Summer 2015 Update For

2014 STATUTORY SUPPLEMENT TO

CLOSELY HELD BUSINESS ORGANIZATIONS

Cases, Materials, and Problems

Second Edition

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DELAWARE GENERAL CORPORATION LAW

Two bills passed by the Delaware Legislature have made changes to the Delaware General Corporation Law since the Statutory Supplement (2014) was published. The following material identifies and discusses the significance of the changes. The two bills, with a redlined version of the amendments to the affected sections, follow.

Summary of Statutory Changes

H.B. No. 329 (2014)

Section 103(a)(1) has been amended to remove any limitation on the reason for the incorporator's unavailability.

Section 108 has been amended to provide a means for the incorporator's actions required by this section to be taken in the event the incorporator is unavailable to act.

Section 141(f) has been amended to clarify that a person may execute a consent, and that such consent may be placed in escrow (or similar arrangement), to become effective at a later time, even if the person is not a director at the time the consent is executed, so long as the escrow period does not exceed 60 days.

Sections 218(a) and (b) have been amended to provide that a voting trust agreement, or any amendment thereto, may be delivered to the principal place of business of the corporation in lieu of the registered office of the corporation.

Section 228(c) has been amended to clarify that a person may execute a consent, and that such consent may be placed in escrow (or similar arrangement), to become effective at a later time even if the person is not a stockholder at the time the consent is executed and that the later effective time would then be treated as the date the consent was signed. In contrast to the similar amendment made to Section 141(f) (addressing consents of directors) the amendment to Section 228(c) does not expressly state the signatory need not be a stockholder when the consent is signed. The reason for this difference is that a person executing a written consent need not be a stockholder at the time of execution under current law, but only on the relevant record date. The amendment does not affect the requirement that the consent bear the actual date of signature.

Section 242 has been amended to authorize corporations to file certificates of amendment that either change the corporate name or delete historical provisions relating to the corporation's incorporator, initial board of directors or initial subscribers for shares and provisions relating to previously effected changes to stock, in each case without submitting the amendment for stockholder approval. The changes also eliminate the requirement that the notice of a meeting at which an amendment is to be voted on contain a copy of the amendment itself or a brief summary thereof, but only when notice constitutes a notice of internet availability of proxy materials for Securities Exchange Act purposes.

Section 251(h) has been amended in several respects, including revisions to (i) eliminate Section 4, which precluded the use of Section 251(h) when a party to the merger agreement is an "interested stockholder" (as that term is defined in Section 203), (ii) clarify when a corporation consummating an offer referred to in Section 251(h) is entitled to effect a merger pursuant to such section, and (iii) clarify that shares of stock tendered into an offer referred to in Section 251(h) are not counted for purposes of Section 251(h) unless irrevocably accepted for exchange and received by the depositary prior to expiration of such offer. The amendments do not change the fiduciary duties of directors in connection with mergers effected pursuant to Section 251(h) or the level of judicial scrutiny that will apply to the decision to enter into such a merger agreement, each of which will be determined based on the common law of fiduciary duty, including the duty of loyalty.

The effective date of these amendments is August 1, 2014, with a limitation that the amendments to Section 251 are effective only for merger agreements entered into on or after that date.

S.B. 75 (2015)

Section 102(a)(1) has been amended to enable the Division of Corporations in the Department of State to waive the requirement under Section 102(a)(1)(ii) in certain limited circumstances.

In ATP Tour, Inc. v. Deutscher Tennis Bund, 91 A.3d 554 (Del. 2014), the Delaware Supreme Court upheld as facially valid a bylaw imposing liability for certain legal fees of the nonstock corporation on certain members who participated in the litigation. In combination with the amendments to Sections 109(b) and 114(b)(2), new subsection (f) of Section 102 does not disturb that ruling in relation to nonstock corporations. In order to preserve the efficacy of the enforcement of fiduciary duties in stock corporations, however, new subsection (f) would invalidate a provision in the certificate of incorporation of a stock corporation that purports to impose liability upon a stockholder for the attorneys' fees or expenses of the corporation or any other party in connection with an internal corporate claim, as defined in new Section 115. New subsection (f) is not intended, however, to prevent the application of such provisions pursuant to a stockholders agreement or other writing signed by the stockholder against whom the provision is to be enforced.

Like the concurrent amendment to Section 102, the new last sentence of subsection (b) of Section 109 would invalidate a provision in the bylaws of a stock corporation that purports to impose liability upon a stockholder for the attorneys' fees or expenses of the corporation or any other party in connection with an internal corporate claim, as defined in new Section 115. The new last sentence of subsection (b) is not intended, however, to prevent the application of any provision in a stockholders agreement or other writing signed by the stockholder against whom the provision is to be enforced.

The amendment to Section 114 has the effect of avoiding the application to nonstock corporations of new Section 102(f) and the new last sentence of Section 109(b).

New Section 115 confirms, as held in Boilermakers Local 154 Retirement Fund v. Chevron Corporation, 73 A.3d 934 (Del. Ch. 2013), that the certificate of incorporation and bylaws of the corporation may effectively specify, consistent with applicable jurisdictional requirements, that claims arising under the DGCL, including claims of breach of fiduciary duty by current or former directors or officers or controlling stockholders of the corporation, or persons who aid and abet such a breach, must be brought only in the courts (including the federal court) in this State. Section 115 does not address the validity of a provision of the certificate of incorporation or bylaws that selects a forum other than the Delaware courts as an additional forum in which internal corporate claims may be brought, but it invalidates such a provision selecting the courts in a different State, or an arbitral forum, if it would preclude litigating such claims in the Delaware courts. Section 115 is not intended, however, to prevent the application of any such provision in a stockholders agreement or other writing signed by the stockholder against whom the provision is to be enforced. Section 115 is not intended to foreclose evaluation of whether the specific terms and manner of adoption of a particular provision authorized by Section 115 comport with any relevant fiduciary obligation or operate reasonably in the circumstances presented. For example, such a provision may not be enforceable if the Delaware courts lack jurisdiction over indispensable parties or core elements of the subject matter of the litigation. Section 115 is also not intended to authorize a provision that purports to foreclose suit in a federal court based on federal jurisdiction, nor is Section 115 intended to limit or expand the jurisdiction of the Court of Chancery or the Superior Court.

The amendment to Section 152 clarifies that the board of directors may authorize stock to be issued in one or more transactions in such numbers and at such times as is determined by a person or body other than the board of directors or a committee of the board, provided the resolution of the board of directors or committee of the board authorizing the issuance fixes the maximum number of shares that may be issued, the time frame during which such shares may be issued and establishes a minimum amount of consideration for which such shares may be issued. The minimum amount of consideration cannot be less than the consideration required pursuant to Section 153. The amendment further clarifies that a formula by which the consideration for stock is determined may include reference to or be made dependent upon the operation of extrinsic facts, such as, without limitation, market prices on one or more dates or averages of market prices on one or more dates. Among other things, without limitation, the amendment is intended to make clear that the board of directors may authorize stock to be issued pursuant to "at the market" programs without having to separately authorize each individual stock issuance pursuant to such program.

The amendment to Section 157(b) clarifies that a formula by which the consideration for stock issued upon the exercise of rights and options in respect of stock is determined may include reference to or be made dependent upon the operation of extrinsic facts, such as market prices on one or more dates, or averages of market prices on one or more dates.

Section 204, which became effective on April 1, 2014, sets forth procedures for ratifying stock or corporate acts that, due to a "failure of authorization," would be void or voidable. This legislation clarifies and confirms the operation of specified provisions of Section 204 and makes certain other changes in respect of the procedures by which stock and defective corporate acts may be statutorily ratified.

The amendments to Section 204(b)(1) confirm that the resolutions that the board of directors adopts to ratify a defective corporate act may include one or more other defective corporate acts. The amendments make clear that the quorum and voting requirements applicable to each defective corporate act contained in a set of board resolutions ratifying one or more defective corporate acts are those applicable to each defective corporate act, viewed on an act-by-act basis. For example, if the resolutions adopted pursuant to subsection 204(b)(1) address two defective corporate acts—the filing of an amendment to the certificate of incorporation and an issuance of shares—and the former required at all relevant times for its approval under the certificate of incorporation the affirmative vote of 75% of the total number of directors, while the latter required for its approval at all relevant times the affirmative vote of a majority of the directors present at a meeting at which a quorum is present, the resolutions must be adopted, with respect to the defective amendment, by the affirmative vote of 75% of the total number of directors, and with respect to the defective issuance, by the vote of a majority of the directors present at the meeting at which the resolutions are submitted to a vote of directors (provided a quorum is established at that meeting). Nothing in the statute is intended to prevent the board from cross-conditioning its own ratification of a defective corporate act on the approval of one or more other defective corporate acts, or from conditioning its ratification of any defective corporate act on the approval by stockholders of one or more other defective corporate acts, whether or not such vote is required by Section 204(c).

Section 204(b)(2) is new. The new subsection addresses the situation in which the initial board of directors was not named in the original certificate of incorporation and has not been constituted by the incorporator. It permits those persons who have been acting as the corporation's directors under claim and color of an election or appointment to adopt resolutions ratifying the election of those persons who, despite having not been named in the certificate of incorporation or by the incorporator as the initial directors, first took action on behalf of the corporation as the board of directors. Nothing in this subsection is intended to prevent a corporation from correcting its certificate of incorporation pursuant to Section 103(f) if the certificate of incorporation inadvertently omitted the provision naming the initial directors or otherwise constitutes an inaccurate record with respect to the naming of the initial directors.

The amendments to Section 204(c) are designed to conform that subsection to the changes to Section 204(b) clarifying that the board may adopt a single set of resolutions ratifying multiple defective corporate acts. The changes to Section 204(c) provide that each defective corporate act—rather than the board's resolutions ratifying one or more defective corporate acts—must be submitted to stockholders for their approval, except where the defective corporate act would not have required a vote of stockholders under the General Corporation Law, the certificate of incorporation or bylaws of the corporation, or any plan to which the corporation is a party, either at the time of the defective corporate act or the time the board adopts the resolutions ratifying the act (and provided that the defective corporate act did not result from a failure to comply with Section 203).

Section 204(d), which specifies the voting standards applicable to the stockholders' approval of a defective corporate act, has been revised principally to conform with the changes to Section 204(b)(1) and Section 204(c). Consistent with the revisions to Section 204(c), Section 204(d) eliminates references to the board's resolution ratifying a defective corporate act being

submitted to stockholders and instead describes the circumstances under which a defective corporate act must be submitted to stockholders for approval. Because Section 204(d), as revised, eliminates the requirement that the board's "resolution" adopting a defective corporate act be submitted to stockholders, it requires that, where the ratification of a defective corporate act is submitted to stockholders for approval at a meeting, the notice must include either the board's resolutions ratifying the defective corporate act or the information set forth in paragraphs (A) through (E) of Section 204(b)(1). As with the voting standards applicable to the board's adoption of resolutions ratifying any defective corporate act, the amendments to Section 204(d) make clear that the quorum and voting requirements applicable to the ratification of each defective corporate act submitted to stockholders are those applicable to the particular defective corporate act, viewed on an act-by-act basis. For example, if the board submits two defective corporate acts to stockholders for their approval—one involving a defective amendment to the certificate of incorporation and the other involving a defective issuance of shares—and the former required at all relevant times for its approval under the certificate of incorporation the affirmative vote of a majority of the outstanding voting power of the capital stock, while the latter required for its approval at all relevant times the affirmative vote of a majority of the Series A Preferred Stock, voting as a single class, the defective amendment must be approved by the affirmative vote of a majority in voting power of the outstanding capital stock, while the defective issuance must be approved by the vote of a majority of the outstanding Series A Preferred Stock. Nothing in the statute is intended to prevent the corporation from cross-conditioning the stockholders' approval of one defective corporate act on the stockholders' approval of one or more other defective corporate acts. Next, Section 204(d) has been amended to clarify that the only stockholders entitled to vote on the ratification of a defective corporate act, or to be counted for purposes of a quorum for such vote, are the holders of record of valid stock as of the record date for determining stockholders entitled to vote thereon. It does so by confirming that shares of putative stock will not be counted for purposes of determining the stockholders entitled to vote or to be counted for purposes of a quorum in any vote on the ratification of any defective corporate act. Corresponding changes are being made to Section 204(f) to clarify that the "retroactive" validity that Section 204 gives to putative stock will not result in shares of putative stock being considered valid stock as of the record date for the vote on the ratification of a defective corporate act or acts previously submitted to stockholders.

Section 204(d)(2), which deals with the voting standards applicable to the ratification of the election of a director requiring a vote of stockholders, has been revised such that the voting standard conforms with that of Section 204(d)(1). Thus, as with Section 204(d)(1), if the certificate of incorporation or bylaws in effect at the time of the vote on the ratification of the election of directors or at the time of the defective election require or required a larger portion of stock or of any class or series of stock or of any specified stockholder to elect such director, then the affirmative vote of such larger number or portion or stock or of any class or series of stock or of such specified stockholder will be required to ratify the election. As with Section 204(d)(1), the amendments to Section 204(d)(2) provide 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, will not be required for purposes of the vote on the ratification of an election.

The amendments to Section 204(e) are intended to clarify the requirements in respect of certificates of validation. First, the changes to Section 204(e) dispense with the requirement that

the board's resolutions ratifying the defective corporate act be attached to the certificate of validation. The changes to Section 204(e) require instead that the certificate of validation set forth specified information regarding the defective corporate act and the related failure of authorization. The changes to Section 204(e) clarify that a separate certificate of validation must be filed in respect of each defective corporate act that requires the filing of a certificate of validation, except in two limited cases. The first case occurs where the corporation had filed (or, to comply with the General Corporation Law, would have filed) a single certificate under another provision of the General Corporation Law to effect multiple defective corporate acts. For example, if two or more subsidiaries of a parent corporation were merged with and into such parent corporation, albeit defectively, and the parent corporation purportedly effected both such mergers through the filing of a single certificate of merger, the defective corporate acts (i.e., both such mergers that were defectively consummated due to a failure of authorization) may be included in a single certificate of validation. The second case occurs where two or more overissues are being validated. In that case, a single certificate of validation may be used so long as the total increase in the authorized capital stock of each class or series of stock is effective as of the date of the earliest overissue referenced in the certificate of validation.

Second, the amendments clarify the information that must be included in the form of certificate of validation in cases where (x) a certificate in respect of the defective corporate act had previously been filed and no changes are required to give effect to the ratification of the defective corporate act that is the subject of the certificate of validation, (y) a certificate in respect of the defective corporate act had previously been filed and changes are required to that certificate to give effect to the ratification of the defective corporate act that is the subject of the certificate of validation, and (z) no certificate had previously been filed and the filing of a certificate was required to give effect to the ratification of a defective corporate act.

Where a certificate had previously been filed and no changes to it are required, Section 204(e) now requires that the certificate as previously filed with the Secretary of State be attached to the certificate of validation as an exhibit. Thus, if a corporation defectively amended its certificate of incorporation due to, for example, the fact that the board adopted the amendment by written consent of fewer than all directors, but a certificate of amendment was previously filed and requires no changes, the file-stamped copy of the certificate of amendment as previously filed would be attached to the certificate of validation as an exhibit.

Where a certificate had previously been filed and changes are required, Section 204(e) now expressly requires that a certificate containing all of the information required under the other section of the General Corporation Law, including the changes necessary to give effect to the ratification of the defective corporate act, be attached to the certificate of validation as an exhibit. The certificate of validation must also state the date and time as of which the certificate attached to it would have become effective. Thus, for example, if the corporation defectively effected a forward stock split of its outstanding common stock and filed a certificate of amendment that increased the authorized shares of common stock to account for the forward split but failed to include the language required by Section 242(b) of the General Corporation Law to effect the forward split of the outstanding shares of common stock, a copy of the certificate of amendment as it would have been filed, including both the increase in the authorized number of shares of common stock and the language effecting the forward stock split of the then

outstanding shares of common stock, must be attached as an exhibit to the certificate of validation. The certificate attached to the certificate of validation under these circumstances need not be separately executed and acknowledged, and it need not include any statement required by any other section of the General Corporation Law that the instrument has been approved and adopted in accordance with such other section.

Where no certificate in respect of the defective corporate act had previously been filed and a certificate would have been required to be filed to give effect to the defective corporate act, Section 204(e) now expressly requires that a certificate containing all of the information required under the other section of the General Corporation Law be attached to the certificate of validation as an exhibit. The certificate of validation must also state the date and time as of which the certificate attached to it would have become effective. Thus, for example, if a corporation defectively effected a reverse stock split by board action alone, and failed to file a certificate of amendment including the language necessary to effect the reverse stock split, a certificate of amendment that includes all of the provisions that would be required under Section 242(b) of the General Corporation Law must be attached to the certificate of validation. The certificate attached to the certificate of validation under these circumstances need not be separately executed and acknowledged, and it need not include any statement required by any other section of the General Corporation Law that the instrument has been approved and adopted in accordance with such other section.

Consistent with the amendments to Section 204(d), the amendments to Section 204(f) are intended to make clear that the stockholders entitled to vote and be counted for quorum purposes on the ratification of a defective corporate act that requires a vote of stockholders are the holders of valid stock as of the record date for the approval of the ratification of the defective corporate act. By making the "retroactive effect" that Section 204(f) grants to defective corporate acts subject to the provision of Section 204(d) that expressly states that shares of putative stock will not be counted for purposes of determining the shares entitled to vote or be counted for quorum purposes on the ratification of a defective corporate act, Section 204(f) confirms that the ratification of a defective corporate act will not result in putative shares being retroactively validated such that they would need to be included in the vote on the ratification of a defective corporate act. For example, if, as of the record date for the approval of the ratification of a defective corporate act that involved the issuance of putative shares of preferred stock, the corporation has 100 shares of valid common stock outstanding and 100 shares of putative preferred stock "outstanding," only the shares of common stock would be counted as shares entitled to vote on the ratification of such defective corporate act and any other defective corporate act submitted to stockholders at such time, even if the shares of preferred stock, by virtue of the ratification, will be deemed to have been validly issued as of a date prior to such record date.

Section 204(g) is being amended to provide that corporations that have a class of stock listed on a national securities exchange may give the notice required by Section 204(g) by means of a public filing pursuant to specified provisions of the Securities Exchange Act of 1934, as amended. Section 204(g) is also being amended to provide clarity as to the manner in which notice may be given when stockholders are approving the ratification of a defective corporate act by written consent in lieu of a meeting. The amendments provide that, where the ratification of a

defective corporate act is approved by consent of stockholders in lieu of a meeting, the notice required by Section 204(g) may be included in the notice required to be given pursuant to Section 228(e). The amendments further clarify that, where a notice sent pursuant to Section 204(g) is included in a notice sent pursuant to Section 228(e), the notice must be sent to the parties entitled to receive the notice under both Section 204(g) and Section 228(e). The amendments to Section 204(g) also clarify that no such notice need be provided to any holder of valid shares that acted by written consent in lieu of a meeting to approve the ratification of a defective corporate act or to putative stockholders who otherwise consented to the ratification.

Section 204(h)(2) is being amended to clarify that the failure of the board of directors or any officer of the corporation to approve an act or transaction taken by or on behalf of the corporation that would have required approval by the board or such officer may constitute a "failure of authorization." The amendment is intended to clarify that any act taken without such approval by the board or such officer could constitute a defective corporate act susceptible to cure by ratification under Section 204. The amendment is intended solely to confirm the broad scope of acts that may be ratified under Section 204 and is not intended to imply that any specific acts suffering from such a failure of authorization would necessarily be void or voidable or that they may not be susceptible to cure by ratification under principles of common law.

Section 204(h)(6) currently defines "validation effective time" as the later of (x) the time at which the ratification of the defective corporate act is approved by stockholders (or, if no vote is required, the time at which the notice required by Section 204(g) is given) and (y) the time at which any certificate of validation has become effective. The amendments to Section 204(h)(6) confirm that, in respect of the ratification of any defective corporate act that requires stockholder approval but does not require the filing of a certificate of validation, the "validation effective time" is the time at which the stockholders approve the ratification of the defective corporate act, whether the stockholders are acting at a meeting or by consent in lieu of a meeting pursuant to Section 228. (Although the statute clarifies that, in such cases, the validation effective time commences upon the stockholders' approval of the ratification of the defective corporate act, a corresponding amendment to Section 204(g) is being made to confirm that the 120-day period during which stockholders may challenge the ratification of a defective corporate act commences from the later of the validation effective time and the time at which the notice required by Section 204(g) is given). The term "validation effective time" in Section 204(h)(6) is being further amended to permit the board of directors to fix a future validation effective time for any defective corporate act that is not required to be submitted to a vote of stockholders and that does not require the filing of a certificate of validation. Again, the 120-day period during which challenges to the ratification may be brought would commence from the later of the validation effective time and the time at which the notice required by Section 204(g) is given. The amendment is intended to obviate logistical issues that may arise in connection with the delivery of notices in situations where multiple defective corporate acts are being ratified at the same time. As amended, Section 204(h)(6) enables the board to set one date on which the ratification of all defective corporate acts approved by the board will be effective, regardless of when the notice under Section 204(g) is sent.

Section 204(i) provides that Section 204 is not the exclusive means of ratifying corporate acts, recognizing that certain "voidable" acts may be susceptible to cure by ratification under

common law. The amendments to Section 204(i) are intended to clarify that the scope of the subsection encompasses actions ratified under the common law "pre-incorporation doctrine," which generally provides that a corporation is competent to adopt and ratify agreements made by its organizer or promoter in contemplation of its organization.

Section 205(f) is being amended to conform that subsection to amended Section 204(g). These amendments confirm that the 120-day period during which stockholders may challenge the ratification of a defective corporate act under Section 205 commences from the later of the validation effective time and the time at which the notice required by Section 204(g) is given.

The amendment to Section 245(c) clarifies that a restated certificate is not required to state that it does not further amend the provisions of the corporation's certificate of incorporation if the only amendment thereto is to change the corporation's name without a vote of the stockholders.

The amendment to Section 362(c) deletes the requirement of a public benefit corporation specific identifier in the name of a public benefit corporation, but requires notification to purchasers of shares in public benefit corporations under certain circumstances.

The amendment to Section 363(a) changes the approval required under that Section.

The amendment to Section 363(b) provides a market out to the provisions requiring appraisal in certain transactions involving public benefit corporations.

The amendment to Section 363(c) changes the approval required under that Section.

The amendment to Section 391(c) confirms that in exchange for the fees described the Secretary of State may issue public records in the form of photocopies or electronic image copies and need not provide public records in any other form.

With the exceptions described below, the effective date of the amendments is August 1, 2015. The amendments to Sections 204 and 205 shall be effective only with respect to defective corporate acts and proposed issuances of putative stock ratified or to be ratified pursuant to resolutions adopted by a board of directors on or after August 1, 2015. The effective date of of the amendments to Sections 204 and 205 is intended to provide certainty as to the notice and filing procedures applicable where a ratification under Section 204 has been commenced prior to August 1, 2015 but the validation effective time in respect thereof has not yet occurred. Nothing is intended to imply that the clarifying and confirmatory amendments to Section 204 are inapplicable in determining the proper interpretation of Section 204 with respect to ratifications that were commenced or became effective prior to August 1, 2015. The amendments to Section 363(b) shall be effective only with respect to mergers and consolidations consummated pursuant to agreements entered into on or after August 1, 2015, or in the case of amendments, amendments approved by the board of directors on or after August 1, 2015. The amendments to Section 391(c) shall be effective upon their enactment into law.

A Redlined Version of the Statutory Changes

DELAWARE 2014 SESSION LAWS

147TH GENERAL ASSEMBLY

H.B. No. 329

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 (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend § 103(a)(1), Title 8 of the Delaware Code by making deletions as shown by strikethrough and inserting as shown by underline as follows:

(a) Whenever an instrument is to be filed with the Secretary of State or in accordance with this section or chapter, such instrument shall be executed as follows:

(1) The certificate of incorporation, and any other instrument to be filed before the election of the initial board of directors if the initial directors were not named in the certificate of incorporation, shall be signed by the incorporator or incorporators (or, in the case of any such other instrument, such incorporator's or incorporators' successors and assigns). If any incorporator is not available ~~by reason of death, incapacity, unknown address, or refusal or neglect to act,~~ then any such other instrument may be signed, with the same effect as if such incorporator had signed it, by any person for whom or on whose behalf such incorporator, in executing the certificate of incorporation, was acting directly or indirectly as employee or agent, provided that such other instrument shall state that such incorporator is not available and the reason therefor, that such incorporator in executing the certificate of incorporation was acting directly or indirectly as employee or agent for or on behalf of such person, and that such person's signature on such instrument is otherwise authorized and not wrongful.

Section 2. Amend § 108, Title 8 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

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

(d) If any incorporator is not available to act, then any person for whom or on whose behalf the incorporator was acting directly or indirectly as employee or agent, may take any action that such incorporator

would have been authorized to take under this section or § 107 of this title; provided that any instrument signed by such other person, or any record of the proceedings of a meeting in which such person participated, shall state that such incorporator is not available and the reason therefor, that such incorporator was acting directly or indirectly as employee or agent for or on behalf of such person, and that such person's signature on such instrument or participation in such meeting is otherwise authorized and not wrongful.

Section 3. Amend § 141(f), Title 8 of the Delaware Code by making deletions as shown by strikethrough and additions as shown by underline as follows:

Unless otherwise restricted by the certificate of incorporation or bylaws, 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 the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the board, or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form. 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.

Section 4. Amend § 218, Title 8 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

(a) One stockholder or 2 or more stockholders may by agreement in writing deposit capital stock of an original issue with or transfer capital stock to any person or persons, or entity or entities authorized to act as trustee, for the purpose of vesting in such person or persons, entity or entities, who may be designated voting trustee, or voting trustees, the right to vote thereon for any period of time determined by such agreement, upon the terms and conditions stated in such agreement. The agreement may contain any other lawful provisions not inconsistent with such purpose. After ~~the filing~~ delivery of a copy of the agreement ~~in~~ to the registered office of the corporation in this State or the principal place of business of the corporation, which copy shall be open to the inspection of any stockholder of the corporation or any beneficiary of the trust under the agreement daily during business hours,

certificates of stock or uncertificated stock shall be issued to the voting trustee or trustees to represent any stock of an original issue so deposited with such voting trustee or trustees, and any certificates of stock or uncertificated stock so transferred to the voting trustee or trustees shall be surrendered and cancelled and new certificates or uncertificated stock shall be issued therefore to the voting trustee or trustees. In the certificate so issued, if any, it shall be stated that it is issued pursuant to such agreement, and that fact shall also be stated in the stock ledger of the corporation. The voting trustee or trustees may vote the stock so issued or transferred during the period specified in the agreement. Stock standing in the name of the voting trustee or trustees may be voted either in person or by proxy, and in voting the stock, the voting trustee or trustees shall incur no responsibility as stockholder, trustee or otherwise, except for their own individual malfeasance. In any case where 2 or more persons or entities are designated as voting trustees, and the right and method of voting any stock standing in their names at any meeting of the corporation are not fixed by the agreement appointing the trustees, the right to vote the stock and the manner of voting it at the meeting shall be determined by a majority of the trustees, or if they be equally divided as to the right and manner of voting the stock in any particular case, the vote of the stock in such case shall be divided equally among the trustees.

(b) Any amendment to a voting trust agreement shall be made by a written agreement, a copy of which shall be ~~filed in~~ delivered to the registered office of the corporation in this State or principal place of business of the corporation.

Section 5. Amend § 228(c), Title 8 of the Delaware Code by making insertions as shown by underline as follows:

(c) Every written consent shall bear the date of signature of each stockholder or member who signs the consent, and no written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest dated consent delivered in the manner required by this section to the corporation, written consents signed by a sufficient number of holders or members to take action are 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 or members are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. 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, and, for the purposes of this section, if evidence of such instruction or provision is provided to the corporation, such later effective time shall serve as the date of signature. Unless otherwise provided, any such consent shall be revocable prior to its becoming effective.

Section 6. Amend § 242, Title 8 of the Delaware Code by making insertions as shown by underline and deletions as shown by strikethrough as follows:

§ 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 shares of any class or series of a class of shares into a greater or lesser number of outstanding 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 (i) 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 (ii) 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 (1) or (7) of subsection (a). 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. At the meeting a vote of the stockholders entitled to vote thereon shall be taken for and against ~~the~~ any proposed amendment~~. If~~ 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.

(2) The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the certificate of incorporation, if the amendment would increase or decrease the aggregate number of authorized shares of such class, increase or

decrease the par value of the shares of such class, or alter or change the powers, preferences, or special rights of the shares of such class so as to affect them adversely. If any proposed amendment would alter or change the powers, preferences, or special rights of 1 or more series of any class so as to affect them adversely, but shall not so affect the entire class, then only the shares of the series so affected by the amendment shall be considered a separate class for the purposes of this paragraph. The number of authorized shares of any such class or classes of stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of the corporation entitled to vote irrespective of this subsection, if so provided in the original certificate of incorporation, in any amendment thereto which created such class or classes of stock or which was adopted prior to the issuance of any shares of such class or classes of stock, or in any amendment thereto which was authorized by a resolution or resolutions adopted by the affirmative vote of the holders of a majority of such class or classes of stock.

(3) If the corporation is a nonstock corporation, then the governing body thereof shall adopt a resolution setting forth the amendment proposed and declaring its advisability. If a majority of all the members of the governing body shall vote in favor of such amendment, a certificate thereof shall be executed, acknowledged and filed and shall become effective in accordance with § 103 of this title. The certificate of incorporation of any nonstock corporation may contain a provision requiring any amendment thereto to be approved by a specified number or percentage of the members or of any specified class of members of such corporation in which event such proposed amendment shall be submitted to the members or to any specified class of members of such corporation in the same manner, so far as applicable, as is provided in this section for an amendment to the certificate of incorporation of a stock corporation; and in the event of the adoption thereof by such members, a certificate evidencing such amendment shall be executed, acknowledged and filed and shall become effective in accordance with § 103 of this title.

(4) Whenever the certificate of incorporation shall require for action by the board of directors of a corporation other than a nonstock corporation or by the governing body of a nonstock corporation, by the holders of any class or series of shares or by the members, or by the holders of any other securities having voting power the vote of a greater number or proportion than is required by any section of this title, the provision of the certificate of incorporation requiring such greater vote shall not be altered, amended or

repealed except by such greater vote.

(c) The resolution authorizing a proposed amendment to the certificate of incorporation may provide that at any time prior to the effectiveness of the filing of the amendment with the Secretary of State, notwithstanding authorization of the proposed amendment by the stockholders of the corporation or by the members of a nonstock corporation, the board of directors or governing body may abandon such proposed amendment without further action by the stockholders or members.

Section 7. Amend § 251(h), Title 8 of the Delaware Code by making insertions as shown by underline and deletions as shown by strikethrough as follows:

(h) 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 whose shares are listed on a national securities exchange or held of record by more than 2,000 holders immediately prior to the execution of the agreement of merger by such constituent corporation shall be necessary to authorize a merger if:

(1) The agreement of merger~~, which must be entered into on or after August 1, 2013,~~ expressly (i) permits or requires such merger to be effected under this subsection and (ii) provides that such merger ~~shall be governed by this subsection and~~ shall be effected as soon as practicable following the consummation of the offer referred to in paragraph (h)(2) of this section if such merger is effected under this subsection;

(2) A corporation consummates a tender or exchange offer for any and all of the outstanding stock of such constituent corporation on the terms provided in such agreement of merger that, absent this subsection, would be entitled to vote on the adoption or rejection of the agreement of merger; provided, however, that such offer may exclude stock of such constituent corporation that is owned at the commencement of such offer by: (i) such constituent corporation; (ii) the corporation making such offer; (iii) any person that owns, directly or indirectly, all of the outstanding stock of the corporation making such offer; or (iv) any direct or indirect wholly-owned subsidiary of any of the foregoing;

(3) Following the consummation of ~~such offer,~~the offer referred to in paragraph (h)(2) of this section, the stock irrevocably accepted for purchase or exchange pursuant to such offer and received by the depository prior to expiration of such offer, plus the stock otherwise owned by the consummating corporation ~~owns~~ equals at least such percentage of the stock, and of each class or series thereof, of such constituent corporation that, absent this subsection, would be required to adopt the agreement of merger by

this chapter and by the certificate of incorporation of such constituent corporation;

~~(4) At the time such constituent corporation's board of directors approves the agreement of merger, no other party to such agreement is an "interested stockholder" (as defined in § 203(c) of this title) of such constituent corporation;~~

(~~5~~4) The corporation consummating the offer ~~described~~ referred to in paragraph (h)(2) of this section merges with or into such constituent corporation pursuant to such agreement; and

(~~6~~5) ~~The~~ Each outstanding ~~shares~~ share of each class or series of stock of the constituent corporation ~~not to be canceled in the merger are~~ that is the subject of and not irrevocably accepted for purchase or exchange in the offer referred to in paragraph (h)(2) of this section is to be converted in such merger into, or into the right to receive, the same amount and kind of cash, property, rights or securities to be paid for shares of such class or series of stock of such constituent corporation ~~upon consummation of the offer referred to in paragraph (h)(2) of this section.~~ irrevocably accepted for purchase or exchange in such offer.

As used in this section only, the term (i) "consummates" (and with correlative meaning, "consummation" and "consummating") means irrevocably accepts for purchase or exchange stock tendered pursuant to a tender or exchange offer, (ii) "depository" means an agent, including a depository, appointed to facilitate consummation of the offer referred to in paragraph (h)(2) of this section, (iii) "person" means any individual, corporation, partnership, limited liability company, unincorporated association or other entity, and (iv) "received" (solely for purposes of paragraph (h)(3) of this section) means physical receipt of a stock certificate in the case of certificated shares and transfer into the depository's account, or an agent's message being received by the depository, in the case of uncertificated shares.

If an agreement of merger is adopted without the vote of stockholders of a corporation pursuant to this subsection, the secretary or assistant secretary of the surviving corporation shall certify on the agreement that the agreement has been adopted pursuant to this subsection and that the conditions specified in this subsection (other than the condition listed in paragraph ~~(h)(5~~(h)(4) of this section) have been satisfied; provided that such certification on the agreement shall not be required if a certificate of merger is filed in lieu of filing the agreement. The agreement so adopted and certified shall then be filed and shall 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.

Section 8. This Act shall become effective on August 1, 2014, except that Section 7 shall be effective with respect to merger agreements entered into on or after August 1, 2014.

DELAWARE 2015 SESSION LAWS

148TH GENERAL ASSEMBLY

S.B. 75

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 (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend § 102(a)(1), Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

§ 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 or statutory trust organized or registered as a domestic or foreign corporation, partnership, limited partnership, limited liability company 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 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 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;

Section 2. Amend § 102, Title 8 of the Delaware Code, by adding a new section, § 102(f), shown by underline as follows:

(f) The certificate of incorporation may not contain any provision that would impose liability on a stockholder for the attorneys' fees or expenses of the corporation or any other party in connection with an internal corporate claim, as defined in § 115 of this title.

Section 3. Amend § 109(b), Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

(b) The bylaws may contain any provision, not inconsistent with law or with the certificate of incorporation, relating to the business of the corporation, the conduct of its affairs, and its rights or powers or the rights or powers of its stockholders, directors, officers or employees. The bylaws may not contain

any provision that would impose liability on a stockholder for the attorneys' fees or expenses of the corporation or any other party in connection with an internal corporate claim, as defined in § 115 of this title.

Section 4. Amend § 114(b), Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

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

(1) Sections 102(a)(4), (b)(1) and (2), 109(a), 114, 141, 154, 215, 228, 230(b), 241, 242, 253, 254, 255, 256, 257, 258, 271, 276, 311, 312, 313, 390, and 503 of this title, which apply to nonstock corporations by their terms;

(2) Sections 102(f), 109(b) (last sentence), 151, 152, 153, 155, 156, 157(d), 158, 161, 162, 163, 164, 165, 166, 167, 168, 203, 204, 205, 211, 212, 213, 214, 216, 219, 222, 231, 243, 244, 251, 252, 267, 274, 275, 324, 364, 366(a), 391 and 502(a)(5) of this title; and

(3) Subchapter XIV and subchapter XVI of this chapter.

Section 5. Amend Title 8 of the Delaware Code by adding a new section, § 115, shown by underline as follows:

§ 115. Forum selection provisions.

The certificate of incorporation or the bylaws may require, consistent with applicable jurisdictional requirements, that any or all internal corporate claims shall be brought solely and exclusively in any or all of the courts in this State, and no provision of the certificate of incorporation or the bylaws may prohibit bringing such claims in the courts of this State. "Internal corporate claims" means claims, including claims in the right of the corporation, (i) that are based upon a violation of a duty by a current or former director or officer or stockholder in such capacity, or (ii) as to which this title confers jurisdiction upon the Court of Chancery.

Section 6. Amend § 152 Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

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

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 form and in such manner as 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 in one or more transactions in such numbers and at such times as are set forth in 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 ~~such~~ 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. In the absence of actual fraud in the transaction, the judgment of the directors as to the value of such consideration shall be conclusive. The capital stock so issued 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.

Section 7. Amend § 157(b) Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

(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 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.

Section 8. Amend § 204, Title 8 of the Delaware Code by making insertions as shown by underline and deletions as shown by strike through as follows:

§ 204 Ratification of defective corporate acts and stock.

(a) Subject to subsection (f) of this section, no defective corporate act or putative stock shall be void or voidable solely as a result of a failure of authorization if ratified as provided in this section or validated by the Court of Chancery in a proceeding brought under § 205 of this title.

(b) (1) In order to ratify ~~a~~ one or more defective corporate ~~act~~ acts pursuant to this section (other than the ratification of an election of the initial board of directors pursuant to subsection (b)(2) of this section), the board of directors of the corporation shall adopt ~~a resolution~~ resolutions stating:

~~(1) The~~ (A) The defective corporate act or acts to be ratified;

~~(2) The time of the~~ (B) The date of each defective corporate act or acts;

~~(3) If~~ (C) If such defective corporate act or acts involved 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;

~~(4) The~~ (D) The nature of the failure of authorization in respect of ~~the~~ each defective corporate act to be ratified; and

~~(5) That~~ (E) That the board of directors approves the ratification of the defective corporate act or acts.

~~The resolution~~ Such resolutions may also provide that, at any time before the validation effective time in respect of any defective corporate act set forth therein, notwithstanding ~~adoption of the resolution~~ the approval of the ratification of such defective corporate act by stockholders, the board of directors may abandon the ~~resolution~~ ratification of such defective corporate act without further action of the stockholders. The quorum and voting requirements applicable to the ~~adoption of such resolution~~ ratification by the board of directors of any defective corporate act shall be the quorum and voting requirements applicable ~~at the time of such adoption for~~ to the type of defective corporate act proposed to be ratified at the time the board adopts the resolutions ratifying the defective corporate act; provided that 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 each case as in effect as of the time of the defective corporate act, would have required a larger number or portion of directors or of specified directors for a quorum to be present or to approve the defective corporate act, such larger number or portion of such directors or

such specified directors shall be required for a quorum to be present or to adopt the ~~resolution~~ resolutions to ratify the defective corporate act, as applicable, except that the presence or approval of any director elected, appointed or nominated by holders of any class or series of which no shares are then outstanding, or by any person that is no longer a stockholder, shall not be required.

(2) In order to ratify a defective corporate act in respect of the election of the initial board of directors of the corporation pursuant to § 108 of this title, a majority of the persons who, at the time the resolutions required by this subsection (b)(2) are adopted, are exercising the powers of directors under claim and color of an election or appointment as such may adopt resolutions stating:

(A) The name of the person or persons who first took action in the name of the corporation as the initial board of directors of the corporation;

(B) The earlier of the date on which such persons first took such action or were purported to have been elected as the initial board of directors; and

(C) That the ratification of the election of such person or persons as the initial board of directors is approved.

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

(1) 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 ~~the~~ such defective corporate act to be ratified, either at the time of ~~the~~ such defective corporate act or at the time ~~when the resolution required by~~ the board of directors adopts the resolutions ratifying such defective corporate act pursuant to subsection (b)(1) of this section ~~is adopted~~; and

(2) ~~The~~ Such defective corporate act ~~to be ratified~~ did not result from a failure to comply with § 203 of this title.

(d) If the ratification of a defective corporate act is required to be submitted to stockholders for approval pursuant to subsection (c) of this section ~~requires that the resolution be submitted to stockholders~~, 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. 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 ~~resolution~~ resolutions adopted by the board of directors pursuant to subsection (b)(1) of this section or the information required by paragraphs (A) through (E) of subsection (b)(1) 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 ~~identified~~ 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. At such meeting, the quorum and voting requirements applicable to the ~~adoption~~ ratification of such ~~resolution by the stockholders~~ defective corporate act shall be the quorum and voting requirements applicable ~~at the time of such adoption for~~ to the type of defective corporate act proposed to be ratified at the time of the approval of the ratification, except that:

(1) 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 ~~adopt the resolution~~ 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) The ~~adoption of a resolution to ratify~~ 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) 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.

Shares of putative stock on the record date for determining stockholders entitled to vote on any matter submitted to stockholders pursuant to subsection (c) of this section (and without giving effect to any ratification that becomes effective after such record date) shall neither be entitled to vote nor counted for quorum purposes in any vote to ratify any defective corporate act.

(e) If ~~the~~ 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 or not a certificate was previously filed in respect of such defective corporate act and 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. 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) two 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) two 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. The certificate of validation shall set forth:

~~(1) The resolution adopted in accordance with subsection (b) of this section, the date of adoption of such resolution by the board of directors and, if applicable, by the stockholders and a statement that such resolution was duly adopted in accordance with this section;~~

(1) each defective corporate act that is the subject of the 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;

(2) a statement that such defective corporate act was 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; and

(3) the information required by one of the following paragraphs:

~~(2) If~~ a. If a certificate was previously filed under § 103 of this title in respect of ~~the defective corporate act, the title and date of filing of such prior certificate and any certificates~~ 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~~ 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. 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 (x) the name, title and filing date of the certificate so previously filed and of any certificate of correction thereto, (y) 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) the date and time that such certificate shall be deemed to have become effective pursuant to this section; or

c. 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 (x) 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) the date and time that such certificate shall be deemed to have become effective pursuant to this section.

A certificate attached to a certificate of validation pursuant to paragraph b. or c. of subsection (e)(3) 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.

~~(3) Such provisions as would be required under any other section of this title to be included in the certificate that otherwise would have been required to be filed pursuant to this title with respect to such defective corporate act.~~

(f) From and after the validation effective time, unless otherwise determined in an action brought pursuant to § 205 of this title:

~~(1) Each~~ (1) Subject to the last sentence of subsection (d), each defective corporate act ~~set forth in the resolution adopted pursuant to subsection (b) of~~ ratified in accordance with this section shall no longer be deemed void or voidable as a result of ~~a~~ the failure of authorization ~~identified in such resolution~~ described in the resolutions adopted pursuant to subsection (b) of this section and such effect shall be retroactive to the time of the defective corporate act; and

~~(2) Each~~ (2) Subject to the last sentence of subsection (d), each share or fraction of a share of putative stock issued or purportedly issued pursuant to any such defective corporate act ~~and identified in the resolution required by subsection (b) of this section~~ shall no longer be deemed void or voidable ~~as a result of a failure of authorization identified in such resolution and, in the absence of any failure of authorization not ratified,~~ and shall be deemed to be an identical share or fraction of a share of outstanding stock as of the time it was purportedly issued.

~~(g) Prompt notice of the adoption of a resolution pursuant to~~ (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 ~~of adoption of such resolution by~~ the board of directors adopts the resolutions approving such defective corporate act, or as of a date within 60 days after ~~the~~ such date of adoption ~~of such resolution~~, 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

~~resolution~~ resolutions adopted pursuant to subsection (b) of this section or the information specified in paragraphs (A) through (E) of subsection (b)(1) or paragraphs (A) through (C) of subsection (b)(2) 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 ~~identified~~ 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 ~~resolution~~ 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 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) 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 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 ~~subsections (d) and (g)~~ 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:

(1) "Defective corporate act" means an overissue, an election or appointment of directors that is void or voidable due to a failure of authorization, or any act or transaction purportedly taken by or on behalf of the corporation that is, and at the time such act or transaction was purportedly taken would have been, within the power of a corporation under subchapter II of this chapter, but is void or voidable due to a failure of

authorization;

(2) "Failure of authorization" means (i) the failure to authorize or effect an act or transaction in compliance with the provisions of this title, the certificate of incorporation or bylaws of the corporation, or any plan or agreement to which the corporation is a party, if and to the extent such failure would render such act or transaction void or voidable, or (ii) the failure of the board of directors or any officer of the corporation to authorize or approve any act or transaction taken by or on behalf of the corporation that would have required for its due authorization the approval of the board of directors or such officer;

(3) "Overissue" means the purported issuance of:

a. Shares of capital stock of a class or series in excess of the number of shares of such class or series the corporation has the power to issue under § 161 of this title at the time of such issuance; or

b. Shares of any class or series of capital stock that is not then authorized for issuance by the certificate of incorporation of the corporation;

(4) "Putative stock" means the shares of any class or series of capital stock of the corporation (including shares issued upon exercise of options, rights, warrants or other securities convertible into shares of capital stock of the corporation, or interests with respect thereto that were created or issued pursuant to a defective corporate act) that:

a. But for any failure of authorization, would constitute valid stock; or

b. Cannot be determined by the board of directors to be valid stock;

(5) "Time of the defective corporate act" means the date and time the defective corporate act was purported to have been taken;

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

a. The time at which the ~~resolution~~ defective corporate act submitted to the stockholders for ~~adoption~~ approval pursuant to subsection (c) of this section is ~~adopted~~ approved by such stockholders~~,~~ or if no such vote of stockholders is required to ~~adopt the resolution~~ approve the ratification of the defective corporate act, the time at which the ~~notice~~ board of directors adopts the resolutions required by subsection ~~(g)~~(b)(1) or (b)(2) of this section ~~is given; and~~;

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 subsection (b)(1) or (b)(2) of this section, which time shall not precede the time at which such resolutions are adopted; and

~~b. The~~ 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.

(7) "Valid stock" means the shares of any class or series of capital stock of the corporation that have been duly authorized and validly issued in accordance with this title~~;~~.

In the absence of actual fraud in the transaction, the judgment of the board of directors that shares of stock are valid stock or putative stock shall be conclusive, unless otherwise determined by the Court of Chancery in a proceeding brought pursuant to § 205 of this title.

(i) Ratification under this section or validation under § 205 of this title shall not be deemed to be the exclusive means of ratifying or validating any act or transaction taken by or on behalf of the corporation, including any defective corporate act, or any issuance of stock, including any putative stock, or of adopting or endorsing any act or transaction taken by or in the name of the corporation prior to the commencement of its existence, and the absence or failure of ratification in accordance with either this section or validation under § 205 of this title shall not, of itself, affect the validity or effectiveness of any act or transaction or the issuance of any stock properly ratified under common law or otherwise, nor shall it create a presumption that any such act or transaction is or was a defective corporate act or that such stock is void or voidable.

Section 9. Amend § 205(f), Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

(f) Notwithstanding any other provision of this section, no action asserting:

(1) That a defective corporate act or putative stock ratified in accordance with § 204 of this title is void or voidable due to a failure of authorization identified in the resolution adopted in accordance with 204(b); or

(2) That the Court of Chancery should declare in its discretion that a ratification in accordance with § 204 of this title not be effective or be effective only on certain conditions,

may be brought after the expiration of 120 days from the later of the validation effective time and the time notice, if any, that is required to be given pursuant to § 204(g) of this title is given with respect to such ratification, except that this subsection shall not apply to an action asserting that a ratification was not accomplished in accordance with §

204 of this title or to any person to whom notice of the ratification was required to have been given pursuant to § 204(d) or (g) of this title, but to whom such notice was not given.

Section 10. Amend § 245(c), Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

(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) 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.

Section 11. Amend § 362(c), Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

(c) The name of the public benefit corporation ~~shall, without exception,~~ may contain the words "public benefit corporation," or the abbreviation "P.B.C.," or the designation "PBC," which shall be deemed to satisfy the requirements of § 102(a)(l)(i) of this title. If the name does not contain such language, the corporation shall, prior to issuing unissued shares of stock or disposing of treasury shares, provide notice to any person to whom such stock is issued or who acquires such treasury shares that it is a public benefit corporation; provided that such notice need not be provided if the issuance or disposal is pursuant to an offering registered under the Securities Act of 1933 or if, at the time of issuance or disposal, the corporation has a class of securities that is registered under the Securities

Exchange Act of 1934.

Section 12. Amend § 363(a), Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

(a) Notwithstanding any other provisions of this chapter, a corporation that is not a public benefit corporation, may not, without the approval of ~~90%~~2/3 of the outstanding ~~shares of each class of the~~ stock of the corporation ~~of which there are outstanding shares, whether voting or nonvoting~~ 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.

Section 13. Amend § 363(b), Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

(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).

Section 14. Amend § 363(c), Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

(c) Notwithstanding any other provisions of this chapter, a corporation that is a public benefit corporation may not, without the approval of 2/3 of the outstanding ~~shares of each class of the~~ stock of the corporation ~~of which there are outstanding shares, whether voting or nonvoting~~ 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.

Section 15. Amend § 391(c), Title 8 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

(c) The Secretary of State may issue photocopies or electronic image copies of instruments on file, as well as instruments, documents and other papers not on file, and for all such photocopies or electronic image copies which are not certified by the Secretary of State, a fee of $10 shall be paid for the first page and $2.00 for each additional page. ~~The Secretary of State may also issue microfiche copies of instruments on file as well as instruments, documents and other papers not on file, and for each such microfiche a fee of $2.00 shall be paid~~

~~therefor.~~ Notwithstanding Delaware's Freedom of Information Act [Chapter 100 of Title 29] or any other provision of ~~this Code~~ law granting access to public records, the Secretary of State upon request shall issue only photocopies~~,~~ ~~microfiche~~ or electronic image copies of public records in exchange for the fees described ~~above~~ in this section, and in no case shall the Secretary of State be required to provide copies (or access to copies) of such public records (including without limitation bulk data, digital copies of instruments, documents and other papers, databases or other information) in an electronic medium or in any form other than photocopies or electronic image copies of such public records in exchange, as applicable, for the fees described in this section or § 2318 of Title 29 for each such record associated with a file number.

Section 16. Sections 1 through 7, 10 through 12 and 14 shall be effective on August 1, 2015. Sections 8 and 9 shall be effective only with respect to defective corporate acts and proposed issuances of putative stock ratified or to be ratified pursuant to resolutions adopted by a board of directors on or after August 1, 2015. Section 13 shall be effective only with respect to mergers and consolidations consummated pursuant to agreements entered into on or after August 1, 2015, or in the case of amendments, amendments approved by the board of directors on or after August 1, 2015. Section 15 shall be effective upon its enactment into law.

DELAWARE REVISED UNIFORM LIMITED PARTNERSHIP ACT

DELAWARE LIMITED LIABILITY COMPANY ACT

There have been several changes to the Delaware Revised Uniform Limited Partnership Act ("DRULPA") and the Delaware Limited Liability Company Act ("DLLCA") since the Statutory Supplement (2014) was published. The following material identifies and discusses the the material changes. A redlined version of the amendments to the affected sections follows.

Summary of Statutory Changes

Most of the changes to the Delaware Limited Partnership Act and the Delaware Limited Liability Company Act are parallel.

Unless otherwise provided in a partnership agreement or a limited liability company agreement, a person who is not at that time a limited partner or a general partner of a limited partnership, or a person who is not at that time a member or manager of a limited liability company, may nonetheless give his consent to any matter in that role, provided that the consent will only be effective at a time when the person is a limited partner, general partner, member, or manager. DRULPA §§ 17-302(e) (limited partner), 17-405(d) (general partner); DLLCA §§ 18-302(d) (LLC member), 18-404(d) (LLC manager).

A limited partner of a limited partnership or a member of a limited liability company may make a books and records request in person or by an attorney or other agent. In addition, limited partnerships are required to maintain a current record of the name and last known address of each partner, and limited liability companies are required to maintain a current record of the name and last known address of each member and manager. DRULPA § 17-305; DLLCA § 18-305.

The provisions governing revocation of a dissolution of a limited partnership or a limited liability company have been modified, and the statutes now provide additional means by which such a dissolution may be revoked. DRULPA § 17-806; DLLCA § 18-806.

Both DRULPA and DLLCA have been amended to delete the default requirement for a class or group vote in connection with mergers and consolidations, transfers or continuances, termination and winding up of series, conversions and the dissolution and winding up of the entity. However, limited partnerships and limited liability companies formed on or before July 31, 2015 continue to be governed by the default requirements for a class or group vote as in effect on July 31, 2015, unless otherwise provided in the partnership agreement or limited liability company agreement. DRULPA §§ 17-204(a)(3), 17-211(b), 17-214(a), 17-216(b), 17-218(k), 17-218(l), 17-219(b), 17-801, 17-803(a), 17-806; DLLCA §§ 18-209(b), 18-213(b), 18-215(k), 18-215(l), 18-216(b), 18-801(a), 18-803(a).

Unless otherwise provided in a partnership agreement or a limited liability company agreement, a general partner's delegation of rights and powers is irrevocable if it states that it is irrevocable, as is an LLC member's or manager's delegation of rights and powers. DRULPA § 403(c); DLLCA § 18-407.

A Redlined Version of the Statutory Changes

DELAWARE REVISED UNIFORM LIMITED PARTNERSHIP ACT
(Delaware Code, Title 6, Chapter 17)

SUBCHAPTER I. GENERAL PROVISIONS

§ 17-104. Registered Office; Registered Agent

. . . .

(g) Every limited partnership formed under the laws of the State of Delaware or qualified to do business in the State of Delaware shall provide to its registered agent and update from time to time as necessary the name, business address and business telephone number of a natural person who is a partner, officer, employee or designated agent of the limited partnership, who is then authorized to receive communications from the registered agent. Such person shall be deemed the communications contact for the limited partnership. A limited partnership, upon receipt of a request by the communications contact delivered in writing or by electronic transmission, shall provide the communications contact with the name, business address and business telephone number of a natural

person who has access to the record required to be maintained pursuant to §17-305(g) of this title. Every registered agent shall retain (in paper or electronic form) the above information concerning the current communications contact for each limited partnership and each foreign limited partnership for which he, she, or it serves as registered agent. If the limited partnership fails to provide the registered agent with a current communications contact, the registered agent may resign as the registered agent for such limited partnership pursuant to this section. For purposes of this subsection, the term "electronic transmission" means any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process.

SUBCHAPTER II. FORMATION; CERTIFICATE OF LIMITED PARTNERSHIP

§ 17.204. Execution

(a) . . .

(3) A certificate of cancellation must be signed by all general partners or, if the general partners are not winding up the limited partnership's affairs, then by all liquidating trustees; provided, however, that if the limited partners are winding up the limited partnership's affairs, a certificate of cancellation shall be signed ~~by the limited partners or, if there is more than 1 class or group of limited partners, then by each class or group of limited partners, in either case,~~ by limited partners who own more than 50 percent of the then current percentage or other interest in the profits of the limited partnership owned by all of the limited partners ~~or by the limited partners in each class or group, as appropriate~~;

. . . .

(c) For all purposes of the laws of the State of Delaware, unless otherwise provided in a partnership agreement, a power of attorney or proxy with respect to ~~matters relating to the organization, internal affairs or termination of a limited partnership or granted by a person as a partner or an assignee of a partnership interest or by a person seeking to become a partner or an assignee of a partnership interest~~ a limited partnership granted to any person shall be irrevocable if it states that it is irrevocable and it is coupled with an interest sufficient in law to support an irrevocable power or proxy. Such irrevocable power of attorney or proxy, unless otherwise provided therein or in a partnership agreement, shall not be affected by subsequent death, disability, incapacity, dissolution,

termination of existence or bankruptcy of, or any other event concerning, the principal. A power of attorney or proxy with respect to matters relating to the organization, internal affairs or termination of a limited partnership or granted by a person as a partner or an assignee of a partnership interest or by a person seeking to become a partner or an assignee of a partnership interest and, in either case, granted to the limited partnership, a general partner or limited partner thereof, or any of their respective officers, directors, managers, members, partners, trustees, employees or agents shall be deemed coupled with an interest sufficient in law to support an irrevocable power or proxy. The provisions of this subsection shall not be construed to limit the enforceability of a power of attorney or proxy that is part of a partnership agreement.

§ 17-211. Merger and Consolidation

. . . .

(b) Pursuant to an agreement of merger or consolidation, 1 or more domestic limited partnerships may merge or consolidate with or into 1 or more domestic limited partnerships or 1 or more other business entities formed or organized under the laws of the State of Delaware or any other state or the United States or any foreign country or other foreign jurisdiction, or any combination thereof, with such domestic limited partnership or other business entity as the agreement shall provide being the surviving or resulting domestic limited partnership or other business entity. Unless otherwise provided in the partnership agreement, an agreement of merger or consolidation or a plan of merger shall be approved by each domestic limited partnership which is to merge or consolidate (1) by all general partners, and (2) ~~by the limited partners or, if there is more than 1 class or group of limited partners, then by each class or group of limited partners, in either case,~~ by limited partners who own more than 50 percent of the then current percentage or other interest in the profits of the domestic limited partnership owned by all of the limited partners ~~or by the limited partners in each class or group, as appropriate~~. In connection with a merger or consolidation hereunder, rights or securities of, or interests in, a limited partnership or other business entity which is a constituent party to the merger or consolidation may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving or resulting limited partnership or other business entity or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, a limited partnership or other business entity which is not the surviving or resulting limited partnership or other business entity in the merger or consolidation, may remain outstanding or may be canceled. Notwithstanding prior approval, an agreement of merger or consolidation or a plan of merger may be terminated or amended pursuant to a

provision for such termination or amendment contained in the agreement of merger or consolidation or plan of merger. 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, 2015, shall continue to be governed by clause (2) of this subsection as in effect on July 31, 2015.

§ 17-214. Limited Partnerships as Limited Liability Limited Partnerships

(a) A limited partnership may be formed as, or may become, a limited liability limited partnership pursuant to this section. A limited partnership may become a limited liability limited partnership as permitted by the limited partnership's partnership agreement or, if the limited partnership's partnership agreement does not provide for the limited partnership's becoming a limited liability limited partnership, with the approval (i) by all general partners, and (ii) ~~by the limited partners, or, if there is more than 1 class or group of limited partners, then by each class or group of limited partners, in either case,~~ by limited partners who own more than 50 percent of the then current percentage or other interest in the profits of the limited partnership owned by all of the limited partners ~~or by the limited partners in each class or group, as appropriate~~. To be formed or to become, and to continue as, a limited liability limited partnership, a limited partnership shall, in addition to complying with the requirements of this chapter:

(1) File a statement of qualification as provided in § 15-1001 of this title and thereafter an annual report as provided in § 15-1003 of this title; and

(2) Have as the last words or letters of its name the words "Limited Liability Limited Partnership," or the abbreviation "L.L.L.P.," or the designation "LLLP."

§ 17-216. Transfer or Continuance of Domestic Limited Partnerships

. . . .

(b) If the partnership agreement specifies the manner of authorizing a transfer or domestication or continuance described in subsection (a) of this section, the transfer or domestication or continuance shall be authorized as specified in the partnership agreement. If the partnership agreement does not specify the manner of authorizing a transfer or domestication or continuance described in subsection (a) of this section and does not prohibit such a transfer or domestication or continuance, the transfer or domestication or continuance shall be authorized in the same manner as is specified in the partnership agreement for authorizing a merger or consolidation that involves the limited partnership as a constituent party to the merger or consolidation. If the partnership

agreement does not specify the manner of authorizing a transfer or domestication or continuance described in subsection (a) of this section or a merger or consolidation that involves the limited partnership as a constituent party and does not prohibit such a transfer or domestication or continuance, the transfer or domestication or continuance shall be authorized by the approval by (1) all general partners and (2) ~~the limited partners or, if there is more than 1 class or group of limited partners, then by each class or group of limited partners, in either case, by~~ limited partners who own more than 50 percent of the then current percentage or other interest in the profits of the domestic limited partnership owned by all of the limited partners ~~or by the limited partners in each class or group, as appropriate~~. If a transfer or domestication or continuance described in subsection (a) of this section shall be authorized as provided in this subsection (b), a certificate of transfer if the limited partnership's existence as a limited partnership of the State of Delaware is to cease or a certificate of transfer and domestic continuance if the limited partnership's existence as a limited partnership in the State of Delaware is to continue, executed in accordance with § 17-204 of this title, shall be filed in the office of the Secretary of State in accordance with § 17-206 of this title. The certificate of transfer or the certificate of transfer and domestic continuance shall state:

(1) The name of the limited partnership and, if it has been changed, the name under which its certificate of limited partnership was originally filed;

(2) The date of the filing of its original certificate of limited partnership with the Secretary of State;

(3) The jurisdiction to which the limited partnership shall be transferred or in which it shall be domesticated or continued and the name of the entity or business form formed, incorporated, created or that otherwise comes into being as a consequence of the transfer of the limited partnership to, or its domestication or continuance in, such foreign jurisdiction;

(4) The future effective date or time (which shall be a date or time certain) of the transfer to or domestication or continuance in the jurisdiction specified in paragraph (b)(3) of this section if it is not to be effective upon the filing of the certificate of transfer or the certificate of transfer and domestic continuance;

(5) That the transfer or domestication or continuance of the limited partnership has been approved in accordance with the provisions of this section;

(6) In the case of a certificate of transfer, (i) that the existence of the limited partnership as a limited partnership of the State of Delaware shall cease when the certificate of transfer becomes effective and (ii) the agreement of the limited partnership 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 limited partnership arising while it was a limited partnership of the State, and that it irrevocably appoints the Secretary of State as its agent to accept service of process in any such action, suit or proceeding;

(7) The address (which may not be that of the limited partnership's registered agent without the written consent of the limited partnership's registered agent, such consent to be filed with the certificate of transfer) to which a copy of the process referred to in paragraph (b)(6) of this section shall be mailed to it by the Secretary of State. Process may be served upon the Secretary of State under paragraph (b)(6) of this section by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event of service hereunder upon the Secretary of State, the procedures set forth in § 17-911(c) of this title shall be applicable, except that the plaintiff in any such action, suit or proceeding shall furnish the Secretary of State with the address specified in this subsection and any other address that the plaintiff may elect to furnish, together with copies of such process as required by the Secretary of State, and the Secretary of State shall notify the limited partnership that has transferred or domesticated or continued out of the State of Delaware at all such addresses furnished by the plaintiff in accordance with the procedures set forth in § 17-911(c) of this title; and

(8) In the case of a certificate of transfer and domestic continuance, that the limited partnership will continue to exist as a limited partnership of the State of Delaware after the certificate of transfer and domestic continuance becomes effective.

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, 2015, shall continue to be governed by clause (2) of the third sentence of this subsection as in effect on July 31, 2015.

§ 17-218. Series of Limited Partners, General Partners, Partnership Interests or Assets

. . . .

(k) Subject to § 17-801 of this title, except to the extent otherwise provided in the partnership agreement, a series may be terminated and its affairs wound up without causing the dissolution of the limited partnership. The termination of a series established in accordance with subsection (b) of this section shall not affect the limitation on liabilities of such series provided by subsection (b) of this section. A series is terminated and its affairs shall be wound up upon the dissolution of the limited partnership under § 17-801 of this title or otherwise upon the first to occur of the following:

(1) At the time specified in the partnership agreement;

(2) Upon the happening of events specified in the partnership agreement;

(3) Unless otherwise provided in the partnership agreement, upon the affirmative vote or written consent of (i) all general partners associated with such series and (ii) ~~the limited partners associated with such series or, if there is more than 1 class or group of limited partners associated with such series, then by each class or group of limited partners associated with such series, in either case, by~~ limited partners associated with such series who own more than 2/3 of the then-current percentage or other interest in the profits of the limited partnership associated with such series owned by all of the limited partners associated with such series ~~or by the limited partners in each class or group associated with such series, as appropriate~~;

(4) An event of withdrawal of a general partner associated with the series unless at the time there is at least 1 other general partner associated with the series and the partnership agreement permits the business of the series to be carried on by the remaining general partner and that partner does so, but the series is not terminated and is not required to be wound up by reason of any event of withdrawal if (i) within 90 days or such other period as is provided for in the partnership agreement after the withdrawal either (A) if provided for in the partnership agreement, the then-current percentage or other interest in the profits of the series specified in the partnership agreement owned by the remaining partners associated with the series agree, in writing or vote, to continue the business of the series and to appoint, effective as of the date of withdrawal, 1 or more

additional general partners for the series if necessary or desired, or (B) if no such right to agree or vote to continue the business of the series of the limited partnership and to appoint 1 or more additional general partners for such series is provided for in the partnership agreement, then more than 50~~%~~ percent of the then-current percentage or other interest in the profits of the series owned by the remaining partners associated with the series ~~or, if there is more than 1 class or group of remaining partners associated with the series, then more than 50% of the then current percentage or other interest in the profits of the series owned by each class or classes or group or groups of remaining partners associated with the series~~ agree, in writing or vote, to continue the business of the series and to appoint, effective as of the date of withdrawal, 1 or more additional general partners for the series if necessary or desired, or (ii) the business of the series is continued pursuant to a right to continue stated in the partnership agreement and the appointment, effective as of the date of withdrawal, of 1 or more additional general partners to be associated with the series if necessary or desired; or

(5) The termination of such series under subsection (m) of this section.

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, 2015, shall continue to be governed by paragraph (3)(ii) and paragraph (4)(i)(B) of this subsection as in effect on July 31, 2015.

(l) Notwithstanding § 17-803(a) of this title, unless otherwise provided in the partnership agreement, a general partner associated with a series who has not wrongfully terminated the series or, if none, the limited partners associated with the series or a person approved by the limited partners associated with the series ~~or, if there is more than 1 class or group of limited partners associated with the series, then by each class or group of limited partners associated with the series~~, in either case, by limited partners who own more than 50~~%~~ percent of the then current percentage or other interest in the profits of the series owned by all of the limited partners associated with the series ~~or by the limited partners in each class or group associated with the series, as appropriate~~, may wind up the affairs of the series; but, if the series has been established in accordance with subsection (b) of this section, the Court of Chancery, upon cause shown, may wind up the affairs of the series upon application of any partner associated with the series, the partner's personal representative or assignee, and in connection therewith, may appoint a liquidating trustee. The persons winding up the affairs of a series may, in the name of the limited partnership and for and on

behalf of the limited partnership and such series, take all actions with respect to the series as are permitted under § 17-803(b) of this title. The persons winding up the affairs of a series shall provide for the claims and obligations of the series and distribute the assets of the series as provided in § 17-804 of this title, which section shall apply to the winding up and distribution of assets of a series. Actions taken in accordance with this subsection shall not affect the liability of limited partners and shall not impose liability on a liquidating trustee. 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, 2015, shall continue to be governed by the first sentence of this subsection as in effect on July 31, 2015.

§ 17-219. Approval of Conversion of a Limited Partnership

. . . .

(b) If the partnership agreement specifies the manner of authorizing a conversion of the limited partnership, the conversion shall be authorized as specified in the partnership agreement. If the partnership agreement does not specify the manner of authorizing a conversion of the limited partnership and does not prohibit a conversion of the limited partnership, the conversion shall be authorized in the same manner as is specified in the partnership agreement for authorizing a merger or consolidation that involves the limited partnership as a constituent party to the merger or consolidation. If the partnership agreement does not specify the manner of authorizing a conversion of the limited partnership or a merger or consolidation that involves the limited partnership as a constituent party and does not prohibit a conversion of the limited partnership, the conversion shall be authorized by the approval (1) by all general partners, and (2) ~~by the limited partners or, if there is more than 1 class or group of limited partners, then by each class or group of limited partners, in either case,~~ by limited partners who own more than 50 percent of the then current percentage or other interest in the profits of the domestic limited partnership owned by all of the limited partners ~~or by the limited partners in each class or group, as appropriate~~. 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, 2015, shall continue to be governed by clause (2) of this subsection as in effect on July 31, 2015.

SUBCHAPTER III. LIMITED PARTNERS

§ 17-302. Classes and Voting

. . . .

(e) Unless otherwise provided in a partnership agreement, meetings of limited partners may be held by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at the meeting. Unless otherwise provided in a partnership agreement, on any matter that is to be voted on, consented to or approved by limited partners, the limited partners may take such action without a meeting, without prior notice and without a vote if consented to, in writing or by electronic transmission, by limited partners 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 limited partners entitled to vote thereon were present and voted. Unless otherwise provided in a partnership agreement, if a person (whether or not then a limited partner) consenting as a limited partner to any matter provides that such consent will be effective at a future time (including a time determined upon the happening of an event), then such person shall be deemed to have consented as a limited partner at such future time so long as such person is then a limited partner. Unless otherwise provided in a partnership agreement, on any matter that is to be voted on by limited partners, the limited partners may vote in person or by proxy, and such proxy may be granted in writing, by means of electronic transmission or as otherwise permitted by applicable law. Unless otherwise provided in a partnership agreement, a consent transmitted by electronic transmission by a limited partner or by a person or persons authorized to act for a limited partner shall be deemed to be written and signed for purposes of this subsection. For purposes of this subsection, the term "electronic transmission" means any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process.

§ 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 and documents 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:

(1) True and full information regarding the status of the business and financial condition of the limited partnership;

(2) Promptly after becoming available, a copy of the limited partnership's federal, state and local income tax returns for each year;

(3) A current list of the name and last known business, residence or mailing address of each partner;

(4) A copy of any written partnership agreement and certificate of limited partnership and all amendments thereto, together with executed copies of any written powers of attorney pursuant to which the partnership agreement and any certificate and all amendments thereto have been executed;

(5) True and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each partner and which each partner has agreed to contribute in the future, and the date on which each became a partner; and

(6) Other information regarding the affairs of the limited partnership as is just and reasonable.

(b) A general partner shall have the right to keep confidential from limited partners for such period of time as the general partner deems reasonable, any information which the general partner reasonably believes to be in the nature of trade secrets or other information the disclosure of which the general partner in good faith believes is not in the best interest of the limited partnership or could damage the limited partnership or its business or which the limited partnership is required by law or by agreement with a third party to keep confidential.

(c) A limited partnership may maintain its records in other than a written form if such form is capable of conversion into written form within a reasonable time.

(d) Any demand under this section shall be in writing and shall state the purpose of such demand. In every instance where an attorney or other agent shall be the person who seeks the right to obtain the information described in subsection (a) of this section, the demand shall be accompanied by a power of attorney or such other writing which authorizes the attorney or other agent to so act on behalf of the limited partner.

(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, 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) The rights of a limited partner to obtain information as provided in this section may be 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 the rights of a limited partner to obtain information by any other means permitted under this chapter.

(g) A limited partnership shall maintain a current record that identifies the name and last known business, residence, or mailing address of each partner.

SUBCHAPTER IV. GENERAL PARTNERS

§ 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 the general partner's rights and powers to manage and control the business and affairs of the limited partnership, including to delegate to agents, officers and employees of the general partner or the limited partnership, and to delegate by a management agreement or another agreement with, or otherwise to, other 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 and powers have been delegated to be a general partner of the limited partnership.

§ 17-405. Classes and Voting

. . . .

(d) Unless otherwise provided in a partnership agreement, meetings of general partners may be held by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at the meeting. Unless otherwise provided in a partnership agreement, on any matter that is to be voted on, consented to or approved by general partners, the general partners may take such action without a meeting, without prior notice and without a vote if consented to, in writing or by electronic transmission, by general partners 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 general partners entitled to vote thereon were present and voted. Unless otherwise provided in a partnership agreement, if a person (whether or not then a general partner) consenting as a general partner to any matter provides that such consent will be effective at a future time (including a time determined upon the happening of an event), then such person shall be deemed to have consented as a general partner at such future time so long as such person is then a general partner. Unless otherwise provided in a partnership agreement, on any matter that is to be voted on by general partners, the general partners may vote in person or by proxy, and such proxy may be granted

in writing, by means of electronic transmission or as otherwise permitted by applicable law. Unless otherwise provided in a partnership agreement, a consent transmitted by electronic transmission by a general partner or by a person or persons authorized to act for a general partner shall be deemed to be written and signed for purposes of this subsection (d). For purposes of this subsection (d), the term "electronic transmission" means any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process.

SUBCHAPTER VI. DISTRIBUTIONS AND WITHDRAWAL

§ 17-603. Withdrawal of Limited Partner

A limited partner may withdraw from a limited partnership only at the time or upon the happening of events specified in the partnership agreement and in accordance with the partnership agreement. Notwithstanding anything to the contrary under applicable law, unless a partnership agreement provides otherwise, a limited partner may not withdraw from a limited partnership prior to the dissolution and winding up of the limited partnership. Notwithstanding anything to the contrary under applicable law, a partnership agreement may provide that a partnership interest may not be assigned prior to the dissolution and winding up of the 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, 1996, shall continue to be governed by this section as in effect on July 31, 1996~~, and shall not be governed by this section~~.

SUBCHAPTER VIII. DISSOLUTION

§ 17-801. Nonjudicial Dissolution

A limited partnership is dissolved and its affairs shall be wound up upon the first to occur of the following:

(1) At the time specified in a partnership agreement, but if no such time is set forth in the partnership agreement, then the limited partnership shall have a perpetual existence;

(2) Unless otherwise provided in a partnership agreement, upon the affirmative vote or written consent of (i) all general partners and (ii) ~~the limited partners of a limited partnership or, if there is more than 1 class or group of limited partners, then by each class or group of limited partners, in either case, by~~ limited partners who own more than 2/3 of the then-current percentage or other interest in the profits of the limited partnership owned by all of the limited partners ~~or by the limited partners in each class or group, as appropriate.~~;

(3) An event of withdrawal of a general partner unless at the time there is at least 1 other general partner and the partnership agreement permits the business of the limited partnership to be carried on by the remaining general partner and that partner does so, but the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal if (i) within 90 days or such other period as is provided for in a partnership agreement after the withdrawal either (A) if provided for in the partnership agreement, the then-current percentage or other interest in the profits of the limited partnership specified in the partnership agreement owned by the remaining partners agree, in writing or vote, to continue the business of the limited partnership and to appoint, effective as of the date of withdrawal, 1 or more additional general partners if necessary or desired, or (B) if no such right to agree or vote to continue the business of the limited partnership and to appoint 1 or more additional general partners is provided for in the partnership agreement, then more than 50~~%~~ percent of the then-current percentage or other interest in the profits of the limited partnership owned by the remaining partners ~~or, if there is more than 1 class or group of remaining partners, then more than 50% of the then current percentage or other interest in the profits of the limited partnership owned by each class or classes or group or groups of remaining partners~~ agree, in writing or vote, to continue the business of the limited partnership and to appoint, effective as of the date of withdrawal, 1 or more additional general partners if necessary or desired, or (ii) the business of the limited partnership is continued pursuant to a right to continue stated in the partnership agreement and; the appointment, effective as of the date of withdrawal, of 1 or more additional general partners if necessary or desired;

(4) At the time there are no limited partners; provided, that the limited partnership is not dissolved and is not required to be wound up if:

a. Unless otherwise provided in a partnership agreement, within 90 days or such other period as is provided for in the partnership agreement after the occurrence of the event that caused the last remaining limited partner to cease to be a limited partner, the personal representative of the last remaining limited partner and all of the general partners agree, in writing or by vote, to continue the business of the limited partnership and to the admission of the personal representative of such limited partner or its nominee or designee to the limited partnership as a limited partner, effective as of the occurrence of the event that caused the last remaining limited partner to cease to be a limited partner; provided, that a partnership agreement may provide that the general partners or the personal representative of the last remaining limited partner shall be obligated to agree in writing

to continue the business of the limited partnership and to the admission of the personal representative of such limited partner or its nominee or designee to the limited partnership as a limited partner, effective as of the occurrence of the event that caused the last limited partner to cease to be a limited partner; or

b. A limited partner is admitted to the limited partnership in the manner provided for in the partnership agreement, effective as of the occurrence of the event that caused the last remaining limited partner to cease to be a limited partner, within 90 days or such other period as is provided for in the partnership agreement after the occurrence of the event that caused the last remaining limited partner to cease to be a limited partner, pursuant to a provision of the partnership agreement that specifically provides for the admission of a limited partner to the limited partnership after there is no longer a remaining limited partner of the limited partnership.

(5) Upon the happening of events specified in a partnership agreement; or

(6) Entry of a decree of judicial dissolution under § 17-802 of this title.

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, 2015, shall continue to be governed by paragraph (2)(ii) and paragraph (3)(i)(B) of this section as in effect on July 31, 2015.

§ 17-803. Winding Up

(a) Unless otherwise provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership or, if none, the limited partners, or a person approved by the limited partners ~~or, if there is more than 1 class or group of limited partners, then by each class or group of limited partners~~, in either case, by limited partners who own more than 50 percent of the then current percentage or other interest in the profits of the limited partnership owned by all of the limited partners ~~or by the limited partners in each class or group, as appropriate~~ may wind up the limited partnership's affairs; but the Court of Chancery, upon cause shown, may wind up the limited partnership's affairs upon application of any partner, the partner's personal representative or assignee, and in connection therewith, may appoint a liquidating trustee. 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, 2015, shall continue to be governed by this subsection as in effect on July 31, 2015.

§ 17-806. Revocation of Dissolution

If a partnership agreement provides the manner in which a dissolution may be revoked, it may be revoked in that manner and, unless a partnership agreement prohibits revocation of dissolution, then notwithstanding the occurrence of an event set forth in § 17-801(1), (2), (3), (4) or (5) of this title, the limited partnership shall not be dissolved and its affairs shall not be wound up if, prior to the filing of a certificate of cancellation in the office of the Secretary of State, the business of the limited partnership is continued, effective as of the occurrence of such event:

(1) In the case of dissolution effected by the affirmative vote or written consent of the partners or other persons, pursuant to such affirmative vote or written consent (and the approval of any partners 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 § 17-801(1) or (5) of this title (other than a dissolution effected by the affirmative vote or written consent of the partners or other persons, an event of withdrawal of a general partner or the occurrence of an event that causes the last remaining limited partner to cease to be a limited partner), pursuant to such affirmative vote or written 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 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 or the occurrence of an event that causes the last remaining limited partner to cease to be a limited partner, pursuant to the affirmative vote or written consent of:

a. All remaining general partners; and

b. ~~The limited partners of the limited partnership or, if there is more than 1 class or group of limited partners, then by each class or group of limited partners, in either case, by limited~~ Limited partners who own more than 2/3 of the then-current percentage or other interest in the profits of the limited partnership owned by all of the limited partners ~~or by the limited partners in each class or group, as appropriate~~, or if there is no remaining limited partner the personal representative of the last remaining limited partner of the limited partnership or the assignee of all of the limited partners' partnership interests in the limited partnership (and the approval of any partners 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 (3) of this section above and there is no remaining general partner of the limited partnership, 1 or more general partners shall be appointed, effective as of the date of withdrawal of the last remaining general partner, by the affirmative vote or written consent of the limited partners of the limited partnership ~~or, if there is more than 1 class or group of limited partners, then by each class or group of limited partners, in either case, by limited partners~~ who own more than 2/3 of the then-current percentage or other interest in the profits of the limited partnership owned by all of the limited partners ~~or by the limited partners in each class or group, as appropriate~~. If dissolution is revoked pursuant to paragraph (3) of this section above and there is no remaining limited partner of the limited partnership, a nominee or designee of such personal representative or such assignee, as applicable, shall be appointed as a limited partner, effective as of the occurrence of the event that caused the last remaining limited partner to cease to be a limited partner, by the affirmative vote or written consent of the remaining general partners and such personal representative or such assignee, as applicable. If dissolution is revoked pursuant to paragraph (3) of this section above and there is no remaining general partner of the limited partnership and no remaining limited partner of the limited partnership, 1 or more general partners shall be appointed, effective as of the date of withdrawal of the last remaining general partner, and a nominee or designee of such personal representative or such assignee, as applicable, shall be appointed as a limited partner, effective as of the occurrence of the event that caused the last remaining limited partner to cease to be a limited partner, in each case, by the affirmative vote or written consent of such personal representative or such assignee, as applicable. The provisions of this section shall not be construed to limit the accomplishment of a revocation of dissolution by other means permitted by law.

§ 17-1107. Fees

(a) . . .

(5) The Secretary of State may issue photocopies or electronic image copies of instruments on file, as well as instruments, documents and other papers not on file, and for all such photocopies or electronic image copies, whether certified or not, a fee of $10 shall be paid for the first page and $2.00 for each additional page. ~~The Secretary of State may also issue microfiche copies of instruments on file as well as instruments, documents and other papers not on file, and for each such microfiche a fee of $2.00 shall be paid therefor.~~ Notwithstanding ~~the State~~

~~of~~ Delaware's Freedom of Information Act [Chapter 100 of Title 29] or other provision of ~~this Code~~ law granting access to public records, the Secretary of State upon request shall issue only photocopies~~, microfiche~~ or electronic image copies of public records in exchange for the fees described ~~above~~in this section, and in no case shall the Secretary of State be required to provide copies (or access to copies) of such public records (including without limitation bulk data, digital copies of instruments, documents and other papers, databases or other information) in an electronic medium or in any form other than photocopies or electronic image copies of such public records in exchange, as applicable, for the fees described in this section or § 2318 of Title 29 for each such record associated with a file number.

§ 17-1109. Annual Tax of Domestic Limited Partnership and Foreign Limited Partnership

(a) Every domestic limited partnership and every foreign limited partnership registered to do business in the State of Delaware shall pay an annual tax, for the use of the State of Delaware, in the amount of ~~$250~~ $300.

DELAWARE LIMITED LIABILITY COMPANY ACT

(Delaware Code, Title 6, Chapter 18)

SUBCHAPTER II. FORMATION; CERTIFICATE OF FORMATION

§ 18-204. Execution

. . . .

(c) For all purposes of the laws of the State of Delaware, unless otherwise provided in a limited liability company agreement, a power of attorney or proxy with respect to ~~matters relating to the organization, internal affairs or termination of a limited liability company or granted by a person as a member or assignee of a limited liability company interest or by a person seeking to become a member or an assignee of a limited liability company interest~~ a limited liability company granted to any person shall be irrevocable if it states that it is irrevocable and it is coupled with an interest sufficient in law to support an irrevocable power or proxy. Such irrevocable power of attorney or proxy, unless otherwise provided therein or in a limited liability company agreement, shall not be affected by subsequent death, disability, incapacity, dissolution, termination of existence or bankruptcy of, or any other event concerning, the principal. A power of attorney or proxy with respect to matters relating to the organization, internal affairs or termination of a limited liability company or granted by a person as a member or an

assignee of a limited liability company interest or by a person seeking to become a member or an assignee of a limited liability company interest and, in either case, granted to the limited liability company, a manager or member thereof, or any of their respective officers, directors, managers, members, partners, trustees, employees or agents shall be deemed coupled with an interest sufficient in law to support an irrevocable power or proxy. The provisions of this subsection shall not be construed to limit the enforceability of a power of attorney or proxy that is part of a limited liability company agreement.

§ 18-209. Merger and Consolidation

. . . .

(b) Pursuant to an agreement of merger or consolidation, 1 or more domestic limited liability companies may merge or consolidate with or into 1 or more domestic limited liability companies or 1 or more other business entities formed or organized under the laws of the State of Delaware or any other state or the United States or any foreign country or other foreign jurisdiction, or any combination thereof, with such domestic limited liability company or other business entity as the agreement shall provide being the surviving or resulting domestic limited liability company or other business entity. Unless otherwise provided in the limited liability company agreement, an agreement of merger or consolidation or a plan of merger shall be approved by each domestic limited liability company which is to merge or consolidate ~~by the members or, if there is more than 1 class or group of members, then by each class or group of members, in either case,~~ by members who own more than 50 percent of the then current percentage or other interest in the profits of the domestic limited liability company owned by all of the members ~~or by the members in each class or group, as appropriate~~. In connection with a merger or consolidation hereunder, rights or securities of, or interests in, a domestic limited liability company or other business entity which is a constituent party to the merger or consolidation may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving or resulting domestic limited liability company or other business entity or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, a domestic limited liability company or other business entity which is not the surviving or resulting limited liability company or other business entity in the merger or consolidation, may remain outstanding or may be canceled. Notwithstanding prior approval, an agreement of merger or consolidation or a plan of merger may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation or plan of merger. Unless otherwise provided in a limited liability company agreement, a

limited liability company whose original certificate of formation was filed with the Secretary of State and effective on or prior to July 31, 2015, shall continue to be governed by the second sentence of this subsection as in effect on July 31, 2015.

§ 18-213. Transfer or Continuance of Domestic Limited Liability Companies

(b) If the limited liability company agreement specifies the manner of authorizing a transfer or domestication or continuance described in subsection (a) of this section, the transfer or domestication or continuance shall be authorized as specified in the limited liability company agreement. If the limited liability company agreement does not specify the manner of authorizing a transfer or domestication or continuance described in subsection (a) of this section and does not prohibit such a transfer or domestication or continuance, the transfer or domestication or continuance shall be authorized in the same manner as is specified in the limited liability company agreement for authorizing a merger or consolidation that involves the limited liability company as a constituent party to the merger or consolidation. If the limited liability company agreement does not specify the manner of authorizing a transfer or domestication or continuance described in subsection (a) of this section or a merger or consolidation that involves the limited liability company as a constituent party and does not prohibit such a transfer or domestication or continuance, the transfer or domestication or continuance shall be authorized by the approval by ~~the members or, if there is more than 1 class or group of members, then by each class or group of members, in either case, by the~~ members who own more than 50~~%~~ percent of the then current percentage or other interest in the profits of the domestic limited liability company owned by all of the members ~~or by the members in each class or group, as appropriate~~. If a transfer or domestication or continuance described in subsection (a) of this section shall be authorized as provided in this subsection (b), a certificate of transfer if the limited liability company's existence as a limited liability company of the State of Delaware is to cease, or a certificate of transfer and domestic continuance if the limited liability company's existence as a limited liability company in the State of Delaware is to continue, executed in accordance with § 18-204 of this title, shall be filed in the office of the Secretary of State in accordance with § 18-206 of this title. The certificate of transfer or the certificate of transfer and domestic continuance shall state:

(1) The name of the limited liability company and, if it has been changed, the name under which its certificate of formation was originally filed;

(2) The date of the filing of its original certificate of formation with the Secretary of State;

(3) The jurisdiction to which the limited liability company shall be transferred or in which it shall be domesticated or continued and the name of the entity or business form formed, incorporated, created or that otherwise comes into being as a consequence of the transfer of the limited liability company to, or its domestication or continuance in, such foreign jurisdiction;

(4) The future effective date or time (which shall be a date or time certain) of the transfer to or domestication or continuance in the jurisdiction specified in paragraph (b)(3) of this section if it is not to be effective upon the filing of the certificate of transfer or the certificate of transfer and domestic continuance;

(5) That the transfer or domestication or continuance of the limited liability company has been approved in accordance with this section;

(6) In the case of a certificate of transfer, (i) that the existence of the limited liability company as a limited liability company of the State of Delaware shall cease when the certificate of transfer becomes effective, and (ii) the agreement of the limited liability company 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 limited liability company arising while it was a limited liability company of the State of Delaware, and that it irrevocably appoints the Secretary of State as its agent to accept service of process in any such action, suit or proceeding;

(7) The address (which may not be that of the limited liability company's registered agent without the written consent of the limited liability company's registered agent, such consent to be filed with the certificate of transfer) to which a copy of the process referred to in paragraph (b)(6) of this section shall be mailed to it by the Secretary of State. Process may be served upon the Secretary of State under paragraph (b)(6) of this section by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event of service hereunder upon the Secretary of State, the procedures set forth in § 18-911(c) of this title shall be applicable, except that the plaintiff in any such action, suit or proceeding shall furnish the Secretary of State with the address specified in this subsection and any other address that the plaintiff may elect to furnish, together with copies of such process as

required by the Secretary of State, and the Secretary of State shall notify the limited liability company that has transferred or domesticated or continued out of the State of Delaware at all such addresses furnished by the plaintiff in accordance with the procedures set forth in § 18-911(c) of this title; and

(8) In the case of a certificate of transfer and domestic continuance, that the limited liability company will continue to exist as a limited liability company of the State of Delaware after the certificate of transfer and domestic continuance becomes effective.

Unless otherwise provided in a limited liability company agreement, a limited liability company whose original certificate of formation was filed with the Secretary of State and effective on or prior to July 31, 2015, shall continue to be governed by the third sentence of this subsection as in effect on July 31, 2015.

§ 18-215. Series of Members, Managers, Limited Liability Company Interests or Assets

. . . .

(k) Subject to § 18-801 of this title, except to the extent otherwise provided in the limited liability company agreement, a series may be terminated and its affairs wound up without causing the dissolution of the limited liability company. The termination of a series established in accordance with subsection (b) of this section shall not affect the limitation on liabilities of such series provided by subsection (b) of this section. A series is terminated and its affairs shall be wound up upon the dissolution of the limited liability company under § 18-801 of this title or otherwise upon the first to occur of the following:

(1) At the time specified in the limited liability company agreement;

(2) Upon the happening of events specified in the limited liability company agreement;

(3) Unless otherwise provided in the limited liability company agreement, upon the affirmative vote or written consent of ~~the members of the limited liability company associated with such series or, if there is more than 1 class or group of members associated with such series, then by each class or group of members associated with such series, in either case, by~~ members associated with such series who own more than 2/3 of the then-current percentage or other interest in the profits of the series of the limited liability company owned by all of the members associated with such series ~~or by the members in each class or group of such series, as appropriate~~; or

(4) The termination of such series under subsection (m) of this section.

Unless otherwise provided in a limited liability company agreement, a limited liability company whose original certificate of formation was filed with the Secretary of State and effective on or prior to July 31, 2015, shall continue to be governed by paragraph (3) of this subsection as in effect on July 31, 2015.

(l) Notwithstanding § 18-803(a) of this title, unless otherwise provided in the limited liability company agreement, a manager associated with a series who has not wrongfully terminated the series or, if none, the members associated with the series or a person approved by the members associated with the series ~~or, if there is more than 1 class or group of members associated with the series, then by each class or group of members associated with the series~~, in either case, by members who own more than 50 percent of the then current percentage or other interest in the profits of the series owned by all of the members associated with the series ~~or by the members in each class or group associated with the series, as appropriate~~, may wind up the affairs of the series; but, if the series has been established in accordance with subsection (b) of this section, the Court of Chancery, upon cause shown, may wind up the affairs of the series upon application of any member or manager associated with the series, or the member's personal representative or assignee, and in connection therewith, may appoint a liquidating trustee. The persons winding up the affairs of a series may, in the name of the limited liability company and for and on behalf of the limited liability company and such series, take all actions with respect to the series as are permitted under § 18-803(b) of this title. The persons winding up the affairs of a series shall provide for the claims and obligations of the series and distribute the assets of the series as provided in § 18-804 of this title, which section shall apply to the winding up and distribution of assets of a series. Actions taken in accordance with this subsection shall not affect the liability of members and shall not impose liability on a liquidating trustee. Unless otherwise provided in a limited liability company agreement, a limited liability company whose original certificate of formation was filed with the Secretary of State and effective on or prior to July 31, 2015, shall continue to be governed by the first sentence of this subsection as in effect on July 31, 2015.

§ 18-216. Approval of Conversion of a Limited Liability Company

. . . .

(b) If the limited liability company agreement specifies the manner of authorizing a conversion of the limited liability company, the conversion shall be authorized as specified in the limited liability company agreement. If the limited liability company agreement does not specify the manner of authorizing a conversion of the limited liability company and does not prohibit a conversion of the limited liability company, the conversion shall be

authorized in the same manner as is specified in the limited liability company agreement for authorizing a merger or consolidation that involves the limited liability company as a constituent party to the merger or consolidation. If the limited liability company agreement does not specify the manner of authorizing a conversion of the limited liability company or a merger or consolidation that involves the limited liability company as a constituent party and does not prohibit a conversion of the limited liability company, the conversion shall be authorized by the approval ~~by the members or, if there is more than 1 class or group of members, then by each class or group of members, in either case,~~ by members who own more than 50 percent of the then current percentage or other interest in the profits of the domestic limited liability company owned by all of the members ~~or by the members in each class or group, as appropriate~~. Unless otherwise provided in a limited liability company agreement, a limited liability company whose original certificate of formation was filed with the Secretary of State and effective on or prior to July 31, 2015, shall continue to be governed by the third sentence of this subsection as in effect on July 31, 2015.

SUBCHAPTER IV. MANAGERS

§ 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 the member's or manager's, as the case may be, rights and powers to manage and control the business and affairs of the limited liability company, including to delegate to agents, officers and employees of a member or manager or the limited liability company, and to delegate by a management agreement or another agreement with, or otherwise to, other 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 and powers have been delegated to be a member or manager, as the case may be, of the limited liability company.

SUBCHAPTER VI. DISTRIBUTIONS AND RESIGNATION

§ 18-603. Resignation of Member

A member may resign from a limited liability company only at the time or upon the happening of events specified in a limited liability company agreement and in accordance with the limited liability company agreement.

Notwithstanding anything to the contrary under applicable law, unless a limited liability company agreement provides otherwise, a member may not resign from a limited liability company prior to the dissolution and winding up of the limited liability company. Notwithstanding anything to the contrary under applicable law, a limited liability company agreement may provide that a limited liability company interest may not be assigned prior to the dissolution and winding up of the limited liability company.

Unless otherwise provided in a limited liability company agreement, a limited liability company whose original certificate of formation was filed with the Secretary of State and effective on or prior to July 31, 1996, shall continue to be governed by this section as in effect on July 31, 1996~~, and shall not be governed by this section~~.

SUBCHAPTER VIII. DISSOLUTION

§ 18-801. Dissolution

(a) A limited liability company is dissolved and its affairs shall be wound up upon the first to occur of the following:

(1) At the time specified in a limited liability company agreement, but if no such time is set forth in the limited liability company agreement, then the limited liability company shall have a perpetual existence;

(2) Upon the happening of events specified in a limited liability company agreement;

(3) Unless otherwise provided in a limited liability company agreement, upon the affirmative vote or written consent of ~~the members of the limited liability company or, if there is more than 1 class or group of members, then by each class or group of members, in either case, by~~ members who own more than 2/3 of the then-current percentage or other interest in the profits of the limited liability company owned by all of the members ~~or by the members in each class or group, as appropriate~~;

(4) At any time there are no members; provided, that the limited liability company is not dissolved and is not required to be wound up if:

a. Unless otherwise provided in a limited liability company agreement, within 90 days or such other period as is provided for in the limited liability company agreement after the occurrence of the event that terminated the continued membership of the last remaining member, the personal representative of the last remaining member agrees in writing to

continue the limited liability company and to the admission of the personal representative of such member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member; provided, that a limited liability company agreement may provide that the personal representative of the last remaining member shall be obligated to agree in writing to continue the limited liability company and to the admission of the personal representative of such member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member, or

b. A member is admitted to the limited liability company in the manner provided for in the limited liability company agreement, effective as of the occurrence of the event that terminated the continued membership of the last remaining member, within 90 days or such other period as is provided for in the limited liability company agreement after the occurrence of the event that terminated the continued membership of the last remaining member, pursuant to a provision of the limited liability company agreement that specifically provides for the admission of a member to the limited liability company after there is no longer a remaining member of the limited liability company.

(5) The entry of a decree of judicial dissolution under § 18-802 of this title.

Unless otherwise provided in a limited liability company agreement, a limited liability company whose original certificate of formation was filed with the Secretary of State and effective on or prior to July 31, 2015, shall continue to be governed by paragraph (3) of this subsection as in effect on July 31, 2015.

§ 18-803. Winding Up

(a) Unless otherwise provided in a limited liability company agreement, a manager who has not wrongfully dissolved a limited liability company or, if none, the members or a person approved by the members ~~or, if there is more than 1 class or group of members, then by each class or group of members~~, in either case, by members who own more than 50 percent of the then current percentage or other interest in the profits of the limited liability company owned by all of the members ~~or by the members in each class or group, as appropriate~~, may wind up the limited liability company's affairs; but the Court of Chancery, upon cause shown, may wind up the limited liability

company's affairs upon application of any member or manager, or the member's personal representative or assignee, and in connection therewith, may appoint a liquidating trustee. Unless otherwise provided in a limited liability company agreement, a limited liability company whose original certificate of formation was filed with the Secretary of State and effective on or prior to July 31, 2015, shall continue to be governed by this subsection as in effect on July 31, 2015.

SUBCHAPTER XI. MISCELLANEOUS

§ 18-1105. Fees

(a) . . .

(5) The Secretary of State may issue photocopies or electronic image copies of instruments on file, as well as instruments, documents and other papers not on file, and for all such photocopies or electronic image copies, whether certified or not, a fee of $10 shall be paid for the first page and $2.00 for each additional page. ~~The Secretary of State may also issue microfiche copies of instruments on file as well as instruments, documents and other papers not on file, and for each such microfiche a fee of $2.00 shall be paid therefor.~~ Notwithstanding ~~the State of~~ Delaware's Freedom of Information Act [Chapter 100 of Title 29] or other provision of ~~this Code~~law granting access to public records, the Secretary of State upon request shall issue only photocopies~~, microfiche~~ or electronic image copies of public records in exchange for the fees described ~~above~~in this section, and in no case shall the Secretary of State be required to provide copies (or access to copies) of such public records (including without limitation bulk data, digital copies of instruments, documents and other papers, databases or other information) in an electronic medium or in any form other than photocopies or electronic image copies of such public records in exchange, as applicable, for the fees described in this section or § 2318 of Title 29 for each such record associated with a file number.

§ 18-1107 Taxation of Limited Liability Companies

. . . .

(b) Every domestic limited liability company and every foreign limited liability company registered to do business in the State of Delaware shall pay an annual tax, for the use of the State of Delaware, in the amount of ~~$250~~ $300.