplated by such Section.

Section 18-210 has been amended to confirm that no appraisal rights are available with respect to a limited liability company interest or another interest in a limited liability company, including in connection with the enumerated transactions unless otherwise provided in the enumerated documents.

Sections 18-213(c), 18-216(f) and 18-220(f) have been amended with regard to certifications provided by the Secretary of State in connection with the filing of a certificate of transfer, a certificate of transfer and domestic continuance, a certificate of conversion to non-Delaware entity, and a certificate of conversion of registered series to protected series.

Section 18-217(h) has been amended to provide specifically that flexibility exists to state other information in a certificate of division.

Section 18-218(d)(4) has been amended to confirm that a certificate of registered series shall be promptly amended if the certificate of registered series no longer complies with the requirements of Section 18- 218(e)(1) of this title. This section also amends Section 18-218(e)(3) to clarify requirements regarding the name of a registered series in its certificate of registered series.

Section 18-301 has been amended (i) to confirm that a limited liability company agreement may provide for the admission of members in connection with formation, (ii) to eliminate any

statutory requirement that a member's admission after formation is subject to the admission being reflected in the records of the limited liability company, and (iii) to clarify that an assignee of a limited liability company interest is admitted as a member as provided in Section 18-704(a).

Section 18-305(d) has been amended to confirm that a limited liability company may maintain its books, records and other information in other than paper form (including electronic form) if such form is capable of conversion into paper form within a reasonable time.

Section 18-904(a) has been amended to clarify requirements regarding the name under which a foreign limited liability company may register with the Secretary of State.

Section 18- 904(b)(2)c. has been amended to identify the types of foreign entities that may be a registered agent of a foreign limited liability company.

Section 18-904(e) has been amended to provide that, if a foreign limited liability company has ceased to be registered pursuant to Section 18-1107(h), its registered agent may resign without appointing a successor registered agent. The amendment also adds requirements regarding the content and form of the certificate of resignation filed with the Delaware Secretary of State when the registered agent resigns without appointing a successor, and provides that such information regarding the communications contact that must be included in such a certificate shall not be deemed public.

S.B. No. 114 (2021)

Section 18-106 has been amended to add subsection (e) to provide a safe harbor procedure for ratifying acts or transactions that may be taken by or in respect of a limited liability company under the Act or a limited liability company agreement that are void or voidable and waiving failures to comply with requirements of a limited liability company agreement that make such acts and transactions void or voidable. New subsection (e) is intended to provide a rule different from the rule applied in Composecure, L.L.C. v. Cardux, LLC, 206 A.3d 807 (Del. 2018), and Absalom Absalom Trust v. Saint Gervais LLC, 2019 WL 2655787 (Del. Ch. June 27, 2019), that acts or transactions determined to be void generally may not be ratified. The penultimate sentence of new subsection (e) confirms that void or voidable actions may be ratified or requirements may be waived by other means permitted by law, and accordingly, new subsection (e) is not intended to preempt or restrict other valid means of ratifying acts or transactions or waiving requirements or to impair the effectiveness of any valid ratification or waiver previously effected.

Section 18-217 has been amended to make a conforming change.

Section 18-305 has been amended to make certain clarifying and conforming changes, and to provide that when a member is entitled to obtain information for a stated purpose (whether pursuant to Section 18-305 or a limited liability company agreement), the member's right shall be to obtain such information as is necessary and essential to achieving that purpose, unless such right has been expanded or restricted in the limited liability company agreement. To the extent current law is that the "necessary and essential" test does not apply by default to (i) a member's right under Section 18-305(a) to obtain information from a limited liability company for a purpose reasonably related to the member's interest as a member, or (ii) a member's right under a limited liability company agreement to obtain information from a limited liability company for a stated purpose, the first sentence of subsection (g) is intended to change that law.

Section 18-407 has been amended to provide that a member or manager may delegate any of its rights, powers or duties irrespective of whether it has a conflict of interest with respect to the matter as to which such rights, powers or duties are being delegated, and that the person or persons to whom any such rights, powers or duties are being delegated shall not be deemed conflicted solely by reason of the conflict of interest of the member or manager. The amendments to Section 18-407 create a different rule than the rule applied in cases such as Wenske v. Bluebell Creameries, Inc.,

214 A.3d 958 (Del. Ch. 2019), that a conflicted principal is legally disabled from delegating authority over the subject matter as to which the principal is conflicted even to an independent delegatee.

Section 18-1201 has been amended to clarify the effect of subchapter XII and to provide for the manner in which a limited liability company may become a statutory public benefit limited liability company.

Section 18-1202(a) has been amended to provide that a limited liability company agreement of a statutory public benefit limited liability company must state that the limited liability company is a statutory public benefit limited liability company and must set forth the specific public benefit or benefits to be promoted by the company, to provide that the limited liability company agreement shall control as among the members, the managers and other persons who are party to or otherwise bound by the liability company agreement in the event of any inconsistency between the public benefit(s) as set forth in such agreement and the certificate of formation, to require amendment of the certificate of formation of a statutory public benefit limited liability company in specified circumstances, and to clarify the effect of subchapter XII.

Section 18-1203 has been repealed.

Sections 18-1204 and 18-1205 have been amended to make conforming changes.

S.B. No. 275 (2022)

Section 18-101(9) is amended to confirm that any registered series or protected series of a limited liability company is bound by the limited liability company agreement of such limited liability company regardless of whether the series executed the limited liability company agreement. This amendment is not intended to imply that other references to "limited liability company" in the Act do not include protected series or registered series thereof (to the extent required by the context).

Section 18-101(9) is also amended to insert a new clause c. to confirm that a limited liability company agreement may include or incorporate multiple documents that may govern the business or affairs of the limited liability company or any of its series.

Section 18-109(b) is amended to provide that when service of process is being effected on a manager or liquidating trustee of a limited liability company, the Prothonotary or the Register in Chancery of the court in which the civil action or proceeding is pending shall address the required copies and statements to the manager or liquidating trustee of the limited liability company at the principal place of business of the limited liability company (if such address is known) and to the manager's or liquidating trustee's address last known to the party desiring to make such service.

Section 18-113(b) is amended to confirm that a signature on a certificate of limited liability company interest may be a manual, facsimile, or electronic signature.

Section 18-204(d) is amended to clarify that the execution of a certificate by a person who is authorized by the Act to execute such certificate constitutes an oath or affirmation that, to the best of such person's knowledge and belief, the facts stated therein shall be true at the time such certificate becomes effective, not at the time such certificate is executed.

Section 18-212(g) is amended to provide that the approval of a limited liability company domestication in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the non-United States entity and the conduct of its business or by applicable non-Delaware law, as appropriate, and the approval of the limited liability company agreement by the same authorization required to approve the domestication, are required to occur prior to the time a certificate of limited liability company domestication becomes effective.

Section 18-214(h) is amended to provide that the approval of a conversion to a limited liability company in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the other entity and the conduct of its business or by applicable law, as appropriate, and the approval of the limited liability company agreement by the same authorization required to approve the conversion, are required to occur prior to the time a certificate of conversion to limited liability company becomes effective.

Section 18-1108(b) is amended to make conforming changes.

Section 18-1109 is amended to (i) clarify the effect of the filing of a certificate of revival of limited liability company on any protected series of such limited liability company that are not, at the time of such filing, otherwise terminated and wound up and any registered series of such limited liability company whose certificates of registered series are not, at the time of such filing, otherwise cancelled, and (ii) make other conforming changes.

S.B. No. 113 (2023)

Section 18-204(a) is amended to clarify that certificates required by the LLC Act to be filed in the office of the Secretary of State are to be executed in the manner set forth in Section 18-204(a).

Section 18-205(a) is amended to clarify that a failure or refusal to execute any required certificate is subject to Section 18-205(a).

Currently, Section 18-209(f) of the LLC Act permits a duly approved agreement of merger or consolidation or plan of merger to effect any amendment to a limited liability company agreement or effect the adoption of a new limited liability company agreement. Section 18-209(f) is amended to confirm that an amendment to a limited liability company agreement or adoption of a new limited liability company agreement effected pursuant to Section 18-209(f) may be effected only with respect to the limited liability company agreement of the surviving or resulting limited liability company and not with respect to the limited liability company agreement of a constituent limited liability company that is not the surviving or resulting limited liability company.

Currently, Section 18-806 permits revocation of dissolution of a limited liability company prior to the filing of a certificate of cancellation of the certificate of formation in the office of the Secretary of State; however, the Limited Liability Company Act does not currently address revocation of termination of a protected series prior to the completion of the winding up of the protected series. A new Section 18-215(d) permits revocation of termination of a protected series prior to the completion of the winding up of the protected series.

Currently, among other requirements, a certificate of division must state the name and business address of the division contact and the name and address of the division company where the plan of division is on file. Because this information may change over time, Section 18-217(h) is amended to permit or require the filing of a certificate of amendment of certificate of division to amend the name or business address of the division contact or the name and address of the division company where the plan of division is on file. The requirement to update such information in a certificate of division ends after the expiration of a period of 6 years following the effective date of the division. Section 18-217(l)(1) is amended to clarify that pursuant to a division, a dividing company is divided into distinct and independent division companies. Finally, under Section 18-217, a dividing company does not need to survive a division. Section 18-217(l)(9) is amended to confirm that a dividing company need not be a surviving company.

Currently, Section 18-806 permits revocation of dissolution of a limited liability company prior to the filing of a certificate of cancellation of the certificate of formation in the office of the Secretary of State; however, the Limited Liability Company Act does not currently address revocation of dissolution of a registered series prior to the filing of a certificate of cancellation of the certificate of registered series in the office of the Secretary of State. A new Section 18-218(f)

permits revocation of dissolution of a registered series prior to the filing of a certificate of cancellation of the certificate of registered series in the office of the Secretary of State.

A new Section 18-506 is added to clarify that a subscription for a limited liability company interest may be irrevocable if the subscription states it is irrevocable to the extent provided by the terms of the subscription.

Section 18-1105(a)(3) is amended to specify the fee payable to the Secretary of State to file a certificate of amendment of certificate of division.

Section 18-1107(k) is amended to acknowledge that certificates of amendment of certificate of division should be accepted for filing by the Secretary of State if at least 1 division company is in good standing at the time of such filings.

Redlined Version of Amendments

DELAWARE 2020 SESSION LAWS

150TH GENERAL ASSEMBLY

H.B. No. 344

AN ACT TO AMEND CHAPTER 18, TITLE 6 OF THE DELAWARE CODE RELATING TO THE CREATION, REGULATION, OPERATION AND DISSOLUTION OF DOMESTIC LIMITED LIABILITY COMPANIES AND THE REGISTRATION AND REGULATION OF FOREIGN LIMITED LIABILITY COMPANIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

§ 18–101. Definitions

As used in this chapter unless the context otherwise requires:

(9) "Limited liability company agreement" means any agreement (whether referred to as a limited liability company agreement, operating agreement or otherwise), written, oral or implied, of the member or members as to the affairs of a limited liability company and the conduct of its business. A member or manager of a limited liability company or an assignee of a limited liability company interest is bound by the limited liability company agreement whether or not the member or manager or assignee executes the limited liability company agreement. A limited liability company is not required to execute its limited liability company agreement. A limited liability company is bound by its limited liability company agreement whether or not the limited liability company executes the limited liability company agreement. A limited liability company agreement of a limited liability company having only 1 member shall not be unenforceable by reason of there being only 1 person who is a party to the limited liability company agreement. A limited liability company agreement is not subject to any statute of frauds (including § 2714 of this title). A limited liability company agreement may provide rights to any person, including a person who is not a party to the limited liability company agreement, to the extent set forth therein. A written limited liability company agreement or another written agreement or writing:

b. Shall not be unenforceable by reason of its not having been signed by a person being admitted as a member or becoming an assignee as provided in paragraph ~~(7)a.~~ **(9)a.** of this section, or by reason of its having been signed by a representative as provided in this chapter.

§ 18–102. Name set forth in certificate

The name of each limited liability company as set forth in its certificate of formation:

(3) Must be such as to distinguish it upon the records in the office of the Secretary of State from the name on such records of any corporation, partnership, limited partnership, statutory trust, limited liability company, registered series of a limited liability company or registered series of a limited partnership reserved, registered, formed or organized under the laws of the State of Delaware or qualified to do business or registered as a foreign corporation, foreign limited partnership, foreign statutory trust, foreign partnership, or foreign limited liability company in the State of Delaware; provided however, that a limited liability company may register under any name which is not such as to distinguish it upon the records in the office of the Secretary of State from the name on such records of any domestic or foreign corporation, partnership, limited partnership, statutory trust, registered series of a limited liability company, registered series of a limited partnership**,** or foreign limited liability company reserved, registered, formed or organized under the laws of the State of Delaware with the written consent of the other corporation, partnership, limited partnership, statutory trust, registered series of a limited liability company, registered series of a limited partnership**,** or foreign limited liability company, which written consent shall be filed with the Secretary of State; provided further, that, if on July 31, 2011, a limited liability company is registered (with the consent of another limited liability company) under a name which is not such as to distinguish it upon the records in the office of the Secretary of

State from the name on such records of such other domestic limited liability company, it shall not be necessary for any such limited liability company to amend its certificate of formation to comply with this subsection;

§ 18–104. Registered office; registered agent

(a) Each limited liability company shall have and maintain in the State of Delaware:

(2) A registered agent for service of process on the limited liability company, having a business office identical with such registered office, which agent may be any of:

d. A foreign corporation, a foreign ~~partnership (whether general (including a~~ limited liability partnership~~) or~~**, a foreign** limited **partnership** (including a **foreign** limited liability limited partnership)~~)~~, a foreign limited liability company, or a foreign statutory trust.

(b) A registered agent may change the address of the registered office of the limited liability company(ies) for which it is registered agent to another address in the State of Delaware by paying a fee as set forth in § 18–1105(a)(2) of this title and filing with the Secretary of State a certificate, executed by such registered agent, setting forth the address at which such registered agent has maintained the registered office for each of the limited liability companies for which it is a registered agent, and further certifying to the new address to which each such registered office will be changed on a given day, and at which new address such registered agent will thereafter maintain the registered office for each of the limited liability companies for which it is a registered agent. Upon the filing of such certificate, ~~the Secretary of State shall furnish to the registered agent a certified copy of the same under the Secretary~~'s ~~hand and seal of office, and thereafter, or~~ until further change of address, as authorized by law, the registered office in the State of Delaware of each of the limited liability companies for which the agent is a registered agent shall be located at the new address of the registered agent thereof as given in the certificate. In the event of a change of name of any person acting as a registered agent of a limited liability company, such registered agent shall file with the Secretary of State a certificate executed by such registered agent setting forth the new name of such registered agent, the name of such registered agent before it was changed, and the address at which such registered agent has maintained the registered office for each of the limited liability companies for which it is a registered agent, and shall pay a fee as set forth in § 18–1105(a)(2) of this title. ~~Upon the filing of such certificate, the Secretary of State shall furnish to the registered agent a certified copy of the certificate under the Secretary of State~~'s ~~own hand and seal of office.~~ A change of name of any person acting as a registered agent of a limited liability company as a result of **(i)** a merger or consolidation of the registered agent with or into another person which succeeds to its assets and liabilities by operation of law**, (ii) the conversion of the registered agent into another person, or (iii) a division of the registered agent in which an identified resulting person succeeds to all of the assets and liabilities of the registered agent related to its registered agent business pursuant to the plan of division, as set forth in the certificate of division,** shall **each** be deemed a change of name for purposes of this section. Filing a certificate under this section shall be deemed to be an amendment of the certificate of formation of each limited liability company affected thereby, and each such limited liability company shall not be required to take any further action with respect thereto to amend its certificate of formation under § 18–202 of this title. Any registered agent filing a certificate under this section shall promptly, upon such filing, deliver a copy of any such certificate to each limited liability company affected thereby.

(c) The registered agent of 1 or more limited liability companies may resign and appoint a successor registered agent by paying a fee as set forth in § 18–1105(a)(2) of this title and filing a certificate with the Secretary of State stating that it resigns and the name and address of the successor registered agent. There shall be attached to such certificate a statement of each affected limited liability company ratifying and approving such change of registered agent. Upon such filing, the successor registered agent shall become the registered agent of such limited liability companies as have ratified and approved such substitution, and the successor registered agent's address, as stated in such certificate, shall become the address of each such limited liability company's registered office in the State of Delaware. ~~The Secretary of State shall then issue a certificate that the successor registered agent has become the registered agent of the limited liability companies so ratifying and approving such change and setting out the names of such limited liability companies.~~ Filing of such certificate of resignation shall be deemed to be an amendment of the certificate of formation of each limited liability company affected thereby, and each such limited liability company shall not be required to take any further action with respect thereto to amend its certificate of formation under § 18–202 of this title.

(f) Any registered agent who at any time serves as registered agent for more than 50 entities (a "commercial registered agent"), whether domestic or foreign, shall satisfy and comply with the following qualifications:

(2) A domestic or foreign corporation, a domestic ~~or foreign~~ partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), **a foreign limited liability partnership,** a domestic or foreign limited liability company, or a domestic or foreign statutory trust serving as a commercial registered agent shall:

§ 18–113. Document form, signature and delivery

(a) Except as provided in subsection (b) of this section, without limiting the manner in which any act or transaction may be documented, or the manner in which a document may be signed or delivered:

(2) Whenever this chapter or the limited liability company agreement requires or permits a signature, the signature may be a manual, facsimile, conformed or electronic signature. "Electronic signature" means an electronic symbol or process that is attached to, or logically associated with, a document and executed or adopted by a person with an intent to **execute,** authenticate or adopt the document. **A person may execute a document with such person's signature.**

§ 18–210. ~~Contractual~~ No statutory appraisal rights

~~A~~ **Unless otherwise provided in a** limited liability company agreement or an agreement of merger or consolidation or a plan of merger or a plan of division ~~may provide that contractual~~**, no** appraisal rights **shall be available** with respect to a limited liability company interest or another interest in a limited liability company ~~shall be available for any class or group or series of members or limited liability company interests~~**, including** in connection with any amendment of a limited liability company agreement, any merger or consolidation in which the limited liability company or a registered series of the limited liability company is a constituent party to the merger or consolidation, any division of the limited liability company, any conversion of the limited liability company to another business form, any conversion of a protected series of the limited liability company to a registered series of such limited liability company, any conversion of a registered series of the limited liability company to a protected series of such limited liability company, any transfer to or domestication or continuance in any jurisdiction by the limited liability company, or the sale of all or substantially all of the limited liability company's assets. The Court of Chancery shall have jurisdiction to hear and determine any matter relating to any ~~such~~ appraisal rights **provided in a limited liability company agreement or an agreement of merger or consolidation or a plan of merger or a plan of division**.

§ 18–213. Transfer or continuance of domestic limited liability companies

(c) Upon the filing in the office of the Secretary of State of the certificate of transfer or upon the future effective date or time of the certificate of transfer and payment to the Secretary of State of all fees prescribed in this chapter, ~~the Secretary of State shall certify that the limited liability company has filed all documents and paid all fees required by this chapter, and thereupon~~ the limited liability company shall cease to exist as a limited liability company of the State of Delaware. ~~Such~~ **A copy of the** certificate **of transfer certified by** ~~of~~ the Secretary of State shall be prima facie evidence of the transfer or domestication or continuance by such limited liability company out of the State of Delaware. **A copy of the certificate of transfer and domestic continuance certified by the Secretary of State shall be prima facie evidence of such limited liability company's transfer to or domestication or continuance in another jurisdiction and its continuance as a limited liability company in the State of Delaware.**

§ 18–216. Approval of conversion of a limited liability company

(f) Upon the filing in the office of the Secretary of State of the certificate of conversion to non-Delaware entity or upon the future effective date or time of the certificate of conversion to non-Delaware entity and payment to the Secretary of State of all fees prescribed in this chapter, ~~the Secretary of State shall certify that the limited liability company has filed all documents and paid all fees required by this chapter, and thereupon~~ the limited liability company shall cease to exist as a limited liability company of the State of Delaware. ~~Such~~ **A copy of the** certificate **of conversion to non-Delaware entity certified by** ~~of~~ the Secretary of State shall be prima facie evidence of the conversion by such limited liability company out of the State of Delaware.

§ 18–217. Division of a limited liability company

(h) If a domestic limited liability company divides under this section, the dividing company shall file a certificate of division executed by 1 or more authorized persons on behalf of such dividing company in the office of the Secretary of State in accordance with § 18–204 of this title and a certificate of formation that complies with § 18–201 of this title for each resulting company executed by one or more authorized persons in accordance with § 18–204 of this title. The certificate of division shall state:

(7) That the plan of division is on file at a place of business of such division company as is specified therein, and shall state the address thereof~~; and~~

(8) That a copy of the plan of division will be furnished by such division company as is specified therein, on request and without cost, to any member of the dividing company~~.~~**; and**

(9) Any other information the dividing company determines to include therein.

§ 18–218. Registered series of members, managers, limited liability company interests or assets

(d) In order to form a registered series of a limited liability company, a certificate of registered series must be filed in accordance with this subsection.

(4) A manager of a registered series or, if there is no manager, then any member of a registered series who becomes aware that any statement in a certificate of registered series filed with respect to such registered series was false when made, or that any matter described therein has changed making the certificate of registered series false in any material respect **or non-compliant with § 18–218(e)(1)**, shall promptly amend the certificate of registered series.

(e) The name of each registered series as set forth in its certificate of registered series:

(3) Must be such as to distinguish it upon the records in the office of the Secretary of State from the name on such records of any corporation, partnership, limited partnership, statutory trust, limited liability company**, registered series of a limited liability company** or registered series **of a limited partnership** reserved, registered, formed or organized under the laws of the State of Delaware or qualified to do business or registered as a foreign corporation, foreign limited partnership, foreign statutory trust, foreign partnership or foreign limited liability company in the State of Delaware; provided, however, that a registered series may register under any name which is not such as to distinguish it upon the records in the office of the Secretary of State from the name on such records of any domestic or foreign corporation, partnership, limited partnership, statutory trust, registered series **of a limited liability company, registered series of a limited partnership,** or foreign limited liability company reserved, registered, formed or organized under the laws of the State of Delaware with the written consent of the other corporation, partnership, limited partnership, statutory trust, registered series **of a limited liability company, registered series of a limited partnership,** or foreign limited liability company, which written consent shall be filed with the Secretary of State;

§ 18–220. Approval of conversion of a registered series of a domestic limited liability company to a protected series of such domestic limited liability company

(f) ~~Upon the filing in the office of the Secretary of State of the certificate of conversion of registered series to protected series or upon the future effective date or time of the certificate of conversion of registered series to protected series and payment to the Secretary of State of all fees prescribed in this chapter, the Secretary of State shall certify that the registered series has filed all documents and paid all fees required by this chapter. Such~~ **A copy of the** certificate **of conversion of registered series to protected series certified by** ~~of~~ the Secretary of State shall be prima facie evidence of the conversion by such registered series to a protected series of such limited liability company.

§ 18–301. Admission of members

(a) In connection with the formation of a limited liability company, a person is admitted as a member of the limited liability company upon the later to occur of:

(2) The time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide, when the person's admission is reflected in the records of the limited liability company **or as otherwise provided in the limited liability company agreement**.

(b) After the formation of a limited liability company, a person is admitted as a member of the limited liability company:

(1) In the case of a person who is not an assignee of a limited liability company interest, including a person acquiring a limited liability company interest directly from the limited liability company and a person to be admitted as a member of the limited liability company without acquiring a limited liability company interest in the limited liability company at the time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide, upon the consent of all members ~~and when the person's admission is reflected in the records of~~ **or as otherwise provided in** the limited liability company **agreement**;

(2) In the case of an assignee of a limited liability company interest, as provided in § 18–704(a) of this title~~ and at the time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide, when any such person's permitted admission is reflected in the records of the limited liability company~~;

§ 18–305. Access to and confidentiality of information; records

(d) A limited liability company may maintain its records in other than ~~a written~~ **paper** form, including on, by means of, or in the form of any information storage device, method, or 1 or more electronic networks or databases (including 1 or more distributed electronic networks or databases), if such form is capable of conversion into ~~written~~ **paper** form within a reasonable time.

§ 18–904. Name; registered office; registered agent

(a) A foreign limited liability company may register with the Secretary of State under any name (whether or not it is the name under which it is registered in the jurisdiction of its formation) that includes the words "Limited Liability Company" or the abbreviation "L.L.C." or the designation "LLC" and that could be registered by a domestic limited liability company; provided however, that a foreign limited liability company may register under any name which is not such as to distinguish it upon the records in the office of the Secretary of State from the name on such records of any domestic or foreign corporation, partnership, statutory trust, limited liability company**,** ~~or~~ limited partnership**, registered series of a limited liability company or registered series of a limited partnership** reserved, registered, formed or organized under the laws of the State of Delaware with the written consent of the other corporation, partnership, statutory trust, limited liability company**,** ~~or~~ limited partnership**, registered series of a limited liability company or registered series of a limited partnership**, which written consent shall be filed with the Secretary of State.

(b) Each foreign limited liability company shall have and maintain in the State of Delaware:

(2) A registered agent for service of process on the foreign limited liability company, having a business office identical with such registered office, which agent may be any of:

c. A foreign corporation, a foreign ~~partnership (whether general (including a~~ limited liability partnership~~) or~~**, a foreign** limited **partnership** (including a **foreign** limited liability limited partnership)~~)~~, a foreign limited liability company (other than the foreign limited liability company itself), or a foreign statutory trust.

(c) A registered agent may change the address of the registered office of the foreign limited liability company or companies for which the agent is registered agent to another address in the State of Delaware by paying a fee as set forth in § 18–1105(a)(7) of this title and filing with the Secretary of State a certificate, executed by such registered agent,

setting forth the address at which such registered agent has maintained the registered office for each of the foreign limited liability companies for which it is a registered agent, and further certifying to the new address to which each such registered office will be changed on a given day, and at which new address such registered agent will thereafter maintain the registered office for each of the foreign limited liability companies for which it is registered agent. Upon the filing of such certificate, ~~the Secretary of State shall furnish to the registered agent a certified copy of the same under the Secretary's hand and seal of office, and thereafter, or~~ until further change of address, as authorized by law, the registered office in the State of Delaware of each of the foreign limited liability companies for which the agent is a registered agent shall be located at the new address of the registered agent thereof as given in the certificate. In the event of a change of name of any person acting as a registered agent of a foreign limited liability company, such registered agent shall file with the Secretary of State a certificate, executed by such registered agent, setting forth the new name of such registered agent, the name of such registered agent before it was changed and the address at which such registered agent has maintained the registered office for each of the foreign limited liability companies for which it is registered agent, and shall pay a fee as set forth in § 18–1105(a)(7) of this title. ~~Upon the filing of such certificate, the Secretary of State shall furnish to the registered agent a certified copy of the same under the Secretary of State's own hand and seal of office.~~ A change of name of any person acting as a registered agent of a foreign limited liability company as a result of ~~the~~ **(i) a** merger or consolidation of the registered agent with or into another person which succeeds to its assets and liabilities by operation of law**, (ii) the conversion of the registered agent into another person, or (iii) a division of the registered agent in which an identified resulting person succeeds to all of the assets and liabilities of the registered agent related to its registered agent business pursuant to the plan of division, as set forth in the certificate of division,** shall **each** be deemed a change of name for purposes of this section. Filing a certificate under this section shall be deemed to be an amendment of the application of each foreign limited liability company affected thereby and each such foreign limited liability company shall not be required to take any further action with respect thereto to amend its application under § 18–905 of this title. Any registered agent filing a certificate under this section shall promptly, upon such filing, deliver a copy of any such certificate to each foreign limited liability company affected thereby.

(d) The registered agent of 1 or more foreign limited liability companies may resign and appoint a successor registered agent by paying a fee as set forth in § 18–1105(a)(7) of this title and filing a certificate with the Secretary of State stating that it resigns and the name and address of the successor registered agent. There shall be attached to such certificate a statement of each affected foreign limited liability company ratifying and approving such change of registered agent. Upon such filing, the successor registered agent shall become the registered agent of such foreign limited liability companies as have ratified and approved such substitution and the successor registered agent's address, as stated in such certificate, shall become the address of each such foreign limited liability company's registered office in the State of Delaware. ~~The Secretary of State shall then issue a certificate that the successor registered agent has become the registered agent of the foreign limited liability companies so ratifying and approving such change and setting out the names of such foreign limited liability companies.~~ Filing of such certificate of resignation shall be deemed to be an amendment of the application of each foreign limited liability company affected thereby and each such foreign limited liability company shall not be required to take any further action with respect thereto to amend its application under § 18–905 of this title.

(e) The registered agent of ~~1 or more~~ **a** foreign limited liability ~~companies~~ **company, including a foreign limited liability company that has ceased to be registered as a foreign limited liability company in the State of Delaware pursuant to § 18–1107(h) of this title,** may resign without appointing a successor registered agent by paying a fee as set forth in § 18–1105(a)(7) of this title and filing a certificate of resignation with the Secretary of State, but such resignation shall not become effective until 30 days after the certificate is filed. The certificate shall contain a statement that written notice of resignation was given to ~~each affected~~ **the** foreign limited liability company at least 30 days prior to the filing of the certificate by mailing or delivering such notice to the foreign limited liability company at its address last known to the registered agent and shall set forth the date of such notice. **The certificate shall include such information last provided to the registered agent pursuant to Section 18–104(g) of this title for a communications contact for the foreign limited liability company. Such information regarding the communications contact shall not be deemed public. A certificate filed pursuant to this subsection must be on the form prescribed by the Secretary of State.** After receipt of the notice of the resignation of its registered agent, the foreign limited liability company for which such registered agent was acting shall obtain and designate a new registered agent to take the place of the registered agent so resigning. If such foreign limited liability company fails to obtain and designate a new registered agent as aforesaid prior to the expiration of the period of 30 days after the filing by the registered agent of the certificate of resignation, such foreign limited liability company shall not be permitted to do business in the State of Delaware and its registration shall be canceled. After the resignation of the registered agent shall have become effective as provided in this section and if no

new registered agent shall have been obtained and designated in the time and manner aforesaid, service of legal process against each foreign limited liability company for which the resigned registered agent had been acting shall thereafter be upon the Secretary of State in accordance with § 18–911 of this title.

DELAWARE 2021 SESSION LAWS

151ST GENERAL ASSEMBLY

S.B. No. 114

AN ACT TO AMEND CHAPTER 18, TITLE 6 OF THE DELAWARE CODE RELATING TO THE CREATION, REGULATION, OPERATION AND DISSOLUTION OF DOMESTIC LIMITED LIABILITY COMPANIES AND THE REGISTRATION AND REGULATION OF FOREIGN LIMITED LIABILITY COMPANIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

§ 18–106. Nature of business permitted; powers

(e) Any act or transaction that may be taken by or in respect of a limited liability company under this chapter or a limited liability company agreement, but that is void or voidable when taken, may be ratified (or the failure to comply with any requirements of the limited liability company agreement making such act or transaction void or voidable may be waived) by the members, managers or other persons whose approval would be required under the limited liability company agreement (i) for such act or transaction to be validly taken, or (ii) to amend the limited liability company agreement in a manner that would permit such act or transaction to be validly taken, in each case at the time of such ratification or waiver; provided, that if the void or voidable act or transaction was the issuance or assignment of any limited liability company interests, the limited liability company interests purportedly issued or assigned shall be deemed not to have been issued or assigned for purposes of determining whether the void or voidable act or transaction was ratified or waived pursuant to this subsection (e). Any act or transaction ratified, or with respect to which the failure to comply with any requirements of the limited liability company agreement is waived, pursuant to this subsection (e) shall be deemed validly taken at the time of such act or transaction. If an amendment to the limited liability company agreement to permit any such act or transaction to be validly taken would require notice to any members, managers or other persons under the limited liability company agreement and the ratification or waiver of such act or transaction is effectuated pursuant to this subsection (e) by the members, managers or other persons whose approval would be required to amend the limited liability company agreement, notice of such ratification or waiver shall be given following such ratification or waiver to the members, managers or other persons who would have been entitled to notice of such an amendment and who have not otherwise received notice of, or participated in, such ratification or waiver. The provisions of this subsection (e) shall not be construed to limit the accomplishment of a ratification or waiver of a void or voidable act by other means permitted by law. Upon application of the limited liability company, any member, any manager or any person claiming to be substantially and adversely affected by a ratification or waiver pursuant to this subsection (e) (excluding any harm that would have resulted if such act or transaction had been valid when taken), the Court of Chancery may hear and determine the validity and effectiveness of the ratification of, or waiver with respect to, any void or voidable act or transaction effectuated pursuant to this subsection (e), and in any such application, the limited liability company shall be named as a party and service of the application upon the registered agent of the limited liability company shall be deemed to be service upon the limited liability company, and no other party need be joined in order for the Court to adjudicate the validity and effectiveness of the ratification or waiver, and the Court may make such order respecting further or other notice of such application as it deems proper under these circumstances; provided, that nothing herein limits or affects the right to serve process in any other manner now or hereafter provided by law, and this sentence is an extension of and not a limitation upon the right otherwise existing of service of legal process upon nonresidents.

§ 18–217. Division of a limited liability company

(a) As used in this section and §§ 18–203~~,~~ **and** 18–301 ~~and 18–1203~~:

§ 18–305. Access to and confidentiality of information; records

(a) Each member of a limited liability company, in person or by attorney or other agent, has the right, subject to such reasonable standards (including standards governing what information **(including books, records** and **other** documents**)**

is ~~are~~ to be furnished at what time and location and at whose expense) as may be set forth in a limited liability company agreement or otherwise established by the manager or, if there is no manager, then by the members, to obtain from the limited liability company from time to time upon reasonable demand for any purpose reasonably related to the member's interest as a member of the limited liability company:

(d) A limited liability company may maintain its **books,** records **and other documents** in other than paper form, including on, by means of, or in the form of any information storage device, method, or 1 or more electronic networks or databases (including 1 or more distributed electronic networks or databases), if such form is capable of conversion into paper form within a reasonable time.

(f) Any action to enforce any right arising under this section shall be brought in the Court of Chancery. If the limited liability company refuses to permit a member, or attorney or other agent acting for the member, to obtain or a manager to examine the information described in subsection (a) of this section or does not reply to the demand that has been made within 5 business days (or such shorter or longer period of time as is provided for in a limited liability company agreement but not longer than 30 business days) after the demand has been made, the demanding member or manager may apply to the Court of Chancery for an order to compel such disclosure. The Court of Chancery is hereby vested with exclusive jurisdiction to determine whether or not the person seeking such information is entitled to the information sought. The Court of Chancery may summarily order the limited liability company to permit the demanding member to obtain or manager to examine the information described in subsection (a) of this section and to make copies or abstracts therefrom, or the Court of Chancery may summarily order the limited liability company to furnish to the demanding member or manager the information described in subsection (a) of this section on the condition that the demanding member or manager first pay to the limited liability company the reasonable cost of obtaining and furnishing such information and on such other conditions as the Court of Chancery deems appropriate. When a demanding member seeks to obtain or a manager seeks to examine the information described in subsection (a) of this section, the demanding member or manager shall first establish:

(1) That the demanding member or manager has complied with the provisions of this section respecting the form and manner of making demand for obtaining or examining of such information, and

(2) That the information the demanding member or manager seeks is reasonably related to the member's interest as a member or the manager's position as a manager, as the case may be.

The Court of Chancery may, in its discretion, prescribe any limitations or conditions with reference to the obtaining or examining of information, or award such other or further relief as the Court of Chancery may deem just and proper. The Court of Chancery may order books, **records and other** documents ~~and records~~, pertinent extracts therefrom, or duly authenticated copies thereof, to be brought within the State of Delaware and kept in the State of Delaware upon such terms and conditions as the order may prescribe.

(g) **If a member is entitled to obtain information under this chapter or a limited liability company agreement for a purpose reasonably related to the member's interest as a member or other stated purpose, the member's right shall be to obtain such information as is necessary and essential to achieving that purpose.** The rights of a member or manager to obtain **or examine** information as provided in this section may be **expanded or** restricted in an original limited liability company agreement or in any subsequent amendment approved or adopted by all of the members or in compliance with any applicable requirements of the limited liability company agreement. The provisions of this subsection shall not be construed to limit the ability to ~~impose restrictions on~~ **expand or restrict** the rights of a member or manager to obtain **or examine** information by any other means permitted ~~under this chapter~~ **by law**.

§ 18–407. Delegation of rights and powers to manage

Unless otherwise provided in the limited liability company agreement, a member or manager of a limited liability company has the power and authority to delegate to 1 or more other persons any or all of the member's or manager's, as the case may be, rights, powers and duties to manage and control the business and affairs of the limited liability company**, which delegation may be made irrespective of whether the member or manager has a conflict of interest with respect to the matter as to which its rights, powers or duties are being delegated, and the person or persons to whom any such rights, powers or duties are being delegated shall not be deemed conflicted solely by reason of the conflict of interest of the member or manager**. Any such delegation may be to agents, officers and employees of a

member or manager or the limited liability company, and by a management agreement or another agreement with, or otherwise to, other persons**, including a committee of 1 or more persons**. Unless otherwise provided in the limited liability company agreement, such delegation by a member or manager shall be irrevocable if it states that it is irrevocable. Unless otherwise provided in the limited liability company agreement, such delegation by a member or manager of a limited liability company shall not cause the member or manager to cease to be a member or manager, as the case may be, of the limited liability company or cause the person to whom any such rights, powers and duties have been delegated to be a member or manager, as the case may be, of the limited liability company. No other provision of this chapter **or other law** shall be construed to restrict a member's or manager's power and authority to delegate any or all of its rights, powers and duties to manage and control the business and affairs of the limited liability company.

§ 18–1201. Law applicable to statutory public benefit limited liability companies; how formed

This subchapter applies to all statutory public benefit limited liability companies, as defined in § 18–1202**(a)** of this title. If a limited liability company **is formed as or** elects to become a statutory public benefit limited liability company ~~under this subchapter~~ in the manner prescribed in this ~~subchapter~~ **section**, it shall be subject in all respects to the provisions of this chapter, except to the extent this subchapter imposes additional or different requirements, in which case such **additional or different** requirements shall apply, and notwithstanding § 18–1101 of this title or any other provision of this title, such **additional or different** requirements imposed by this subchapter may not be altered in the limited liability company agreement. **If a limited liability company is not formed as a statutory public benefit limited liability company, it may become a statutory public benefit limited liability company in the manner specified in its limited liability company agreement or by amending its limited liability company agreement and certificate of formation to comply with the requirements of this subchapter.**

§ 18–1202. Statutory public benefit limited liability company defined; contents of certificate of formation and limited liability company agreement

(a) A "statutory public benefit limited liability company" is a for-profit limited liability company formed under and subject to the requirements of this chapter that is intended to produce a public benefit or public benefits and to operate in a responsible and sustainable manner. To that end, a statutory public benefit limited liability company shall be managed in a manner that balances the members' pecuniary interests, the best interests of those materially affected by the limited liability company's conduct, and the public benefit or public benefits set forth **in its limited liability company agreement and** in its certificate of formation. A statutory public benefit limited liability company shall state **in its limited liability company agreement and** in the heading of its certificate of formation that it is a statutory public benefit limited liability company and shall set forth **in its limited liability company agreement and in its certificate of formation** 1 or more specific public benefits to be promoted by the limited liability company ~~in its certificate of formation. The limited liability company agreement~~**. In the event of any inconsistency between the public benefit or benefits to be promoted by the limited liability company as set forth in its limited liability company agreement and in its certificate of formation, the limited liability company agreement shall control as among the members, the managers and other persons who are party to or otherwise bound by the liability company agreement. A manager** of a statutory public benefit limited liability company ~~may not contain any~~ **or, if there is no manager, then any member of a statutory public benefit limited liability company who becomes aware that the specific public benefit or benefits to be promoted by the limited liability company as set forth in its limited liability company agreement are inaccurately set forth in its certificate of formation, shall promptly amend the certificate of formation. Any** provision **in the limited liability company agreement or certificate of formation of a statutory public benefit limited liability company that is** inconsistent with this subchapter **shall not be effective to the extent of such inconsistency**.

§ 18–1203. [Repealed and Reserved]

§ 18–1204. Duties of members or managers

(a) The members or managers or other persons with authority to manage or direct the business and affairs of a statutory public benefit limited liability company shall manage or direct the business and affairs of the statutory public benefit limited liability company in a manner that balances the pecuniary interests of the members, the best interests of those materially affected by the limited liability company's conduct, and the specific public benefit or public benefits set forth in its **limited liability company agreement and** certificate of formation. Unless otherwise provided in a limited liability

company agreement, no member, manager or other person with authority to manage or direct the business and affairs of the statutory public benefit limited liability company shall have any liability for monetary damages for the failure to manage or direct the business and affairs of the statutory public benefit limited liability company as provided in this subsection.

(b) A member or manager of a statutory public benefit limited liability company or any other person with authority to manage or direct the business and affairs of the statutory public benefit limited liability company shall not, by virtue of the public benefit provisions or § 18–1202(a) of this title, have any duty to any person on account of any interest of such person in the public benefit or public benefits set forth in its **limited liability company agreement and** certificate of formation or on account of any interest materially affected by the limited liability company's conduct and, with respect to a decision implicating the balance requirement in subsection (a) of this section, will be deemed to satisfy such person's fiduciary duties to members and the limited liability company if such person's decision is both informed and disinterested and not such that no person of ordinary, sound judgment would approve.

§ 18–1205. Periodic statements and third-party certification

A statutory public benefit limited liability company shall no less than biennially provide its members with a statement as to the limited liability company's promotion of the public benefit or public benefits set forth in its **limited liability company agreement and** certificate of formation and as to the best interests of those materially affected by the limited liability company's conduct. The statement shall include:

DELAWARE 2022 SESSION LAWS

151ST GENERAL ASSEMBLY

S.B. No. 275

AN ACT TO AMEND CHAPTER 18, TITLE 6 OF THE DELAWARE CODE RELATING TO THE CREATION, REGULATION, OPERATION AND DISSOLUTION OF DOMESTIC LIMITED LIABILITY COMPANIES AND THE REGISTRATION AND REGULATION OF FOREIGN LIMITED LIABILITY COMPANIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

§ 18-101. Definitions.

As used in this chapter unless the context otherwise requires:

(9) "Limited liability company agreement" means any agreement (whether referred to as a limited liability company agreement, operating agreement or otherwise), written, oral or implied, of the member or members as to the affairs of a limited liability company and the conduct of its business. A member or manager of a limited liability company or an assignee of a limited liability company interest is bound by the limited liability company agreement whether or not the member or manager or assignee executes the limited liability company agreement. A limited liability company **(including any protected series or registered series thereof)** is not required to execute its limited liability company agreement. A limited liability company **(including any protected series or registered series thereof)** is bound by its limited liability company agreement whether or not the limited liability company **(or any protected series or registered series thereof)** executes the limited liability company agreement. A limited liability company agreement of a limited liability company having only 1 member shall not be unenforceable by reason of there being only 1 person who is a party to the limited liability company agreement. A limited liability company agreement is not subject to any statute of frauds (including § 2714 of this title). A limited liability company agreement may provide rights to any person, including a person who is not a party to the limited liability company agreement, to the extent set forth therein. A written limited liability company agreement or another written agreement or writing:

a. May provide that a person shall be admitted as a member of a limited liability company, or shall become an assignee of a limited liability company interest or other rights or powers of a member to the extent assigned:

1. If such person (or a representative authorized by such person orally, in writing or by other action such as payment for a limited liability company interest) executes the limited liability company agreement or any other writing evidencing the intent of such person to become a member or assignee; or

2. Without such execution, if such person (or a representative authorized by such person orally, in writing or by other action such as payment for a limited liability company interest) complies with the conditions for becoming a member or assignee as set forth in the limited liability company agreement or any other writing; ~~and~~

b. Shall not be unenforceable by reason of its not having been signed by a person being admitted as a member or becoming an assignee as provided in paragraph (9)a. of this section, or by reason of its having been signed by a representative as provided in this ~~chapter~~ **chapter; and**

c. May consist of 1 or more agreements, instruments or other writings and may include or incorporate one or more schedules, supplements or other writings containing provisions as to the conduct of the business and affairs of the limited liability company or any series thereof.

§ 18-109. Service of process on managers and liquidating trustees.

(b) Service of process shall be effected by serving the registered agent (or, if there is none, the Secretary of State) with 1 copy of such process in the manner provided by law for service of writs of summons. In the event service is made under

this subsection upon the Secretary of State, the plaintiff shall pay to the Secretary of State the sum of $50 for the use of the State of Delaware, which sum shall be taxed as part of the costs of the proceeding if the plaintiff shall prevail therein. In addition, the Prothonotary or the Register in Chancery of the court in which the civil action or proceeding is pending shall, within 7 days of such service, deposit in the United States mails, by registered mail, postage prepaid, true and attested copies of the process, together with a statement that service is being made pursuant to this section, addressed to such manager or liquidating trustee at the ~~registered office~~ **principal place of business** of the limited liability company **(if such address is known)** and at the manager's or liquidating trustee's address last known to the party desiring to make such service.

§ 18-113. Document form, signature and delivery.

(b) Subsection (a) of this section shall not apply to:

(1) A document filed with or submitted to the Secretary of State, the Register in Chancery, or a court or other judicial or governmental body of this State;

(2) A certificate of limited liability company interest**, except that a signature on a certificate of limited liability company interest may be a manual, facsimile, or electronic signature**; and

(3) An act or transaction effected pursuant to § 18-104, § 18-105, or § 18-109 or subchapter IX or X of this title.

The foregoing shall not create any presumption about the lawful means to document a matter addressed by this subsection, or the lawful means to sign or deliver a document addressed by this subsection. A provision of the limited liability company agreement shall not limit the application of subsection (a) of this section unless the provision expressly restricts one or more of the means of documenting an act or transaction, or of signing or delivering a document, permitted by subsection (a) of this section.

§ 18-204. Execution.

(d) The execution of a certificate by a person who is authorized by this chapter to execute such certificate constitutes an oath or affirmation, under the penalties of perjury in the third degree, that, to the best of such person's knowledge and belief, the facts stated therein ~~are~~ **shall be** true **at the time such certificate becomes effective as provided in this chapter**.

§ 18-212. Domestication of non-United States entities.

(g) Prior to the ~~filing of~~ **time** a certificate of limited liability company domestication ~~with the Office of the Secretary of State~~ **becomes effective as provided in this chapter**, the domestication shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the non-United States entity and the conduct of its business or by applicable non-Delaware law, as appropriate, and a limited liability company agreement shall be approved by the same authorization required to approve the domestication.

§ 18-214. Conversion of certain entities to a limited liability company.

(h) Prior to ~~filing~~ **the time** a certificate of conversion to limited liability company ~~with the office of the Secretary of State~~ **becomes effective as provided in this chapter**, the conversion shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the other entity and the conduct of its business or by applicable law, as appropriate and a limited liability company agreement shall be approved by the same authorization required to approve the conversion.

§ 18-1108. Cancellation of certificate of formation or certificate of registered series for failure to pay taxes.

(b) The certificate of registered series **of a registered series** shall be canceled if the annual tax due under § 18-1107 of this title **for the registered series** is not paid for a period of 3 years from the date it is due, such cancellation to be effective on the third anniversary of such due date.

§ 18-1109. Revival of domestic limited liability company.

(a) A domestic limited liability company whose certificate of formation has been canceled pursuant to § 18-104(d) ~~or~~**, § 18-104**(i)(4) or § 18-1108(a) of this title may be revived by filing in the office of the Secretary of State a certificate of revival **of limited liability company** accompanied by the payment of the fee required by § 18-1105(a)(3) of this title and payment of the annual tax due under § 18-1107 of this title and all penalties and interest thereon due at the time of the cancellation of its certificate of formation. The certificate of revival **of limited liability company** shall set forth:

(1) The name of the limited liability company at the time its certificate of formation was canceled and, if such name is not available at the time of revival, the name under which the limited liability company is to be revived;

(2) The date of filing of the original certificate of formation of the limited liability company;

(3) The address of the limited liability company's registered office in the State of Delaware and the name and address of the limited liability company's registered agent in the State of Delaware;

(4) A statement that the certificate of revival **of limited liability company** is filed by 1 or more persons authorized to execute and file ~~the~~ **such** certificate of revival to revive the limited liability company; and

(5) Any other matters the persons executing the certificate of revival **of limited liability company** determine to include therein.

(b) The certificate of revival **of limited liability company** shall be deemed to be an amendment to the certificate of formation of the limited liability company, and the limited liability company shall not be required to take any further action to amend its certificate of formation under § 18-202 of this title with respect to the matters set forth in ~~the~~ **such** certificate of revival.

(c) Upon the filing of a certificate of revival **of limited liability company**, a limited liability company ~~and all~~**, each** registered series thereof ~~that have been formed and~~ whose certificate of registered series has ~~not~~ been canceled ~~prior to~~ **as a result of** the cancellation of the certificate of formation **of the limited liability company pursuant to § 18-104(d), § 18-104(i)(4) or § 18-1108(a) of this title, and each protected series thereof that has not been terminated and wound up,** shall be revived with the same force and effect as if ~~its~~ **the** certificate of formation **of the limited liability company** had not been canceled pursuant to § 18-104(d), § 18-104(i)(4) or § 18-1108(a) of this title. Such revival shall validate all contracts, acts, matters and things made, done and performed by the limited liability company~~, its~~**, any protected series or registered series thereof, or by the** members, managers, employees and agents **of the limited liability company or such series** during the time when ~~its~~ **the** certificate of formation **of the limited liability company** was canceled pursuant to § 18-104(d), § 18-104(i)(4) or § 18-1108(a) of this title, with the same force and effect and to all intents and purposes as if the certificate of formation **of the limited liability company** had remained in full force and effect. All real and personal property, and all rights and interests, which belonged to the limited liability company **or any protected series or registered series thereof** at the time ~~its~~ **the** certificate of formation **of the limited liability company** was canceled pursuant to § 18-104(d), § 18-104(i)(4) or § 18-1108(a) of this title or which were acquired by the limited liability company **or any protected series or registered series thereof** following the cancellation of ~~its~~ **the** certificate of formation **of the limited liability company** pursuant to § 18-104(d), § 18-104(i)(4) or § 18-1108(a) of this title, and which were not disposed of prior to the time of ~~its~~ **the limited liability company's** revival, shall be vested in the limited liability company **or the applicable protected series or registered series** after ~~its~~ **the** revival **of the limited liability company** as fully as they were held by the limited liability company **or such series** at, and after, as the case may be, the time ~~its~~ **the** certificate of formation **of the limited liability company** was canceled pursuant to § 18-104(d), § 18-104(i)(4) or § 18-1108(a) of this title. After ~~its revival,~~ **the revival of** the limited liability company**, the limited liability company and any protected series or registered series thereof** shall be as exclusively liable for all contracts, acts, matters and things made, done or performed in ~~its name and on its behalf~~ **the name of and on behalf of the limited liability company or such series** by ~~its~~ **the** members, managers, employees and agents **of the limited liability company or such series** prior to ~~its~~ **the limited liability company's** revival as if ~~its~~ **the** certificate of formation **of the limited liability company** had at all times remained in full force and effect.

DELAWARE 2023 SESSION LAWS

152ND GENERAL ASSEMBLY

S.B. No. 113

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO THE CREATION, REGULATION, OPERATION, AND DISSOLUTION OF DOMESTIC LIMITED LIABILITY COMPANIES AND THE REGISTRATION AND REGULATION OF FOREIGN LIMITED LIABILITY COMPANIES.

§ 18–204. Execution.

(a) Each certificate required by this ~~subchapter~~ **chapter** to be filed in the office of the Secretary of State shall be executed by 1 or more authorized persons or, in the case of a certificate of conversion to limited liability company or certificate of limited liability company domestication, by any person authorized to execute such certificate on behalf of the other entity or non-United States entity, respectively, except that a certificate of merger or consolidation filed by a surviving or resulting other business entity shall be executed by any person authorized to execute such certificate on behalf of such other business entity.

§ 18-205. Execution, amendment or cancellation by judicial order.

(a) If a person required to execute a certificate required by this ~~subchapter~~ **chapter** fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the Court of Chancery to direct the execution of the certificate. If the Court finds that the execution of the certificate is proper and that any person so designated has failed or refused to execute the certificate, it shall order the Secretary of State to record an appropriate certificate.

§ 18-209. Merger and consolidation.

(f) An agreement of merger or consolidation or a plan of merger approved in accordance with subsection (b) of this section may:

(1) Effect any amendment to the limited liability company agreement; or

(2) Effect the adoption of a new limited liability company agreement, **in either case,** for a limited liability company if it is the surviving or resulting limited liability company in the merger or consolidation.

§ 18-215. Series of members, managers, limited liability company interests or assets.

(d) If a limited liability company agreement provides the manner in which a termination of a protected series may be revoked, it may be revoked in that manner and, unless the limited liability company has dissolved and such dissolution has not been revoked or the limited liability company agreement prohibits revocation of termination of a protected series, then notwithstanding the occurrence of an event set forth in paragraph (b)(9)a., b., or c. of this section, the protected series shall not be terminated and its affairs shall not be wound up if, prior to the completion of the winding up of the protected series, the protected series is continued, effective as of the occurrence of such event:

(1) In the case of termination effected by the vote or consent of the members associated with the protected series or other persons, pursuant to such vote or consent (and the approval of any members associated with the protected series or other persons whose approval is required under the limited liability company agreement to revoke a termination contemplated by this paragraph); and

(2) In the case of termination under paragraph (b)(9)a. or b. of this section (other than a termination effected by the vote or consent of the members associated with the protected series or other persons), pursuant to such vote or consent that, pursuant to the terms of the limited liability company agreement, is required to amend the provision of the limited liability company agreement effecting such termination (and the approval of any

members associated with the protected series or other persons whose approval is required under the limited liability company agreement to revoke a termination contemplated by this paragraph).

If a protected series is terminated by the dissolution of the limited liability company, unless the winding up of the protected series has been completed or the limited liability company agreement prohibits revocation of termination of the protected series, the termination of the protected series shall be automatically revoked upon any revocation of dissolution of the limited liability company in accordance with § 18-806 of this title.

The provisions of this subsection shall not be construed to limit the accomplishment of a revocation of termination of a protected series by other means permitted by law.

§ 18-217. Division of a limited liability company.

(h) If a domestic limited liability company divides under this section, the dividing company shall file a certificate of division executed by 1 or more authorized persons on behalf of such dividing company in the office of the Secretary of State in accordance with § 18-204 of this title and a certificate of formation that complies with § 18-201 of this title for each resulting company executed by 1 or more authorized persons in accordance with § 18-204 of this title.

(1) The certificate of division shall state:

~~(1)~~ **a.** The name of the dividing company and, if it has been changed, the name under which its certificate of formation was originally filed and whether the dividing company is a surviving company;

~~(2)~~ **b.** The date of filing of the dividing company's original certificate of formation with the Secretary of State;

~~(3)~~ **c.** The name of each division company;

~~(4)~~ **d.** The name and business address of the division contact required by paragraph (g)(3) of this section;

~~(5)~~ **e.** The future effective date or time (which shall be a date or time certain) of the division if it is not to be effective upon the filing of the certificate of division;

~~(6)~~ **f.** That the division has been approved in accordance with this section;

~~(7)~~ **g.** That the plan of division is on file at a place of business of such division company as is specified therein, and shall state the address thereof;

~~(8)~~ **h.** That a copy of the plan of division will be furnished by such division company as is specified therein, on request and without cost, to any member of the dividing company; and

~~(9)~~ **i.** Any other information the dividing company determines to include therein.

(2) A certificate of division may be amended to change the name or business address of the division contact in a certificate of division or to change information in the certificate of division required by paragraph (h)(1)g. of this section. A certificate of division is amended by filing a certificate of amendment thereto for each division company that exists as a limited liability company in the office of the Secretary of State. Each certificate of amendment of certificate of division must include all of the following:

a. The name of the dividing company and, if the name has been changed, the name under which the dividing company's certificate of formation was originally filed.

b. The name of the division company to which the amendment to the certificate of division relates.

c. The amendment to the certificate of division.

(3) If the dividing company is a surviving company, a manager of the dividing company or, if there is no manager

of the dividing company, any member of the dividing company, who becomes aware that the name or business address of the division contact, or information in the certificate of division required by paragraph (h)(1)g. of this section, in a certificate of division was false when made, or that the name or business address of the division contact, or information in the certificate of division required by paragraph (h)(1)g. of this section, in a certificate of division has changed, must promptly amend the certificate of division. If the dividing company is not a surviving company or no longer exists as a limited liability company, a manager of any resulting company or, if there is no manager of any resulting company, then any member of any resulting company who becomes aware that the name or business address of the division contact, or information in the certificate of division required by paragraph (h)(1)g. of this section, in a certificate of division was false when made, or that the name or business address of the division contact, or information in the certificate of division required by paragraph (h)(1)g. of this section, in a certificate of division has changed, must promptly amend the certificate of division. This subsection does not apply after the expiration of a period of 6 years following the effective date of the division.

(4)a. Unless otherwise provided in the plan of division or the certificate of division, each certificate of amendment of certificate of division must be executed as follows:

1. If the dividing company is a surviving company, by 1 or more authorized persons on behalf of the dividing company acting on behalf of the division company to which the certificate of amendment of certificate of division relates.

2. If the dividing company is not a surviving company or no longer exists as a limited liability company, by 1 or more authorized persons on behalf of a resulting company acting on behalf of the division company to which the certificate of amendment of certificate of division relates.

b. Each division company is deemed to have consented to the execution of a certificate of amendment of certificate of division under paragraph (h)(4) of this section.

(5) Unless otherwise provided in this chapter or unless a later effective date or time (which shall be a date or time certain) is provided for in the certificate of amendment of certificate of division, a certificate of amendment of certificate of division is effective at the time of its filing with the Secretary of State.

(6) Subject to this chapter, the Secretary of State shall accept the filing of certificates of amendment of certificate of division for all division companies resulting from the same certificate of division if at least 1 division company is in good standing at the time of such filings.

(l) Upon the division of a domestic limited liability company becoming effective:

(1) The dividing company shall be divided into the distinct and independent ~~resulting~~ **division** companies named in the plan of division, and, if the dividing company is not a surviving company, the existence of the dividing company shall cease.

(9) Any action or proceeding pending against a dividing company may be continued against the surviving ~~company~~ **company, if any,** as if the division did not occur, but subject to paragraph (l)(4) of this section, and against any resulting company to which the asset, property, right, series, debt, liability or duty associated with such action or proceeding was allocated pursuant to the plan of division by adding or substituting such resulting company as a party in the action or proceeding.

§ 18-218. Registered series of members, managers, limited liability company interests or assets.

(f) If a limited liability company agreement provides the manner in which a dissolution of a registered series may be revoked, it may be revoked in that manner and, unless the limited liability company has dissolved and such dissolution has not been revoked or the limited liability company agreement prohibits revocation of dissolution of a registered series, then notwithstanding the occurrence of an event set forth in paragraph (c)(9)a., b., or c. of this section, the registered series shall not be dissolved and its affairs shall not be wound up if, prior to the filing of a certificate of cancellation of the certificate of registered series in the office of the Secretary of State, the registered series is continued, effective as of the occurrence of such event:

(1) In the case of dissolution effected by the vote or consent of the members associated with the registered series or other persons, pursuant to such vote or consent (and the approval of any members associated with the registered series or other persons whose approval is required under the limited liability company agreement to revoke a dissolution contemplated by this paragraph); and

(2) In the case of dissolution under paragraph (c)(9)a. or b. of this section (other than a dissolution effected by the vote or consent of the members associated with the registered series or other persons), pursuant to such vote or consent that, pursuant to the terms of the limited liability company agreement, is required to amend the provision of the limited liability company agreement effecting such dissolution (and the approval of any members associated with the registered series or other persons whose approval is required under the limited liability company agreement to revoke a dissolution contemplated by this paragraph).

If a registered series is dissolved by the dissolution of the limited liability company, unless a certificate of cancellation of the certificate of registered series with respect to such registered series has been filed in the office of the Secretary of State or the limited liability company agreement prohibits revocation of dissolution of the registered series, the dissolution of the registered series shall be automatically revoked upon any revocation of dissolution of the limited liability company in accordance with § 18-806 of this title.

The provisions of this subsection shall not be construed to limit the accomplishment of a revocation of dissolution of a registered series by other means permitted by law.

§ 18-506. Irrevocability of subscription.

For all purposes of the laws of the State of Delaware, a subscription for a limited liability company interest, whether submitted in writing, by means of electronic transmission, or as otherwise permitted by applicable law, is irrevocable if the subscription states that it is irrevocable to the extent provided by the terms of the subscription.

§ 18-1105. Fees.

(a) No document required to be filed under this chapter shall be effective until the applicable fee required by this section is paid. The following fees shall be paid to and collected by the Secretary of State for the use of the State of Delaware:

(3) Upon the receipt for filing of a certificate of formation under § 18-201 of this title or a certificate of registered series under § 18-218 of this title, a fee in the amount of $70 and upon the receipt for filing of a certificate of limited liability company domestication under § 18-212 of this title, a certificate of transfer or a certificate of transfer and domestic continuance under § 18-213 of this title, a certificate of conversion to limited liability company under § 18-214 of this title, a certificate of conversion to a non-Delaware entity under § 18-216 of this title, a certificate of amendment under ~~§ 18-202~~ **§ 18-202, § 18-217(h)(2),** or § 18-218(d)(3) of this title (except as otherwise provided in paragraph (a)(11) of this section), a certificate of cancellation under § 18-203 or § 18-218(d)(7) of this title, a certificate of merger or consolidation or a certificate of ownership and merger under § 18-209 of this title, a restated certificate of formation or a restated certificate of registered series under § 18-208 of this title, a certificate of amendment of a certificate with a future effective date or time under § 18-206(c) of this title, a certificate of termination of a certificate with a future effective date or time under § 18-206(c) of this title, a certificate of correction under § 18-211 of this title, a certificate of division under § 18-217 of this title, a certificate of conversion of protected series to registered series under § 18-219 of this title, a certificate of conversion of registered series to protected series under § 18-220 of this title, a certificate of merger or consolidation of registered series under § 18-221 of this title or a certificate of revival under § 18-1109 or § 18-1110 of this title, a fee in the amount of $180, plus, in the case of a certificate of cancellation under § 18-203 of this title, a fee in the amount of $50 for each registered series of the limited liability company named in the certificate of cancellation.

§ 18-1107. Taxation of limited liability companies and registered series.

(k) A domestic limited liability company that has ceased to be in good standing by reason of the domestic limited liability company's neglect, refusal or failure to pay an annual tax shall remain a domestic limited liability company formed under this chapter, and each registered series thereof shall remain a registered series formed under this chapter,

and each protected series thereof shall remain a protected series established under this chapter. A registered series that has ceased to be in good standing by reason of the registered series' neglect, refusal or failure to pay an annual tax shall remain a registered series formed under this chapter. The Secretary of State shall not accept for filing any certificate (except a certificate of resignation of a registered agent when a successor registered agent is not being appointed **and certificates of amendment of certificate of division as required by § 18-217(h)(6) of this title**) required or permitted by this chapter to be filed in respect of any domestic limited liability company, registered series or foreign limited liability company if such domestic limited liability company, registered series or foreign limited liability company has neglected, refused or failed to pay an annual tax, and shall not issue any certificate of good standing with respect to such domestic limited liability company, registered series or foreign limited liability company, unless or until such domestic limited liability company, registered series or foreign limited liability company shall have been restored to and have the status of a domestic limited liability company or registered series in good standing or a foreign limited liability company duly registered in the State of Delaware.

SECURITIES EXCHANGE ACT

The following material identifies the amendments to the Securities Exchange Act that were adopted after the Statutory Supplement was published in 2020. The relevant statutes follow with a redlined version of the amendments.

Redlined Version of Amendments

2022-2023 AMENDMENTS

15 U.S.C. § 78u-1. Civil penalties for insider trading

(g) Duty of Members and employees of Congress.

. . . .

(2) Definitions. In this subsection—

. . . .

(B) the term "employee of Congress" means—

. . . .

(ii) any other officer or employee of the legislative branch (as defined in section 13101(11) of Title 5, United States Code~~1109(11) of the Ethics in Government Act of 1978 (5 U.S.C. App. 109(11))~~).

(h) Duty of other Federal officials.

. . . .

(2) Definitions. In this subsection—

. . . .

(B) the term "judicial employee" has the meaning given that term in section 13101(9) of Title 5, United States Code~~109(8) of the Ethics in Government Act of 1978 (5 U.S.C. App. 109(8))~~; and

(C) the term "judicial officer" has the meaning given that term under section 13101(10) of Title 5, United States Code~~109(10) of the Ethics in Government Act of 1978 (5 U.S.C. App. 109(10))~~.

. . . .

(i) Participation in initial public offerings. An individual described in section 13103(f) of Title 5, United States Code ~~101(f) of the Ethics in Government Act of 1978 [5 USCS Appx. § 101(f)]~~ may not purchase securities that are the subject of an initial public offering (within the meaning given such term in section 12(f)(1)(G)(i) [15 USCS § 78l(f)(1)(G)(i)]) in any manner other than is available to members of the public generally.

FEDERAL SECURITIES REGULATIONS

The following material identifies and discusses the amendments to the federal securities regulations that were adopted after the Statutory Supplement was published in 2020. The summary quotes the releases of the Securities and Exchange Commission discussing the amendments (with internal citations and quotations omitted). The relevant rules follow with a redlined version of the amendments.

Summary of Amendments

2020-2021 AMENDMENTS

17 C.F.R. § 240.14a-1

Rel. No. 34-89372, 85 Fed. Reg. 55082 (2020)

With respect to Rule 14a-1(l)(1)(iii) . . . we are adding paragraph (A) to make clear that the terms "solicit" and "solicitation" include any proxy voting advice that makes a recommendation to a shareholder as to its vote, consent, or authorization on a specific matter for which shareholder approval is solicited, and that is furnished by a person who markets its expertise as a provider of such advice, separately from other forms of investment advice, and sells such advice for a fee.

. . . .

With respect to Rule 14a-1(l)(2), we are . . . amending this provision . . . to make clear that the terms "solicit" and "solicitation" do not include any proxy voting advice provided by a person who furnishes such advice only in response to an unprompted request. . . .

17 C.F.R. § 240.14a-2

Rel. No. 34-89372, 85 Fed. Reg. 55082 (2020)

. . . [W]e are adopting new Rule 14a-2(b)(9)(ii) to require, as a separate condition to the availability of the exemptions in Rules 14a-2(b)(1) and (b)(3), that a proxy voting advice business adopt and publicly disclose written policies and procedures reasonably designed to ensure that:

(A) Registrants that are the subject of proxy voting advice have such advice made available to them at or prior to the time when such advice is disseminated to the proxy voting advice business's clients; and

(B) The proxy voting advice business provides its clients with a mechanism by which they can reasonably be expected to become aware of any written statements regarding its proxy voting advice by registrants that are the subject of such advice, in a timely manner before the shareholder

meeting (or, if no meeting, before the votes, consents, or authorizations may be used to effect the proposed action).

. . . .

In addition, paragraph (iii) of Rule 14a-2(b)(9) includes a non-exclusive safe harbor provision that, if followed, will give assurance to a proxy voting advice business that it has met the principles-based requirement of new Rule 14a-2(b)(9)(ii)(A). In accordance with this safe harbor, a proxy voting advice business will be deemed to satisfy Rule 14a-2(b)(9)(ii)(A) if it has written policies and procedures that are reasonably designed to provide registrants with a copy of its proxy voting advice, at no charge, no later than the time it is disseminated to the business's clients. Such policies and procedures may include conditions requiring that such registrants have:

(A) Filed their definitive proxy statement at least 40 calendar days before the shareholder meeting; and

(B) Expressly acknowledged that they will only use the proxy voting advice for their internal purposes and/or in connection with the solicitation and it will not be published or otherwise shared except with the registrant's employees or advisers.

. . . .

. . . . We are . . . providing a non-exclusive safe harbor in new 17 CFR 240.14a-2(b)(9)(iv) . . . pursuant to which proxy voting advice businesses will be deemed to satisfy the principle-based requirement of paragraph (ii)(B). To satisfy this safe harbor, a proxy voting advice business must have written policies and procedures reasonably designed to inform clients who have received proxy voting advice about a particular registrant in the event that such registrant notifies the proxy voting advice business that the registrant either intends to file or has filed additional soliciting materials with the Commission setting forth its views regarding such advice. The safe harbor sets forth two methods by which the proxy voting advice business may provide such notice to its clients. It may either:

(A) Provide notice on its electronic client platform that the registrant has filed, or has informed the proxy voting advice business that it intends to file, additional soliciting materials (and include an active hyperlink to those materials on EDGAR when available); or

(B) Provide notice through email or other electronic means that the registrant has filed, or has informed the proxy voting advice business that it intends to file, additional soliciting materials (and include an active hyperlink to those materials on EDGAR when available).

. . . .

. . . . [P]ursuant to new Rules 14a-2(b)(9)(v) and (vi), respectively, proxy voting advice businesses need not comply with Rule 14a-2(b)(9)(ii) in order to rely on either the Rule 14a-2(b)(1) or (b)(3) exemption (1) to the extent that their proxy voting advice is based on a custom policy or (2)

if they provide proxy voting advice as to non-exempt solicitations regarding certain mergers and acquisitions or contested matters. . . .

17 C.F.R. § 240.14a-3

Rel. No. 34-90459, 86 Fed. Reg. 2080 (2021)

Current Item 301 [of Regulation S-K] requires registrants to furnish selected financial data in comparative tabular form for each of the registrant's last five fiscal years and any additional fiscal years necessary to keep the information from being misleading. Instruction 1 to Item 301 states that the purpose of the item is to supply in a convenient and readable format selected financial data that highlights certain significant trends in the registrant's financial condition and results of operations. Instruction 2 to Item 301 lists specific items that must be included, subject to appropriate variation to conform to the nature of the registrant's business, and provides that registrants may include additional items they believe would enhance an understanding of, and highlight, other trends in their financial condition and results of operations.

. . . .

We are adopting the amendments to eliminate Item 301 . . . . We agree . . . that the earlier two years required by Item 301 can create additional costs and complexity. . . .

. . . .

[We are] [a]mend[ing] § 240.14a-3 by removing and reserving paragraph (b)(5)(i).

17 C.F.R. § 240.14a-8

Rel. No. 34-89964, 85 Fed. Reg. 70240 (2020)

Rule 14a-8(b) requires a shareholder that wishes to have a proposal included in a company's proxy materials to have continuously held at least $2,000 in market value, or 1 percent, of a company's securities entitled to vote on the proposal for at least one year as of the date the shareholder submits the proposal.

. . . .

Under new Rule 14a-8(b), a shareholder will be eligible to submit a Rule 14a-8 proposal if the shareholder demonstrates continuous ownership of at least:

• $2,000 of the company's securities entitled to vote on the proposal for at least three years;

• $15,000 of the company's securities entitled to vote on the proposal for at least two years; or

• $25,000 of the company's securities entitled to vote on the proposal for at least one year.

. . . .

. . . [T]he amended rule will not include a component based on a percentage of shares owned. We believe that each of the revised thresholds represents a meaningful economic stake or investment interest such that a separate percentage-based threshold is unnecessary. . . .

. . . [A]ggregation of holdings for purposes of meeting the ownership requirements will not be permitted. Instead, each shareholder must satisfy one of the three ownership thresholds to be eligible to submit or co-file a proposal. . . .

. . . .

. . . . The rule will require shareholders that use a representative to submit a proposal for inclusion in a company's proxy statement to provide documentation that:

• Identifies the company to which the proposal is directed;

• Identifies the annual or special meeting for which the proposal is submitted;

• Identifies the shareholder submitting the proposal and the shareholder's designated representative;

• Includes the shareholder's statement authorizing the designated representative to submit the proposal and otherwise act on the shareholder's behalf;

• Identifies the specific topic of the proposal to be submitted;

• Includes the shareholder's statement supporting the proposal; and

• Is signed and dated by the shareholder.

. . . .

Under the amendment, shareholder-proponents will be required to provide the company with a written statement that they are able to meet with the company in person or via teleconference at specified dates and times that are no less than 10 calendar days, nor more than 30 calendar days, after submission of the proposal. . . .

Shareholder-proponents will also be required to provide their contact information and identify specific business days and times (i.e., more than one date and time) that they are available to discuss the proposal. . . . [W]e are modifying the final rule to clarify that the times specified should be during the regular business hours of the company's principal executive offices. If these hours are not disclosed in the company's proxy statement, the shareholder-proponent should identify times between 9:00 a.m. and 5:30 p.m. on business days in the time zone of the company's principal executive offices. . . .

. . . .

The contact information and availability must be the shareholder-proponent's, and not that of the shareholder's representative, if any. . . .

. . . . [S]hareholder-proponents may seek assistance and advice from lawyers, investment advisers, or others to help them draft shareholder proposals and navigate the shareholder-proposal process. The shareholder-proponent's representative also may participate in any discussions between the company and the shareholder. Thus, shareholder-proponents will be able to continue to seek and utilize the assistance of a representative.

. . . .

. . . [T]he submission of multiple proposals by a single proponent constitute[s] an unreasonable exercise of the right to submit proposals at the expense of other shareholders and also may tend to obscure other material matters in the proxy statement of issuers, thereby reducing the effectiveness of such documents. . . .

. . . .

. . . [T]he new rule will state that each person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders' meeting. It also will state that a person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders' meeting. Under the new rule, a shareholder-proponent will not be permitted to submit one proposal in his or her own name and simultaneously serve as a representative to submit a different proposal on another shareholder's behalf for consideration at the same meeting. Likewise, a representative will not be permitted to submit more than one proposal to be considered at the same meeting, even if the representative were to submit each proposal on behalf of different shareholders. . . .

. . . .

. . . . Under amended Rule 14a-8(i)(12), a shareholder proposal will be excludable from a company's proxy materials if it addresses substantially the same subject matter as a proposal, or proposals, previously included in the company's proxy materials within the preceding five calendar years if the most recent vote occurred within the preceding three calendar years and the most recent vote was:

• Less than 5 percent of the votes cast if previously voted on once;

• Less than 15 percent of the votes cast if previously voted on twice; or

• Less than 25 percent of the votes cast if previously voted on three or more times.

. . . .

The final amendments will become effective 60 days after they are published in the Federal Register and will apply to any proposal submitted for an annual or special meeting to be held on or after January 1, 2022. However, a shareholder that has continuously held at least $2,000 of a company's securities entitled to vote on the proposal for at least one year as of January 4, 2021, and continuously maintains at least $2,000 of such securities from January 4, 2021 through the date he or she submits a proposal, will be eligible to submit a proposal to such company, and need not satisfy the amended share ownership thresholds under Rule 14a-8(b)(1)(i)(A)—(C), for an annual or special meeting to be held prior to January 1, 2023. A shareholder relying on this transition provision must follow the procedures set forth in Rule 14a-8(b)(2) to demonstrate that the shareholder (i) continuously held at least $2,000 of the company's securities entitled to vote on the proposal for at least one year as of January 4, 2021 and (ii) continuously held at least $2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company. The shareholder will also be required to provide the company with a written statement that the shareholder intends to continue to hold at least $2,000 of such securities through the date of the shareholders' meeting at which the proposal will be considered. This temporary provision will expire on January 1, 2023. . . .

17 C.F.R. § 240.14a-9

Rel. No. 34-89372, 85 Fed. Reg. 55082 (2020)

We are adopting amendments to Rule 14a-9 that will add to the examples of what may be misleading within the meaning of the rule . . . . [T]he Note to Rule 14a-9 will include new paragraph (e) to provide that the failure to disclose material information regarding proxy voting advice, "such as the proxy voting advice business's methodology, sources of information, or conflicts of interest" could, depending upon particular facts and circumstances, be misleading within the meaning of the rule. . . .

17 C.F.R. § 240.14a-16

Rel. No. 34-88358, 85 Fed. Reg. 25964 (2020)

. . . . New rule 498A under the Securities Act of 1933 will permit a person to satisfy its prospectus delivery obligations under the Securities Act for a variable annuity or variable life insurance contract by sending or giving a summary prospectus to investors and making the statutory prospectus available online. The rule also will consider a person to have met its prospectus delivery obligations for any portfolio companies associated with a variable annuity or variable life insurance contract if the portfolio company prospectuses are posted online.

. . . .

We are adopting . . . conforming amendments to various cross-references in our rules to reflect rule 498A . . . . These cross-references are reflected in our amendments to . . . rule 14a-16 under the Exchange Act. . . .

17 C.F.R. § 240.14d-1

Rel. No. 34-90441, 85 Fed. Reg. 78224 (2020)

. . . . We are adopting amendments to the following rules and forms to permit the use of electronic signatures in signature authentication documents in connection with certain specified filings, including electronic filings on EDGAR: . . . Exchange Act Rule 14d-1, § 240.14d-1. . . .

17 C.F.R. § 240.16a-3

Rel. No. 34-90441, 85 Fed. Reg. 78224 (2020)

. . . . We are adopting amendments to the following rules and forms to permit the use of electronic signatures in signature authentication documents in connection with certain specified filings, including electronic filings on EDGAR: . . . Exchange Act Rule 16a-3, § 240.16a-3. . . .

2021-2022 AMENDMENTS

In addition to the sections discussed below, conforming amendments were made to Rules 14a-2(b), 14a-5(e)(4), and 14a-6 (note 3) in light of new Rule 14a-19. Rule 14a-19(g) specifies situations to which new Rule 14a-19 does not apply. Technical amendments were made to Rules 14a-3(a)(3) and 14a-4(c).

17 C.F.R. § 240.14a-2(b)(9)

Rel. No. 34-95266, 87 Fed. Reg. 43168 (2022)

In 2020, the Securities and Exchange Commission (the "Commission") adopted final rules regarding proxy voting advice (the "2020 Final Rules") provided by proxy advisory firms, or proxy voting advice businesses ("PVABs"). . . .

. . . .

After the Commission adopted the 2020 Final Rules, however, institutional investors and other PVAB clients continued to express strong concerns about the rules' impact on their ability to receive independent proxy voting advice in a timely manner. Furthermore, PVABs continued to develop industry-wide best practices and improve their own business practices to address the concerns that were the impetus for the 2020 Final Rules. The Commission subsequently determined that it was appropriate to reassess the 2020 Final Rules, solicit further public comment, and, where appropriate, recalibrate the rules to preserve the independence of proxy voting advice and ensure that PVABs can deliver advice in a timely manner without passing on higher costs to their clients. . . .

. . . .

The Commission reasonably determined at the time it adopted the 2020 Final Rules that the revised Rule 14a-2(b)(9)(ii) conditions struck an appropriate balance between the risks raised by

commenters and the Commission's interest in facilitating more informed proxy voting decisions. We have revisited our analysis of those issues, however, and are now striking a different and improved policy balance. We believe this new policy balance better alleviates the costs and risks to PVABs, as compared to the 2020 Final Rules, and better addresses PVAB clients' and other investors' concerns about receiving timely and independent advice from PVABs. In particular, we are no longer persuaded that the potential benefits of those conditions sufficiently justify the risks they pose to the cost, timeliness, and independence of proxy voting advice and believe that the final amendments strike a better policy balance. . . .

. . . .

We emphasize that the final amendments do not represent a wholesale reversal of the 2020 Final Rules. Proxy voting advice generally remains a solicitation subject to the proxy rules, including liability under Rule 14a-9 for material misstatements or omissions of fact. Further, in order to rely on the exemptions from the proxy rules' information and filing requirements set forth in Rules 14a-2(b)(1) and (3), PVABs will still have to satisfy Rule 14a-2(b)(9)'s conflicts of interest disclosure requirements. . . .

17 C.F.R. § 240.14a-4(b)

Rel. No. 34-93596, 86 Fed. Reg. 68330 (2021)

. . . . Rule 14a-4(b) mandates . . . the inclusion of an "against" voting option in lieu of a "withhold authority to vote" option on the form of proxy for the election of directors where there is a legal effect to such a vote. It also provides shareholders who neither support nor oppose a director nominee an opportunity to "abstain" (rather than "withhold authority to vote") in a director election governed by a majority voting standard. These changes will provide shareholders with a better understanding of the effect of their votes on the outcome of the election. . . .

We agree with commenters . . . that including an "against" voting option on a proxy card where there is no legal effect to such vote is unnecessarily confusing for shareholders and have therefore amended Rule 14a-4(b) to prohibit such a voting option on the proxy card where such votes have no legal effect. . . .

17 C.F.R. § 240.14a-4(d)

Rel. No. 34-93596, 86 Fed. Reg. 68330 (2021)

We are eliminating the short slate rule . . . for operating companies that will be subject to the final rules mandating the use of universal proxy cards. The revisions we adopt to the bona fide nominee rule, along with the changes to mandate the use of a universal proxy card in all non-exempt director election contests, obviate the need for the short slate rule for operating companies. . . .

. . . .

We are adopting changes to the consent requirement for a bona fide nominee in Rule 14a-

4(d)(1)(ii) . . . . This rule change expands the scope of a nominee's consent in an election contest to include consent to being named in any proxy statement for the applicable meeting. The rule amendment is necessary to permit the universal proxy requirement we adopt in this document, because it expands the concept of consent to allow a nominee to be considered a bona fide nominee when named on any side's proxy card in a director election contest.

As a practical matter and as noted by commenters, it will also permit a dissident soliciting in favor of a proposal (but not its own director nominees) to include some or all of the registrant's nominees on its proxy card. It further allows a dissident conducting a "vote no" campaign without presenting its own slate of competing nominees to permit shareholders to vote for select registrant nominees on the dissident's card. In both of these circumstances, the changes to the bona fide nominee rule will further shareholder enfranchisement. Although including a registrant's nominees on its own proxy card in both of these circumstances will remain optional for the dissident under the final rules, this optionality will not limit shareholders' voting choices. If the dissident does not include some or all registrant nominees on the dissident's card, shareholders will always be able to vote on the registrant's proxy card. Where a dissident includes some but not all registrant nominees on its proxy card, or where it solicits in favor of a proposal but does not include registrant nominees on its proxy card, the dissident should—in order to avoid potential liability under Rule 14a-9 for omission of material facts—disclose the fact that its proxy card does not include some or all of the registrant nominees and that shareholders who wish to vote for nominees not included on the dissident's proxy card may do so on the registrant's proxy card. Such disclosure should mitigate the risk of shareholder confusion.

The final rules maintain the requirement that a bona fide nominee consent to serve if elected. This will ensure that neither party nominates an individual who has not consented to serve if elected as a director. To the extent that any nominee would not serve if elected with other nominees (or would not serve unless certain other nominees were elected), we would expect this material fact to be disclosed prominently in the proxy statement of the party nominating such individual. If one or more of the registrant's nominees will not serve under such circumstances, the registrant should explain in its proxy statement how such vacancies would be filled.

17 C.F.R. § 240.14a-5(c)

Rel. No. 34-93596, 86 Fed. Reg. 68330 (2021)

. . . . The Commission . . . proposed to revise Rule 14a-5(c) to permit the parties to refer to information that would be furnished in a filing of the other party to satisfy their disclosure obligations. . . .

We are adopting, as proposed: . . . the changes to Rule 14a-5(c) described above . . . .

17 C.F.R. § 240.14a-9, Note e

Rel. No. 34-95266, 87 Fed. Reg. 43168 (2022)

The Commission also determined at the time it adopted the 2020 Final Rules that the addition of Note (e) to Rule 14a-9 would clarify the application of the rule to proxy voting advice while balancing concerns regarding heightened legal uncertainty and litigation risk for PVABs. We now conclude, however, that rather than reducing legal uncertainty and confusion, the addition of Note (e) has unnecessarily exacerbated it by creating a risk of confusion regarding the application of Rule 14a-9 to proxy voting advice.

. . . . [O]ur deletion of Note (e) does not affect the scope of Rule 14a-9 or its application to proxy voting advice. As with any other person engaged in a solicitation as defined in Rule 14a-1(l), a PVAB may be liable under Rule 14a-9 for a material misstatement of fact, or an omission of material fact, including, depending on the facts and circumstances, with regard to its methodology, sources of information, or conflicts of interest. . . .

17 C.F.R. § 240.14a-19(a)

Rel. No. 34-93596, 86 Fed. Reg. 68330 (2021)

. . . [A] universal proxy requirement without a minimum solicitation requirement could enable dissidents to capitalize on the registrant's solicitation efforts while relieving dissidents of the time and expense necessary to undertake meaningful solicitation efforts, thereby potentially exposing registrants to frivolous proxy contests. The minimum solicitation requirement establishes a fundamentally important check in that regard.

After careful consideration of the many comments received on this topic, and an updated economic analysis of the costs and benefits of setting the minimum solicitation threshold at various levels, we have decided to adopt the requirement that dissidents solicit holders of shares representing at least 67% of the voting power of shares entitled to vote on the election of directors. We have raised the threshold from a majority of the voting power to 67% of the voting power in response to commenters' concerns that setting the threshold at the proposed majority of the voting power would insufficiently deter the potential for "freeriding" of dissident nominees on the registrant's proxy card. A 67% threshold represents an appropriate balance between achieving the benefits of the universal proxy requirement for shareholders and preventing dissidents from capitalizing on the inclusion of dissident nominees on the registrant's universal proxy card without undertaking meaningful solicitation efforts.

. . . .

We are adopting . . . the requirement that a dissident in a contested director election file its definitive proxy statement with the Commission by the later of 25 calendar days prior to the meeting date or five calendar days after the registrant files its definitive proxy statement.

Due to the typical sequencing of registrant and dissident proxy filings, as well as the fact that

dissidents may choose not to solicit all shareholders, shareholders may not have seen information about the dissident's nominees when they receive a universal proxy card from the registrant. Therefore, a dissident filing deadline is appropriate to help ensure that shareholders who receive a universal proxy card will have access to information about all nominees sufficiently in advance of the meeting. We recognize, however, that some shareholders could receive the registrant's proxy statement and submit their votes on the registrant's universal proxy card before the dissident's proxy statement is available. The 25 calendar day deadline will provide those shareholders with sufficient time to access the dissident's proxy statement, once available, and to change their votes if preferred. . . .

17 C.F.R. § 240.14a-19(b)

Rel. No. 34-93596, 86 Fed. Reg. 68330 (2021)

We are adopting . . . the requirement that a dissident provide the registrant with the names of the nominees for whom it intends to solicit proxies no later than 60 calendar days before the anniversary of the previous year's annual meeting date. If the registrant did not hold an annual meeting during the previous year, or if the date of the meeting has changed by more than 30 calendar days from the previous year, Rule 14a-19(b)(1) . . . requires that the dissident provide notice by the later of 60 calendar days prior to the date of the annual meeting or the tenth calendar day following the day on which public announcement of the date of the annual meeting is first made by the registrant. Rule 14a-19 requires a dissident to indicate its intent to comply with the minimum solicitation threshold in the adopted rules by including in its notice a statement that it intends to solicit the holders of shares representing at least 67% of the voting power of shares entitled to vote on the election of directors. Rule 14a-19 does not require a dissident to provide this notice to the registrant if the information required in the notice has already been provided in a preliminary or definitive proxy statement filed by the dissident by the deadline imposed by the rule. Rule 14a-19 also does not require a dissident to file the notice with the Commission or otherwise make the notice publicly available.

. . . .

. . . . Rule 14a-4(b) mandates, as proposed, the inclusion of an "against" voting option in lieu of a "withhold authority to vote" option on the form of proxy for the election of directors where there is a legal effect to such a vote. It also provides shareholders who neither support nor oppose a director nominee an opportunity to "abstain" (rather than "withhold authority to vote") in a director election governed by a majority voting standard. These changes will provide shareholders with a better understanding of the effect of their votes on the outcome of the election. . . .

17 C.F.R. § 240.14a-19(d)

Rel. No. 34-93596, 86 Fed. Reg. 68330 (2021)

We are adopting Rule 14a-19(d) . . . . [N]otification deadlines are important in a mandatory universal proxy system to provide the parties with a definitive date by which they will have the names of all nominees to compile a universal proxy card. Absent such a requirement for registrants, dissidents could face an informational and timing disadvantage in a universal proxy system.

Registrants would know the names of dissident nominees no later than 60 days prior to the meeting, while dissidents would not necessarily know the names of the registrant nominees until the registrant files its preliminary proxy statement, which is only required to be filed at least 10 calendar days before the definitive proxy statement is first sent to shareholders and may be filed much closer to the meeting date. In that case, dissidents would have to wait to file their definitive proxy statement and proxy card until the registrant filed its preliminary proxy statement with the names of the registrant nominees.

A deadline that is 10 calendar days after the latest date the registrant will receive the dissident's notice of nominees is appropriate because it provides a sufficient period of time for the registrant to consider the dissident's notice, finalize its nominees, and respond with its own notice of nominees. The 10-day period is appropriate, given that the dissident's notice of nominees may be the first indication of a contested solicitation that the registrant receives. Moreover, the 50-day deadline is appropriate for providing dissidents with timely access to the names of registrant nominees for purposes of preparing a universal proxy card. While the deadline for registrants is 10 days after the deadline for dissidents, as a practical matter, dissidents are unlikely to be disadvantaged because registrant nominees are often existing directors about whom information will already be available.

. . . .

We are eliminating the short slate rule . . . for operating companies that will be subject to the final rules mandating the use of universal proxy cards. The revisions we adopt to the bona fide nominee rule, along with the changes to mandate the use of a universal proxy card in all non-exempt director election contests, obviate the need for the short slate rule for operating companies. The amended short slate rule, however, will continue to be available for funds in contested elections, which will not be subject to the universal proxy requirements at this time. If we later adopt rule changes to make the universal proxy requirement applicable to some or all funds, we will consider whether to eliminate the short slate rule completely at that time.

. . . .

We are adopting changes to the consent requirement for a bona fide nominee in Rule 14a-4(d)(1)(ii) . . . . This rule change expands the scope of a nominee's consent in an election contest to include consent to being named in any proxy statement for the applicable meeting. The rule amendment is necessary to permit the universal proxy requirement we adopt in this document, because it expands the concept of consent to allow a nominee to be considered a bona fide nominee when named on any side's proxy card in a director election contest. . . .

17 C.F.R. § 240.14a-19(e)

Rel. No. 34-93596, 86 Fed. Reg. 68330 (2021)

We are adopting Rule 14a-19(e) . . . to require the mandatory use of universal proxy cards by operating companies in all non-exempt director election contests. A mandatory system better protects the shareholder voting franchise, while avoiding the confusion that could result from a voluntary universal proxy system, where one party or the other strategically uses universal proxy only when they perceive it to be to their advantage. The logistics of how votes are cast through the proxy voting system should not affect the substantive voting options of shareholders, and therefore

potential outcomes of the vote. The ability of shareholders to fully exercise their right under state law to elect their preferred candidates through the proxy process represents a key reason to adopt the rule amendments. In particular, we note that under existing rules, institutional and other large shareholders can split their vote between registrant and dissident candidates—albeit with effort and expense—because they can arrange for a representative to attend the shareholder meeting and vote in person. Retail and other smaller investors, however, are unlikely to have the resources or sophistication to be able to do so. The mandatory use of universal proxy cards would address this disparity and remove this impediment to retail investors' ability to exercise their right to vote to the full extent allowed by state law.

Use of a universal proxy card should not be dependent on the potentially self-interested considerations of the contesting parties, the registrant's board of directors, or any controlling shareholders, as it would be under an optional system, or one where a registrant (through, for example, a board or shareholder vote) could opt out of a universal proxy requirement. Mandating a universal proxy is a more efficient and effective means to achieve the objective of allowing shareholders to elect their preferred candidates through the proxy process. Similarly, a universal proxy requirement should not be dependent on the size of a dissident's equity stake in a registrant or the period of time it has maintained its equity position. The purpose of requiring a universal proxy is to allow shareholders to exercise their right to vote for directors in the same manner as they could vote through in-person attendance at a shareholder meeting. Conditioning a universal proxy mandate on a minimum ownership threshold or holding period, as certain commenters advocated, would be contrary to this purpose. Conditioning a universal proxy mandate in such manner would inappropriately subject shareholders' ability to vote in director election contests through the proxy process to conditions that are not imposed upon shareholders' ability to vote if attending a shareholder meeting. . . .

17 C.F.R. § 240.14a-19(f)

Rel. No. 34-93596, 86 Fed. Reg. 68330 (2021)

We are adopting . . . the formatting and presentation requirements for universal proxy cards . . . . As under current rules, each side will disseminate its own proxy card. Each side will be free to choose the design of its card, subject to the requirements of the final rules.

. . . [W]e considered the merits of creating a system whereby the registrant and dissident distribute an identical card, with the only difference being the persons given proxy authority on the card. In our view, such a system would be inferior to the one adopted in this document . . . . While we recognize the potential benefits of more prescriptive requirements for the universal proxy card, the final rules, as adopted, appropriately strike a balance between ensuring clarity and fairness on the one hand while preserving flexibility on the other. Under current proxy rules, each side in a contest has the ability to design and use its own proxy card, subject to the requirements set forth in the proxy rules. This ability will continue under the new rules we adopt. Rather than specifically mandating a set format for each card or requiring that each side's universal proxy card look identical to the other's, we are allowing each party some latitude in designing and distributing its own universal proxy card. However, we note that the font type, style, and size must be consistent for all nominees presented on the same card. This should avoid concerns about bolding or otherwise drawing

attention to certain candidates. The goal of our adopted rules with respect to the formatting and presentation of the universal proxy cards is to ensure clarity and fairness in presentation, so that the cards allow shareholders to make an informed voting decision, while at the same time providing flexibility for each side in a contest to craft its own card, as under current rules. . . .

2022-2023 AMENDMENTS

17 C.F.R. § 240.10b5-1

Rel. No. 34-96492, 87 Fed. Reg. 80362 (2022)

We are concerned that some corporate insiders use Rule 10b5-1 plans in ways that are not consistent with the objectives of the rule, and that harm investors and undermine the integrity of the securities markets. As the use of Rule 10b5-1 plans has become more widespread, commentators have raised concerns that the design of Rule 10b5-1(c)(1) has enabled corporate insiders to trade on the basis of material nonpublic information while avoiding liability under Section 10(b) and Rule 10b-5. Several commenters on the proposals reiterated those concerns. These concerns stem from, among other things, the ability of corporate insiders to adopt multiple Rule 10b5-1 plans at a time when they lack material nonpublic information, and subsequently terminate some of the plans based on later-obtained material nonpublic information (notwithstanding the provision of the current affirmative defense that it is applicable only when the contract, instruction, or plan was entered into in good faith). For example, such plans might take financial positions that authorize trades at price points above and/or below the issuer's current stock price. When the insider becomes aware of material nonpublic information indicating likely future changes in the company's stock price, the insider could cancel the less advantageous plan or plans. Corporate insiders also could adopt multiple Rule 10b5-1 plans that direct trades only at price points above the current share price, anticipating that they will subsequently learn material nonpublic information that would reveal which of the plans would be most profitable. Then, when they become aware of material non-public information, they might cancel the less profitable ones. We are concerned that, in these situations, an insider's awareness of material nonpublic information may still "factor into the trading decision," even if the insider's plans appear to satisfy the requirements of Rule 10b5-1(c)(1).

Furthermore, multiple studies examining Rule 10b5-1 plans have identified potentially abusive activity, including when trades occur shortly after adoption of a plan. Some of these studies have observed, among other things, that trades that occur shortly after adoption of a Rule 10b5-1 plan demonstrate abnormal profitability, which suggests that some corporate insiders may be aware of material nonpublic information at the time of adoption of a Rule 10b5-1 plan that otherwise appears to meet the existing requirements of Rule 10b5-1.

To address all of these concerns, we are amending Rule 10b5-1(c)(1) to apply a cooling-off period on persons other than the issuer, impose a certification requirement on directors and officers, limit the ability of persons other than the issuer to use multiple-overlapping Rule 10b5-1 plans, limit the use of single-trade plans by persons other than the issuer to one such single-trade plan in any 12-month period, and add a condition that all persons entering into a Rule 10b5-1 plan must act in good faith with respect to that plan.

. . . .

After consideration of the comments, we are adopting a modified cooling-off period that will apply to all persons other than the issuer, with directors and "officers" (as defined in Rule 16a-1(f)) of the issuer subject to a longer cooling-off period than applies to other persons (other than the issuer) who rely on the Rule 10b5-1(c)(1) affirmative defense.

Under the final rule, a director or "officer" (as defined in Rule 16a-1(f)) who adopts (including a modification of) a Rule 10b5-1 plan would not be able to rely on the Rule 10b5-1 affirmative defense unless the plan provides that trading under the plan will not begin until the later of (1) 90 days after the adoption of the Rule 10b5-1 plan or (2) two business days following the disclosure of the issuer's financial results in a Form 10-Q or Form 10-K for the fiscal quarter in which the plan was adopted or, for foreign private issuers, in a Form 20-F or Form 6-K that discloses the issuer's financial results (but in any event, the required cooling-off period is subject to a maximum of 120 days after adoption of the plan).

. . . .

. . . . Under the final rule, if a director or "officer" (as defined in Rule 16a-1(f)) of the issuer of the securities adopts a Rule 10b5-1 plan, as a condition to the availability of the affirmative defense, such director or officer will be required to include a representation in the plan certifying that at the time of the adoption of a new or modified Rule 10b5-1 plan: (1) they are not aware of material nonpublic information about the issuer or its securities; and (2) they are adopting the contract, instruction, or plan in good faith and not as part of a plan or scheme to evade the prohibitions of Rule 10b-5.

. . . .

. . . . With respect to multiple overlapping Rule 10b5-1 contracts, instructions or plans, the final amendment will add a condition to the Rule 10b5-1(c)(1) affirmative defense that persons, other than issuers, may not have another outstanding (and may not subsequently enter into any additional) contract, instruction or plan that would qualify for the affirmative defense under the amended Rule 10b5-1 for purchases or sales of any class of securities of the issuer on the open market during the same period. . . .

. . . .

. . . . [W]e are adopting the proposed limitation on single-trade plans with modifications. Consistent with the approach to multiple overlapping plans, the limitation will apply to the Rule 10b5-1 plans of all persons, other than the issuer. As a result, the final rule provides that if the contract, instruction, or plan is designed to effect the open-market purchase or sale of the total amount of securities as a single transaction, the contract, instruction or plan will not receive the benefit of the affirmative defense unless: (1) the person who entered into the contract, instruction, or plan has not, during the prior 12-month period, adopted another contract, instruction, or plan that was designed to effect the open-market purchase or sale of the total amount of securities subject to that plan in a single transaction; and (2) such other contract, instruction, or plan in fact was eligible

to receive the affirmative defense. A person (other than the issuer) will be able to rely on the Rule 10b5-1(c)(1)(ii) affirmative defense for only one single-trade plan during any 12-month period. The defense will only be available for a single-trade plan if the person had not, during the preceding 12-month period, adopted another single-trade plan, where the other plan qualified for the affirmative defense under Rule 10b5-1. . . .

. . . .

. . . . The final rules add the condition that the person who entered into the Rule 10b5-1 contract, instruction, or plan "has acted in good faith with respect to" the contract, instruction, or plan. As discussed above, since the time that Rule 10b5-1 was adopted, we have become concerned that corporate insiders may take actions after adopting a Rule 10b5-1 plan to benefit from material nonpublic information the insider acquires after establishment of the plan. We therefore agree with commenters that this requirement will help ensure that traders do not engage in opportunistic trading in connection with Rule 10b5-1 plans, and will help deter corporate insiders from improperly influencing the timing of corporate disclosures to benefit their trades under such a plan.

Redlined Version of Amendments

2020-2021 AMENDMENTS

17 C.F.R. § 240.14a-1 Definitions.

Unless the context otherwise requires, all terms used in this regulation have the same meanings as in the Act or elsewhere in the general rules and regulations thereunder. In addition, the following definitions apply unless the context otherwise requires:

. . . .

(l) Solicitation.

(1) The terms "solicit" and "solicitation" include:

(i) Any request for a proxy whether or not accompanied by or included in a form of proxy:

(ii) Any request to execute or not to execute, or to revoke, a proxy; or

(iii) The furnishing of a form of proxy or other communication to security holders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy~~.~~; including:

(A) Any proxy voting advice that makes a recommendation to a security holder as to its vote, consent, or authorization on a specific matter for which security holder approval is solicited, and that is furnished by a person that markets its expertise as a provider of such proxy voting advice, separately from other forms of investment advice, and sells such proxy voting advice for a fee.

(B) [Reserved]

(2) The terms do not apply, however, to:

(i) The furnishing of a form of proxy to a security holder upon the unsolicited request of such security holder;

(ii) The performance by the registrant of acts required by § 240.14a-7;

(iii) The performance by any person of ministerial acts on behalf of a person soliciting a proxy; ~~or~~

(iv) A communication by a security holder who does not otherwise engage in a proxy solicitation (other than a solicitation exempt under § 240.14a-2) stating how the security holder intends to vote and the reasons therefor, provided that the communication:

(A) Is made by means of speeches in public forums, press releases, published or broadcast opinions, statements, or advertisements appearing in a broadcast media, or newspaper, magazine or other bona fide publication disseminated on a regular basis,

(B) Is directed to persons to whom the security holder owes a fiduciary duty in connection with the voting of securities of a registrant held by the security holder, or

(C) Is made in response to unsolicited requests for additional information with respect to a prior communication by the security holder made pursuant to this paragraph (l)(2)(iv)~~.~~; or

(v) The furnishing of any proxy voting advice by a person who furnishes such advice only in response to an unprompted request.

17 C.F.R. § 240.14a-2 Solicitations to which § 240.14a-3 to § 240.14a-15 apply.

Sections 240.14a-3 to 240.14a-15, except as specified, apply to every solicitation of a proxy with respect to securities registered pursuant to Section 12 of the Act (15 U.S.C. 78l), whether or not trading in such securities has been

suspended. To the extent specified below, certain of these sections also apply to roll-up transactions that do not involve an entity with securities registered pursuant to Section 12 of the Act.

. . . .

(b) Sections 240.14a-3 to 240.14a-6 (other than paragraphs 14a-6(g) and a-6(p)), § 240.14a-8, § 240.14a-10, and §§ 240.14a-12 to 240.14a-15 do not apply to the following:

. . . .

(9) Paragraphs (b)(1) and (b)(3) of this section shall not be available to a person furnishing proxy voting advice covered by § 240.14a-1(l)(1)(iii)(A) ("proxy voting advice business") unless both of the conditions in (b)(9)(i) and (ii) of this section are satisfied:

(i) The proxy voting advice business includes in its proxy voting advice or in an electronic medium used to deliver the proxy voting advice prominent disclosure of:

(A) Any information regarding an interest, transaction, or relationship of the proxy voting advice business (or its affiliates) that is material to assessing the objectivity of the proxy voting advice in light of the circumstances of the particular interest, transaction, or relationship; and

(B) Any policies and procedures used to identify, as well as the steps taken to address, any such material conflicts of interest arising from such interest, transaction, or relationship; and

(ii) The proxy voting advice business has adopted and publicly disclosed written policies and procedures reasonably designed to ensure that:

(A) Registrants that are the subject of the proxy voting advice have such advice made available to them at or prior to the time when such advice is disseminated to the proxy voting advice business's clients; and

(B) The proxy voting advice business provides its clients with a mechanism by which they can reasonably be expected to become aware of any written statements regarding its proxy voting advice by registrants who are the subject of such advice, in a timely manner before the security holder meeting (or, if no meeting, before the votes, consents, or authorizations may be used to effect the proposed action).

Note 1 to paragraph (b)(9)(ii): For purposes of satisfying the requirement in paragraph (b)(9)(ii)(A) of this section, the proxy voting advice business's written policies and procedures need not require it to make available to the registrant additional versions of its proxy voting advice with respect to the same meeting, vote, consent or authorization, as applicable, if the advice is subsequently revised.

(iii) A proxy voting advice business will be deemed to satisfy the requirement in paragraph (b)(9)(ii)(A) of this section if it has written policies and procedures that are reasonably designed to provide a registrant with a copy of its proxy voting advice, at no charge, no later than the time such advice is disseminated to the proxy voting advice business's clients. Such policies and procedures may include conditions requiring that:

(A) The registrant has filed its definitive proxy statement at least 40 calendar days before the security holder meeting date (or if no meeting is held, at least 40 calendar days before the date the votes, consents, or authorizations may be used to effect the proposed action); and

(B) The registrant has acknowledged that it will only use the copy of the proxy voting advice for its internal purposes and/or in connection with the solicitation and such copy will not be published or otherwise shared except with the registrant's employees or advisers.

(iv) A proxy voting advice business will be deemed to satisfy the requirement in paragraph (b)(9)(ii)(B) of this section if it has written policies and procedures that are reasonably designed to inform clients who receive

proxy voting advice when a registrant that is the subject of such advice notifies the proxy voting advice business that it intends to file or has filed additional soliciting materials with the Commission pursuant to § 240.14a-6 setting forth the registrant's statement regarding the advice, by:

(A) The proxy voting advice business providing notice to its clients on its electronic platform that the registrant intends to file or has filed such additional soliciting materials and including an active hyperlink to those materials on EDGAR when available; or

(B) The proxy voting advice business providing notice to its clients through email or other electronic means that the registrant intends to file or has filed such additional soliciting materials and including an active hyperlink to those materials on EDGAR when available.

(v) Paragraph (b)(9)(ii) of this section does not apply to proxy voting advice to the extent such advice is based on custom voting policies that are proprietary to a proxy voting advice business's client.

(vi) Paragraph (b)(9)(ii) of this section does not apply to any portion of the proxy voting advice that makes a recommendation to a security holder as to its vote, consent, or authorization in a solicitation subject to § 240.14a-3(a):

(A) To approve any transaction specified in § 230.145(a); or

(B) By any person or group of persons for the purpose of opposing a solicitation subject to this regulation by any other person or group of persons.

17 C.F.R. § 240.14a-3 Information to be furnished to security holders.

(b) If the solicitation is made on behalf of the registrant, other than an investment company registered under the Investment Company Act of 1940, and relates to an annual (or special meeting in lieu of the annual) meeting of security holders, or written consent in lieu of such meeting, at which directors are to be elected, each proxy statement furnished pursuant to paragraph (a) of this section shall be accompanied or preceded by an annual report to security holders as follows:

. . . .

(5)

(i) ~~The report shall contain the selected financial data required by Item 301 of Regulation S-K (§ 229.301 of this chapter).~~[Reserved]

(ii) The report shall contain management's discussion and analysis of financial condition and results of operations required by Item 303 of Regulation S-K (§ 229.303 of this chapter).

(iii) The report shall contain the quantitative and qualitative disclosures about market risk required by Item 305 of Regulation S-K (§ 229.305 of this chapter).

17 C.F.R. § 240.14a-8 Shareholder proposals.

(b) Question 2: Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?

(1) ~~In order t~~To be eligible to submit a proposal, you must ~~have continuously held at least $ 2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal. You must continue to hold those securities through the date of the meeting.~~satisfy the following requirements:

(i) You must have continuously held:

(A) At least $2,000 in market value of the company's securities entitled to vote on the proposal for at least three years; or

(B) At least $15,000 in market value of the company's securities entitled to vote on the proposal for at least two years; or

(C) At least $25,000 in market value of the company's securities entitled to vote on the proposal for at least one year; or

(D) The amounts specified in paragraph (b)(3) of this section. This paragraph (b)(1)(i)(D) will expire on the same date that § 240.14a-8(b)(3) expires; and

(ii) You must provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; and

(iii) You must provide the company with a written statement that you are able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal. You must include your contact information as well as business days and specific times that you are available to discuss the proposal with the company. You must identify times that are within the regular business hours of the company's principal executive offices. If these hours are not disclosed in the company's proxy statement for the prior year's annual meeting, you must identify times that are between 9 a.m. and 5:30 p.m. in the time zone of the company's principal executive offices. If you elect to co-file a proposal, all co-filers must either:

(A) Agree to the same dates and times of availability, or

(B) Identify a single lead filer who will provide dates and times of the lead filer's availability to engage on behalf of all co-filers; and

(iv) If you use a representative to submit a shareholder proposal on your behalf, you must provide the company with written documentation that:

(A) Identifies the company to which the proposal is directed;

(B) Identifies the annual or special meeting for which the proposal is submitted;

(C) Identifies you as the proponent and identifies the person acting on your behalf as your representative;

(D) Includes your statement authorizing the designated representative to submit the proposal and otherwise act on your behalf;

(E) Identifies the specific topic of the proposal to be submitted;

(F) Includes your statement supporting the proposal; and

(G) Is signed and dated by you.

(v) The requirements of paragraph (b)(1)(iv) of this section shall not apply to shareholders that are entities so long as the representative's authority to act on the shareholder's behalf is apparent and self-evident such that a reasonable person would understand that the agent has authority to submit the proposal and otherwise act on the shareholder's behalf.

(vi) For purposes of paragraph (b)(1)(i) of this section, you may not aggregate your holdings with those of another shareholder or group of shareholders to meet the requisite amount of securities necessary to be eligible to submit a proposal.

(2) One of the following methods must be used to demonstrate your eligibility to submit a proposal:

(i) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the meeting of shareholders.

(ii) ~~However, i~~ If like many shareholders you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

~~(i)~~**(A)** The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held ~~the securities for at least one year.~~at least $2,000, $15,000, or $25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively. You must also include your own written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting ~~of shareholders~~for which the proposal is submitted; or

~~(ii)~~**(B)** The second way to prove ownership applies only if you were required to file, and have filed, a Schedule 13D (§ 240.13d-101), Schedule 13G (§ 240.13d-102), Form 3 (§ 249.103 of this chapter), Form 4 (§ 249.104 of this chapter) and/or Form 5 (§ 249.105 of this chapter), or amendments to those documents or updated forms, ~~reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins~~ demonstrating that you meet at least one of the share ownership requirements under paragraph (b)(1)(i)(A) through (C) of this section. If you have filed one or more of these documents with the SEC, you may demonstrate your eligibility to submit a proposal by submitting to the company:

~~(A)~~**(1)** A copy of the schedule(s) and/or form(s), and any subsequent amendments reporting a change in your ownership level;

~~(B)~~**(2)** Your written statement that you continuously held ~~the required number of shares for the one-year period as of the date of the statement~~ at least $2,000, $15,000, or $25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively; and

~~(C)~~**(3)** Your written statement that you intend to ~~continue ownership of the shares~~hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the company's annual or special meeting.

(3) If you continuously held at least $2,000 of a company's securities entitled to vote on the proposal for at least one year as of January 4, 2021, and you have continuously maintained a minimum investment of at least $2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company, you will be eligible to submit a proposal to such company for an annual or special meeting to be held prior to January 1, 2023. If you rely on this provision, you must provide the company with your written statement that you intend to continue to hold at least $2,000 of such securities through the date of the shareholders' meeting for which the proposal is submitted. You must also follow the procedures set forth in paragraph (b)(2) of this section to demonstrate that:

(i) You continuously held at least $2,000 of the company's securities entitled to vote on the proposal for at least one year as of January 4, 2021; and

(ii) You have continuously maintained a minimum investment of at least $2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company.

(iii) This paragraph (b)(3) will expire on January 1, 2023.

(c) Question 3: How many proposals may I submit? Each ~~shareholder~~person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders' meeting. A person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders' meeting.

. . . .

(i) Question 9: If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal?

. . . .

(12) Resubmissions: If the proposal ~~deals with~~addresses substantially the same subject matter as ~~another~~a proposal or proposals, ~~that has or have been~~ previously included in the company's proxy materials within the preceding 5 calendar years~~, a company may exclude it from its proxy materials for any meeting held within 3 calendar years of the last time it was included if the proposal received~~ if the most recent vote occurred within the preceding three calendar years and the most recent vote was:

~~**(i)** Less than 3% of the vote if proposed once within the preceding 5 calendar years;~~

~~**(ii)** Less than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years; or~~

~~**(iii)** Less than 10% of the vote on its last submission to shareholders if proposed three times or more previously within the preceding 5 calendar years;~~

(i) Less than 5 percent of the votes cast if previously voted on once;

(ii) Less than 15 percent of the votes cast if previously voted on twice; or

(iii) Less than 25 percent of the votes cast if previously voted on three or more times.

17 C.F.R. § 240.14a-9 False or misleading statements.

NOTE: The following are some examples of what, depending upon particular facts and circumstances, may be misleading within the meaning of this section.

. . . .

e. Failure to disclose material information regarding proxy voting advice covered by § 240.14a-1(l)(1)(iii)(A), such as the proxy voting advice business's methodology, sources of information, or conflicts of interest.

17 C.F.R. § 240.14a-16 Internet availability of proxy materials.

(f)

(1) Except as provided in paragraph (h) of this section, the Notice of Internet Availability of Proxy Materials must be sent separately from other types of security holder communications and may not accompany any other document or materials, including the form of proxy.

(2) Notwithstanding paragraph (f)(1) of this section, the registrant may accompany the Notice of Internet Availability of Proxy Materials with:

. . . .

(iii) In the case of an investment company registered under the Investment Company Act of 1940, the company's prospectus, a summary prospectus that satisfies the requirements of § 230.498(b) or § 230.498A(b) or (c) of this chapter, a Notice under § 270.30e-3 of this chapter, or a report that is required to be transmitted to stockholders by section 30(e) of the Investment Company Act (15 U.S.C. 80a-29(e)) and ~~the rules thereunder~~ its implementing regulations (e.g., §§ 270.30e-1 and 270.30e-2 of this chapter); and

17 C.F.R. § 240.14d-1 Scope of and definitions applicable to Regulations 14D and 14E.

(h) Signatures. Where the Act or the rules, forms, reports or schedules thereunder require a document filed with or furnished to the Commission to be signed, such document shall be manually signed, or signed using either typed signatures or duplicated or facsimile versions of manual signatures. Where typed, duplicated or facsimile signatures are used, each signatory to the filing shall manually or electronically sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in the filing ("authentication document"). Such authentication document shall be executed before or at the time the filing is made and shall be retained by the filer for a period of five years. The requirements set forth in § 232.302(b) must be met with regards to the use of an electronically signed authentication document pursuant to this paragraph (h). Upon request, the filer shall furnish to the Commission or its staff a copy of any or all documents retained pursuant to this section.

17 C.F.R. § 240.16a-3 Reporting transactions and holdings.

(i) Signatures. Where Section 16 of the Act, or the rules or forms thereunder, require a document filed with or furnished to the Commission to be signed, such document shall be manually signed, or signed using either typed signatures or duplicated or facsimile versions of manual signatures. Where typed, duplicated or facsimile signatures are used, each signatory to the filing shall manually or electronically sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in the filing ("authentication document"). Such document shall be executed before or at the time the filing is made and shall be retained by the filer for a period of five years. The requirements set forth in § 232.302(b) must be met with regards to the use of an electronically signed authentication document pursuant to this paragraph (i). Upon request, the filer shall furnish to the Commission or its staff a copy of any or all documents retained pursuant to this section.

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17 C.F.R. § 240.14a-2 Solicitations to which § 240.14a-3 to § 240.14a-15 apply.

Sections 240.14a-3 to 240.14a-15, except as specified, apply to every solicitation of a proxy with respect to securities registered pursuant to Section 12 of the Act (15 U.S.C. 78l), whether or not trading in such securities has been suspended. To the extent specified below, certain of these sections also apply to roll-up transactions that do not involve an entity with securities registered pursuant to Section 12 of the Act.

. . . .

(b) Sections 240.14a-3 to 240.14a-6 (other than paragraphs 14a-6(g) and a-6(p)), § 240.14a-8, § 240.14a-10, and §§ 240.14a-12 to 240.14a-15, and 240.14a-19 do not apply to the following:

. . . .

(9) Paragraphs (b)(1) and (b)(3) of this section shall not be available to a person furnishing proxy voting advice covered by § 240.14a-1(l)(1)(iii)(A) ("proxy voting advice business") unless ~~both of the conditions in (b)(9)(i) and (ii) of this section are satisfied~~ the proxy voting advice business includes in its proxy voting advice or in an electronic medium used to deliver the proxy voting advice prominent disclosure of:

(i) ~~The proxy voting advice business includes in its proxy voting advice or in an electronic medium used to deliver the proxy voting advice prominent disclosure of:~~

~~(A)~~ Any information regarding an interest, transaction, or relationship of the proxy voting advice business (or its affiliates) that is material to assessing the objectivity of the proxy voting advice in light of the circumstances of the particular interest, transaction, or relationship; and

(ii) ~~(B) A~~any policies and procedures used to identify, as well as the steps taken to address, any such material conflicts of interest arising from such interest, transaction, or relationship.~~; and~~

~~**(ii)** The proxy voting advice business has adopted and publicly disclosed written policies and procedures reasonably designed to ensure that:~~

~~**(A)** Registrants that are the subject of the proxy voting advice have such advice made available to them at or prior to the time when such advice is disseminated to the proxy voting advice business's clients; and~~

~~**(B)** The proxy voting advice business provides its clients with a mechanism by which they can reasonably be expected to become aware of any written statements regarding its proxy voting advice by registrants who are the subject of such advice, in a timely manner before the security holder meeting (or, if no meeting, before the votes, consents, or authorizations may be used to effect the proposed action).~~

~~Note 1 to paragraph (b)(9)(ii): For purposes of satisfying the requirement in paragraph (b)(9)(ii)(A) of this section, the proxy voting advice business's written policies and procedures need not require it to make available to the registrant additional versions of its proxy voting advice with respect to the same meeting, vote, consent or authorization, as applicable, if the advice is subsequently revised.~~

~~**(iii)** A proxy voting advice business will be deemed to satisfy the requirement in paragraph (b)(9)(ii)(A) of this section if it has written policies and procedures that are reasonably designed to provide a registrant with a copy of its proxy voting advice, at no charge, no later than the time such advice is disseminated to the proxy voting advice business's clients. Such policies and procedures may include conditions requiring that:~~

~~(A) The registrant has filed its definitive proxy statement at least 40 calendar days before the security holder meeting date (or if no meeting is held, at least 40 calendar days before the date the votes, consents, or authorizations may be used to effect the proposed action); and~~

~~(B) The registrant has acknowledged that it will only use the copy of the proxy voting advice for its internal purposes and/or in connection with the solicitation and such copy will not be published or otherwise shared except with the registrant's employees or advisers.~~

~~**(iv)** A proxy voting advice business will be deemed to satisfy the requirement in paragraph (b)(9)(ii)(B) of this section if it has written policies and procedures that are reasonably designed to inform clients who receive proxy voting advice when a registrant that is the subject of such advice notifies the proxy voting advice business that it intends to file or has filed additional soliciting materials with the Commission pursuant to § 240.14a-6 setting forth the registrant's statement regarding the advice, by:~~

~~(A) The proxy voting advice business providing notice to its clients on its electronic platform that the registrant intends to file or has filed such additional soliciting materials and including an active hyperlink to those materials on EDGAR when available; or~~

~~(B) The proxy voting advice business providing notice to its clients through email or other electronic means that the registrant intends to file or has filed such additional soliciting materials and including an active hyperlink to those materials on EDGAR when available.~~

~~**(v)** Paragraph (b)(9)(ii) of this section does not apply to proxy voting advice to the extent such advice is based on custom voting policies that are proprietary to a proxy voting advice business's client.~~

~~**(vi)** Paragraph (b)(9)(ii) of this section does not apply to any portion of the proxy voting advice that makes a recommendation to a security holder as to its vote, consent, or authorization in a solicitation subject to § 240.14a-3(a):~~

~~**(A)** To approve any transaction specified in § 230.145(a); or~~

~~**(B)** By any person or group of persons for the purpose of opposing a solicitation subject to this regulation by any other person or group of persons.~~

17 C.F.R. § 240.14a-3 Information to be furnished to security holders.

(a) No solicitation subject to this regulation shall be made unless each person solicited is concurrently furnished or has previously been furnished with: . . .

. . . .

(3) A publicly-filed preliminary or definitive proxy statement, not in the form and manner described in § 240.14a-16, containing the information specified in Schedule 14A (§ 240.14a-101), if:

(i) The solicitation relates to a business combination transaction as defined in § 230.165 of this chapter, as well as transactions for cash consideration requiring disclosure under Item 14 of § 240.14a-101~~.~~,or,

(ii) The solicitation may not follow the form and manner described in § 240.14a-16 pursuant to the laws of the state of incorporation of the registrant~~;~~

17 C.F.R. § 240.14a-4 Requirements as to proxy.

(b)

. . . .

(2) A form of proxy that provides for the election of directors shall set forth the names of persons nominated for election as directors, including any person whose nomination by a shareholder or

shareholder group satisfies the requirements of ~~§ 240.14a-11,~~ an applicable state or foreign law provision, or a registrant's governing documents as they relate to the inclusion of shareholder director nominees in the registrant's proxy materials. ~~Such form of proxy shall clearly provide any of the following means for security holders to withhold authority to vote for each nominee:~~

~~**(i)** A box opposite the name of each nominee which may be marked to indicate that authority to vote for such nominee is withheld; or~~

~~**(ii)** An instruction in bold face type which indicates that the security holder may withhold authority to vote for any nominee by lining through or otherwise striking out the name of any nominee; or~~

~~**(iii)** Designated blank spaces in which the security holder may enter the names of nominees with respect to whom the security holder chooses to withhold authority to vote; or~~

~~**(iv)** Any other similar means, provided that clear instructions are furnished indicating how the security holder may withhold authority to vote for any nominee.~~

~~Such form of proxy also may provide a means for the security holder to grant authority to vote for the nominees set forth, as a group, provided that there is a similar means for the security holder to withhold authority to vote for such group of nominees. Any such form of proxy which is executed by the security holder in such manner as not to withhold authority to vote for the election of any nominee shall be deemed to grant such authority, provided that the form of proxy so states in bold face type. Means to grant authority to vote for any nominees as a group or to withhold authority for any nominees as a group may not be provided if the form of proxy includes one or more shareholder nominees in accordance with § 240.14a-11, an applicable state or foreign law provision, or a registrant's governing documents as they relate to the inclusion of shareholder director nominees in the registrant's proxy materials.~~

~~Instructions.~~

~~**1.** Paragraph (2) does not apply in the case of a merger, consolidation or other plan if the election of directors is an integral part of the plan.~~

~~**2.** If applicable state law gives legal effect to votes cast against a nominee, then in lieu of, or in addition to, providing a means for security holders to withhold authority to vote, the registrant should provide a similar means for security holders to vote against each nominee.~~

(3) Except as otherwise provided in § 240.14a–19, a form of proxy that provides for the election of directors may provide a means for the security holder to grant authority to vote for the nominees set forth, as a group, provided that there is a similar means for the security holder to withhold authority to vote for such group of nominees (or, when applicable state law gives legal effect to votes cast against a nominee, a similar means for the security holder to vote against such group of nominees and a means for security holders to abstain from voting for such group of nominees). Any such form of proxy which is executed by the security holder in such manner as not to withhold authority to vote for the election of any nominee, or not to grant authority to vote against the election of any nominee, shall be deemed to grant authority to vote for the election of any nominee, provided that the form of proxy so states in bold-face type. Means to grant authority to vote for any nominees as a group or to withhold authority for any nominees as a group or to vote against any nominees as a group may not be provided if the form of proxy includes one or more shareholder nominees in accordance with an applicable state or foreign law provision, or a registrant’s governing documents as they relate to the inclusion of shareholder director nominees in the registrant’s proxy materials.

(4) When applicable state law gives legal effect to votes cast against a nominee, then in lieu of providing a means for security holders to withhold authority to vote, the form of proxy shall provide a means for security holders to vote against each nominee and a means for security holders to abstain from voting. When applicable state law does not give legal effect to votes cast against a nominee, such form of proxy shall not provide a means for security holders to vote against any nominee and such form of proxy shall clearly provide any of the following means for security holders to withhold authority to vote for each nominee:

(i) A box opposite the name of each nominee which may be marked to indicate that authority to vote for such nominee is withheld; or

(ii) An instruction in bold-face type which indicates that the security holder may withhold authority to vote for any nominee by lining through or otherwise striking out the name of any nominee; or

(iii) Designated blank spaces in which the security holder may enter the names of nominees with respect to whom the security holder chooses to withhold authority to vote; or

(iv) Any other similar means, provided that clear instructions are furnished indicating how the security holder may withhold authority to vote for any nominee.

Instruction 1 to paragraphs (b)(2), (3), and (4). Paragraphs (b)(2), (3), and (4) do not apply in the case of a merger, consolidation or other plan if the election of directors is an integral part of the plan.

(3~~3~~5) A form of proxy which provides for a shareholder vote on the frequency of shareholder votes to approve the compensation of executives required by section 14A(a)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78n-1(a)(2)) shall provide means whereby the person solicited is afforded an opportunity to specify by boxes a choice among 1, 2 or 3 years, or abstain.

(c) A proxy may confer discretionary authority to vote on any of the following matters:

. . . .

(5) The election of any person to any office for which a bona fide nominee is named in ~~the~~a proxy statement and such nominee is unable to serve or for good cause will not serve. . . .

(d) No proxy shall confer authority.

(1) To vote for the election of any person to any office for which a bona fide nominee is not named in the proxy statement~~,~~:

(i) A person shall not be deemed to be a bona fide nominee and shall not be named as such unless the person has consented to being named in a proxy statement relating to the registrant's next annual meeting of shareholders at which directors are to be elected (or a special meeting in lieu of such meeting) and to serve if elected.

(ii) Notwithstanding paragraph (d)(1)(i) of this section, if the registrant is an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) or a business development company as defined by section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(48), a person shall not be deemed to be a bona fide nominee and shall not be named as such unless the person has consented to being named in the proxy statement and to serve if elected. Provided, however, that nothing in this section shall prevent any person soliciting

in support of nominees who, if elected, would constitute a minority of the board of directors of an investment company registered under the Investment Company Act of 1940 or a business development company as defined by section 2(a)(48) of the Investment Company Act of 1940, from seeking authority to vote for nominees named in the registrant's proxy statement, so long as the soliciting party:

(A) Seeks authority to vote in the aggregate for the number of director positions then subject to election;

(B) Represents that it will vote for all the registrant nominees, other than those registrant nominees specified by the soliciting party;

(C) Provides the security holder an opportunity to withhold authority with respect to any other registrant nominee by writing the name of that nominee on the form of proxy; and

(D) States on the form of proxy and in the proxy statement that there is no assurance that the registrant's nominees will serve if elected with any of the soliciting party's nominees; . . . .

(2) To vote at any annual meeting other than the next annual meeting (or any adjournment thereof) to be held after the date on which the proxy statement and form of proxy are first sent or given to security holders~~,~~ ;

(3) To vote with respect to more than one meeting (and any adjournment thereof) or more than one consent solicitation; or

(4) To consent to or authorize any action other than the action proposed to be taken in the proxy statement, or matters referred to in paragraph (c) of this ~~rule~~section. ~~A person shall not be deemed to be a bona fide nominee and he shall not be named as such unless he has consented to being named in the proxy statement and to serve if elected. Provided, however, That nothing in this section 240.14a-4 shall prevent any person soliciting in support of nominees who, if elected, would constitute a minority of the board of directors, from seeking authority to vote for nominees named in the registrant's proxy statement, so long as the soliciting party:~~

~~**(i)** Seeks authority to vote in the aggregate for the number of director positions then subject to election;~~

~~**(ii)** Represents that it will vote for all the registrant nominees, other than those registrant nominees specified by the soliciting party;~~

~~**(iii)** Provides the security holder an opportunity to withhold authority with respect to any other registrant nominee by writing the name of that nominee on the form of proxy; and~~

~~**(iv)** States on the form of proxy and in the proxy statement that there is no assurance that the registrant's nominees will serve if elected with any of the soliciting party's nominees~~.

17 C.F.R. § 240.14a-5 Presentation of information in proxy statement.

. . . .

(c) Any information contained in any other proxy soliciting material which has been or will be furnished to each person solicited in connection with the same meeting or subject matter may be omitted from the proxy statement, if a clear reference is made to the particular document containing such information.

. . . .

(e) All proxy statements shall disclose, under an appropriate caption, the following dates:

. . . .

(2) The date after which notice of a shareholder proposal submitted outside the processes of § 240.14a-8 is considered untimely, either calculated in the manner provided by § 240.14a-4(c)(1) or as established by the registrant's advance notice provision, if any, authorized by applicable state law; ~~and~~

(3) The deadline for submitting nominees for inclusion in the registrant's proxy statement and form of proxy pursuant to § 240.14a-11, an applicable state or foreign law provision, or a registrant's governing documents as they relate to the inclusion of shareholder director nominees in the registrant's proxy materials for the registrant's next annual meeting of shareholders~~.~~,and

(4) The deadline for providing notice of a solicitation of proxies in support of director nominees other than the registrant's nominees pursuant to § 240.14a–19 for the registrant's next annual meeting unless the registrant is an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) or a business development company as defined by section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)).

17 C.F.R. § 240.14a-6 Filing requirements.

. . . .

NOTE 3 to paragraph (a): Solicitation in Opposition. For purposes of the exclusion from filing preliminary proxy material, a "solicitation in opposition" includes: (a) Any solicitation opposing a proposal supported by the registrant; and (b) any solicitation supporting a proposal that the registrant does not expressly support, other than a security holder proposal included in the registrant's proxy material pursuant to ~~Rule 14a-8 (~~§ 240.14a-8~~of this chapter).~~; and (c) any solicitation subject to § 240.14a-19. The inclusion of a security holder proposal in the registrant's proxy material pursuant to Rule 14a-8 does not constitute a "solicitation in opposition," even if the registrant opposes the proposal and/or includes a statement in opposition to the proposal. The inclusion of a shareholder nominee in the registrant's proxy materials pursuant to ~~§ 240.14a-11,~~ an applicable state or foreign law provision, or a registrant's governing documents as they relate to the inclusion of shareholder director nominees in the registrant's proxy materials does not constitute a "solicitation in opposition" for purposes of ~~Rule 14a-6(a) (§ 240.14a-6(a))~~paragraph (a) of this section, even if the registrant opposes the shareholder nominee and solicits against the shareholder nominee and in favor of a registrant nominee.

17 C.F.R. § 240.14a-9 False or misleading statements.

NOTE: The following are some examples of what, depending upon particular facts and circumstances, may be misleading within the meaning of this section.

. . . .

~~**e.** Failure to disclose material information regarding proxy voting advice covered by § 240.14a-1(l)(1)(iii)(A), such as the proxy voting advice business's methodology, sources of information, or conflicts of interest.~~

17 C.F.R. § 240.14a-19 Solicitation of proxies in support of director nominees other than the registrant's nominees.

(a) No person may solicit proxies in support of director nominees other than the registrant's nominees unless such person:

(1) Provides notice to the registrant in accordance with paragraph (b) of this section unless the information required by paragraph (b) of this section has been provided in a preliminary or definitive proxy statement previously filed by such person;

(2) Files a definitive proxy statement with the Commission in accordance with § 240.14a–6(b) by the later of:

(i) 25 calendar days prior to the security holder meeting date; or

(ii) Five (5) calendar days after the date that the registrant files its definitive proxy statement; and

(3) Solicits the holders of shares representing at least 67% of the voting power of shares entitled to vote on the election of directors and includes a statement to that effect in the proxy statement or form of proxy.

(b) The notice shall:

(1) Be postmarked or transmitted electronically to the registrant at its principal executive office no later than 60 calendar days prior to the anniversary of the previous year's annual meeting date, except that, if the registrant did not hold an annual meeting during the previous year, or if the date of the meeting has changed by more than 30 calendar days from the previous year, then notice must be provided by the later of 60 calendar days prior to the date of the annual meeting or the 10th calendar day following the day on which public announcement of the date of the annual meeting is first made by the registrant;

(2) Include the names of all nominees for whom such person intends to solicit proxies; and

(3) Include a statement that such person intends to solicit the holders of shares representing at least 67% of the voting power of shares entitled to vote on the election of directors in support of director nominees other than the registrant's nominees.

(c) If any change occurs with respect to such person's intent to solicit the holders of shares representing at least 67% of the voting power of shares entitled to vote on the election of directors in support of director nominees other than the registrant's nominees or with respect to the names of such person's nominees, such person shall notify the registrant promptly.

(d) A registrant shall notify the person conducting a proxy solicitation subject to this section of the names of all nominees for whom the registrant intends to solicit proxies unless the names have been provided in a preliminary or definitive proxy statement previously filed by the registrant. The notice shall be postmarked or transmitted electronically no later than 50 calendar days prior to the anniversary of the previous year's annual meeting date, except that, if the registrant did not hold an annual meeting during the previous year, or if the date of the meeting has changed by more than 30 calendar days from the previous year, then notice must be provided no later than 50 calendar days prior to the date of the annual meeting. If any change occurs with respect to the names of the registrant's nominees, the registrant shall notify the person conducting a proxy solicitation subject to this section promptly.

(e) Notwithstanding the provisions of § 240.14a–4(b)(2), if any person is conducting a proxy solicitation subject to this section, the form of proxy of the registrant and the form of proxy of any person soliciting proxies pursuant to this section shall:

(1) Set forth the names of all persons nominated for election by the registrant and by any person or group of persons that has complied with this section and the name of any person whose nomination by a shareholder or shareholder group satisfies the requirements of an applicable state or foreign law provision or a registrant's governing documents as they relate to the inclusion of shareholder director

nominees in the registrant's proxy materials;

(2) Provide a means for the security holder to grant authority to vote for the nominees set forth;

(3) Clearly distinguish between the nominees of the registrant, the nominees of the person or group of persons that has complied with this section and the nominees of any shareholder or shareholder group whose nominees are included in a registrant's proxy materials pursuant to the requirements of an applicable state or foreign law provision or a registrant's governing documents;

(4) Within each group of nominees referred to in paragraph (e)(3) of this section, list nominees in alphabetical order by last name;

(5) Use the same font type, style and size for all nominees;

(6) Prominently disclose the maximum number of nominees for which authority to vote can be granted; and

(7) Prominently disclose the treatment and effect of a proxy executed in a manner that grants authority to vote for the election of fewer or more nominees than the number of directors being elected and the treatment and effect of a proxy executed in a manner that does not grant authority to vote with respect to any nominees.

(f) If any person is conducting a proxy solicitation subject to this section, the form of proxy of the registrant and the form of proxy of any person soliciting proxies pursuant to this section may provide a means for the security holder to grant authority to vote for the nominees of the registrant set forth, as a group, and a means for the security holder to grant authority to vote for the nominees of any other soliciting person set forth, as a group, provided that there is a similar means for the security holder to withhold authority to vote for such groups of nominees unless the number of nominees of the registrant or of any other soliciting person is less than the number of directors being elected. Means to grant authority to vote for any nominees as a group or to withhold authority for any nominees as a group may not be provided if the form of proxy includes one or more shareholder nominees in accordance with an applicable state or foreign law provision or a registrant's governing documents as they relate to the inclusion of shareholder director nominees in the registrant's proxy materials.

(g) This section shall not apply to:

(1) A consent solicitation; or

(2) A solicitation in connection with an election of directors at an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) or a business development company as defined by section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)).

Instruction 1 to paragraphs (b)(1) and (d). Where the deadline falls on a Saturday, Sunday, or holiday, the deadline will be treated as the first business day following the Saturday, Sunday, or holiday.

Instruction 2 to paragraph (f). Where applicable state law gives legal effect to votes cast against a nominee, the form of proxy may provide a means for the security holder to grant authority to vote for the nominees of the registrant set forth, as a group, and a means for the security holder to grant authority to vote for the nominees of any other soliciting person set forth, as a group, provided that, in lieu of the ability to withhold authority to vote as a group, there is a similar means for the security holder to vote against such group of nominees (as well as a means for security holders to abstain from voting for such group of nominees).

2022-2023 AMENDMENTS

§ 240.10b5-1 Trading "on the basis of" material nonpublic information in insider trading cases.

~~Preliminary Note to § 240.10b5-1: This provision defines when a purchase or sale constitutes trading "on the basis of" material nonpublic information in insider trading cases brought under Section 10(b) of the Act and Rule 10b-5 thereunder. The law of insider trading is otherwise defined by judicial opinions construing Rule 10b-5, and Rule 10b5-1 does not modify the scope of insider trading law in any other respect.~~

(a) Manipulative or deceptive devices~~General~~. The "manipulative or~~and~~ deceptive device[s] or contrivance[s]" prohibited by Section 10(b) of the Act (15 U.S.C. 78j) and § 240.10b–5 (Rule 10b–5) thereunder include, among other things, the purchase or sale of a security of any issuer, on the basis of material nonpublic information about that security or issuer, in breach of a duty of trust or confidence that is owed directly, indirectly, or derivatively, to the issuer of that security or the shareholders of that issuer, or to any other person who is the source of the material nonpublic information.

(b) Awareness of material nonpublic information~~Definition of "on the basis of"~~. Subject to the affirmative defenses in paragraph (c) of this section, a purchase or sale of a security of an issuer is ~~"~~on the basis of~~"~~ material nonpublic information for purposes of Section 10(b) and Rule 10b–5~~about that security or issuer~~ if the person making the purchase or sale was aware of the material nonpublic information when the person made the purchase or sale. The law of insider trading is otherwise defined by judicial opinions construing Rule 10b–5, and Rule 10b5–1 does not modify the scope of insider trading law in any other respect.

(c) Affirmative defenses.

(1)

(i) Subject to paragraph (c)(1)(ii) of this section, a person's purchase or sale is not ~~"~~on the basis of~~"~~ material nonpublic information if the person making the purchase or sale demonstrates that:

(A) Before becoming aware of the information, the person had:

(1) Entered into a binding contract to purchase or sell the security,

(2) Instructed another person to purchase or sell the security for the instructing person's account, or

(3) Adopted a written plan for trading securities;

(B) The contract, instruction, or plan described in paragraph (c)(1)(i)(A) of this ~~s~~Section:

(1) Specified the amount of securities to be purchased or sold and the price at which and the date on which the securities were to be purchased or sold;

(2) Included a written formula or algorithm, or computer program, for determining the amount of securities to be purchased or sold and the price at which and the date on which the securities were to be purchased or sold; or

(3) Did not permit the person to exercise any subsequent influence over how, when, or whether to effect purchases or sales; provided, in addition, that any other person who, pursuant to the contract, instruction, or plan, did exercise such influence must not have been aware of the material nonpublic information when doing so; and

(C) The purchase or sale that occurred was pursuant to the contract, instruction, or plan. A

purchase or sale is not "pursuant to a contract, instruction, or plan" if, among other things, the person who entered into the contract, instruction, or plan altered or deviated from the contract, instruction, or plan to purchase or sell securities (whether by changing the amount, price, or timing of the purchase or sale), or entered into or altered a corresponding or hedging transaction or position with respect to those securities.

(ii) Paragraph (c)(1)(i) of this section is applicable only when:

(A) ~~t~~The contract, instruction, or plan to purchase or sell securities was given or entered into in good faith and not as part of a plan or scheme to evade the prohibitions of this section, and the person who entered into the contract, instruction, or plan has acted in good faith with respect to the contract, instruction or plan;~~.~~

(B) If the person who entered into the contract, instruction, or plan is:

(1) A director or officer (as defined in § 240.16a–1(f) (Rule 16a–1(f)) of the issuer, no purchases or sales occur until expiration of a cooling-off period consisting of the later of:

(i) Ninety days after the adoption of the contract, instruction, or plan or

(ii) Two business days following the disclosure of the issuer's financial results in a Form 10–Q (§ 249.308a of this chapter) or Form 10–K (§ 249.310 of this chapter) for the completed fiscal quarter in which the plan was adopted or, for foreign private issuers, in a Form 20–F (§ 249.220f of this chapter) or Form 6–K (§ 249.306 of this chapter) that discloses the issuer's financial results (but, in any event, this required cooling-off period is subject to a maximum of 120 days after adoption of the contract, instruction, or plan); or

(2) Not the issuer and not a director or officer (as defined in § 240.16a–1(f) (Rule 16a–1(f)) of the issuer, no purchases or sales occur until the expiration of a cooling-off period that is 30 days after the adoption of the contract, instruction or plan;

(C) If the person who entered into a plan as described in paragraph (c)(1)(i)(A)(3) of this section is a director or officer (as defined in Rule 16a–1(f) (§ 240.16a–1(f)) of the issuer of the securities, such director or officer included a representation in the plan certifying that, on the date of adoption of the plan:

(1) The individual director or officer is not aware of any material nonpublic information about the security or issuer; and

(2) The individual director or officer is adopting the plan in good faith and not as part of a plan or scheme to evade the prohibitions of this section;

(D) The person (other than the issuer) who entered into the contract, instruction, or plan has no outstanding (and does not subsequently enter into any additional) contract, instruction, or plan that would qualify for the affirmative defense under paragraph (c)(1) of this section for purchases or sales of the issuer's securities on the open market; except that:

(1) For purposes of this paragraph (c)(1)(ii)(D), a series of separate contracts with different broker-dealers or other agents acting on behalf of the person (other than the issuer) to execute trades thereunder may be treated as a single "plan," provided that the individual constituent contracts with each broker-dealer or other agent, when taken together as a whole, meet all of the applicable conditions of and remain collectively subject to the provisions of this rule, including that a modification of any individual contract acts as

modification of the whole contract, instruction of plan, as defined in paragraph (c)(1)(iv) of this section. The substitution of a broker-dealer or other agent acting on behalf of the person (other than the issuer) for another broker-dealer that is executing trades pursuant to a contract, instruction or plan shall not be a modification of the contract, instruction, or plan (as defined in paragraph (c)(1)(iv) of this section) as long as the purchase or sales instructions applicable to the substitute and substituted broker are identical with respect to the prices of securities to be purchased or sold, dates of the purchases or sales to be executed, and amount of securities to be purchased or sold; and

(2) The person (other than the issuer) may have one later-commencing contract, instruction, or plan for purchases or sales of any securities of the issuer on the open market under which trading is not authorized to begin until after all trades under the earlier-commencing contract, instruction, or plan are completed or expired without execution; provided, however, that if the first trade under the later-commencing contract, instruction, or plan is scheduled during the Effective Cooling–Off Period, the later-commencing contract, instruction, or plan may not rely on this paragraph (c)(1)(ii)(D)(2). For purposes of this paragraph (c)(1)(ii)(D)(2), "Effective Cooling–Off Period" means the cooling-off period that would be applicable under paragraph (c)(1)(ii)(B) of this section with respect to the later-commencing contract, instruction, or plan if the date of adoption of the later-commencing contract, instruction, or plan were deemed to be the date of termination of the earlier-commencing contract, instruction, or plan; and

(3) A contract, instruction, or plan providing for an eligible sell-to-cover transaction shall not be considered an outstanding or additional contract, instruction, or plan under paragraph (c)(1)(ii)(D) of this section, and such eligible sell-to-cover transaction shall not be subject to the limitation under paragraph (c)(1)(ii)(D) of this section. A contract, instruction, or plan provides for an eligible sell-to-cover transaction where the contract, instruction, or plan authorizes an agent to sell only such securities as are necessary to satisfy tax withholding obligations arising exclusively from the vesting of a compensatory award, such as restricted stock or stock appreciation rights, and the insider does not otherwise exercise control over the timing of such sales; and

(E) With respect to persons (other than the issuer), if the contract, instruction, or plan does not provide for an eligible sell-to-cover transaction as described in paragraph (c)(1)(ii)(D)(3) of this section and is designed to effect the open-market purchase or sale of the total amount of securities as a single transaction, the person who entered into the contract, instruction, or plan has not during the prior 12–month period adopted a contract, instruction, or plan that:

(1) was designed to effect the open-market purchase or sale of all of the securities covered by such prior contract, instruction or plan, in a single transaction; and

(2) Would otherwise qualify for the affirmative defense under paragraph (c)(1) of this section.

(iii) This paragraph (c)(1)(iii) defines certain terms as used in paragraph (c) of this Section.

(A) Amount. "Amount" means either a specified number of shares or other securities or a specified dollar value of securities.

(B) Price. "Price" means the market price on a particular date or a limit price, or a particular dollar price.

(C) Date. "Date" means, in the case of a market order, the specific day of the year on which the

order is to be executed (or as soon thereafter as is practicable under ordinary principles of best execution). “Date” means, in the case of a limit order, a day of the year on which the limit order is in force.

(iv) Any modification or change to the amount, price, or timing of the purchase or sale of the securities underlying a contract, instruction, or written plan as described in paragraph (c)(1)(i)(A) of this section is a termination of such contract, instruction, or written plan, and the adoption of a new contract, instruction, or written plan. A plan modification, such as the substitution or removal of a broker that is executing trades pursuant to a Rule 10b5–1 arrangement on behalf of the person, that changes the price or date on which purchases or sales are to be executed, is a termination of such plan and the adoption of a new plan.

(2) A person other than a natural person also may demonstrate that a purchase or sale of securities is not “on the basis of” material nonpublic information if the person demonstrates that:

(i) The individual making the investment decision on behalf of the person to purchase or sell the securities was not aware of the information; and

(ii) The person had implemented reasonable policies and procedures, taking into consideration the nature of the person’s business, to ensure that individuals making investment decisions would not violate the laws prohibiting trading on the basis of material nonpublic information. These policies and procedures may include those that restrict any purchase, sale, and causing any purchase or sale of any security as to which the person has material nonpublic information, or those that prevent such individuals from becoming aware of such information.