

D R A F T
FOR DISCUSSION ONLY

**SERIES OF UNINCORPORATED BUSINESS
ENTITIES ACT**

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

January 31 – February 2, 2014 Drafting Committee Meeting

With Reporter's Introductory Note

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ON UNIFORM STATE LAWS

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January 15, 2014

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ENTITIES ACT**

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SERIES OF UNINCORPORATED BUSINESS ENTITIES ACT

TABLE OF CONTENTS

Reporter’s Introductory Note 1

[ARTICLE] 11

PROTECTED SERIES

[PART 1] [CAPTION TBD]

SECTION 1101. DEFINITIONS 3
SECTION 1102. NATURE, PURPOSE, AND DURATION OF PROTECTED SERIES 6
SECTION 1103. POWERS. 7
SECTION 1104. GOVERNING LAW 9
SECTION 1105. OF RELATIONSHIP OF OPERATING AGREEMENT TO PROTECTED
SERIES. 10
SECTION 1106. NAME 12
SECTION 1107. [ESTABLISHMENT OF] [ESTABLISHING] PROTECTED SERIES;
STATEMENT OF DESIGNATION; AMENDMENT AND CANCELLATION OF
STATEMENT 13
SECTION 1108. [ANNUAL] [BIENNIAL] REPORTS 14
SECTION 1109. PROPERTY ASSOCIATED WITH PROTECTED SERIES. 15
SECTION 1110. MEMBER ASSOCIATED WITH PROTECTED SERIES. 17
SECTION 1111. NO AGENCY POWER OF MEMBER ASSOCIATED WITH PROTECTED
SERIES. 17
SECTION 1112. LIMITED LIABILITY. 18
SECTION 1113. MANAGEMENT OF PROTECTED SERIES. 19

[PART 2] [CAPTION TBD]

SECTION 1114. OTHER PROVISIONS OF [ACT] MADE APPLICABLE TO PROTECTED
SERIES. 21
SECTION 1115. REGISTERED AGENT; SERVICE OF PROCESS, NOTICE, OR
DEMAND 23
SECTION 1116. SIGNING AND FILING PURSUANT TO JUDICIAL ORDER. 24
SECTION 1117. LIABILITY FOR INACCURATE INFORMATION IN FILED RECORD. . 24
SECTION 1118. STATEMENT OF AUTHORITY; STATEMENT OF DENIAL 24
SECTION 1119. CONTRIBUTIONS AND DISTRIBUTIONS 24
SECTION 1120. REIMBURSEMENT; INDEMNIFICATION; ADVANCEMENT; AND
INSURANCE 25
SECTION 1121. STANDARDS OF CONDUCT FOR SERIES MANAGERS 25
SECTION 1122. INFORMATION RIGHTS OF ASSOCIATED MEMBERS AND PERSONS
FORMERLY ASSOCIATED WITH A PROTECTED SERIES. 26
SECTION 1123. NATURE OF TRANSFERABLE INTEREST 26

SECTION 1124. TRANSFER OF TRANSFERABLE INTEREST.	26
SECTION 1125. CHARGING ORDER.	26
SECTION 1126. POWER OF LEGAL REPRESENTATIVE OF DECEASED MEMBER.....	26
SECTION 1127. CEASING TO BE ASSOCIATED; CONSEQUENCES.	27
SECTION 1128. DISSOLUTION.	27
SECTION 1129. ACTIONS BY MEMBERS.	28
SECTION 1130. FOREIGN PROTECTED SERIES.....	28

1 **SERIES OF UNINCORPORATED BUSINESS ENTITIES ACT**

2
3 **Reporter’s Introductory Note¹**

4
5 **Series Provisions for ULLCA (2013)**

6
7 **Parameters Used in this Draft**

- 8
- 9 • To the greatest extent possible, locate all series provisions in a separate article –Article
- 10 11;
- 11
- 12 • As to each ULLCA provision, consider whether to extrapolate the provision into a series-
- 13 related version.
- 14 ○ When extrapolating, incorporate by reference whenever possible, so as to limit the
- 15 length of Article 11.
- 16 ○ To make the incorporation by reference as little confusing as possible; divide
- 17 Article 11 into two parts, with the latter including all provisions that incorporate
- 18 by reference.
- 19 ○ Where dividing a topic (e.g., dissociation) between “original” [Part 1] and
- 20 incorporated [Part 2] provisions would be confusing, put the topic in Part 2.
- 21
- 22 • For each controversial provision, provide at least two alternatives.
- 23 ○ “Controversial” in this context means: much debated, with strongly held views
- 24 on two (or more) sides.²
- 25 ○ Alternatives are sometimes stated as such and sometimes indicated by brackets.
- 26
- 27 • In contrast to the Fall 2013 draft, this draft will provide three alternatives with regard to
- 28 characterizing the legal status of a series: undefined (as with the first draft),³ a person,
- 29 and an entity.
- 30 • The term of art for the “thing”⁴ is “protected series” because: (i) usage in the series/asset-
- 31 partitioning realm requires that the act refer to “series,” while (ii) usage elsewhere makes
- 32 the term confusing when standing alone.
- 33
- 34 • As to the relationship between a limited liability company and a protected series, this
- 35 draft in most instances refers to the latter as being “of” the former – i.e., “a protected
- 36 series of the [a] limited liability company.” Where that formulation is awkward, this draft

¹ “Prefatory Note” is the Conference’s term of art for introductory materials explaining an act. These introductory materials state drafting premises, parameters, etc.

² As will be seen, most of this act’s key provisions meet this definition.

³ The Prefatory Note to the first draft stated: “Series provisions will scrupulously avoid stating that a protected series is an entity or a person in its own right, even though a series will have many of the most important powers of a legal entity/person.”

⁴ As suggested by a participant in the drafting process, “thing” is a placeholder, pending the Drafting Committee’s decision on how to characterize a protected series.

1 uses “a protected series the limited liability company has established”⁵ or similar
2 formulation.⁶

3
4 **Abbreviations**

5
6 “ Fall 2013 meeting” refers to the Drafting Committee meeting in September, 2013 in
7 Minneapolis.

8 “COSL” refers to the Committee on Style Liaison to the Drafting Committee, John Stieff.

⁵ The past tense is necessary, because most provisions of the statute apply to a series already in existence at the moment the statute applies.

⁶ An early version of the Fall 2013 draft referred to a protected series as “belonging to” the limited liability company. That usage was rejected as having inappropriate connotations. The next version referred to “a protected series a limited liability company establishes.” That usage was accurate but in most instances cumbersome. Consonant with the Drafting Committee’s current approach, the preposition “of” denotes a relationship but does not particularly characterize it.

1 **SERIES OF UNINCORPORATED BUSINESS ENTITIES ACT**⁷

2 **[ARTICLE] 11**

3 **PROTECTED SERIES**

4 **[PART 1] [CAPTION TBD]**

5 **SECTION 1101. DEFINITIONS.**⁸ In this [article]:

6 **Alternative A**

7 (1) “Associated”⁹ means with respect to:

8 (A) property, property that under Section 1109 has become associated with a
9 protected series;¹⁰

10 (B) a member, a member that under Section 1110¹¹ has become associated with a
11 protected series; and

12 (C) a transferable interest, a transferable interest comprising a person’s rights to
13 receive distributions from a protected series.

14 **Alternative B**

15 (1) “Associated” means have become associated with a protected series:

16 (A) under Section 1109 as property;

17 (B) under Section 1110 as a member; or

⁷ Many of these definitions have been relocated to Article 11, where they are not underscored except to the extent that language has been revised.

⁸ In the Fall 2013 draft, many of these definitions were located in ULLCA § 102(b). Such relocated provisions are not underscored except to the extent that language has been revised. The same is true for relocated footnotes.

⁹ Even if the act were to define “associate” as a verb, the concept of association would be used far more often in adjectival form. Therefore, this draft defines the adjectival form.

¹⁰ Passive used here to parallel the next provision, which cannot easily be stated in the active voice.

¹¹ Change made to make syntax parallel to parallel parts of the definition. COSL – Query – which is the proper location?

1 (C) as a transferable interest.

2 **End of Alternatives**

3 ¹²(2) “Distribution” means a transfer of money or other property from a protected series
4 to a person on account of an associated transferable interest or in the person’s capacity as an
5 associated member. The term:

6 (A) includes:

7 (i) a redemption or other purchase by a series of an associated transferable
8 interest; and

9 (ii) a transfer to an associated member in return for the member’s
10 relinquishment of any right to participate as an associated member in the management or conduct
11 of the series’ activities and affairs or to have access to records or other information concerning
12 the series’ activities and affairs; and

13 (B) does not include amounts constituting reasonable compensation for present or
14 past service or payments made in the ordinary course of business under a bona fide retirement
15 plan or other bona fide benefits program.¹³

16 (3) “Foreign protected series” means a structure ¹⁴ of a foreign limited liability company

¹² The decision to confine all series provisions to one article necessitates redefining this term for the purposes of this article.

¹³ The Reporter considered but rejected the idea of providing an alternative definition to the following effect: “Distribution” has the meaning stated in Section 102(4), except that: (1) “limited liability company” is applied as if the phrase referred to “protected series”; (2) “member” is applied as if the word referred to “member associated with the protected series”; and (3) “transferable interest is applied as if” Although superficially appealing, this approach is actually quite complicated; the “as applied redefinition” of “distribution” includes “transferable interest”, which, under this approach, would also be an “as applied redefinition”. Here and with the definition of transferee, a comment will express the intent to apply the Article 1 extrapolated definitions to a series rather than the parallel Article 1 definition. Query: Is it necessary to indicate somehow that the Article 1 definitions of “transferee” and “distribution” do not apply in Article 11?

¹⁴ An early version of the Fall 2013 draft used “arrangement” as the term of art.

1 which would be a protected series if the company were formed and the foreign series [were]
2 established under this [act].

3 (4) “Protected series”, except in the phrase “foreign protected series”,¹⁵

4 **Alternative A**

5 means a structure¹⁶ of a limited liability company which is established under Section 1107.

6 **Alternatives B & C**

7 means the [person] [entity] established under Section 1107.

8 **Alternative D**

9 is established under Section 1107.¹⁷

10 **End of Alternatives**¹⁸

11 (5) “Series manager” means a person¹⁹ that manages a protected series under
12 Section 1113 or the operating agreement.²⁰

13 ²¹(7) “Transferable interest” means, with respect to a protected series, the right, as
14 initially owned by a person in the person’s capacity as an associated member, to receive
15 distributions from the series, whether or not the person remains a member, remains associated

¹⁵ At its Fall 2013 meeting, the Drafting Committee rejected this alternative. Query: Is it necessary to include a provision analogous to ULLCA § 110 (APPLICATION TO EXISTING RELATIONSHIPS)?

¹⁶ “Structure” is also the term of art used in the definition of “foreign protected series.” See Section 1101(3).

¹⁷ It is unknown whether the Committee on Style would accept this formulation.

¹⁸ At the Fall 2013 meeting, the Drafting Committee decided to delete the concepts of supplemental agreement and series-specific terms of the operating agreement. As a result, this defined term is no longer necessary.

¹⁹ Query: “person” or entity? Query: May the operating agreement provide that one protected series manages another? (This draft does not exclude that arrangement.)

²⁰ In the Fall 2013 draft, this provision appears at ULLCA § 102(b)(7). (At its Fall 2013 meeting, the Drafting Committee rejected the concepts of series-specific provisions of the operating agreement and supplemental agreements.)

²¹ The decision to confine all series provisions to one article necessitates redefining this term for the purposes of this article.

1 with the series, or continues to own any part of the right. The term applies to any fraction of the
2 interest, by whomever owned.

3 **SECTION 1102. NATURE, PURPOSE, AND DURATION OF PROTECTED**
4 **SERIES.**

5 (a) A protected series is [distinct²² from] [a person distinct from] [an entity distinct from]²³

6 (1) any member associated with it;

7 (2) the limited liability company that established the series; and

8 (3) any other protected series of the company.

9 (b) A protected series may have any lawful purpose

10 **Alternative A**

11 , regardless of whether for profit.

12 **Alternative B**

13 , regardless of whether for profit, which the limited liability company that established the series

14 has.²⁴

²² The word “distinct” derives from Section 108(a): “A limited liability company is an entity distinct from its member or members.” Merriam Webster (on line), provides as the word’s first definition “distinguishable to the eye or mind as discrete: separate <a distinct cultural group> <teaching as distinct from research>”. <http://www.merriam-webster.com/dictionary/distinct>; last visited 8-23-13.

²³ In addition to the much discussed questions of bankruptcy law, Article 9, and title insurance, this characterization issue has less obvious implications. For example, May one series conspire with another civilly? Criminally? Is a series subject to criminal prosecution? E.g., U.S. v. ITT Blackburn Co., a Div. of ITT, 824 F.2d 628, 631 (8th Cir. 1987) (“[A]n unincorporated division cannot be sued or indicted, as it is not a legal entity.... See United States v. Computer Sciences Corp., 689 F.2d 1181, 1190 (4th Cir.1982), cert. denied, 459 U.S. 1105, 103 S.Ct. 729, 74 L.Ed.2d 953 (1983) (“The RICO ‘enterprise’ was identified in the indictment as the Infonet Division of CSC, an organization which had no corporate existence separate and apart from that of CSC itself”); Spearing v. National Iron Co., 770 F.2d 87, 88-89 (7th Cir.1985) (“The complaint also names as defendants ... National Iron Company, which being an unincorporated division of Pettibone Corporation is not suable in its own right”). (Words not underscored are merely relocated from a nearby footnote.”

²⁴ Alternative B conforms this provision to Section 1103(b) (stating that “a protected series has the same powers as the limited liability company that established the series”). Query: Should this conformity be maintained? For example, Alternatives B and C would likely preclude a for-profit LLC establishing a

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Alternative C

that the limited liability company that established the series has.²⁵

End of Alternatives

(c) Except as otherwise provided in Section 1103(b)(1)(A), termination of a limited liability company terminates the existence of a protected series of the company.²⁶

SECTION 1103. POWERS.

(a) A protected series has the capacity to sue and be sued in its own name.²⁷

Alternative A²⁸

(b) To carry on its activities and affairs, a protected series has the same powers as the limited liability company that established the series, [including the power to own and hold title to property,]²⁹ [except to] [except the power to] [the series may not]:

(1) continue [continue in existence] after the company has:

non-profit series.

²⁵ Alternative C has the same effect as Alternative B. Given the link between the purpose(s) of the LLC and the permitted purpose(s) of the protected series, the phrase “whether or not for profit” is unnecessary (as would be explained in a comment). Deleting the phrase make the provision much more readable.

²⁶ At the Fall 2013 meeting, a participant suggested this article define “termination.” However, the main act does not provide a definition, so a definition here would be inappropriate.

²⁷ Formulation parallels Section 109. See also Sections 105(c)(1) and ~~1104(f)(4)~~ 1105(b)(1) (precluding variance of this capacity). Queries: May one series conspire with another civilly? Criminally? Is a series subject to criminal prosecution? *E.g.*, U.S. v. ITT Blackburn Co., a Div. of ITT, 824 F.2d 628, 631 (8th Cir. 1987) (“[A]n unincorporated division cannot be sued or indicted, as it is not a legal entity.... See United States v. Computer Sciences Corp., 689 F.2d 1181, 1190 (4th Cir.1982), cert. denied, 459 U.S. 1105, 103 S.Ct. 729, 74 L.Ed.2d 953 (1983) (“The RICO ‘enterprise’ was identified in the indictment as the Infonet Division of CSC, an organization which had no corporate existence separate and apart from that of CSC itself”); *Spearing v. National Iron Co.*, 770 F.2d 87, 88-89 (7th Cir.1985) (“The complaint also names as defendants ... National Iron Company, which being an unincorporated division of Pettibone Corporation is not suable in its own right”).”)

²⁸ The two alternatives differ only in that Alternative B places the limitations in a separate subsection.

²⁹ The bracketed language seeks to provide comfort as to the concerns stated by the title insurance experts who addressed the Drafting Committee at the Fall 2013 meeting.

1 (A) ceased to exist,³⁰ dissolved and completed its winding up, or filed a
2 statement of termination under Section 702(b)(2)(F), unless the company has been merged into
3 an entity that may establish a protected series or foreign protected series; or

4 (B) converted or domesticated, unless the converted or domesticated entity
5 may establish a protected series or foreign protected series;³¹

6 (2) be a party to a merger,³² interest exchange, conversion, domestication, or
7 any comparable transaction, except indirectly when the company participates in the transaction;
8 or (3) establish another protected series.

9 **Alternative B**

10 (b) Except as otherwise provided in subsection (c), to carry on its activities and affairs, a
11 protected series has the same powers as the limited liability company that established the series,
12 [including the power to own and hold title to property,]³³

13 (c) A protected series may not:

14 (1) continue [continue in existence] after the company has:

15 (A) ceased to exist,³⁴ dissolved and completed its winding up, or filed a
16 statement of termination under Section 702(b)(2)(F), unless the company has been merged into
17 an entity that may establish a protected series of foreign protected series; or

18 (B) converted or domesticated, unless the converted or domesticated entity

³⁰ As in a merger – typically without winding up.

³¹ In such circumstances, a protected series *may* continue in existence but whether the series actually does so depends on the plan of merger, conversion, or domestication.

³² META uses “party to a merger” as a term of art.

³³ The bracketed language seeks to provide comfort as to the concerns stated by the title insurance experts who addressed the Drafting Committee at the Fall 2013 meeting.

³⁴ As in a merger – typically without winding up.

- 1 may establish a protected series or foreign protected series;³⁵
2 (2) be a party to a merger,³⁶ interest exchange, conversion, domestication, or any
3 comparable transaction,³⁷ except indirectly when the company participates in the transaction; or
4 (3) establish another protected series.

5 **End of Alternatives**

6 **SECTION 1104. GOVERNING LAW.** The law of this state governs:

- 7 (1) the internal affairs of a protected series;
8 (2) the relations between³⁸ a protected series and
9 (A) the limited liability company that established the series;
10 (B) any other protected series of the company; and
11 (C) any member not associated with the series;³⁹
12 (3) the liability of a limited liability company for a debt, obligation, or other liability of a
13 protected series of the company;
14 (4) the liability of a protected series for a debt, obligation, or other liability of the limited

³⁵ In these circumstances, a protected series *may* continue in existence but whether the series actually does so depends on the plan of merger, conversion, or domestication.

³⁶ META uses “party to a merger” as a term of art.

³⁷ At its Fall 2013 meeting, the Drafting Committee discussed whether to include this exclusion, but time constraints prevented even a tentative decision.

At least one participant tied this exclusion to the decision not to characterize a protected series as an entity – i.e., “only an entity can merge.” That analysis is, however, at odds with META. In META, “entity” is indeed the term of art for permissible participants in a merger, but META defines “entity” to include (subject to exceptions not relevant here) “any other person that has: (I) a legal existence separate from any interest holder of that person; or (II) the power to acquire an interest in real property in its own name”. See ULLCA § 1001(11)(A)(x).

³⁸ The changes made in this line (of => between and to => and) are to cover each relationship in both directions. The change from “relationship” to “relations” is for consistency’s sake. See e.g. ULLCA § 105(a)(1) (referring to “relations among the members ...”).

³⁹ As a comment will indicate, the relationship of a protected series to an associated member is an internal affair.

1 liability company or any other protected series of the company; and

2 (5) the liability for the debts, obligations, or other liabilities of a protected series of:

3 **Alternative A**

4 (A) a member as such;

5 (B) a member associated with a series as such;

6 (C) a manager as such; and

7 (D) a series manager as such.⁴⁰

8 **Alternative B**

9 (A) a member in that capacity;

10 (B) a member associated with a series in that capacity;

11 (C) a manager in that capacity; and

12 (D) a series manager in that capacity.

13 **Alternative C**

14 a person in the person's capacity of a member, member associated with a series, a manager, or a
15 series manager.⁴¹

16 **End of Alternatives**

17 **SECTION 1105. OF RELATIONSHIP OF OPERATING AGREEMENT TO**
18 **PROTECTED SERIES.**

19 (a) Except as otherwise provided in Sections 105 and 107(b)(2)⁴² and subsection (b), the
20 operating agreement governs:

⁴⁰ Alternative A was in the Fall 2013 draft, except that items (C) and (D) have been exchanged so that the same pattern (general to specific) applies to managers as well as members.

⁴¹ Same alternatives presented in Section 1130 re: a foreign protected series.

⁴² Query: Is the reference to Sections 105 and 107 necessary, or would a comment suffice?

1 (1) relations among the members associated with a protected series in their
2 capacity as associated members and between the associated members and the series;

3 (2) the rights and duties under this [act] of a person in the capacity of series
4 manager;

5 (3) the activities and affairs of the series and the conduct of those activities and
6 affairs

7 (4) the relations among the series, the company, and any other protected series of
8 the company; and

9 (5) the relations among a member associated with a series in that capacity with the
10 company, any other protected series, and any member not associated with the series.⁴³

11 (b) The operating agreement may not:⁴⁴

12 (1) vary the capacity of a protected series under Section 1103(a) to sue and be
13 sued in the name of the series;

14 **Alternative A**

15 (2) vary the powers of a series under Section 1103, except to limit those powers;

16 **Alternative B**

17 add to, increase, or otherwise expand the powers stated in Section 1103;

18 **End of Alternatives**

19 (3) restrict the rights under this [act] of a person other than a member associated
20 with the relevant protected series or series manager of that series, except to the same extent that
21 Sections 105(c)(15), 106 and 107(b) permit the operating agreement to restrict the rights under

⁴³ The last category includes other members *qua* members and members *qua* members associated with another series.

⁴⁴ COSL – Query: Is it necessary or at least acceptable to state that these strictures are in addition to the requirements stated in Sections 105-107, or would/should a comment suffice?

1 this [act] of a person other than a member or manager;⁴⁵

2 (4) vary the provisions of Section 805, as made applicable by Section 1129 to a
3 protected series, but the operating agreement may provide that the protected series may not have
4 a special litigation committee or.

5 (5) vary Section (TBA)⁴⁶.

6 **SECTION 1106. NAME.** The name of a protected series

7 **Alternative A**

8 must comply with Section 112 and contain the phrase “Protected Series”.^{47 48}

9 **Alternative B**

10 must:

11 (1) comply with Section 112;

12 (2) contain the name of the of the limited liability company that establishes the
13 series; and

14 (3) contain the phrase “Protected Series”.⁴⁹

15 **End of Alternatives**

⁴⁵ Arguably, Section 106 need not be included, but there is less risk in needlessly including the section than in erroneously excluding it.

⁴⁶ Placeholder for further items.

⁴⁷ At its Fall 2013 meeting, the Drafting Committee (provisionally) accepted the Reporter’s recommendation against allowing an abbreviation to function as a designator. (Rationale – the series concept is so new, an abbreviation is unlikely to function effectively as a signifier.)

⁴⁸ Query: necessary to state that the designator suffices to distinguish the name of a protected series from the otherwise identical name of the LLC?

⁴⁹ See notes 47 and 48.

1 **SECTION 1107. [ESTABLISHMENT⁵⁰ OF] [ESTABLISHING] PROTECTED**
2 **SERIES; STATEMENT OF DESIGNATION; AMENDMENT AND CANCELLATION**
3 **OF STATEMENT.**

4 (a) With the affirmative vote or consent of all the members,⁵¹ a limited liability company
5 may establish one or more protected series pursuant to subsections (b) through (d).

6 (b) A limited liability company may establish a protected series by delivering to the
7 [Secretary of State] for filing a protected series designation, signed by the company,⁵² stating:

8 (1) the name of the limited liability company;

9 (2) the name of the series; and

10 (3) the name and street and mailing address of the registered agent for the series.

11 (c) A protected series designation may contain statements as to matters other than those
12 required by subsection (b), but may not vary or otherwise affect the provisions specified in
13 Sections 105(c) and (d) and 1104(f) in a manner inconsistent with those sections. A statement in

⁵⁰ “ESTABLISHMENT OF” rather than “ESTABLISHING” to follow the style of Section 201 – Formation.

⁵¹ On instructions from the Chair of the Drafting Committee, the Reporter notes that Chair: (i) considers “affirmative vote” unnecessary (to put his views mildly); and (ii) consents to the phrase’s inclusion in this article only because the phrase is used repeatedly in ULLCA.

⁵² See ULLCA § 203(a)(1) (providing that, with exceptions not relevant here, “a record signed by a limited liability company must be signed by a person authorized by the company”). Query: Once the certificate of designation becomes effective, who controls its amendment or cancellation – the LLC or the series? The answer will not be a default rule, because amendment pertains to the filing office. See Section 105(3)(c)(B).

An operating agreement can restrict the limited liability company’s right to amend or cancel the certificate of designation, but such restrictions are not binding on the filing office. See ULLCA § 203(a)(i), comment (“The filing office will not check whether a person who purports to be authorized to sign a record on behalf of an LLC actually has that authority, even if a statement of authority pertaining to the matter is in effect. “). If the company amends or cancels a certificate in breach of the operating agreement: (i) the company may be liable for damages; and (ii) the individual who signed the record for the company may be guilty of perjury. See ULLCA §§ 203(c) (“A person that signs a record as an agent or legal representative affirms as a fact that the person is authorized to sign the record.”); 205(c) (“An individual who signs a record authorized or required to be filed under this [act] affirms under penalty of perjury that the information stated in the record is accurate.”).

1 a designation is not effective as a statement of authority.

2 (d) A protected series is established when the protected series designation becomes
3 effective.⁵³

4 (e) A limited liability company may amend or cancel a certificate of designation by
5 delivering to the [Secretary of State] for filing a statement of change⁵⁴ that states the name of the
6 company and the protected series to which the certificate pertains;⁵⁵ and

7 (1) for amendment, the information that is to be in effect as a result of the filing of
8 the statement of change; and

9 (2) for cancellation, that the certificate is canceled.⁵⁶

10 **SECTION 1108. [ANNUAL] [BIENNIAL] REPORTS.** ^{57 58} In addition to the
11 information required by Section 212,⁵⁹ a limited liability company or foreign limited liability
12 company must in its [annual] [biennial] report include for each protected series or foreign

⁵³ The deleted language sought to parallel this formation process with the process for forming an LLC. The deletion conforms to the Committee’s decision at the Spring 2013 meeting and reaffirmed at the Fall 2013 meeting.

⁵⁴ Note that Section 116 also uses the term “statement of change” for a different effect in a different context: Change of Registered Agent or Address for Registered Agent by Limited Liability Company.

⁵⁵ It would be possible, though more complicated, to empower the series manager to sign records after the certificate of designation is filed. However, we achieve the same effect (and more) if we state at least that a protected series is a person. In that case, ULLCA §203(a)(5) would apply: “(5) Any other record delivered on behalf of a person to the [Secretary of State] for filing must be signed by that person.” Also, there is some rationale for keeping the LLC in charge of all filed records which pertain to it.

⁵⁶ Query: What is the effect of cancellation?

⁵⁷ The Drafting Committee has not yet decided whether to require annual/biennial reports. It would be possible to require each protected series to file its own report, but that approach would increase filing costs.

⁵⁸ Likewise, the Drafting Committee has not yet decided whether to provide for a certificate of good standing for a protected series. Query: is the certificate desirable (or perhaps even necessary) for the purposes of writing opinions?

⁵⁹ This section is properly located in Part 1, although the section does refer to a section in another article. Part 2 is for sections that involve *incorporation by reference* at least in part and not for sections that merely *add on* to provisions in other articles.

1 protected series of the company for which a certification of designation or statement of foreign
2 qualification is in effect.⁶⁰

3 (1) the name of the series; and

4 (2) the name and street and mailing address of the registered agent for the series.^{61 62}

5 **SECTION 1109. PROPERTY ASSOCIATED WITH PROTECTED SERIES.**

6 (a) Property of a limited liability company or protected series⁶³ becomes associated with
7 the series when the company⁶⁴ identifies in a record:⁶⁵

8 (1) the series by name; and

9 (2) the property with sufficient specificity to permit a reasonable person that is not
10 a member,⁶⁶ manager, or series manager to identify the property and distinguish it from:

11 (i) property of the company; and

⁶⁰ The phrase “for which a certificate of designation is in effect” is arguably redundant. A protected series can only exist while its certificate of designation is in effect. The phrase is included to achieve parallel syntax.

⁶¹ Because this section requires information to be included in an LLC’s or foreign LLC’s regular annual report, ULLCA § 212(d) and (e) will by their terms apply to the information required by this section.

⁶² This section is relocated, not deleted. See Section 1111.

⁶³ A protected series can acquire property from third parties.

⁶⁴ A protected series should not be able to maintain the records², because the records typically will encompass property owned by the limited liability company or another series. Query: Is it necessary to state that the LLC has a duty to properly maintain the records? At least a comment should address this issue, including the question of standing (i.e., series not associated member).

⁶⁵ Non-record designation (“the memory of man runneth not to the contrary”) could not possibly satisfy the specificity requirement stated in Section 109(a)(2). *But see* Anderson v. City of Huntington, 40 Ind. App. 130, 81 N.E. 223, 224 (1907) (“If the fence lines at this point have been maintained as they now are, so long that ‘the mind of man runneth not to the contrary,’ we take it no one would contend that the county commissioners could declare that said road was 60 feet wide at such place and appropriate sufficient land from the adjoining property owners to make said road 60 feet wide without any legal proceedings or process.”)

⁶⁶ In this context, “member” encompasses both general status as a member and status as a member associated with the series. That is, the standard excludes members, regardless of whether associated with the series.

1 (ii) property associated with any other protected series of the company.^{67 68}

2 (b) Property of a limited liability company which becomes associated with a protected
3 series vests in the series without transfer, reversion, or impairment.^{69 70}

4 (c) Associated property:⁷¹

5 **Alternative A**

6 must be held in the name of the relevant protected series, except to the extent that law other than
7 this act permits otherwise⁷².

8 **Alternative B**

9 may be held directly or indirectly, including in the name of the relevant protected series, in the

⁶⁷ A comment will note that different means may be necessary depending on whether the type of property is subject to a public recording system.

⁶⁸ Under this subsection, property might be owned by a protected series with being associated with the series. That result is intentional. The category of “associated property” provides support for the horizontal shields, *see* subsection (d), and the proper record is the only entryway into that protected situation.

⁶⁹ This language derives from the META provisions of ULLCA. *See e.g.* ULLCA § 1026(a)(3) (stating that, when a merger becomes effective, “all property of each merging entity vests in the surviving entity without transfer, reversion, or impairment”).

⁷⁰ At the Fall 2013 meeting, concern was voiced about how this subsection fit with subsection (a). Subsection (b) language mirrors the language in UCC § 9-108(b):

[Examples of reasonable identification.] Except as otherwise provided in subsection (d), a description of collateral reasonably identifies the collateral if it identifies the collateral by: (1) specific listing; (2) category; (3) except as otherwise provided in subsection (e), a type of collateral defined in [the Uniform Commercial Code]; (4) quantity; (5) computational or allocational formula or procedure; or (6) except as otherwise provided in subsection (c), any other method, if the identity of the collateral is objectively determinable.

In the Reporter’s view, this list does not extrapolate well to the context of protected series. In UCC, Article 9, the list functions to characterize *different categories* of property owned by the same person. In the context of series, the task is to distinguish *all types* of property owned by one [“thing”][person][entity] from various types of property owned by another [“thing”][person][entity].

⁷¹ Struck language is no longer necessary, given the revision to the first line of subsection (a) and the new text for subsection (b).

⁷² This draft does not delineate the mechanics for transferring ownership of associated property. Characterizing protected series as entities would simplify matters considerably. *Cf.* UPA (1914) (providing detailed rules for the transfer of property owned by a partnership).

1 name of the limited liability company, through a nominee or otherwise.⁷³

2 (d) Property associated with a protected series is not subject to the enforcement of a
3 judgment against the limited liability company or another series and property of a limited
4 liability company is not subject to the enforcement of a judgment against a series, regardless of
5 whether enforcement is sought by levy, attachment, execution, judicial sale, or other comparable
6 procedure.⁷⁴

7 **End of Alternatives**

8 **SECTION 1110. MEMBER ASSOCIATED WITH PROTECTED SERIES.**

9 (a) Only a member⁷⁵ may become associated with a protected series of a limited liability
10 company.

11 (b) A member becomes associated with a protected series when the member is so
12 identified in or pursuant to the operating agreement.

13 **SECTION 1111. NO AGENCY POWER OF MEMBER ASSOCIATED WITH**
14 **PROTECTED SERIES.**⁷⁶

15 (a) A member is not an agent of a protected series solely by reason of being associated
16 with the series.

⁷³ Some states seem to provide special rules regarding titling. The language here is taken essentially from *See e.g.* Del. Code Ann. tit. 6 § 18-215(b) Query: Under such language, if property associated with a series is held in the name of the LLC, what is the LLC's relationship to the property and what are the LLC's duties to the series with regard to the property. This query is one reason the Reporter prefers the "other law" approach. The same law that permits the different method of holding the property will supply the rules determining the participants' rights and duties vis a vis the property.

⁷⁴ This subsection: (i) buttresses the horizontal shields; (ii) does not apply to property owned by a protected series but not properly associated with the series under subsection (a); and (iii) is not intended to preclude other claims such as piercing and fraudulent transfer.

⁷⁵ An early version of the Fall 2013 draft included "of a limited liability company". That phrase is redundant, given the definition of member. Section 102(11).

⁷⁶ Derived essentially verbatim from Section 301. This language has been moved without any other revision. Hence, only the new section number is underlined.

1 (b) A person’s status as a member associated with a protected series does not prevent or
2 restrict law other than this [act] from imposing liability on the series because of the person’s
3 conduct.

4 **SECTION 1112. LIMITED LIABILITY.** ^{77 78}

5 (a) A debt, obligation, or other liability of a protected series is solely the debt, obligation,
6 or other liability of the series.

7 (b) A member associated with a protected series, the series manager, a member, or
8 manager is not personally liable, directly or indirectly, by way of contribution or otherwise, for a
9 debt, obligation, or other liability of the series solely by reason of being or acting as an
10 associated member, the series manager, a member or manager.⁷⁹

11 (c) A limited liability company is not personally liable, directly or indirectly, by way of
12 contribution or otherwise, for a debt, obligation, or other liability of a protected series of the
13 company solely by reason of the company having established or managed the series.

14 (d) A protected series of a limited liability company is not personally liable, directly or
15 indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the
16 company or another protected series of the company solely by reason of being a protected series
17 of the company.

⁷⁷ This section is derived from ULLCA § 304. Given the Drafting Committee’s decision to locate all series provisions in one article (to the extent possible), the Committee needs to closely consider whether stating the main shield separately from the series shield leaves any gaps.

⁷⁸ ULLCA § 304 is captioned “Liability of Members and Managers” but in fact provides a shield against liability. ULLCA (2006) adopted its caption to parallel the comparable captions in UPA (1997) and ULPA (2001). The caption suits the partnership acts, because they both contemplate general partner liability. Like ULLCA § 304, this section limits liability.

⁷⁹ Arguably, protecting unassociated members and LLC managers is unnecessary, but “better safe than sorry.”

1 (e) The failure of a protected series or a limited liability company⁸⁰ to observe formalities
2 relating to the exercise of its powers or management of its activities and affairs is not a ground
3 for imposing liability on:

4 (1) a member associated with a protected series, series manager, manager, or a
5 member for a debt, obligation, or other liability of the series; and

6 (2) except as to the requirements of Section 1109(a):⁸¹

7 (A) a limited liability company for a debt, obligation, or other liability of a
8 protected series of the company; and

9 (B) a protected series for a debt, obligation, or other liability of:

10 (i) the limited liability company that established the series; or

11 (ii) another protected series of the company.

12 (f) This section applies regardless of the dissolution of a limited liability company or a
13 protected series.

14 **SECTION 1113. MANAGEMENT OF PROTECTED SERIES.**⁸²

15 (a)

16 **Alternative A**

17 A protected series is managed by the limited liability company that establishes the series.⁸³

⁸⁰ It is necessary to include the limited liability company itself in this shield; otherwise a gap might exist.

⁸¹ The cross-reference provision requires records to clearly indicate what property is associated with a series. This formulation does not automatically dissolve the shield for failure to maintain the records. Rather, that failure of formalities can be a ground for piercing. In addition, the buttress provided by Section 1109(d) applies only to properly described property. *Compare* Del. Code Ann. § 18-215(b) (establishing, as one of several preconditions for erecting the series shield, that “the records maintained for any such series account for the assets associated with such series separately from the other assets of the limited liability company, or any other series thereof”).

⁸² A comment will note that this rule applies during winding up.

⁸³ This language reflects a tentative decision made at the Spring 2013 meeting, which was reconfirmed at the Fall 2013 meeting. The language by itself is probably insufficient, because this article – unlike

1 **Alternative B**

2 A protected series is managed by the limited liability company that establishes the series, and
3 any matter relating to the activities and affairs of the series is decided exclusively by the
4 company.⁸⁴

5 (b) For the purposes of Section 105(d)(3), it is not manifestly unreasonable if the
6 operating agreement of a manager-managed limited liability company with more than one
7 manager.⁸⁵

8 (1) makes a specified manager responsible only for the activities and affairs of a
9 specified protected series; and

10 (2) confines the manager’s fiduciary duties to the specified responsibility; and

11 (3) eliminates any other fiduciary duty the manager might otherwise have had.⁸⁶

12 **End of Alternatives**^{87 88 89 90}

ULLCA – this article contains no default rules delineating the actual authority of managers. *See* ULLCA § 407. Part 2 of this article does contain fiduciary duties for an LLC as manager of a protected series. *See* Section 1121.

⁸⁴ Source: ULLCA § 407(c)(1). COSL Query: the added language is in the passive voice but so is ULLCA § 407(c)(1). OK?

⁸⁵ Section 105(d)(2) expressly authorizes this type of provision for the operating agreement of a member-managed LLC.

⁸⁶ Query: Locate here or in Section 1121 (addressing standards of conduct).

⁸⁷ This provision has been relocated to Section 1122(b).

⁸⁸ This provision has been relocated to Part 2, Section 1127.

⁸⁹ The cited, struck provision incorporated by reference the causes of dissociation under Section 602. That incorporation is unnecessary, because each incorporated event would trigger dissociation, which would automatically cause the person to cease to be associated with the series.

⁹⁰ This section has been relocated to Part 2, Section (1130)(a).

1 [PART 2] [CAPTION TBD]

2 SECTION 1114. OTHER PROVISIONS OF [ACT] MADE APPLICABLE TO
3 PROTECTED SERIES.⁹¹

4 (a) Subject to Section 1130,⁹² for the purposes of

5 **Alternative A**

6 provisions in this [part] which make provisions of other [articles] applicable to a protected series
7 or foreign protected series,

8 **Alternative B**

9 Sections 1115 to 1129,⁹³

10 **End of Alternatives**

11 the following words and phrases defined in [Section] 102 are applied as follows.⁹⁴

12 (1) “certificate of formation” as if the phrase referred to “certificate of
13 designation”;

14 (2) “contribution” as if the word referred to “contributions made, promised, or
15 otherwise pertaining to a protected series”;

16 (3) “dissociates” and “dissociation” as if each word referred to “ceasing to be
17 associated with a protected series”;

⁹¹ Many provisions of the Act do not need to be “made applicable”; they apply by their terms as stated. E.g., § 205(c) (“An individual who signs a record authorized or required to be filed under this [act] affirms under penalty of perjury that the information stated in the record is accurate.”).

⁹² Section 1130 pertains to foreign protected series and therefore requires slightly different “as if” definitions.

⁹³ This alternative reads far better. However, some of the subsections do not apply Article 1 provisions to protected series. Query: Is it necessary to be more specific – i.e., including only those subsections that do apply Article 1 provisions?

⁹⁴ COSL – Query: Consistent with COS rules, after the first use in a paragraph of a multiword defined term, subsequent references use a shortened form. For example, the second reference in a paragraph to “limited liability company” would be “company”. Is it necessary for these “as is” provisions to contemplate the Style rule?

1 (4) “distribution”

2 **Alternative A**

3 as defined in Section 1101(2);

4 **Alternative B**

5 as if the term were defined as in Section 1101(2);⁹⁵

6 **End of Alternatives**

7 (4) “foreign limited liability company” as if the phrase referred to “foreign
8 protected series”;

9 (5) “limited liability company” as if the phrase referred to “protected series”;

10 (6) “member” as if the word referred to “associated member ”;⁹⁶

11 (7) “member of a member-managed limited liability company”, “manager of a
12 manager-managed limited liability company”, and manager as if each referred to “series
13 manager”;

14 (8) “transferable interest” as if the phrase referred to “associated transferable
15 interest”; and

16 (9) “transferee” as if the word referred to “associated transferee”;

17 (b) To the extent this [article] makes provisions of other [articles] applicable to a
18 protected series, Section 105(c) and (d) and Section 107(b) apply to the operating agreement as
19 the agreement applies to a protected series.⁹⁷

Note to Reporter -- if/when the Committee approves this approach, check whether each of the (re)defined terms is used at least once in the “made applicable” provisions.

⁹⁵ Alternative B contains unnecessary words but preserves parallelism of structure with the other parts of this section.

⁹⁶ Although the definition is applicable only within Article 11, Part 2 brings ULLCA sections into Article 11 by incorporation.

⁹⁷ Query: Necessary? Understandable? Review after the Drafting Committee decides which ULLCA

1 (c) This [article] and provisions of other [articles] t to which this [part] refers must be
2 construed wherever reasonable as consistent with each other. If that construction is not possible,
3 this [article] governs.⁹⁸

4 **SECTION 1115. REGISTERED AGENT; SERVICE OF PROCESS, NOTICE,**
5 **OR DEMAND.**

6 (a) Sections 115 through 119 apply to a protected series or foreign protected series.

7 (b) In addition to the means of service authorized in Section 119(b) and (c), if a protected
8 series or registered foreign protected series ceases to have a registered agent, or if its registered
9 agent cannot with reasonable diligence be served, the series may be served by:

10 (1) noting conspicuously⁹⁹ on the process, notice, or demand that the series is the
11 addressee; and

12 (2) serving the limited liability company or foreign limited liability company that
13 established the series.

14 (c) Subject to other law:

15 (1) except as provided in subsection (b), service on a limited liability company or
16 foreign limited liability company is not service on a protected series or foreign protected series
17 of the company; and

18 (2) service on a protected series or foreign protected services is not service on:

19 (A) the limited liability company or foreign limited liability company that
20 established the series; or

21 (B) another protected series of the company.

provisions to incorporate into Part 2.

⁹⁸ Safety net provision. Query: retain?

⁹⁹ At its Fall 2013 meeting, the Drafting Committee decided to delete “conspicuously”.

1 **SECTION 1116. SIGNING AND FILING PURSUANT TO JUDICIAL ORDER.**

2 Section 204(b) applies to a protected series and foreign protected series.¹⁰⁰

3 **SECTION 1117. LIABILITY FOR INACCURATE INFORMATION IN FILED**

4 **RECORD.** Section 205(a) applies to a protected series.¹⁰¹

5 **SECTION 1118. STATEMENT OF AUTHORITY; STATEMENT OF DENIAL.**

6 (a) Sections 302 and 303 apply to a protected series

7 (b) Except as provided in subsection (c), a statement of authority, an¹⁰² amendment, or a
8 cancellation under this section pertains only to the protected series on whose behalf the
9 statement, amendment, or cancellation was delivered to the [Secretary of State] for filing.

10 (c) A limited liability company may deliver to the [Secretary of State] for filing a
11 statement of authority, an amendment, or a cancellation that pertains both to the company and a
12 protected series of the company.¹⁰³

13 **SECTION 1119. CONTRIBUTIONS AND DISTRIBUTIONS.**

14 (a) Except as stated in subsection (b), Sections 402 through 406, except for Section
15 406(b), apply to a protected series.

16 ¹⁰⁴(b) If a protected series has no associated transferable interests,¹⁰⁵ a distribution from

¹⁰⁰ Section 204(a) applies by its terms, and a comment will so note.

¹⁰¹ The caption here is the same as for Section 205. Subsection (b) is inapposite: “(b) To the extent that the operating agreement of a member-managed limited liability company expressly relieves a member of responsibility for maintaining the accuracy of information contained in records delivered on behalf of the company to the [Secretary of State] for filing under this [act] and imposes that responsibility on one or more other members, the liability stated in subsection (a)(2) applies to those other members and not to the member that the operating agreement relieves of the responsibility.” Subsection (c) applies by its terms.

¹⁰² Indefinite articles included here and before “cancellation” to indicate that “a statement” applies only to “of authority”. [COSL agrees.]

¹⁰³ Query: should we empower the LLC to deliver a statement, etc. that pertains solely to one or more protected series? Query for IACA – will the filing office want conformed copies for each protected series involved?

¹⁰⁴ Relocated from Section 1112 of the Fall 2013 draft.

1 the series is [paid] [made] [due] to

2 **Alternative A**

3 the limited liability company that established the series.¹⁰⁶

4 **Alternative B**

5 the members, as if the distribution were [being paid] [being made] [due] directly by the limited
6 liability company.¹⁰⁷

7 **End of Alternatives**

8 **SECTION 1120. REIMBURSEMENT; INDEMNIFICATION; ADVANCEMENT;**
9 **AND INSURANCE.** Section 408 applies to a protected series.

10 **SECTION 1121. STANDARDS OF CONDUCT FOR SERIES MANAGERS.**

11 Section 409(i) applies to a protected series.¹⁰⁸

¹⁰⁵ This provision reflects a decision made at the Fall 2013 meeting. A protected series might have no associated members but still be obligated to transferees of members that were formerly associated with the series. For a protected series with one or more associated members, subsection (a) makes the act’s default rule applicable (Section 404).

¹⁰⁶ At the Fall 2013 meeting, the members of the Drafting Committee tentatively chose this approach by a vote of 5 to 3.

¹⁰⁷ At the Fall 2013 meeting, a learned commissioner and a learned advisor forcefully advocated this approach. Under both alternatives, the distribution is subject to clawback provision (unlawful distributions) and fraudulent transfer claims. Note to Reporter – once decision finally made, make sure to clarify which clawback provisions applies – those of the main act or those stated in Part 2.

¹⁰⁸ The omission of Section 407 and most of Section 409 reflects the Drafting Committee’s tentative decision, made at the Fall 2013 meeting, to provide that as a default rule the LLC manages each protected series of the LLC. A comment to the definition of series manager will note that the term would encompass all members associated with a series if the operating agreement were to provide for “associated member management” of a series.

Note that this section provides for management by the limited liability company, which means that those who manage the company will have responsibility for managing the series. As to whether those who manage the LLC owe a duty to the series, this draft takes no position. *Compare In re USACafes, L.P. Litigation*, 600 A.2d 43, 49–50 (Del.Ch. 1991) (recognizing such a duty in an analogous context *with 1515 N. Wells, L.P. v. 1513 N. Wells, L.L.C.*, 392 Ill. App. 3d 863, 872-73, 913 N.E.2d 1, 10 (Ill. App. Ct. 2009) (rejecting *USACafes*). *See also* Section 1113(b) (contemplating a multimanager LLC whose operating agreement makes one of the LLC’s managers responsible solely for one protected series and eliminating the manager’s fiduciary duties with regard to other protected series; stating that such an arrangement is not manifestly unreasonable).

1 **SECTION 1122. INFORMATION RIGHTS OF ASSOCIATED MEMBERS AND**
2 **PERSONS FORMERLY ASSOCIATED WITH A PROTECTED SERIES.** Section 410,
3 subsections (b) through (h) apply to a protected series.¹⁰⁹

4 ¹¹⁰**SECTION 1123. NATURE OF TRANSFERABLE INTEREST.** Section 501
5 applies to a protected series.

6 **SECTION 1124. TRANSFER OF TRANSFERABLE INTEREST.** Section 502
7 applies to a protected series.¹¹¹

8 **SECTION 1125. CHARGING ORDER.** Section 503 applies to a protected series, except
9 that subsection (f) applies only if the limited liability company has only one member.^{112 113}

10 **SECTION 1126. POWER OF LEGAL REPRESENTATIVE OF DECEASED**
11 **MEMBER.** Section 504 applies to a protected series.¹¹⁴

¹⁰⁹ A comment will indicate that the information rights of a person no longer associated with a series are the same regardless of whether the person has remained a member.

¹¹⁰ In the alternative, we could combine this and the following three sections into one, captioned “TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS”.

¹¹¹ ULLCA § 502(g) states: “Except as otherwise provided in Section 602(5)(B), if a member transfers a transferable interest, the transferor retains the rights of a member other than the transferable interest transferred and retains all the duties and obligations of a member.” The application of subsection (g) to protected series works as is, despite the reference to Section 602(5)(B), which does not apply to protected series. Section 602(5)(B) provides for expulsion by unanimous consent if “there has been a transfer of all the person’s transferable interest in the company, other than: (i) a transfer for security purposes; or (ii) a charging order in effect under Section 503 which has not been foreclosed.” This type of expulsion is automatically relevant to a protected series because dissociation from the LLC automatically ends the member’s association with the series.

¹¹² This exception is necessary because a person must be a member in order to be associated with a series. If Section 503(f) were to apply without the exception, then the purchaser at foreclosure (unless already a member) would as a result of the foreclosure (i) become a member of the LLC, or (ii) be able to be associated with the series without being a member of the LLC.

¹¹³ At the Spring 2013 meeting, the Drafting Committee tentatively decided that an LLC is responsible for the compliance by a protected series with a charging order, and the Fall 2013 draft so provided. Because that decision resulted in a gap in the internal shields, the decision is to be revisited. Pending that revisiting, this draft does not implement the decision.

¹¹⁴ Section 504 cross references two other sections, each of them applicable to protected series. A comment will so note here and wherever else the same situation exists.

1 **SECTION 1127. CEASING TO BE ASSOCIATED; CONSEQUENCES.**

2 (a) A member associated with a protected series ceases to be associated if the
3 person is dissociated as a member of the limited liability company that established the
4 series.¹¹⁵

5 (b) A member:

6 (1) has the power to cease to be associated with a protected series at any time,
7 rightfully or wrongfully;¹¹⁶ and

8 (2) ceases to be associated with a protected series when the series knows or has
9 notice of the member’s express will to cease being associated.¹¹⁷

10 (c) A person’s ceasing to be associated with a protected series does not dissociate the
11 person from the limited liability company that established the series.

12 (d) Section 603 applies to a protected series.¹¹⁸

13 **SECTION 1128. DISSOLUTION.**

14 (a) As part of its winding up, a dissolved limited liability company shall dissolve and
15 wind up any protected series.¹¹⁹

¹¹⁵ The cited, struck provision incorporated by reference the causes of dissociation under Section 602. That incorporation is unnecessary, because each incorporated event would trigger dissociation, which would automatically cause the person to cease to be associated with the series.

¹¹⁶ ULLCA permits the operating agreement to eliminate the power as well as the right of a member to dissociate. This Article takes the same approach with regard to ceasing to be associated with a protected series.

¹¹⁷ Subsection (b) is derived from ULLCA §§ 601(a) and 602(1).

¹¹⁸ Section 603 is captioned “Effect of Dissociation.”

¹¹⁹ Some participants in the drafting process have expressed concern about applying the concept of dissolution to a “thing” that is not an entity. If the Drafting Committee opts to characterize a protected series as an entity (or perhaps even as a person), the concern is moot. If not, the Committee will need to consider: (i) how much more complicated Subsection (b) will be if “dissolution” may not be used; and whether the dissolution concept may be at least marginally helpful to protect the shields.

1 (b) [Article] 7 applies to a protected series,¹²⁰ except that:
2 (1) the following provisions do not apply:
3 (A) Section 701(a)(5)¹²¹ and (5);^{122 123}
4 (B) Section 702(c), (d), and (e)(2);¹²⁴ and
5 (C) Sections 708 through 710;¹²⁵; and
6 (2) the affirmative vote or consent required by Section 703(b)(1)¹²⁶ is the consent
7 of the limited liability company that established the series.¹²⁷

8 **SECTION 1129. ACTIONS BY MEMBERS.** [Article] 8 applies to a protected series.

9 **SECTION 1130. FOREIGN PROTECTED SERIES.**

10 (a) The law of the jurisdiction of formation of a foreign limited liability company
11 governs:

- 12 (1) the internal affairs of a foreign protected series of the company;
13 (2) the relationship between a foreign protected series of the company and:¹²⁸
14 (A) the company;
15 (B) any other protected series of the company; and

¹²⁰ Article 7 pertains to dissolution

¹²¹ The cited provision pertains to dissolution when an LLC has no members.

¹²² Paragraph 5 pertains to administrative dissolution, and the Committee has not yet decided whether administration dissolution applies to series.

¹²³ Query: should judicial dissolution of a series due to oppression be non-waivable?

¹²⁴ The cited provisions pertain to a dissolved LLC that has no members. A dissolved protected series without members will be wound up by the LLC.

¹²⁵ Administrative dissolution – undetermined whether such applies to a series.

¹²⁶ Rescinding dissolution. In the default mode, the LLC has plenipotentiary management authority over a protected series.

¹²⁷ Relocated to Sections 1121 through 1125.

¹²⁸ The changes made in this line (of => between and to => and) are to cover each relationship in both directions.

1 (C) any member¹²⁹ not associated with the series;¹³⁰

2 (3) the liability of the company for a debt, obligation, or other liability of a foreign
3 protected series of the company;

4 (4) the liability of a foreign protected series of the company for a debt, obligation, or
5 other liability of the company or any other protected series of the company.

6 (5) the liability for a debt, obligation, or other liability of the company or¹³¹ a foreign
7 protected series of the company of:

8 **Alternative A**¹³²

9 (A) a member as such;¹³³

10 (B) a member associated with the series as such;

11 (C) a manager of the foreign company as such; and

12 (D) a manager of the series as such.

13 **Alternative B**

14 (A) a member in that capacity;

15 (B) a member associated with a series in that capacity;

16 (C) a manager in that capacity; and

17 (D) a series manager in that capacity.

¹²⁹ ULLCA § 102(11) defines “member” as pertaining only to a domestic limited liability company. However, the usage here parallels the usage in ULLCA § 901(a). The same issue exists with regard to “manager” and “series manager.”

¹³⁰ The addition parallels the addition to Section 1104(2). As a comment will indicate, the relationship of a protected series to an associated member is an internal affair.

¹³¹ COSL Query: “and”?

¹³² The alternatives presented here parallel the alternates presented for Section 1104.

¹³³ With regard to the foreign limited liability company, Paragraph 5(A) is redundant of Section 901(a)(2). The redundancy seems preferable to the more complicated structure needed to eliminate the redundancy.

1 **Alternative C**

2 a person in the person’s capacity of a member of a foreign limited liability company, member
3 associated with a foreign protected series, a person managing the company or a series.

4 **End of Alternatives**

5 (b) Subsections (c) and (d) apply for purposes of determining whether:

6 (1) a foreign limited liability company or foreign protected series has transacted
7 business in this state; and

8 (2) this state has personal jurisdiction over a foreign limited liability company or
9 foreign protected series of the foreign company.

10 (c) The conduct of a foreign protected series of a foreign limited liability company is not
11 attributable to:

12 (1) the company solely by reason¹³⁴ of the company having established¹³⁵ the
13 series; or

14 (2) any other protected series of the company solely by reason of the company
15 having established the two series.

16 (d) The conduct of a foreign limited liability company is not attributable to a foreign
17 protected series of the company solely by reason of the foreign company having established the
18 series.

19 **Alternative A¹³⁶**

20 (e) Section 901 (b)¹³⁷ and Sections 902¹³⁸ through 906 and 910 through 912 apply to a

¹³⁴ This Draft uses “solely by reason of” instead of “because” to track language used elsewhere. See Sections 301(a), 304(a), and ~~4408~~ 1111(a).

¹³⁵ Note the omission of “managed”. Compare Section 304(b).

¹³⁶ Items in the list are in conceptual rather than alphabetical order.

¹³⁷ Subsection (a) addresses the issues addressed by Section 901(a).

1 foreign protected series as if:¹³⁹

2 (1) the series were a foreign limited liability company;

3 (2) “member” referred to a member of the company and a person associated with
4 the series;

5 (3) “manager” referred to a person managing either the company or the series;

6 (4) “jurisdiction of formation” referred to the jurisdiction of formation of the
7 company that established the series; and

8 (5) “the company’s principal office” referred to the principal office of the
9 company that established the series.

10 **Alternative B**¹⁴⁰

11 (e) Section 901 (b)¹⁴¹ and Sections 902¹⁴² through 906 and 910 through 912 apply to a
12 foreign protected series and for that purpose the following words and phrases are applied as
13 follows.

14 (1) “foreign limited liability company” as if the phrase referred to “series”;

15 (2) “jurisdiction of formation” referred to the jurisdiction of formation of the
16 company that established the series;

17 (3) “manager” as if the word referred to referred to a person managing either the
18 company or the series;

19 (4) “member” as if the word referred either to a member of the company or a

¹³⁸ The Fall 2013 draft excluded Section 902(c).

¹³⁹ The Reporter and COSL are continuing to think about the formulations in this subsection. The Reporter is contemplating how, if at all, to make ULLCA §§ 907 – 909 applicable to a foreign protected series and invites advice from any participant who needs a very good headache.

¹⁴⁰ This alternative follows the structure used in Section 1114(a).

¹⁴¹ Subsection (a) addresses the issues addressed by Section 901(a).

¹⁴² The Fall 2013 draft excluded Section 902(c).

1 member associated with the series; and

2 (5) “the company’s principal office” as if the phrase referred to the principal

3 office of the company that established the series.

4 **End of Alternatives**¹⁴³

5 *Legislative Note Re: Fraudulent Transfer will advise enacting states that have not enacted the*
6 *UFTA revisions to enact the revisions pertaining to series.*

¹⁴³ Relocated to Section 1114(c).