

## ATTACHMENT B

### **Proposed Changes by the ABA Committee on Partnerships and Unincorporated Business Organizations**

The overall concerns of the Committee on Partnerships META review committee are expressed in the attached proposed resolution. At the Partnership Committee meeting in Washington, D.C. on March 16, a decision was made to table this resolution and to recommend that the META review committee propose specific suggested changes that the review committee (with the approval of the Partnership Committee Executive Committee) feels are essential and a second list of other concerns that it would like the Standby Committee to review. The review committee's report will be distributed to the Standby Committee as soon as it is completed. Given the short timeframe between the March 16 meeting and the Standby Committee meeting, it may not be possible to distribute that report until we meet in Philadelphia.

One change that it is clear that the review committee will recommend is the elimination of Article 6 on Divisions.

**Resolution of the Committee on Partnerships and Unincorporated Business Organizations  
with respect to Article 6 of the  
Model Entity Transactions Act (META)**

**WHEREAS**, Article 6 of the Model Entity Transaction Act proposes a model for the transaction labeled a "division" and described as permitting "the dividing entity to subdivide itself into two or more separate and distinct entities"; and

**WHEREAS**, there has been expressed views and positions in opposition to the division transaction and the process of the drafting of Article 6 including the lack of demand for this transactional structure in the various states and the lack of representation of creditor interests in the drafting process.

**RESOLVED**, that the Committee on Partnerships and Unincorporated Business Organizations, Section of Business Law, American Bar Association, does not endorse Article 6 (Divisions) of the Model Entity Transactions Act ("META") as approved by the National Conference of Commissioners of Uniform State Laws in July, 2004 and subsequently amended in July, 2005 by the addition of Article 6, and as such does not endorse Article 6 of META for adoption by the various states.

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**Resolution of the Committee on Partnerships and Unincorporated Business Organizations  
with respect the  
Model Entity Transactions Act (META)**

**WHEREAS**, the Model Entity Transactions Act ("META") proposes a limited "junction box" for certain organic transactions by and among business organizations including partnerships, limited partnerships, limited liability companies, and business (statutory) trusts; and

**WHEREAS**, the Committee on Partnerships and Unincorporated Business Organizations of the Section of Business Law, American Bar Association ("PUBO") provides leadership, guidance and assistance with to the law of unincorporated business organizations including partnerships, limited partnerships, limited liability companies and business trusts; and

**WHEREAS**, META does not address intra-entity transactions (e.g., a merger of a corporation into a corporation or of a limited liability company into a limited liability company) with the possible effect of a series of transactions accomplished as parts of a whole may have different legal effects; and

**WHEREAS**, PUBO believes it necessary that there not be distinctions drawn between intra- and inter-entity organic transactions and that any "junction-box" act include both intra- and inter-entity transactions; and

**WHEREAS**, with respect to all organic transactions other than a merger, META proposes that to the extent neither the substantive law of the entity in question nor its governing instrument does not provide an applicable voting threshold, that the voting threshold for the approval of a merger will apply; and

**WHEREAS**, PUBO believes that the merger thresholds of the various underlying acts have in many instances been not well reasoned and that reliance upon those thresholds for transactions that are not mergers inappropriate; and

**WHEREAS**, as certain forms of unincorporated business organization do not afford some or all participants therein limited liability from the debts and obligations of the business organization, it is important that there be provided appropriate protections for those who would, in an organic transaction, become liable for the debts and obligations of the business organization surviving or created in the course of the transaction; and

**WHEREAS**, PUBO believes that META fails to properly protect persons from personal liability for the debts and obligations of the business organization surviving or created in the course of the transaction; and

**WHEREAS**, as certain unincorporated business organizations surviving or created in the course of an organic transaction may obligate some or all of the owners thereof to contribute additional capital to the organization beyond those contribution obligations agreed to with respect to the original organization, it is important that there be provided appropriate protections for those who would, in an organic transaction, become obligated upon additional contribution obligations to the business organization surviving or created in the course of the transaction; and

**WHEREAS**, PUBO believes that META fails to properly protect persons from obligations to contribute to the capital of the business organization surviving or created in the course of the transaction; and

**WHEREAS**, the law of unincorporated business organizations must account for the differing interests of owners (*e.g.*, partners and members) and transferees/assignees and as appropriate afford protections for their various interests in organic transactions; and

**WHEREAS**, PUBO believes that META fails to properly address the differing interests of owners (*e.g.*, partners and members) and transferees/assignees and as appropriate afford protections for their various interests in organic transactions; and

**WHEREAS**, this list of issues with respect to META is not intended to be exclusive; and

**WHEREAS**, PUBO does commend the work involved over a course of several years in META's drafting; and

**WHEREAS**, PUBO does believe that META may serve as a useful starting point for efforts by state drafting committees seeking to prepare for submission to state legislatures a "junction box" statute; and

**WHEREAS**, PUBO is aware that state drafting committees may accept model and uniform acts as final acts with little to no revisions, and as such PUBO is concerned about endorsing META at this time and thereby sending an incorrect message to the various state drafting committees; and

**WHEREAS**, PUBO recommends efforts to continue the drafting of META so as to address its concerns; and

**WHEREAS**, PUBO is also aware of an additional joint effort among NCCUSL, PUBO and the Committee on Corporate Laws to produce a more definitive "junction box" statute by and through the Omnibus Business Code Act; and

**WHEREAS**, PUBO recommends that portions of META be utilized by the Omnibus Business Code Act Committee so as to resolve many of the issues listed above.

**RESOLVED**, that the Committee on Partnerships and Unincorporated Business Organizations, Section of Business Law, American Bar Association ("PUBO"), does not endorse the Model Entity Transactions Act ("META") as approved by the National Conference of Commissioners of Uniform State Laws in July, 2004 and subsequently amended in July, 2005 by the addition of Article 6, and as such does not endorse META for adoption by the various states.

**FURTHER RESOLVED**, PUBO recommends that the Council of the Section of Business Law and the House of Delegates not endorse META for adoption by the various states.