

ULLCPSA Drafting Committee
Reporter's Summary of Results of September 28, 2016 Internet Meeting
9-29-16

The agenda for the September 28 meeting included three items, the description of which is pasted below. *Interspersed, in this color and font, are the reporter's summaries of the results. Further below are a couple of additional points.*

1) decision regarding inclusion of Section 402 in the Act (mechanics having been covered on Wednesday of [last] week);

Retention of Section of 402 was approved by a substantial margin, with discussion postponed as to whether to relax the recordkeeping requirements of 301 in addition to considering a safe harbor for recordkeeping.¹

2) discussion, to extent appropriate, of any progress by the informal working group on the merger issue;

The Reporter noted that, consonant with an analysis provided by Dean Haynsworth:

- *the language of ULLCA (2013) already provides for mergers between a domestic protected series and a domestic LLC, although some gaps need to be addressed;² and*
- *under the same analysis, ULLCA (2013) provides for a protected series to participate in a domestication, interest exchange, and conversion. Given the Drafting Committee's decision not to allow a protected series to be involved in these three types of organic transactions, the act must contain preventative language.*

The informal working group on Mergers will begin discussions on approximately October 5.

3) whether the prohibition on a protected series owning an interest in another series should apply indirect and direct holdings; ...

The committee decided to cut this Gordian knot by eliminating the prohibition.

4) whether the act is too demanding (we will try and identify for your consideration those sections of the Act that raise this issue, but we would appreciate your input as well). Also

¹ Per the September 21 meeting, the Reporter is to draft language for Section 301 safe harbor for recordkeeping meeting a good faith/reasonable/efforts/substantial compliance/etc. standard. E.g., a DMV error should not defeat association.

² Language would be needed to address the filing requirement and to deem Section 402 asset exposure as a liability for purposes of ULLCA's "effect of merger" provision.

enclosed with this email is a chart prepared by Harry that compares series with what may be done with affiliates and identifies issues for consideration - to be discussed.

This discussion will resume during the October 5 meeting.